

Lewis County Planning Commission **Workshop**

Lewis County Courthouse
Commissioners' Hearing Room – 2nd Floor
351 NW North St – Chehalis, WA

November 10, 2015 - Meeting Notes

Planning Commissioners Present: Russ Prior, District 3; Jeff Millman, District 2; Sue Rosbach, District 2; Mike Mahoney, District 1; Richard Tausch, District 2; Leslie Myers, District 1

Planning Commissioners Absent: Bob Guenther, District 3

Staff Present: Lee Napier, Community Development Director; Fred Evander, Senior Planner; Glenn Carter, Civil Deputy Prosecuting Attorney; Pat Anderson

Consultants Present: Brad Medrud, AHBL, Inc.

Others Present: Please see sign in sheet

Handouts/Materials Used:

- Agenda
- Meeting Notes
- Memo – Response to SMP comments from Commissioner Prior
- Matrix of Permit Approval Process

1. Call to Order

Chair Mahoney called the meeting to order at 6:03 p.m. The Commissioners introduced themselves.

2. Approval of Agenda

The Agenda was approved as presented.

3. Approval of Meeting Notes

The Chair entertained a motion to approve the meeting notes. Commissioner Prior made the motion to approve the October 13 meeting notes; Commissioner Rosbach seconded. The notes were approved. Commissioner Prior stated Mr. Medrud changed his statement to say that Channel Migration Zones were used in determining Shoreline Jurisdiction. He would have a question later about that.

Commissioner Rosbach made a motion to approve the meeting notes from October 27; Commissioner Tausch seconded. The notes were approved.

4. Old Business

A. Workshop on Shoreline Master Program

The Chair recognized Mr. Medrud. Mr. Medrud stated two workshops have been held and comment was accepted from the public. Tonight's workshop would provide an opportunity for the Planning Commissioners to take the input received at the two prior workshops and come up with their questions and make sure they are satisfied with the update. Commissioner Prior submitted comments on the September draft and Mr. Medrud provided responses to his comments, which were distributed to the Commission.

Before beginning, Commissioner Prior referred to Section 4.04, which is a combination of Critical Areas and Shoreline Vegetation Conservation. He noted that those combined sections are now 14 pages long; in the individual sections in the April 15 draft the Critical Areas was one page and the Shoreline Vegetation Conservation was three pages. Now there are 10 additional pages devoted to that section and he would like an explanation.

Mr. Medrud stated Section 4.04 now contains three sections that were different sections before. This was driven by a suggestion by DOE to provide a way of explaining and to provide the basis for shoreline buffers. There are now three components. 1 – the component of critical area regulations within the shoreline jurisdiction; 2 – the shoreline vegetation component which say what you can and cannot do; and 3 – the established buffers that are for every structure that will be located in a shoreline jurisdiction. The important thing about putting all of those things together is the buffers themselves are drawn from the County's existing critical area regulations. The reason that section is longer than it was before is that rather than having the entire county critical area regulations in the back with strike-through, the intent is to have the existing Chapter 17.35 and 17.35A as they are currently written, unchanged, as the appendices of the SMP. They are there as reference and they are static as of the adoption of the SMP. Any changes to those particular sections are handled in the 7 or 8 pages that were added to Section 4.04. The intent was to list out what has changed; everything else remains the same. Mr. Medrud stated if the critical area regulations were included with all of the strike-through it would have added another 100+ pages. It was an effort to reduce the size but to also make sure it is clear that the shoreline buffers are based on the critical area regulations which in turn are based on habitat.

Mr. Medrud stated Commissioner Prior's comments are very straightforward and appropriate. In the memo the section and comment are in bold type. The response is not in bold type.

Mr. Medrud went through the comments and responses.

1. Section 4.02.01(A) – **Add reference to the "White Pass Country Historical Society."** Agree with suggestion.
2. Section 4.02.02(C) – **Remove reference to "affected tribes."** The standards for addressing archaeological and historic resources are found in WAC 173-26-221(1)(c), WAC 173-26-221(1)(c)(i) states: "Require that developers and property owners immediately stop work and notify the local government, the office of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation." Mr. Medrud stated this language must remain in the SMP because of the WAC.

Commissioner Prior thought that it should not be incumbent on the developer or the property owner to go directly to the tribes. He thought the issue should be taken to the county and the county should go to the tribe. He did not intend to exclude tribal involvement.

There was much discussion and Ms. Napier and Mr. Carter explained that the Tribe will not talk to the county under that type of situation. Mr. Carter stated that since the Tribes are a sovereign nation they will only have these discussions with their peers, which includes the United States Federal Government and sometimes the State governments. Mr. Carter stated there were a couple of issues with fill in the past and the tribe blamed the county when it was actually the Ports that were in violation, but it is their view that the county has engaged in practices that are not favorable to the tribe's positions. If a person

discovers something on his property and contacts the office of archaeology and historic preservation, which is a state agency, then they will contact everyone who should be notified.

3. Section 4.04.01(F) – **“Prohibit speculative vegetation removal within shoreline jurisdiction.” What does speculative vegetation removal mean?**

The intent of the policy was to encourage the County to restrict the clearing of sites in the shoreline jurisdiction in the expectation of potential development before formal application is made for development permits.

Commissioner Rosbach stated most farms are along a shoreline where farmers are cutting hay, planting, etc. Mr. Medrud stated this is different from the agriculture exemptions; this would be for a building that is not being used for agriculture and vegetation was removed from the site in anticipation of development. Commissioner Prior asked if the term “speculative vegetation removal” is understood by developers. Mr. Medrud stated he could find another term that is more appropriate and see if it belongs in the clearing, grading and filling chapter.

4. Section 4.04.02(A)(3) – **Change “are” to “is.”** Agree with suggestion.

5. Section 4.04.02(A)(3) – **Add “in” before “LCC Chapters 17.35 and 17.35A.”** Agree with suggestion.

6. Section 4.04.02(A)(5)(a) – **Have the CAO and SMP definitions been compared?** Yes, the definitions were compared. The intent of the regulation was to provide a more concise way of addressing potential overlaps in definitions rather than listing all of the CAO definitions that may be replaced by the SMP definitions in this section.

7. Section 4.04.02(A)(5)(e) – Commissioner Prior does not like the regulation: **“Within shoreline jurisdiction, the reasonable use and variance procedures in LCC 17.35A.530 are not available for relief from critical area standards. Instead, applicants seeking relief from critical area standards shall apply for a shoreline variance under SMP Section 7.04.03.”** Comment acknowledged. Suggest discussion with Planning Commission and staff.

Commissioner Prior finds that the reasonable use language is very useful and likes the wording and would not like to see it go away. Mr. Medrud stated the reasonable use exemption is within the framework of the Growth Management Act, which is a separate act from the Shoreline Management Act (SMA). When an action takes place under the SMA that has precedence and the procedures for reviewing applications and determining how to vary from a requirement is in the variance process. Under the SMA the reasonable use exemption is not an option.

Mr. Evander stated he is not sure that reasonable uses exist within the current Shoreline Master Program, so this is not taking away anything from what exists currently.

Commissioner Prior stated Lynn Deitrick helped him and he didn’t know if it was found within the Critical Areas Ordinance. He was able to use reasonable use if everything fell into place. Ms. Napier stated she would try to clarify.

8. Section 4.05 – **In introductory paragraph, add numbers for nonstructural and structural measures.**

Agree with suggestion.

9. Section 4.07.02(H) – **Add “in a UGA” after a shoreline substantial development permit.** Agree with suggestion.

10. Section 5.03(C) – **Add WAC reference to the regulation.** The WAC reference was incorrect and was changed in a subsequent draft. To shorten the revised SMP draft, we removed footnotes where possible and the list of all possible exemptions from the WAC that was found in a separate appendix of the SMP. Commissioner Prior does not want the WAC references removed without good reason. They are very helpful and make the document easier to read.

11. Section 5.11.02(D)(1) – **Continued concern over the use of the phrase “waterbody as a whole” in the regulation leading to regulators precluding all development.** The regulation is based on WAC 173-26-241 (3)(h)(ii)(D)(I): “Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole.” Mr. Medrud stated there are phrases that Ecology wants to see in the SMP, even though they are sometimes repeating the WAC verbatim. That is why “as a whole” is included. Commissioner Prior stated his experience as a consulting hydro geologist. The significant change in the water rights law came about in the 1990s. What we regarded as an insignificant impact to a stream by withdrawing groundwater from a well, it was Ecology’s opinion that if one molecule of water was removed from the system that stream was being impacted. That was their policy and it shut down the water well industry for a long time. Commissioner Prior’s concern with this section is when someone has a business to mine gravel. Of course it’s going to have an impact on the river but he has a permit and it’s a good resource and he does not want that resource to go away because Ecology says that is affecting the whole waterbody by removing gravel.

Mr. Medrud stated he did not know if this was the place to have that discussion with Ecology but it is something that could be brought up with Ms. Bailey as a concern of the County. It is, however, written into the WAC, and how that is interpreted is with Ecology.

12. Section 5.14.01(D) – **Question whether policy would mean no new docks. Policy states: “Prohibit new overwater residential development.”**

No, docks and piers are addressed as a separate use in SMP Section 5.07. The intent of this policy was to prohibit overwater residential development such as single-family residences, multifamily development and appurtenant structures and uses, such as garages or sheds.

13. Section 6.03 – **Use of the work “fill” as a noun and a verb is confusing.** Agree with suggestion. “Fill” will be used just as a noun.

14. Section 6.04.01(D) – **Prefer to see gravel mining allowed in the Cowlitz River.** Mr. Medrud stated the issue is: there are conditions within the mining section of the WAC and the mining section of the SMP that say it holds out the possibility of potentially using material, providing one goes through all the hoops of proving that it doesn’t affect anything naturally, etc. The language in the WAC says under no condition except for restoration or as part of a flood hazard mitigation are you allowed to use dredge material for anything else. This is a question Mr. Medrud has for Ecology because he believes there is a

conflict between those two sections, but the WAC says “no way” in the dredge section and it is slightly different in the mining section.

Commissioner Prior understands that it is a dredging vs mining issue, but when you are referring to dredging you have to remove to obtain fill material and that is mining to Commissioner Prior. Mr. Medrud stated it is confusing to him as well. Chair Mahoney stated part of the question to Ecology: you prohibit dredging to obtain material but you allow dredging to remove material. If material is being removed to maintain a waterway is that acceptable? Mr. Medrud stated the intent is if you are dredging for a restoration project, as defined under the SMP, or if you are doing it for navigation purposes or flood hazard mitigation, that is acceptable. The dredge material can be taken out of the water. That is clear but how it works with the mining chapter is not clear.

15. **No separate “overwater structures” section as in the April 2015 draft SMP.** The section which deals with piers and docks has been combined with the section of overwater structures, such as marinas, in Chapter 4. Those two chapters should work together but they are separate according to the WAC. It made more sense to combine them.

16. Section 7.04.03 – **Highlight this to the Planning Commission. The regulation currently reads: “The decision of the Hearing Examiner shall be the final decision of the County. Ecology shall be the final authority authorizing a shoreline variance consistent with WAC 173-27-200.”** Comment acknowledged. Suggest discussion with Planning Commission and staff. Commissioner Prior stated for the benefit of the other Planning Commissioners, the state has the final say, not the County. Commissioner Prior does not like that but that is the law.

Mr. Medrud stated all of Commissioner Prior’s comments have been addressed. He asked if anyone else had comments or questions.

Chair Mahoney stated on page 31, Standard Shoreline Buffer from Ordinary High Water Mark (OHWM)– in the middle it speaks to signs as free-standing structures. How do the 150’ buffers affect the signage? He understands that there can be no signs within the 150’ buffer. Mr. Medrud stated the signs that are of a concern for buffering purposes are those signs that are not attached to a building. If there is a pole sign separate from structures that in itself has to be at least 150’ away from the OHWM. Commissioner Mahoney asked what happens within developed areas, such as parks. Informational signs take place around boat launches and in parks and campgrounds that might be within the buffer. Mr. Medrud stated that an existing sign being replaced with one of equal size in the same location should be permitted. There could be a potential issue if there is new signage and how that could be interpreted with this phrase. That could be looked at further.

Commissioner Tausch asked if it is correct that Ecology writes the WACs and do they get the information from the RCW? Mr. Medrud stated he believes that is the case, but he does not know if once they write the WAC who has ultimate approval. Commissioner Tausch has heard many times “we may not like it but it’s the law” and asked if the County has the ability to go back to the RCWs and say this is what the Legislature actually passed and disagree with Ecology’s interpretation of the RCW.

Mr. Carter stated conceptually that could be done. If a WAC is not consistent with the RCW then the County has a right to challenge it and to say that it is beyond the scope of what the Legislature authorized. In this process, Ecology has the final word on the SMP and he does not know if the County

has a lot of leverage. Chair Mahoney stated the Legislature put Ecology in the driver's seat and tasked them with developing the rules so whether or not we like it is beside the point. Chair Mahoney stated Chrissy Bailey of Ecology was very good to work with and helpful, but there are things that the Legislature put in there and then told Ecology to develop the rules and that is pretty hard to challenge. Mr. Carter agreed. The rule-making process provides for opportunities for comment, opportunities to provide input before the WAC becomes final, so all of us have that opportunity to participate in the process. We would accomplish a great deal more if we can work cooperatively with Ecology; otherwise there could be a lawsuit and it takes time and has an uncertain result.

Chair Mahoney stated given the language changes so far will there be a clean copy before the next meeting in December? Mr. Medrud stated the strike-through can be left in place to see the changes in the text or a clean copy can be provided. He believes the draft is up-to-date. Chair Mahoney would like to see a clean copy because that is what the public will see at the hearing.

Mr. Medrud stated there are a couple of potential issues before going into the formal adoption process of the draft. In other jurisdictions, Ecology has been asked to look at the final draft before it goes to the Planning Commission for final adoption. If there are any red flags they can deal with them before it is approved. There are still some elements that they are responding to comments on. One is the cumulative impacts analysis and the other is the restoration plan. Mr. Medrud believes Ecology would want the County to finish that process and send them the almost final draft before moving into the formal adoption process. He asked if that is staff's understanding.

Ms. Napier stated staff would prepare for a clean copy for next month's meeting and will check in with Ecology about where Ms. Bailey's review is. Staff can transmit a draft to her so she knows that the Planning Commission has reviewed the draft and staff will also work with her on the cumulative impacts and the restoration plan. Chairman Mahoney stated a public hearing would not be held in December. Ms. Napier stated that was correct. There would be another workshop to look at the draft one last time. Chairman Mahoney asked if that is enough time to get comments back from Ecology. Ms. Napier stated no. As she understands it, Ms. Bailey is saying not to have the final adoption but let Ecology have a chance to look at the final draft. The Planning Commission is looking at getting a final draft to transmit to Ecology. Ecology will provide comments and then there will be a discussion about those comments with the Planning Commission and at that time move forward with the final recommendation to the Board of County Commissioners.

Commissioner Prior stated he thought Ecology excluded Channel Migration Zones for other county jurisdictions and asked why they are not doing it for Lewis County. Mr. Medrud did not have an answer. He needs to do more research. Mr. Medrud stated Ms. Bailey and Ecology has the same draft that the Planning Commission has and it was Ms. Bailey's intent to offer comment before the December meeting. He has learned that because Ms. Bailey is good at what she does she has been promoted and she will work as much as possible to get the County through but there may be someone else that will need to be brought up to speed.

Ms. Napier stated she had an answer regarding Commissioner Prior's question of reasonable use and variances. Checking through the records, Commissioner Prior actually had an exemption and his situation was reviewed against an option that is still available under the shoreline permits.

B. Update on Proposed Changes to Code Process

Mr. Evander asked the Commission if they would like to proceed with the discussion at the last meeting. Mr. Evander stated there are at least seven ways that permits are being processed currently and that makes the code very confusing for everyone involved with it. He thought a matrix would show what is happening and perhaps that would allow tossing out the noticing requirements and establish a consistent notice procedure, a consistent appeal procedure, etc.

Another discrepancy is the distance of neighbors for noticing. Mr. Medrud pointed out other processes that are confusing and unnecessary. A matrix would help organize the code, consolidate certain portions and make it more coherent.

Chairman Mahoney is in favor of not having conflicts within sections of the ordinances but he wanted the Prosecuting Attorney's office to keep track of the procedure to ensure that something that was changed would not create another problem for that office. Simplifying the code is great but any changes must pass muster with Mr. Carter. Mr. Carter stated his department is whole heartedly in favor of simplifying the code and would be involved.

Commissioner Prior was in favor of the matrix; Commissioner Rosbach stated it was easy to understand. Mr. Evander stated it will be a long process to create a simpler administrative process. Commissioner Prior asked if the plan is to continue with what Mr. Evander introduced at the last meeting. Mr. Evander suggested refraining from the last concept and use the matrix as a guide to see about looking at other portions of the code. Commissioner Rosbach suggested simplifying and eliminating. Mr. Evander agreed and stated that's what a matrix does.

Mr. Evander stated he went to Toledo High School and talked to a number of students. He asked general, open-ended questions and got a lot of responses that he would have never anticipated. One was that the students would like job opportunities while they are still in school. Many of them value the small town but wanted to add vitality. Many talked about developing Exit 63 for jobs, etc. Mr. Evander stated the Planning Commission would eventually see the results of his visit to Toledo.

5. New Business

There was no new business

6. Calendar

The next meeting will be on December 8, 2015, a workshop on the Shoreline Master Program. Chair Mahoney stated that would be the last meeting of the year and two commissioners would be stepping down: Commissioner Guenther and Commissioner Tausch. Commissioner Prior asked if there was any progress for their replacements. Ms. Napier stated she has mentioned this to the County Commissioners several times and they are looking. If any of the Planning Commissioners could offer suggestions that would be helpful. Commissioner Prior thought someone to represent the area around Onalaska would be helpful rather than someone else from the extreme east end.

7. Good of the Order

There were no comments.

8. Adjourn

The business before the Planning Commission concluded and adjournment was at 7:41.