

MASON COUNTY PLANNING ADVISORY COMMISSION

March 11, 2013

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1. CALL TO ORDER

The meeting was called to order at 6:05 pm by Chair Jim Sims.

2. ROLL CALL

Members present: Jim Sims, Kristy Buck and Bill Dewey.
Cathi Bright and Ken VanBusKirk were excused.

Staff present: Barbara Adkins, Rebecca Hersha, Allan Borden
Department of Ecology: Tim Gates and Rick Mraz

3. NEW BUSINESS

Ground rules for the hearings proceedings were clarified by Chair Jim Sims. He added that all public input was welcome during the workshop.

Tim Gates, Department of Commerce, working on Assignment to the Department of Ecology presented a Powerpoint presentation pertaining to the Shoreline Master Program (SMP) and the Resource Ordinance regulations that pertain to the SMP and how they vary. He explained that tonight's presentation would be a discussion on the Resource Ordinance and the SMP and addressing the differences and how they vary.

Mason County Resource Ordinance

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

- A. PURPOSE
- B. DESIGNATION

Tim explained the buffer setbacks in detail and what the purposes were. He showed two different purposes and three variations of buffers on Fish and Wildlife. Staffs gave details on a 2003 ruling on buffers of 100 feet for saltwater shorelines and SMA lakes. It was a suggestion by the Technical Advisory Committee that the County increase the buffer on saltwater shorelines that are Conservancy and Natural and include a 15' setback for all lakes and saltwater areas (not just Conservancy).

Tim showed an example of how the Resource Ordinance listed the setbacks clearly. He explained that if you made the changes to the Resource Ordinance you would not need regulation B.5.2 or B.6. in the SMP under 17.50.055.5.

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Both Kristy Buck and Jim Sims questioned the 15' setback from the buffer, stating that they did not want to add an additional buffer. Staff explained that the buffer is supposed to be a functioning area that can be managed.

Eric Schallon of Green Diamond Resource Company commented on the buffer and asked if there was a variance and if it was possible that the 15' buffer could push someone's lot to an unbuildable category? Tim clarified that this would be more clear when they discuss infill lot buffers, this really applies on lots where reasonable use is probably not going to be a major consideration. On infill lots, the buffer is smaller than 100' - There is a different approach there. Eric rephrased his comment, stating that this would be new construction and if there was a variance process available. Jim clarified and asked if there was a variance possible in the setback or in the buffer. Staff affirmed. Rick Mraz also explained that there are the standard variance criteria in the State WAC that requires you to demonstrate, that without it you are denied reasonable use of the property. Jim said he was still troubled and questioned why they need the setback if they have the buffer and there is the County permitting process, then why is it necessary? Rick said it was based on discussion by the Joint Technical Advisory Committee (JTAC), who felt there was a lack of setbacks in the areas that were not scientifically supported. Jim asked Theresa Nation, who was also part of JTAC, if she could comment. Theresa stated that she agreed with Rick, and that the setback area was for people to better utilize their structures. When a building is built against the edge of a buffer, then the buffer ends up being impacted she explained.

The Board agreed to keep the setbacks in the Resource Ordinance with revisions to Table 3 on page 67 (see below) and remove 5.2 and 5.6 from 17.50.055.5 in the SMP.

Table 3. Mason County Resource Ordinance

Habitat Type	Buffer	Building Setback from Buffer
Type S Stream	150 Feet	15 Feet
Type F Stream	150 Feet	15 Feet
Type SP Stream**	200 Feet	15 Feet
Type Np Stream	100 Feet	15 Feet
Type Ns Stream	75 Feet	15 Feet
Saltwater and Lakes over 20 acres excluding <u>Natural And Conservancy Shoreline</u>	100 Feet	Ø 15 Feet
<u>Natural and-Conservancy Shorelines*</u> , Saltwater and Lakes over 20 acres	400 <u>150</u> Feet	15 Feet
Urban Shorelines	50 Feet	15 Feet

Shoreline Master Program Draft

17.50.055.5 GENERAL REGULATIONS

5. Fish and Wildlife Habitat Conservation Areas

~~2. Standard buffer widths are modified from MCC 17.01.110.D(2) within shoreline jurisdiction for saltwater shorelines designated Urban Commercial, Conservancy, and Natural as specified in Table 055-1.~~

~~6. A building setback of 15 feet is required from the landward edge of shoreline buffers. The exception to this setback requirement in MCC 17.01.110.D(1)(c) for saltwater shorelines and lakes excluding Conservancy shorelines does not apply.~~

Staff continued the presentation with the Resource Ordinance continuing with 17.01.110.

Mason County Resource Ordinance

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

D. ESTABLISHMENT OF BUFFERS ON FISH & WILDLIFE HABITAT CONSERVATION AREAS

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1. Fish and Wildlife Habitat Conservation Areas shall have Buffers and Building Setbacks established. The standard buffer and setback requirements are shown in Table 3.
 - a. Buffers or setbacks shall be maintained along the perimeter of Fish and Wildlife Habitat Conservation Areas Buffer distances associated with streams shall be measured horizontally from the ordinary high water mark (OHWM) or channel migration zone (CMZ), whichever is greater. All other buffer distances shall be measured horizontally from the established FWHCA perimeter.

The Channel Migration Zone (CMZ) was discussed in detail and the consideration of addressing them in the Resource Ordinance. Staff gave a presentation on CMZ maps and shoreline jurisdiction.

Tim explained that Ecologies guidelines do address activity within CMZ to the extent that they are in the shoreline jurisdiction. Tim suggested that the regulations be addressed through the Resource Ordinance versus the SMP.

Pat VanDeHey of Shelton addressed the podium and questioned if any consideration was being given as the water was rising in the ocean? Jim stated that the topic of global warming was not going to be addressed at tonight's workshop.

Tim stated that you would not use the SMP to enforce the CMZ. Bill Dewey questioned what other counties were doing. Tim showed the Board that there are already some provisions existing in the Resource Ordinance for increasing or decreasing buffers. Staff showed how Clark County and Clallam County were addressing the CMZs in their SMP update. Jim asked Theresa Nation, with the Washington Dept. of Fish and Wildlife, if there was any impact with regard to Fish and Wildlife with change to habitat in regards to buffers. Theresa stated that one of the things that may result is people wanting to protect their property or structures with dikes or rip-rapping the shoreline, which has a negative impact on fish and wildlife impact.

Clark County SMP reads:

"When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone."

Clallam County draft SMP reads:

Buffer shall be the greater of:

- a. Standard buffer from OHWM; or
- b. Outer edge of CMZ plus fifty (50) feet

Regulations allow development within CMZ portion of the buffer based on report that shows:

- i. The parcel on which the development is proposed is effectively disconnected from CMZ due to levees or infrastructure such as roads and bridges constructed and maintained by public agencies; or
- ii. Minimal risk of channel migration during the next 100 years based on a geomorphic site assessment. (Regulation includes requirements for the assessment.)

Eric Schallon of Green Diamond Resource Company recommended that this is a model and needs to be based as a site-specific application.

Monica Hale asked for clarification on what was being changed, if it was the Resource Ordinance or the draft SMP. Staff confirmed that changes would be made to the Resource Ordinance (page 65) under 17.01.110 to Fish and Wildlife Habitat Conservation Areas D.1. Modifications of 150' on the edge of the CMZ plus the 15' buffer for the setback. PAC agreed to use the first part of Clark County ordinance and the second half of Clallam County ordinance to 17.01.110 Fish and Wildlife Habitat Conservation Areas D.1.a. (shown below).

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17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

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1. Fish and Wildlife Habitat Conservation Areas shall have Buffers and Building Setbacks established. The standard buffer and setback requirements are shown in Table 3.
 - b. Buffers or setbacks shall be maintained along the perimeter of Fish and Wildlife Habitat Conservation Areas Buffer distances associated with streams shall be measured horizontally from the ordinary high water mark (OHWM) ~~or channel migration zone (CMZ)~~, whichever is greater. When the channel migration zone exceeds the recommended buffer width, the buffer width shall extend to the outer edge of the channel migration zone. All other buffer distances shall be measured horizontally from the established FWHCA perimeter.
 - c. Regulations allow development within CMZ portion of the buffer based on report that shows:
 - i. The parcel on which the development is proposed is effectively disconnected from CMZ due to levees or infrastructure such as roads and bridges constructed and maintained by public agencies; or
 - ii. Minimal risk of channel migration during the next 100 years based on a geomorphic site assessment. (Regulation includes requirements for the assessment.)

It was also determined that 17.50.055.B.5 may also be struck from the SMP. Rebecca suggested that if it were removed from the SMP, a definition should be added in its place for setbacks and buffers that would include that information.

Tim continued his presentation on Standard Fish and Wildlife Buffers D.1.B.

Mason County Resource Ordinance

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

C. DESIGNATION

1. Buffers

- b. Buffers shall be retained in their natural conditions, except as provided elsewhere in this ordinance.

Eric Schallon of Green Diamond Resource Company had a question regarding vegetation and asked for clarification. Does the SMP mean native or non-native under MCC 17.50.055.B.5.5. Tim suggested to staff that this is exactly what needs to be addressed in both the Resource Ordinance and the SMP and they need to provide more clarification for the applicant and for staff. It was discussed in detail with staff and the PAC that it should be addressed in both the Resource Ordinance and the SMP as well, but they need to be consistent.

Language of "native woody trees and shrubs" needs to be more general, how many feet apart? Rick suggested a more general statement of "the buffer shall be enhanced with native vegetation pursuant to a habitat management plan". Rick also talked about ecological function and if they meet the buffer. Kristy commented about property located on Phillips Lake, Timber Lakes, Star Lakes, etc., that may have been cleared 35 years ago and is being used for camping, and now they want to retire and build a house and you are going to tell them that they have to plant on the shoreline. How is this going to affect them? Eric also asked if the purpose of requiring the buffer is providing ecological services, why would a new development be required to do anything, waterward of the setback, the buffer is by definition, a buffer. Secondly, a cleared lot is a developed lot. Shorelines aren't naturally void of vegetation. Does that fall in to the grandfathered in category? Does the SMP only apply to new development?

Jim commented that he also wanted clarification on Kristy's comment that you have an existing lot that you use for camping, but now you want to build on it, is that grandfathered in or is it subject to new regulations?

Tim explained that the way Ecologies guidelines are written, assumes that when you authorize new development that is the time to say the restoration and enhancement components should be proportionate to those impacts. When you have an existing lot, you can use it recreationally. The trigger is authorizing new development.

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Eric commented that there should be an incentive, stating that the intent of this buffer is to provide ecological function, if you can show us how you can do that, you get some kind of incentive. He explained that if the applicant plants so many trees and shrubs, they should get something in return.

A 10-minute break was taken.

There was further discussion on the use of lots being grandfathered in for buffers. Tim explained that you would permanently authorize continued ongoing use and intensification of use. A permanent structure will generate new ongoing impacts that these plantings that are proportionate to the impact will help mitigate.

Rick suggested that the Kitsap County model be used. It was discussed in detail and that there should be no additional work involved in the permitting process and not to add any additional cost to the property owner. Allan commented that there was already a provision on Plantings in the Resource Ordinance on page 84 and 85, under Appendix C of the Fish and Wildlife Habitat Conservation Areas.

Vicky Wilson asked if there was a way to include the incentive that Eric Schallon talked about, not as a sentence in the Resource Ordinance or in the SMP, but for staff to use as a guideline. To have it read "if you are willing to plant these kinds of things over X percent, you are not required to have a biologist review it. If you were willing to do this on your own, otherwise you would have to have it looked at and reviewed by a biologist." It was agreed that the discussion would be reviewed in further detail.

Tim continued his presentation on Standard Fish and Wildlife Buffers D.2.

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17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

D. ESTABLISHMENT OF BUFFERS ON FISH & WILDLIFE HABITAT CONSERVATION AREAS

2. The following are special provisions for buffers and setbacks on lots created prior to December 5, 1996, and which are located on saltwater or on a freshwater lake 20 acres or larger in size. As stated in the Table 3, there shall be a standard 100 foot buffer for a total of 100 feet as measured from the ordinary high water mark (OHWM). Provided, however, that in the following circumstances, these special provisions apply instead of the standard buffer and setback requirement.

Tim explained the special provisions for single family homes and the setbacks that apply under the SMP 17.50.055.B.5.3. It was discussed in detail. It was agreed that buffers shall not be less than 20' with a 15' setback, without a variance. The Kitsap draft was discussed and will be brought in to discuss at the next meeting. It was also agreed to remove 17.50.055.B.5.3 from the SMP.

Shoreline Master Program Draft

17.50.055.B.5.3 Reads:

3. As authorized by MCC 17.01.110.D(2)(a) special buffers may be authorized for single-family residences on existing lots in certain circumstances without a shoreline variance, provided the buffer shall not be less than 50 feet from the OHWM.

Theresa Nation commented that there is no way to obtain a State Fish and Wildlife Habitat functions with a 20' buffer and meet no net loss with a site specific level or jurisdictional level. Rebecca asked if there were an option for the common line to come down 35' to keep the buffer at 100'. It was then discussed to limited setbacks. She suggested limiting the structural footprint and changing the setback, but leaving the buffers. Rebecca then submitted a handout that recommended common line setbacks and buffers, adding that it models the Kitsap model. The PAC asked for more time to review and come back to the suggestions at the next meeting. Vicky Wilson asked if there was anything in the regulations about how close the existing houses has to be. Staff explained the regulations.

Tim continued his presentation on Special Provisions for water-dependent uses on existing lots. He explained that water dependent-uses aren't just a preferred use, they are specific to what you are doing.

Mason County Resource Ordinance

17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

D. ESTABLISHMENT OF BUFFERS ON FISH & WILDLIFE HABITAT CONSERVATION AREAS

- 2b. Special provision for water-dependent uses on existing lots. Applications for development defined as water-dependent uses shall provide the standard 100 foot buffer along as much of

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the shoreline as possible while making the minimum necessary adjustments to the buffer to provide for the water dependent use, as determined by the Director. Such development shall meet the requirements of other applicable regulations, including other Resource Ordinance sections and the Mason County Shoreline Master Program.

Tim suggested that “b. Beach access structures” be removed and added to the Resource Ordinance under the Beach Access regulations and do not require a variance. A definition for Beach Access was listed on page 11 of the SMP. It was discussed if #4 was even necessary under the SMP. Beach Access Structure needs to be added to the Resource Ordinance. Tim noted that a Use Regulation for Scientific, Research and Education Facilities and those should also get a section added under page 67 of the Resource Ordinance.

Shoreline Master Program Draft

17.50.055.B.5.4 Reads:

4. As authorized by MCC 17.01.110.D(2)(b), special exception for water-dependent uses may be authorized without a shoreline variance, if the development provides the standard buffer along as much of the shoreline as possible while making the minimum necessary adjustments to the buffer. Within shoreline jurisdiction the following water-oriented developments may also be permitted within a shoreline buffer without a shoreline variance, provided they meet all requirements of this Program, and the amount and extent of buffer modification is the minimum needed to accommodate the allowed development:

- a. Freshwater boating facilities accessory to a single-family residential development including pier, dock, float, boat ramp, boat lift, stairways, stair towers;
- b. Beach access structures;
- c. Public access structures, including but not limited to docks, piers, floats or pedestrian beach access structures accessory to water-dependent commercial, industrial, port or other allowed uses/developments; and
- d. Utilities and essential public facilities as authorized under Utility regulations.

It was also suggested that under the beach access structure section of the SMP 17.50.065.3 (page 90), beach access structures “without a variance” would be added.

Shoreline Master Program Draft

17.50.065.1.3 Reads:

3. Beach access structures may be located within the shoreline buffer, without a variance, provided that:

Monica Hale asked how difficult it was getting the Resource Ordinance changed along with the SMP. Jim explained that both the Resource Ordinance amendments and the SMP will be submitted to the Board of County Commissioners at the same time for review. He explained that they have to be submitted in tandem. The SMP is state mandated and incorporating, by reference, the Resource Ordinance. Jim explained that the PAC will have both available for review at public hearings to provide the opportunity for opposition to be addressed jointly.

Tim closed out the workshop talking about the residential use table (shown on page 45), that was erroneously left off, that has been replaced and tailored by either zoning codes, buffer requirements, Resource Ordinance or no longer in effect. It should have been shown in strikethrough in the January 1, 2013 version of the draft SMP, but was an oversight. He gave a brief presentation showing the items that were stricken from the original and why the new draft SMP deletes the existing use tables.

The Board discussed the next workshop and agreed to move it out to the following week in order to allow the meeting to get published in the Journal. It was agreed by the PAC to schedule the next SMP workshop for Monday, March 25, 2013. The timeline will be updated and a revised edition will be posted to the website.

Adjournment at 8:26 p.m.