

MASON COUNTY PLANNING ADVISORY COMMISSION

May 20, 2013

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1. CALL TO ORDER

The meeting was called to order at 6:07 pm by Chair Jim Sims.

2. ROLL CALL

Members present: Jim Sims, Ken VanBuskirk, Bill Dewey, Rob Drexler and Vicki Wilson. Kristy Buck and Cathi Bright were excused.

Staff present: Grace Miller and Allan Borden

Department of Ecology: Tim Gates and Rick Mraz

3. REGULAR BUSINESS

APPROVAL OF MINUTES

The minutes for May 6, 2013 were reviewed and approved as amended. Jim made the motion to approve and Vicki seconded, the motion passed unanimously.

RESTORATION PLAN

Ken addressed the restoration plan and asked how much ESA was paid. Tim explained that the Dept. of Ecology has a contract with Mason County for \$65,000. He stated that it was up to the County to determine how much of that was given to ESA for the Restoration Plan. Ken was concerned that the Restoration Plan was not vetted by the Citizens Advisory Committee (CAC) and recommended that the PAC approve the plan prior to passing it to the Board of County Commissioners (BOCC). Jim asked if there were a requirement to forward to the BOCC? Tim explained how the process and recommendations were set based on Ecology guidelines and quoted WAC173-26-201(2)(f). He suggested to the PAC if they have questions and concerns, to address each one individually with staff. Jim stated that it was lack of public input that is the issue, adding that the Restoration Plan was not submitted for public comment, as it should have been. It was discussed in detail. Vicki added that they had agreed to give the public 45 days to review and add any comments. She suggested that any public comment or input could be used to set priorities and help shape some recommendations for the future. It was discussed how to get the public to comment. The PAC agreed to email the Restoration Plan out to individuals and certain groups for comment. There will also be a comment section added to the County website.

SHORELINE MASTER PROGRAM UPDATE

Ground rules for the hearings proceedings were clarified by Chair Jim Sims.

Tim Gates with the Department of Ecology presented a Powerpoint presentation that highlighted the items on the agenda pertaining to regulations and policies under the Shoreline Master Plan (SMP) and the Comprehensive Plan.

Planning Advisory Commission Minutes, May 20, 2013

AGRICULTURE

Tim started the presentation off with Agriculture explaining the key changes in the Use Regulations of the SMP. It was explained that this is a 'Use' activity and it is regulated. He explained that the 2003 amendment to the Shoreline Management Act (SMA) should be implemented that says when you adopt a new Shoreline Management Plan (SMP), consistent with Ecologies guidelines; it should only apply to a new farm. He explained, not an existing farm that does something new, but if you are converting from another use to Agriculture land. Tim explained that the definitions are from the statute and was carved out by Legislature.

Ken commented that the wording for Agriculture be changed, based on a suggestion from Marley Young and Jerry Rickert. He suggested adding the word 'only'.

It was discussed that the SMP uses the words "shall not restrict", but that the Comprehensive Plan says "shall not require modification of or limit". Tim suggested refining the SMP to match what the Comp. Plan and statute says by striking "restrict" and replace with "require modification of or limit existing or ongoing".

17.50.060 Use Regulations

1. AGRICULTURE

1. In accordance with RCW 90.58.065, this Program shall not ~~restrict~~ require modification of or limit existing or ongoing agricultural activities occurring on agricultural lands. The regulations in this master program apply only to:

Tim explained that new farms must meet No Net Loss as it states in Use Regulations.

2. New agricultural uses and developments shall conform to the requirements of this Program, consistent with General Use Regulations.

Feedlot restrictions were discussed in the SMP.

11. Commercial Feedlots are prohibited in Urban, Residential, Conservancy, Natural and Aquatic environments. They may be considered as a Conditional Use in Rural shoreline environments, provided they be set back a minimum of 200 feet from the ordinary high water mark and are not located within a channel migration zone.

The definitions of Feedlots were discussed. Vicki commented that it was listed twice, as Commercial Feedlots and as Feedlots. Ken commented that Feedlots were discussed in the CAC and that they asked for animal waste to be addressed in the definition. It was discussed in detail if it would fall under a County regulation due to water quality. Rick felt it more an Environmental Health issue or an Ecology issue. Bill asked if it would fall under the jurisdiction of County if it were found in violation of a critical area. Arguably yes, Rick answered, if it is a new feedlot operating within the shoreline jurisdiction. It would have to meet setbacks and the conditions of the SMP, which are restrictive. A new feedlot would have to be 200 feet away from the water. Rick stated that even existing feedlots have to meet water quality standards.

Jim questioned the two definitions as Vicki pointed out and asked what the difference was between them. Staff determined that they were redundant. It was suggested to remove "commercial feedlot" and focus on the definition of "feedlot". Vicki asked for clarification on the definition of feedlot and if it is what is listed in the statute? It was discussed in detail. It was asked if there were any known feedlots in Mason County. Staff affirmed, none. It was determined to strike the word "Commercial" from Feedlots under 17.50.060.1.11 Use Regulations, Agriculture. Staff suggested removing Commercial Feedlots from the definitions as well.

Tim continued the presentation with Upland FinFish Facilities, which is #11 under 17.50.060 Use Regulations of Agriculture. He explained why it is in Agriculture and not under Aquaculture. Tim also stated that they should be cited outside of shoreline jurisdiction when possible. Location, design and operations are the considerations when citing water dependent aspects. They are not prohibited, but there are regulations.

Planning Advisory Commission Minutes, May 20, 2013

Ken asked about the use of both designations of Rural and Conservancy in the definition under Agriculture. Tim discussed the environment designations and what is allowed under the new proposed designations. Ken added that it was originally discussed to pull Agriculture out of Conservancy and put Agriculture strictly in to Rural designation. He commented that he wanted it noted. Tim commented that it would be a conditional use in either designation. Rick clarified that any conditions would be for the FinFish regulations. Tim affirmed.

Agriculture: environment designations

P=Permitted (allowed use, may needSDP)
 C=Conditional Use
 X=Prohibited

Existing

Designation	Urban	Rural	Conservancy	Natural
Agriculture	P	P	P	C
Commercial Feedlots	X	C	X	X

Proposed

Designation	Urban Com	Residential	Rural	Conservancy	Natural	Aquatic
Agriculture	P	P	P	P	C	X
Comm Feedlots	X	X	C ¹	X	X	X
Upland finfish rearing facilities	X	X	C	C	X	n/a

Tim moved on to policies and what items were clarified and cleaned up. Policies #13 and #14 under 17.50.060 Use Regulations, Agriculture. He explained that Confinement Areas were added under definitions.

Jim commented that item #15 was redundant and asked if it should be removed. Tim explained that it is not about the environment. He emphasized that it is in regards to impacts of existing public areas and you should avoid those impacts. He added that it had been discussed at a prior workshop along with the fundamental purpose of the shoreline act, which included public access.

17.50.060 Use Regulations

1. AGRICULTURE

15. New agricultural uses and development in support of agricultural uses should be located and designed to avoid, minimize, and mitigate impacts to existing public access to or enjoyment of adjacent shoreline areas.

A new agriculture use could impact public access and it should be avoided. He added that it is not specific on how it should be done, but it needs to be included.

Vicki questioned the regulations and asked for clarification that items #2 through #16, under Agriculture, are relevant only to 'new'? She commented that the word new is not always used and asked if it would create confusion. Tim stated that this question was addressed by Marley Young and Jerry Rickert in a letter dated May 20, 2013. They asked that the word 'new' be added to the beginning of regulations #2 through #9. It was discussed in detail. Staff commented that the way it is currently worded is adequate on 1.a.

Planning Advisory Commission Minutes, May 20, 2013

17.50.060 Use Regulations

1. AGRICULTURE

1. In accordance with RCW 90.58.065, this Program shall not restrict existing or ongoing agricultural activities occurring on agricultural lands. The regulations in this master program apply to:

- a. new agricultural activities on land not meeting the definition of agricultural land,

Jim opened the floor for public comments.

Eric Schallon of Green Diamond Resource Company commented on confinement areas. He asked if commercial feedlots were to be eliminated, that there is still room for confusion to misinterpret the definition of confinement areas and feedlots. He also asked for clarification on #7 and what is an animal containment site? Asking if it is supposed to be animal confinement, which is not defined.

1. AGRICULTURE

7. Wetlands shall not be used as animal containment sites.

Staff explained that it is existing language and stated that there is no definition for containment. Jim asked if there was a significant difference between containment and confinement?

Marley Young commented on the guidelines asking the PAC to make sure that they are clear and concise on their instructions for future employees of Mason County. He added that the definitions need to be clear on the original intent. He wanted to make sure that by not adding the word 'new' to the regulations under Agriculture, could they interpret the regulation to being all-inclusive to all agriculture? He wanted to make sure that the guidelines were clear and the regulations are for 'new' agriculture.

Constance Ibsen of Union asked staff to explain the Voluntary Stewardship Program that Mason County has signed up for. Tim explained that it is a volunteer program, but there is no money to implement yet, but the county has asked for funding when and if available. He added that this program would not effect the improvements to agricultural activities through the SMP process, but through water quality enforcement laws.

Steve Bloomfield commented on the definition of feedlots versus a concentrated animal feeding operation. He suggested that they both be defined so it is clear to the public. He also commented that it is a separate permitting process. Jim commented that they need to work on the definition of feedlot and revisit it. Vicki stated that they are prohibited everywhere except Rural, but only allowed in Rural if they meet the 200 feet setback, which removes them from Shoreline jurisdiction.

Bill questioned if it was necessary to consider deleting #7 and amending #8 by adding the word 'wetlands'.

1. AGRICULTURE

~~7. Wetlands shall not be used as animal containment sites.~~

8. Confinement areas shall be located away from perennial and intermittently flowing streams, wetlands and other waterbodies in shoreline jurisdiction. A fenced buffer of permanent native vegetation consistent with MCC 17.50.060, General Use Regulations ~~and at least 100 feet in width~~ shall be maintained between confinement areas, wetlands and water bodies.

Staff discussed if it was possible to put an animal containment area in a wetland under the Resource Ordinance (RO). It is considered a high-density land use area, according to the buffer table. Containment areas were discussed and determined it was a different land use and density. Rick commented that it was redundant and contradictory when citing the General Use Regulation and the buffer and just use the wetland buffer when talking about new development. It was agreed to strike 'and at least 100 feet in width' on #8.

Public comment was closed.

Planning Advisory Commission Minutes, May 20, 2013

AQUACULTURE

Tim continued his presentation with Aquaculture regulations and policies. He explained that regulations #1 through #3, #7 and #8 all prevent impact to Aquaculture operations. New wording was added for more specificity to existing regulations, which was discussed in detail.

Policy #4 and #5 were added to the SMP to clarify status of existing farms and the requirements for exemptions.

Rick asked how these regulations address existing operations that don't have a permit. He questioned if they change the scope and intent of what? What if you do not have an original permit? It was discussed in detail. Tim explained that it is an allowed use, but it is not accompanied by a permit. He discussed regulations #19 and #20.

It was questioned who provides the written statement. Staff explained that the County provides it. Staff suggested that the wording in #4.a. replace 'original permit' with 'authorization.'

17.50.060 Use Regulations - 2.Aquaculture

A. General aquaculture regulations

4. Ongoing maintenance, harvest, replanting, restocking or changing the culture technique or species cultivated in any existing or permitted aquaculture operation shall not require a new permit, unless or until:

a. the operation changes the scope and intent of the original permit as defined in MCC 15.09.055.H; or

Staff discussed if the wording should be clarified under a new sub-category '#4.b.' with clarification on existing operations and authorized use. It was discussed in detail and determined that no revisions or changes will be made to the existing regulation under #4.a.

Tim continued the presentation with General Aquaculture provisions with Navigation and Aesthetics. He explained the definition of floating and non-floating. He discussed recommended changes for General Aquaculture.

Staff recommended changes to General Aquaculture

Policy 11: clarify to align with regulation 8

Structures or activities associated with aquaculture should be located ~~inland from shoreline areas or~~ landward of shoreline buffers unless clearly shoreline dependent.

Reg 5: Fix typo [ALSO: consider possible redundancy with Reg 12]

Floating aquaculture structures shall be placed in such a manner, and be suitably...

Reg 11: Fix scrivener's error: Second sentence is redundant with 10(d)

RE: Reg 18: Clarify Definition of fill (in 17.50.040) to exclude gravel enhancement projects:

Aquaculture gravel enhancement projects, beach nourishment protection projects, and restoration projects are not considered fill.

Planning Advisory Commission Minutes, May 20, 2013

The presentation continued with Aesthetics.

Vicki questioned regulation #11, which is also stated in #10.d. Staff suggested removing part of the last sentence in #11, which is already listed in #10.d.

17.50.060 Use Regulations – 2.Aquaculture

A. General aquaculture regulations

11. Floating aquaculture structures shall not substantially detract from the aesthetic qualities of the surrounding area, provided methods are allowed by federal and state regulations and follow best management practices. ~~Aquaculture use and development shall employ the least harmful best management practices to control birds and mammals to~~ the maximum extent practicable.

The PAC agreed to strike a portion of the last sentence, 'Aquaculture use and development shall employ the least harmful best management practices to control birds and mammals' in #11 and agreed to keep 'To the maximum extent practicable.'

Staff continued the presentation Aquaculture. Tim added the definition of Fill would be modified. Ecological impacts were discussed in detail. Tim explained that a new policy was added to the Comp. Plan under Specific Use as #9. He also explained that it is language directly from the WAC.

IX-3 SHORELINE MANAGEMENT PROGRAM POLICIES – Specific Use

B. Aquaculture

9. The County should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions. Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions or adversely impact eelgrass and macroalgae. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, or establish new nonnative species which cause significant ecological impacts. Unavoidable impacts to ecological functions shall be mitigated. ~~In regards to the specific issue of eelgrass/macroalgae that move onto aquaculture structures, see Aquaculture General Regulations 10(b), which adds clarification that regulatory protections do not apply to eelgrass or macroalgae that colonizes aquaculture.~~

It was discussed in detail to remove the last sentence, which is also in the regulations under 17.50.060 Aquaculture 10.b. Staff also discussed #11 and suggested clarifying the statement so it reads 'located landward of shoreline buffers.', which makes it more consistent. The PAC agreed to strike 'inland from shoreline areas or'.

IX-3 SHORELINE MANAGEMENT PROGRAM POLICIES – Specific Use

B. Aquaculture

11. Structures or activities associated with aquaculture should be located ~~inland from shoreline areas~~ or landward of shoreline buffers unless clearly shoreline dependent.

Overwater work shelters were discussed in detail as listed in SMP regulation #8. Staff agreed to strike the last sentence.

17.50.060 Use Regulations – 2.Aquaculture

A. General aquaculture regulations

8. Aquaculture structures and activities that are not shoreline dependent or do not have a functional relationship to the water shall be located landward of shoreline buffers required by this Program to minimize the detrimental impact to the shoreline. ~~Overwater work shelters and overwater sleeping quarters accessory to non-water dependent aquaculture uses are prohibited.~~

There was a 5-minute break.

Tim discussed the addition and expansion to SMP regulation #10. He explained the additional language that adds specificity to the regulation.

- 2.a. No Net Loss
- 2.b. Clarify avoidance / mitigation for eelgrass
- 2.c. Floating aquaculture
- 2.d. Disease and pest control

Planning Advisory Commission Minutes, May 20, 2013

Native eelgrass and its definition were discussed in detail. It was determined that the regulation was consistent with Federal permitting processes. The PAC discussed the definition of native versus non-native eelgrass.

Tim pointed out that Regulations #5 and #12 were similar and suggested to combine them. Vicki agreed and asked staff to come up with new language that combines them.

17.50.060 Use Regulations – 2.Aquaculture

A. General aquaculture regulations

5. Floating aquacultural structures placed in such a manner, and be suitably sized and so as to minimize interference with navigation.
12. Aquacultural structures shall be placed in such a manner, and be suitably marked, so as to minimize interference with navigation.

Tim explained that a clarification to the definition of 'Fill' in 17.50.040 to exclude gravel enhancement projects. Ken questioned Regulation #18 regarding fill and asked why 1,000 cubic yards. Tim explained that it was existing language.

Teri King requested that #3 also be added to the Residential section of the SMP. She also suggested that 'non-native' be added to Regulation #4.b. She explained that if it is a species that has not been cultured before, but may have the opportunity to be cultured now.

A. General aquaculture regulations

- 4.b. The facility proposes to cultivate non-native species not previously cultivated in the state of Washington.

Staff discussed in detail. Vicki made the comment that she would like more time to read through before making a decision. The PAC agreed to revisit Teri's suggestion after further review.

Constance Ibsen commented on the definition of eelgrass and asked if it should list the Latin name. Staff stated that it was not necessary.

FINFISH NET PEN REGULATIONS

Finfish Net Pen regulations were discussed. Tim explained that the first regulation is new and is for limited conservation needs targeting cultivation of wild salmon stock. Staff recommended changes on #2.B.1, which will clarify criteria and permit requirements for conservation-related fish pens in Hood Canal.

17.50.060 Use Regulations – 2.Aquaculture

B. Finfish net pen regulations

1. Because of persistent low dissolved oxygen conditions, finfish net pen facilities shall not be located in the waters of Hood Canal, except for limited conservation needs targeting the cultivation of wild salmon stocks during a limited portion of their lifecycle to enhance restoration of native stocks. When Such activities may be considered as a conditional use, must meet the criteria in Regulation 2(a)-(e), and must involve minimal supplemental feeding and no use of chemicals or antibiotics.

Ken commented that there were discussions in the Citizens Advisory Committee (CAC) whether or not it was non-profit and asked for clarification. Tim explained that the original language came from Whatcom County which included it. The wording 'profit' was removed when it was added to the draft SMP. Ken commented that he was struggling with the fact that Mason County would have an exception and the neighboring county wouldn't. It was discussed in detail. Ken commented that Mason County should be consistent with neighboring counties.

Vicki asked for clarification on #2.e and asked if it was being removed. The PAC agreed to strike from the regulations.

17.50.060 Use Regulations – 2.Aquaculture

Planning Advisory Commission Minutes, May 20, 2013

B. Finfish net pen regulations

- 2.e. ~~In the event of a significant fish kill at the site of a net pen facility, the finfish aquaculture operator shall submit a timely report to the Mason County Department of Community Development stating the cause of death and shall detail remedial action(s) to be implemented to prevent reoccurrence.~~

Teri King suggested that limited conservation should be addressed and asked to remove the word 'salmon'. It was discussed and the PAC agreed to strike 'salmon' from B.1. in the first sentence.

17.50.060 Use Regulations – 2.Aquaculture

B. Finfish net pen regulations

2. Because of persistent low dissolved oxygen conditions, finfish net pen facilities shall not be located in the waters of Hood Canal, except for limited conservation needs targeting the cultivation of wild ~~salmon~~ stocks during a limited portion of their lifecycle to enhance restoration of native stocks.

It was discussed if the PAC wanted to outlaw Finfish altogether on the Hood Canal or allow a conservation exception. It was approved to keep the FinFish regulations. Ken disagreed and asked that it be on record that he did not support the decision.

Commercial Geoduck aquaculture was discussed. Tim explained that the Regulations were very close to Ecologies rules. He discussed the general citing criteria and their purpose. Staff recommended changing some of the grammar on Geoduck Reg. 3 and match Ecology rule.

17.50.060 Use Regulations – 2.Aquaculture

C. Commercial Geoduck aquaculture

- C. Conditional use permits are required for new commercial geoduck aquaculture. Conversions from existing non-geoduck aquaculture to geoduck aquaculture within existing farm boundaries do not require a conditional use permit.

Ecology WAC 173-26-241(3)(b)(iv)(A): "Where the applicant proposes to convert *existing* nongeoduck *aquaculture* to geoduck *aquaculture*, the requirement for a conditional use permit is at the discretion of local government."

Tim explained the proposed environmental designations of floating aquaculture and what was allowed. It was discussed in detail. Vicki was concerned with the requirement of a Conditional Use Permit on Geoduck operations upland verses floating. It was discussed to change Commercial geoduck to "Permitted" in all designations with the exception of Natural, which would remain "Conditional Use".

Planning Advisory Commission Minutes, May 20, 2013

P=Permitted (allowed use, may need SDP)
 C=Conditional Use
 X=Prohibited

Aquaculture: environment designations

Existing

Designation	Urban	Rural	Conservancy	Natural
Aquaculture				
non-floating	P	P	P	C
floating	C	C	C	C
gravel enhancement projects > 1,000 c yards	C	C	C	C

Proposed

Designation	Urban Com	Residential	Rural	Conservancy	Natural	Aquatic
Aquaculture						
Non-floating	P	P	P	P	C	P
Floating	F	P	P	P	C	P
Finfish net pens	n/a	n/a	n/a	n/a	n/a	C/X ¹
New gravel enhancement projects > 1,000 c yards	n/a	n/a	n/a	n/a	n/a	C
Commercial aquaculture*	C	C	C	C	C	C

1. Prohibited in Hood Canal. Exceptions apply

FOREST MANAGEMENT PRACTICES

Tim continued the presentation with Forestry Management Practices in the SMP. He explained the policy changes in the Comprehensive Plan were very clear explaining that the County should rely on the Forest Practices Act (FPA). You rely on Dept. of Natural Resource rules until you change the use. Staff discussed the Regulations under Forest Management Practices.

Vicki directed a question to Eric Schallon of Green Diamond Resource Company. She asked him about issues with roads. He commented that he would like to address any issues when the PAC discusses Transportation. His only concern with the current language is with the RCW.

Tim pointed out that 60% of major land use in Freshwater Shoreline areas are Forestry. Commenting that 60% of the rivers are regulated by the Forestry Management Practices, not the SMP. Under Marine Shoreline Areas, forestry is only at 14%.

Eric Schallon asked if the FPA refers back to the SMP? Tim explained that it would be for the definition of development. Rick confirmed, stating that it would be anything that meets the definition of development that might need a permit, like roads and bridges.

MINING

Mining was discussed. Staff explained that the first policy explains in detail with extra clarification. Tim suggested that both #3 and #4 be combined in the Comprehensive Plan, as were redundant and would clean up the policies.

IX-3 SHORELINE MANAGEMENT PROGRAM POLICIES – Specific Use

G. Mining

3. Screening and buffering measures shall, as far as is reasonably feasible, utilize natural vegetation and topography of the site.
4. Screening and buffering shall use topography and natural vegetation to the extent feasible and shall be maintained in effective condition

It was discussed in detail and the PAC agreed to combine both #3 and #4 and asked staff to make the necessary changes.

Planning Advisory Commission Minutes, May 20, 2013

Tim continued his presentation with the regulations on mining in the SMP. He explained the key changes under Mining to clarify the requirement of water-dependency and minor edits made to the other regulations.

Jim opened the floor for public comments.

Eric Schallon of Green Diamond Resource Company asked if existing borrow pits will be effected under the new proposed designations? Will they be grandfathered in to the new jurisdiction or will there be issues on existing borrow pits that are within 200 feet of a creek? He also asked for clarification on the definition of mining, asking if mining was defined as commercial sale of product and if there were borrow pits on your own property, would this be considered mining?

It was discussed in detail. Staff asked Eric why it was not regulated by the FPA. Eric clarified that these are existing pits and if a road needs to be touched up, they pull from these old pits. It may not be on a current FPA, but they are on an existing pit.

Staff asked Eric to research and if it is not covered under the FPA, then to submit proposed language for the PAC to review.

Public comment was closed.

4. NEW BUSINESS

The PAC agreed the next meeting would be on June 3, 2013.

5. ADJOURNMENT

Meeting adjourned at 9:08 p.m.