

# MASON COUNTY PLANNING ADVISORY COMMISSION

March 25, 2013

*(This document is not intended to be a verbatim transcript.)*

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## 1. CALL TO ORDER

The meeting was called to order at 6:09 pm by Chair Jim Sims.

## 2. ROLL CALL

**Members present:** Jim Sims, Kristy Buck, Bill Dewey, and Ken VanBuskirk.  
Cathi Bright was excused.

**Staff present:** Rebecca Hersha and Grace Miller

**Department of Ecology:** Tim Gates and Rick Mraz

## 3. APPROVAL OF MINUTES

The minutes for February 25 were approved. The March 11, 2013 minutes were approved with one modification of removing "The public comment portion of the meeting was closed" on page 6. Ken VanBuskirk made the motion to approve and Kristy seconded. Motion passed unanimously.

Ken wanted it noted for the record that he wanted to talk more in detail about #7, 8 and 9 on No Net Loss and Mitigation of the SMP on 17.50.055 of the General Regulations as detailed in the February 25, 2013 minutes. Kristy also commented that she wanted to discuss incentives again as noted in the March 11, 2013 minutes on page 5.

## 4. NEW BUSINESS

Ground rules for the hearings proceedings were clarified by Chair Jim Sims. He explained that the Commission would be referring to the Resource Ordinance and the proposed Shoreline Master Program (SMP).

Rebecca Hersha addressed the Planning Advisory Commission (PAC) with the tentative schedule and asked that the topics scheduled be rearranged for the April 22 meeting in order to accommodate Environmental Consultants. She explained that she would like to discuss Environmental Designations along with the Restoration Plan draft.

Tim Gates with the Department of Ecology presented a Powerpoint presentation pertaining to the (SMP) and the Resource Ordinance (RO) regulations that pertains to it and how they vary.

Tim explained three variations on Fish and Wildlife buffers in the RO. He talked about the types of buffers, where they are applied, set-backs and what citation they are under in the SMP. He went on to explain that the RO is not clear on what happens if existing conditions are not natural.

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## *Mason County Resource Ordinance*

### 17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS

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

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-
  - (b) Buffers shall be retained in their natural condition, except as provided elsewhere in this ordinance.
  - (c) Building Setback Lines: A building setback line of fifteen (15) feet is required from the edge of any buffer area, except for Type 1 saltwater and lake excluding Conservancy Shorelines.

Standard Buffers were discussed in detail. Staff suggested there be more clarity in the RO instead of the SMP on D.1.b. and to review the Kitsap County draft for the SMP. Jim Sims asked if the common line was 100' from the edge of the neighboring homes and the standard buffer to the water, what are the requirements if he chooses to build. Rebecca Hersha explained that he would meet the setbacks and buffers in the current RO, and would not be required to enhance. Tim said that they should be retained as in D.1.b of the RO (as listed above).

John Diehl, of Shelton, addressed the board and asked if it made sense to call something a buffer designed to protect functions and values of fish and wildlife habitat conservations area, if in fact it is not functioning in that fashion? Tim commented that the buffer width was based on studies of areas that had vegetation and how to obtain adequate ecological function. The difficulty with that is that Ecologies baseline is no-net loss of existing ecological functions and the areas are degraded and the guidelines say there are no positive requirements to require restoration. Jim asked if the buffers, as they relate to new development or improvement, is there anything in the RO that addresses existing properties? Do we need to add "new" in the SMP? Jim asked staff, from a permitting standpoint, if new language needs to be added. Staff responded, that the wording just needs to be cleaned up.

Jim stated that they want to protect from the buffer to the water. He was concerned with the wording in D.1.b and felt it was confusing. Bill asked if there was an opportunity to add an incentive by reducing the buffer to 80', if they planted native vegetation and made it a healthy habitat buffer? Take a much less functioning buffer and making it functioning and rewarding them. Jim stated that outside of the buffer that we don't put any restriction on planting woody trees; secondly, inside the buffer, the issue becomes the 15' setback, which hasn't been discussed. Is it necessary? Is it appropriate? Tim commented that there were exceptions to the setback in two areas.

Buffers to the water were discussed in detail. Tim explained the common line setbacks and the mitigation requirements. Staff discussed the view protection on shoreline jurisdictions on the RO: D.2.a. Tim discussed the options of mitigation standards for specific development activities and the option from the Kitsap County draft SMP.

Eric Schallon of Green Diamond Resource Company commented that there should be three options for improving vegetation without having to go to a Habitat Management Plan. "If we are just talking about reestablishing native species, couldn't there be an option A, B, C? Or have them put up some bond money, if it fails, then the county hires a landscaper to come in and do it properly." PAC commented that would be adding to the cost. Staff also stated that it would be considered monitoring. It was then questioned how the county would monitor or handle it. Staff answered, through enforcement action and violation. It would be a condition on the building permit. If it takes a couple years to get things planted, it would have to be monitored. It was discussed if occupancy could be held on the permit, it was discussed in detail and determined that the permit could not be held due to planting vegetation. Staff commented that a monitoring program is an option.

John Diehl, of Shelton, addressed the Board and asked if the SMP in Kitsap County has been adopted or approved by Ecology yet. Staff commented that it has been adopted by Kitsap County. He asked how you justify the concept of no-net loss in the context where the buffer is intruded upon. Jim commented that that was Kitsap County, not Mason County. Mr. Diehl questioned that it was being offered as a model. Staff commented that the RO is being modified, which will be improving the ordinance. Tim explained that current RO states the minimum requirement is

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that the resulting buffer is less than 100' it will be enhanced, which will include at a minimum, planting with native vegetation. He added that what they are talking about is adding specificity to that requirement.

John Diehl asked if there was a problem that non-native vegetation was not defined? That non-native vegetation might be superior to the lawn, or might not be. Tim agreed that it was something that needs to be defined. He explained that it was one approach and these are options. Bill asked what would happen if the land you wanted to develop was all native vegetation versus lawn. Jim clarified that if the entire buffer area was currently native vegetation, can there be selective tree cutting, clearing? Bill asked if you are clearing native vegetation, and you are encroaching in to it, then how do you mitigate by planting more native vegetation? Tim explained that if it was native vegetation, then you could mitigate within the standard buffer.

There was a 10-minute break.

The PAC discussed the April meeting/workshop schedule. They agreed the meeting on April 8 would be cancelled and the next meeting would be held on April 22. There would be no regular scheduled meeting for April 15.

There was additional discussion on buffers and Jim wanted clarification with the PAC that they were satisfied with what they have discussed so far, ie: buffers to the water and the requirements to the homeowner. Tim explained that the purpose was to provide more specifics about the existing RO; it says you have to enhance, but it doesn't say how much. Tim recommended that if the PAC wants additional specifics, then staff should work on additional options and details in the standard buffer, with the possibility of adding mitigation ratios like the Kitsap County draft and adding more specifics, and the idea of adding some incentives. Jim noted that he would like to add a definition on non-native vegetation.

Kristy asked Rebecca about her proposal and how it would change things. Rebecca added that it would not change much, it makes it have more sense when you are thinking about the buffer and reducing it to the common line and it requires maintenance and enhancing the buffer. The common line was discussed in detail along with variances. Tim explained that if you have a common line setback, because it is a site specific dimensional standard that applies, there is mitigation required for impact. Rebecca commented that it does not create more restrictions, it just frames it. What the Kitsap County draft does is set some parameters for mitigation ratios. Staff then added they needed to look at the E. Vegetation Conservation on page 45 of the SMP.

### *Shoreline Master Program Draft* **17.50.055.5 GENERAL REGULATIONS**

#### **E. VEGETATION CONSERVATION**

1. Unless otherwise specified, all shoreline uses and development shall comply with the buffer provisions of this program to protect and maintain shoreline vegetation.
2. Vegetation clearing in shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development. Outside shoreline buffers, vegetation removal shall comply with applicable requirements for clearing and grading, forest practices, and protection standards for fish and wildlife habitat. Clearing nonnative vegetation is allowed.
3. Removal of dangerous trees, establishment of view corridors, trimming, pruning, maintenance of existing landscaped areas, and noxious weed removal in buffers shall be conducted in accordance with the regulations in the Mason County Resource Ordinance, MCC 17.01.070D.2.i, MCC 17.01.100.D(2)(c), and MCC 17.01.110.F.

Staff suggested adding the Kitsap County SMP to #2 above, which would read:

2. Vegetation clearing in shoreline jurisdiction shall be limited to the minimum necessary to accommodate approved shoreline development. Outside shoreline buffers, vegetation removal shall comply with applicable requirements for clearing and grading, forest practices, and protection standards for fish and wildlife habitat. Clearing nonnative vegetation is allowed.  
Vegetation conservation standards shall not be applied retroactively in a way which requires lawfully existing uses and developments including residential landscaping and gardens, to be removed, except when required as mitigation for new or expanded development.

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Jim asked for clarification on the setbacks in the Resource Ordinance with revisions to Table 3 on page 67 (see below). Staff made corrections: Created a separate row for marine and lakes. Buffers for lakes now increased to 150'.

**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 Natural And Conservancy Shoreline	100 Feet	0 15 Feet
<del>Saltwater</del> : Natural and-Conservancy Shorelines*, <del>Saltwater and Lakes over 20 acres</del>	400 150 Feet	15 Feet
Lakes over 20 acres	100 Feet	15 Feet
Urban Shorelines	50 Feet	15 Feet

Bill questioned #3 in E. Vegetation Conservation. He noted that it talks about noxious weed removal, but there is no guidance in any of the other ordinances with what you replace it with. Adding, "It seems logical that you have guidance as to what type of vegetation you replace it with." Terry King, stated that they have done three recently, explaining that they do a complete kill and then a vegetation management plan for the area, which is always native. Rick Mraz pointed out that there was guidance under Appendix C of the Resource Ordinance (RO) on page 88.

*It reads:*

**Functions and values of the forested area between the proposed residence and the marine shoreline should be maintained through the following measure.**

- Sites where invasive species are removed should be replanted using native species.

Bill noted that that the reference in the RO should be added under #3. Staff affirmed.

Tim continued his presentation with Frequently Flooded Areas of the Resource Ordinance 17.01.090.

*Mason County Resource Ordinance*

**17.01.090 FREQUENTLY FLOODED AREAS**

**A. CLASSIFICATION**

The following shall be classified Frequently Flooded Areas:

Frequently Flooded Areas are identified by the Federal Emergency Management Agency as those areas within the 100 year floodplain in a report entitled "The Flood Insurance Study for Mason County" dated May 17, 1988, and revised December 8, 1998, with accompanying Flood Insurance Rate Maps, and any subsequent amendments thereto, and should be utilized as a guide to development.

The Skokomish River and floodplain as shown in the Comprehensive Flood Hazard Management Plan for the Skokomish River, February 1997.

**B. DESIGNATION**

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Lands of Mason County meeting the classification criterion for Frequently Flooded Areas are hereby designated, under RCW 36.70A.060 and RCW 36.70A.170, as Frequently Flooded Areas requiring immediate protection from incompatible land uses.

### C. LAND USE

1. Land uses in Frequently Flooded Areas shall be in compliance with the applicable provisions and requirements of all ordinances as referenced in Section 17.01.050, or as amended and updated.
2. The following uses within Frequently Flooded Areas are subject to conditional use permits:
  - (a) Radio and transmission towers, resource based industries, schools, trailer-mix concrete plants, sawmills, marinas, fire stations, fuel storage tanks, and commercial outdoor recreation.
  - (b) Other uses and activities determined by the Director and the Health Director that are likely to pose a threat to public health, safety, and general welfare if located within a frequently flooded area.

### D. DEVELOPMENT STANDARDS

Mason County Flood Damage Prevention Ordinance provides specific regulations and permit requirements for development conducted within the frequently flooded areas of Mason County.

He started his presentation with designations and how they are identified and designated. He discussed how the SMP carries forward what is in the RO, which details how to manage for flood hazards, see the SMP, Applicability 17.50.055.B.1. It was discussed in detail. Options were given to the Board to consider. It was suggested to add to SMP 17.50.055.B.6.1: "where provisions of the Flood Damage Prevention Ordinance (FDPO) and the SMP conflict, the more restrictive provisions shall apply." To the Applicability section as 1(a).

*Shoreline Master Program Draft*

#### **17.50.055.B.6.1 Reads:**

#### 6. Frequently Flooded Areas

1. Shoreline uses and developments shall be consistent with MCC Chapter 14.22 Flood Damage Prevention, or as amended. Where provisions of the FDPO and the SMP conflict, the more restrictive provisions shall apply.

A letter was received by staff from Advocates for Responsible Development dated March 25, 2013 from John Diehl. Tim referenced the letter saying that Mr. Diehl is suggesting what the staff is recommending, which is not to change the SMP.

There was a 10-minute break.

John Diehl of Shelton directed a question to Tim Gates. He asked, "How would this avoid a contradiction with the provision under Critical Areas and Buffers and Setbacks, subsection 3, which provides that there are inconsistencies between the RO and the SMP, which shall apply?" Tim suggested to move the requirement (as listed above) to the Applicability section with Regulation 3. He explained that if anything in the RO is inconsistent, the SMP shall govern. There is a conflict in the FDPO, it's the more restrictive that should apply. Tim also added that the way the PAC has been working on the SMP and the RO, there shouldn't be any inconsistencies. The PAC discussed in detail where the new language should be added.

John Diehl suggested adding the new language under 17.50.055.B.1.3 with exempt as provided below, then you wouldn't have a contradiction, but instead a reference to a statement if added as a separate bullet point as Jim Sims suggested. Staff conferred and agreed to discuss in more detail.

Tim continued his presentation with Frequently Flooded Areas in the SMP.

*Shoreline Master Program Draft*

#### **MCC 17.50.055.B.6.2. reads:**

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## 6. Frequently Flooded Areas

2. New development shall not reduce the effective flood storage volume of the regulatory floodplain. A development proposal shall provide compensatory storage if grading or other activity eliminates effective flood storage volume. Compensatory storage shall not be required in coastal or lacustrine floodplains. Compensatory storage may not be required in specific instances where flooding results from emergent groundwater, or where flooding occurs behind levees or in backwater areas without salmonid access and where effects to habitat and flood storage functions are negligible. The County shall require documentation completed by a qualified professional providing evidence that a proposal for floodplain fill would have no effect on effective flood storage. Compensatory storage shall...

Staff explained that the PAC has considered adopting a 100-year floodplain and try to address some of the FEMA requirements. One of the key issues was compensatory storage. If you are going to do any kind of development in the floodplain that involves grading or other activity, that involves balance, cut and fill by increasing flood hazards. Development must provide compensatory storage if grading or other activity eliminates effective flood storage volume. Provide equivalent volume at equivalent elevations to that being displaced. There are two options where to address compensatory storage, add to the flood chapter of the RO or in the FDPO.

Staff asked the Board if they wanted to move all the compensatory storage to the floodplain section of the RO? Jim asked for compensatory storage to be defined in the SMP, and if there was anything in the statute that requires it. It was questioned if the wording in the last sentence was adequate, ie: qualified professional.

Staff wanted to address the issue with critter pads that was originally addressed in a letter submitted by Mr. Richert & Mr. Young dated February 11, 2013. The letter stated that under the RCW 86.16.190, the state has authorized livestock flood sanctuary areas in floodplains and the SMP has to include flood sanctuary areas. Staff explained that the issue may be more appropriate to address in the FDPO rather than the SMP. The PAC discussed the options and agreed to come up with a draft to provide to Mr. Richert and Mr. Young, and to make sure that the Board gets their input. It was discussed that the best place for the critter pads to be is FDPO.

Jim asked staff, from the perspective of permitting and planning, should the provision be including in the SMP and the RO or only referenced and addressed in the Flood Damage Prevention Ordinance (FDPO) and the PAC make a recommendation to amend to include? It was discussed in length and the PAC determined that the best recommendation, based on regulations, was to recommend to the Board of County Commissioners (BOCC) that it be added to the FDPO, but if the BOCC declines, then to add it to the RO.

Channel migration zones were the next topic of discussion. Staff continued the presentation with the Resource Ordinance continuing with 17.01.110.

Tim gave an overview from the last workshop on what approach the PAC wanted to add to the RO regarding Channel migration zones. The prohibitions and Ecology guidelines were discussed in detail. Jim asked Eric Schallon and Theresa Nation if they recalled how CMZ was addressed in the Citizens Advisory Committee. Both Eric and Theresa agreed that it was not discussed in detail.

Suggested language below:

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#### **17.01.110 FISH AND WILDLIFE HABITAT CONSERVATION AREAS**

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Staff agreed to look at the regulations again more carefully.

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Staff continued discussing the options of the Frequently Flooded Areas of the SMP: 17.50.055.B.2.6 3 –7

Tim discussed two options to consider; amend the RO to allow a site specific study or refine the CMZ maps with concerns to regulations regarding the SMP B.6.5 and B.6.7. It was questioned if a variance was required. Tim explained what was allowed with a site-specific CMZ assessment using the Clallam County draft SMP. It was discussed in detail.

The public comment portion of the hearing was open.

John Diehl addressed the Commission and wanted to remind the PAC that when they open the RO, their obligation is to protect critical areas using best available science. He added that scientific backing needed to be added to the revisions, not to make revisions based on convenience, consistent on what they want to do, but the standard is to use the best available science to protect critical areas. He also noted the Skokomish Valley and the Channel Migration Zone and the lack of scientific findings. Mr. Diehl also talked about increasing the shoreline buffers in certain areas, but suggested reducing shoreline buffers to 50' in designated Urban areas. He also noted the broad definition of Urban areas, but would like to see a more restrictive use of urban shorelines. Mr. Diehl also discussed No Net Loss, commenting that the test is not No Net Loss, the test is the best available science to protect critical areas.

Harvey Scott of Mill Creek commented on the resource ordinance and that it only has one drawing that talks about buffers and setbacks. He noted that the drawing is not sufficient. Mr. Scott also commented on the presentation that Tim Gates presented on buffers and setbacks, he pointed out that the illustrations used would help the general public understand and decipher the criteria in both the SMP and the RO.

Tim closed the meeting stating the definition of Urban has been reduced to areas that are inside UGA's or RAC's. The old SMP applied Urban to most lakes and vast stretches of marine shoreline that would now fit under Shoreline Residential and be following the RO under the buffers. But noted that it will be looked at closely. Jim also noted that it is a draft, and thanked everyone for their time and patience.

The Board discussed the next workshop and agreed to meet on Monday, April 22, 2013. Staff agreed to update and revise the timeline and email the PAC with the changes and have it posted to the website.

Adjournment at 9:29 p.m.