

Date: July 7, 2016
To: Lewis County Planning Commission
From: Fred Evander, Senior Long Range Planner
RE: **PUBLIC HEARING: REVISIONS TO LCC 17.25 AND 18.05.120**
Attachments: Proposed Changes to Chapter 17.25 – Shoreline Management (10 pages)
Proposed Changes to Section 18.05.120 – Shoreline Management Fee Schedule (1 Page)

The purpose of this staff report is to introduce two proposed changes to the Lewis County Code to accommodate the revised Shoreline Master Program. These matters will be considered by the Planning Commission as part of a public hearing on July 26.

ISSUE

The existing Chapter 17.25 (Shoreline Management) of the Lewis County Code contains provisions that are intended to aid in the implementation of the Lewis County Shoreline Master Program. As written, the existing chapter includes:

- Definitions;
- Methods to determine and regulate critical areas;
- Criteria for granting permits;
- Methods to consider appeals;
- Standards to enforce violations of the code; and
- A variety of other topics.

With the impending adoption of the Shoreline Master Program (previously heard by the Planning Commission on May 10, 2016), these sections of the code will no longer be necessary. The draft Shoreline Master Program includes separate sections for each of these items.

PROPOSED CHANGES TO CODE

To eliminate the duplication of standards between the code and the SMP, staff recommends that the Planning Commission remove all mention of the topics from LCC Chapter 17.25 (see the attached code for a draft of the proposal). These proposed changes would eliminate the redundant provisions and potential contradictions between the code and the Shoreline Master Program, and would entirely point people from the code to the stand-alone Shoreline Master Program for all applicable regulatory and procedural standards.

As part of these changes, staff additionally recommends that the Planning Commission make a small change to LCC 18.05.120 to clarify how the fees for projects subject to the Shoreline Master Program are collected.

RECOMMENDATION

Staff recommends that the Planning Commission receive public testimony about the proposed changes to LCC 17.25 and LCC 18.05.120 as part of the Public Hearing on July 26. Following the public hearing the Commission may consider additional changes to the codes, and/or vote to forward a recommendation to the Board of County Commissioners.

Chapter 17.25 SHORELINE MANAGEMENT

Sections:

- 17.25.010 Title.
- 17.25.020 Purpose.
- 17.25.030 Administration – Adoption by Reference
- 17.25.040 Fees
- ~~17.25.030~~ Definitions.
- ~~17.25.035~~ Critical areas.
- ~~17.25.040~~ Permits required for substantial development.
- ~~17.25.050~~ Administration of permits.
- ~~17.25.060~~ Application for a permit – Fees – Publication of notices – Director's review – Burden of proof.
- ~~17.25.070~~ Criteria for granting permits.
- ~~17.25.080~~ Public hearing – Notice – Director's decision.
- ~~17.25.090~~ Appeals to the Hearing Examiner.
- ~~17.25.100~~ Public hearing – Notice required.
- ~~17.25.110~~ Notice of final action.
- ~~17.25.120~~ Applicability.
- ~~17.25.130~~ Appeals to the state.
- ~~17.25.140~~ Appeals to the state by the board.
- ~~17.25.150~~ Rescission – Service of notice – Hearing.
- ~~17.25.160~~ Criminal penalties – Civil liabilities.
- ~~17.25.170~~ Rules of the director.

17.25.010 Title.

This chapter shall be known, and shall be cited, as the Lewis County shorelines chapter. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 1, 1974]

17.25.020 Purpose.

The purpose of this chapter is to implement the Shoreline Management Act of 1971 (Chapter 286, Laws of 1971, 1st Ex. Sess.), codified as Chapter 90.58 RCW, ~~and to regulate development of the shorelines of the county in a manner consistent with the policy declared in RCW 90.58.020.~~ [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 2, 1974]

17.25.030 Administration – Adoption by Reference

Standards for the regulation of shorelines in Lewis County are contained in the Lewis County Shoreline Master Program adopted _____. ~~Copies of the Lewis County Shoreline Master Program shall be kept on file and shall be made available to the public at the office of the Lewis County Department of Community Development.~~

17.25.040 Fees – (FROM EXISTING 17.25.060(2))

The fees for this chapter are set forth in LCC 18.05.120.

17.25.030 Definitions.

~~As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:~~

~~(1) "Board" means the board of county commissioners of Lewis County.~~

~~(2) "Department" means the Washington State Department of Ecology.~~

~~(3) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel or minerals; bulkheading; driving of pilings; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.~~

~~(4) "Director" means the director of the Lewis County planning department or his duly authorized designee.~~

~~(5) "Hearings board" means the shoreline hearing board.~~

~~(6) "Master program" means the "Lewis County shoreline management master program" adopted on June 17, 1974, by the Lewis County board of commissioners, and the use regulations together with maps, diagrams, charts, or other descriptive material and text; a statement of desired goals and standards developed in accordance with the policies enunciated in RCW 90.58.020.~~

~~(7) "Ordinary high water mark" on all lakes, streams, and tidal water means that mark which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland in respect to vegetation as that condition exists on June 1, 1971, or as it may naturally change thereafter; provided, that in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water.~~

~~(8) "Person" means an individual, firm, copartnership, association, corporation, or other legal entity, including any federal, state, or local municipal corporation, agency, or special purpose district.~~

~~(9) "Planning commission" means the planning commission of Lewis County.~~

~~(10) "Planning department" means the planning department of Lewis County.~~

~~(11) "Shorelines" means all of the water areas within the unincorporated portion of Lewis County, including reservoirs, and their associated wetlands, together with lands underlying them except:~~

~~(a) Shorelines of state-wide significance;~~

~~(b) Shorelines on segments of streams upstream of a point where the mean annual flow is 20 cubic feet per second or less and the wetlands associated with such upstream segments; and~~

~~(c) Shorelines on lakes less than 20 acres in size and wetlands associated with such small lakes.~~

~~(12) "Shorelines of state-wide significance" means those shorelines described in Appendix B of the Lewis County shoreline management master program.~~

~~(13) "Shorelines of the county" means the total of all "shorelines" and "shorelines of state-wide significance" as designated in Appendix A of the Lewis County shoreline management master program within the county.~~

~~(14) "Substantial development" means any development of which the total cost, or fair market value, exceeds \$2,500 or any development which materially interferes with normal public use of the water or shorelines of the state except that the following shall not be considered substantial developments:~~

~~(a) Normal maintenance or repair of existing structures or developments, including damage by fire, accident, or elements;~~

~~(b) Construction of the normal protective bulkhead, common to single-family residences;~~

~~(c) Emergency construction necessary to protect property from damage by the elements;~~

~~(d) Construction of a barn or similar agricultural structure on wetlands. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels; provided, that a feed lot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation shall not be considered normal or necessary farming or ranching activities. A feed lot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing nor shall it include normal livestock wintering operations;~~

~~(e) Construction or modification of navigational aids such as markers and anchor buoys;~~

~~(f) Construction on wetlands by an owner, lessee or contract purchaser of a single-family residence for his own use or for the use of his family, which residence does not exceed a height of 35 feet above average~~

~~grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;~~

~~(g) Construction of a dock, designed for pleasure craft only, for the private noncommercial use of the owners, lessee, or contract purchaser of a single family residence, for which the cost or fair market value, whichever is higher, does not exceed \$2,500;~~

~~(h) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water from the irrigation of lands;~~

~~(i) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;~~

~~(j) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on the effective date of the 1975 amendatory act which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;~~

~~(k) Any project with a certification from the governor pursuant to Chapter 80.50 RCW;~~

~~(l) The construction of up to 500 feet of one and only one road or segment of a road for forest practices; provided, such road does not enter the shoreline more than once. Such exemption from said permit requirement shall be limited to a single road or road segment for each forest practice and such road construction shall be subject to the requirements of Chapter 76.09 RCW, the Forest Practices Act, and regulations adopted pursuant thereto and to the prohibitions or restrictions of any master program in effect under the provision of Chapter 90.58 RCW. Nothing in this subsection shall add to or diminish the authority of the shoreline management act regarding road construction except as specifically provided herein. The provisions of this subsection shall not relate to any road which crosses over or through a stream, lake, or other water body subject to Chapter 90.58 RCW.~~

~~(15) "Substantial development permit" means the shoreline management substantial development permit provided for in RCW 90.58.140.~~

~~(16) "Substantial development undertaken on the shorelines of the county prior to June 1, 1971" means actual construction begun upon the shoreline as opposed to preliminary engineering or planning, financing, or testing.~~

~~(17) "Wetland" or "wetland areas" means those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark and all marshes, bogs, swamps, floodways, river deltas, and floodplains associated with the streams, lakes and tidal waters which are subject to the provisions of this chapter, the same to be designated as to location by the Washington State Department of Ecology or in the case of rivers and streams for which the 100-year floodways have~~

been specifically defined wetlands shall be the 100-year floodway and those lands extending for 200 feet in all directions as measured on a horizontal plane from the 100-year floodway of the rivers and streams subject to the provisions of this chapter. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 Amend. 1, 1979; Ord. 1034 § 3, 1974]

17.25.035 Critical areas.*

The Lewis County critical areas regulations, Chapter ~~17.35A LCC~~, is hereby adopted in whole as a part of the program, except that the permit, nonconforming use, appeal and enforcement provisions of Chapter ~~17.35A LCC~~ shall not apply within shoreline jurisdiction. [Ord. 1204 Exh. A § 3, 2008]

*Code reviser's note: Ord. 1204, Section 4, provides that the provisions of Chapter ~~17.35A LCC~~ shall apply county-wide without revision to the shoreline master program as provided in LCC ~~17.25.035~~, if the provisions of RCW ~~36.70A.480(3)~~ are amended or interpreted to allow application of critical area regulations to the jurisdiction of the Shoreline Management Act without amendment of the local shoreline master program prior to a comprehensive update of the shoreline master program.

17.25.040 Permits required for substantial development.

(1) No development shall be undertaken by a person on the shorelines of Lewis County unless such development is consistent with the policy of RCW ~~90.58.020~~, and the guidelines and regulations of the Washington State Department of Ecology and the Lewis County shoreline management master program.

(2) No substantial development shall be undertaken by any person on the shorelines of Lewis County without first obtaining a substantial development permit from the director; provided, that such a permit shall not be required for any project with a certification from the governor pursuant to Chapter ~~80.50 RCW~~ (Thermal Power Plants). [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 4, 1974]

17.25.050 Administration of permits.

The director is vested with the duty of administering the rules and regulations relating to shoreline permits. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 5, 1974]

17.25.060 Application for a permit – Fees – Publication of notices – Director's review – Burden of proof.

(1) Applications for substantial development permits on forms prescribed by the director shall be made with the director by the property owner, lessee, contract purchaser, other person entitled to possession of the property, or by an authorized agent.

2) The fees for this chapter are set forth in LCC ~~18.05.120~~.

(3) Upon receipt of an application the planning department will insure that public notice of the application is given by the following methods:

~~(a) Publication of a legal notice of application at least once a week on the same day of the week for two consecutive weeks in a newspaper of general circulation in the area in which the development is proposed at the expense of the applicant; and~~

~~(b) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least 300 feet of the boundary of the property upon which the substantial development is proposed; or~~

~~(c) Posting of the notice in a conspicuous manner on the property upon which the project is to be located; or~~

~~(d) Any other manner deemed appropriate by the director, Lewis County planning department, to accomplish the objectives of reasonable notice to adjacent land owners and the public.~~

~~(4) The director shall review an application for a permit based on the following: the application; the environmental impact statement, if one has been prepared; written comments from interested persons; information and comment from other county departments affected and from the office of the prosecuting attorney; independent study of the planning department staff; and evidence presented at the public hearing, if any, held pursuant to the provisions of LCC 17.25.080. The director may require that an applicant furnish information in addition to the information required in the application forms prescribed. Unless an adequate environmental impact statement has previously been prepared for the proposed development by another agency, the director shall cause to be prepared such a statement, prior to granting a permit, when the State Environmental Policy Act of 1971 requires such a statement.~~

~~(5) The burden of proving that the proposed development is consistent with the criteria set forth in LCC 17.25.070 shall be on the applicant. [Ord. 1170B, 2000; Ord. 1158B, 1998; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 § 6, 1974]~~

~~17.25.070 Criteria for granting permits.~~

~~(1) A permit shall be granted only when the proposed development is consistent with:~~

~~(a) The master program of Lewis County set forth in the Lewis County shoreline management master program; and~~

~~(b) The policy of RCW 90.58.020.~~

~~(2) No permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the county that will obstruct the view of a substantial number of residences in adjoining areas unless there exists a master program which permits the same and that such permits shall be granted only when overriding considerations of public interest will be served. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 7, 1974]~~

~~17.25.080 Public hearing – Notice – Director's decision.~~

~~(1) In the following cases, decisions on applications for substantial development permits shall not be made until at least one public hearing has been held:~~

~~(a) One or more interested persons has submitted to the director, within 15 days of the final publication of notice of the application, a written request for such a hearing together with a statement of the reasons for the request; or~~

~~(b) The estimated total cost of the proposed development exceeds \$500,000; or~~

~~(c) The director determines that the proposed development is one of broad public significance.~~

~~(2) The public hearing required under subsection (1) of this section shall be conducted by the Hearing Examiner as a substantive hearing pursuant to Chapter 2.25 LCC.~~

~~(3) Notice of the time and place of the public hearing shall be published in the same manner and, where appropriate, combined with the notices of application required in LCC 17.25.060(3) and the public hearing shall be held no sooner than 15 days after the final date of publication of the notice of public hearing. Ten days' written notice of the time and place of the public hearing shall be mailed or delivered to the applicant and to any interested person who has submitted a written request for such hearing or who has submitted a written request for notice of such a hearing.~~

~~(4) If, for any reason, testimony on any matter set for public hearing on being heard cannot be completed on the date set for such hearing, the Hearing Examiner may, before adjournment or recess of such matters under consideration, publicly announce the time and place of the continued hearing and no further notice is required.~~

~~(5) When the Hearing Examiner renders a decision, it shall make and enter written findings from the record and conclusions thereof which support its decision and the findings and conclusions shall set forth the manner in which the decision is consistent with the criteria set forth in LCC 17.25.070.~~

~~(6) The Hearing Examiner shall have the power to prescribe rules and regulations for the conduct of hearings pursuant to Chapter 2.25 LCC. All decisions of the Hearing Examiner shall be final, unless appeal is timely made to the Hearing Examiner pursuant to Chapter 2.25 LCC. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 8, 1974]~~

~~17.25.090 Appeals to the Hearing Examiner.~~

~~(1) Any aggrieved person may file written appeal with the Hearing Examiner in accordance with Chapter 2.25 LCC from any decision of the director or substantive hearing before the Examiner within seven days from the date of the contested decision. Appeals shall be filed in duplicate with the office of the planning department. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 § 9, 1974]~~

~~17.25.100 Public hearing – Notice required.~~

Notice of public hearing shall be provided as stated under Chapter ~~2.25~~ LCC. [Ord. 1170B, 2000; Ord. 1157, 1998]

~~17.25.110 Notice of final action.~~

~~(1) Within eight days of final action on any application for permit, the director shall notify in writing the following persons of such final approval, disapproval, or conditional approval of a substantial development permit:~~

~~(a) The applicant;~~

~~(b) Washington State Department of Ecology;~~

~~(c) Washington State Attorney General;~~

~~(d) Lewis County prosecuting attorney; and~~

~~(e) Any person who has submitted to the director written comments on the application or who has written the director requesting notification. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 § 11, 1974]~~

~~17.25.120 Applicability.~~

~~(1) No person shall begin substantial development of all or of any part of the shorelines of the county until 30 days after being granted a permit according to the provisions of this chapter or until all review proceedings initiated within such 30-day period are terminated.~~

~~(2) Nothing in the permit shall be construed as excusing the applicant from compliance with any other local, state, or federal statutes, ordinances, or regulations applicable to the proposed development. A permit shall not be granted until the proposed development is in compliance with all other applicable regulations; except, a building permit shall not be required prior to a substantial development permit. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 § 12, 1974]~~

~~17.25.130 Appeals to the state.~~

~~Any person aggrieved by the granting, denying, or rescinding of a shoreline development permit by the Hearing Examiner may seek review by filing a request for review with the shorelines hearing board, the Department of Ecology, and the Attorney General within 30 days of receipt of the final order. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 13, 1974]~~

~~17.25.140 Appeals to the state by the board.~~

The board may appeal to the shorelines hearings board for rules, regulations, guidelines, designations or master programs for shorelines of the state adopted or approved by the Department of Ecology within 30 days of the date of the adoption or approval. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 14, 1974]

~~17.25.150 Rescission – Service of notice – Hearing.~~

~~(1) Any permit granted pursuant to this chapter may be rescinded or modified upon a finding by the Hearing Examiner after a substantive hearing in accordance with Chapter 2.25 LCC that the permittee has not complied with the conditions of his permit.~~

~~(2) The director or board may initiate rescission and modification proceedings by serving written notice of noncompliance on the permittee.~~

~~(3) Before a permit can be rescinded or modified, a public hearing shall be held by the Hearing Examiner no sooner than 30 days following the service of notice upon the permittee. The Hearing Examiner shall have the power to prescribe rules and regulations for the conduct of such hearings.~~

~~(4) The director of the Lewis County community development department or his authorized representative may inspect properties as necessary to determine whether permittees have complied with conditions of their respective permits and, whenever there is reasonable cause to believe that development has occurred upon any premises in violation of the Shoreline Management Act of 1971 and this chapter, enter upon such premises at all reasonable times to inspect the same. The said director or his representative shall present proper credentials before demanding entry. If such premises are unoccupied, a reasonable effort shall be made to locate the owner or tenant of the premises advising such person(s) of any violations and requiring him to take whatever action is necessary to comply with the Shorelines Management Act of 1971 and/or this chapter. Subsequently, he shall also seek appropriate legal sanctions by the office of the Lewis County prosecuting attorney as provided in LCC 17.25.160. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 Amendment 2, 1980; Ord. 1034 § 15, 1974]~~

~~17.25.160 Criminal penalties – Civil liabilities.~~

~~(1) Any person having willfully engaged in activities on the shorelines of the county in violation of this chapter or the Shoreline Management Act of 1971 or in violation of the Lewis County master program, and rules or regulations adopted pursuant thereto, shall be subject to the penalties in RCW 90.58.220.~~

~~(2) The office of the Lewis County prosecuting attorney may bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are being made of the shorelines of the county in conflict with the provisions of this chapter or the Shoreline Management Act of 1971 or in conflict with the master program, rules or regulations adopted pursuant thereto, and to otherwise enforce the provisions of this chapter and the Shoreline Management Act of 1971.~~

~~(3) Any person subject to the regulatory program of this chapter who violates any provision of this chapter or the provisions of a permit issued pursuant thereto shall be civilly liable for all damage to public or~~

~~private property arising from such violation including the cost of restoring the affected area, within a reasonable time, to its condition prior to such violation. The office of the Lewis County prosecuting attorney may bring suit for damages under this subsection on behalf of the county. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 16, 1974]~~

~~**17.25.170 Rules of the director.**~~

~~(1) The director is authorized to adopt such rules as are necessary and appropriate to implement this chapter.~~

~~(2) The director may prepare and require the use of such forms as are necessary to its administration. [Ord. 1170B, 2000; Ord. 1157, 1998; Ord. 1034 § 17, 1974]~~

PROPOSED CHANGES TO THE FEE SCHEDULE

Section 18.05.120

18.05.120 Shoreline Management Fee Schedule.

The Fee Schedule for Chapter 17.25*, Shoreline Management shall be as follows:

(1) A fee as provided for in the currently adopted Lewis County Fee Schedule, on file at the Office of the Board of County Commissioners shall be paid to the Community Development Department at the time the application is submitted, or a request for an extension of a permit is submitted for proposed development.

(2) An applicant shall also bear the cost providing legal notices for any public hearings, as provided for in said Lewis County Fee Schedule payable to the Community Development Department. [Ord. 1158B § 17, 1999; Ord. 1158A § 38, 1999; Ord. 1158, 1998]

~~*[Codifier's Note: the referenced Code chapters have been amended to reflect the renumbering of the underlying development regulations by Ord. 117013, 2000.]~~