Whidbey Environmental Action Network

Restoration Education Preservation

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Dedicated to the preservation and restoration of the native biological diversity of Whidbey Island and the Pacific Northwest

Sept. 27, 2015

TO: **Dave Wechner**

FROM: **Steve Erickson**

RE: **Code Cleanup:**
Intensity Rating for Non-Residential Uses on Parcels with Wetlands

The existing ICC language in the wetlands ordinance for determining the intensity rating for non-residential (NR) uses is internally contradictory and contains a major loophole. If the current wetland regulatory system is retained, this dysfunctional portion of the code needs to be corrected.

Width of wetland buffers is based in large part on the "intensity" of proposed land uses. The "new" (2008) wetlands ordinance (ICC 17.02A) includes "initial" intensity ratings for Residential and Non- Residential (NR) uses for parcels based on three different size classes (less than 1 acre, 1 to 5 acres, and over 5 acres). The Planning Director can then adjust these "initial" ratings based on the specifics of the project, site characteristics, proposed design, etc.

The current code language has two problems regarding the "initial" determination of land use intensity for (NR) uses:

1) The regulations are internally contradictory; NR uses on lots between 1 and 5 acres are listed as both high and medium intensity.
2) The regulations address NR uses on lots of 5 acres or less, but completely omit NR uses on lots larger than 5 acres.

The existing relevant code reads:

17.02.090 D. Land Use Intensity

The appropriate Buffer for a Wetland will, in part, be determined based on the intensity of a Development Proposal. Land Use Intensity shall be determined by the Planning Director on a case-by-case basis for Development Proposals that contain or are affected by a Wetland or Wetland Buffer. The Land Use Intensity Worksheet from the Wetlands Identification Guide shall be submitted with all Development Proposals on a Lot that contains or is affected by a Wetland or Wetland Buffer and will be used by the Planning Director in the determination of Land Use Intensity. The Planning Director shall determine Land Use Intensity as follows:

1. High Intensity
   a) All Uses and Structures located on Lots less than one (1) acre in size

shall typically be classified initially as high intensity;

b) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as high intensity;

. . . . .

2. Medium Intensity

a) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as medium intensity;

b) All Residential Uses and Structures that do not meet the Cleared Area and Impervious Surface ratios established for high and low intensity Uses shall typically be classified initially as medium intensity.

The result of these problems is two-fold. First, the contradictory intensity rating for lots of 5 acres or less provides great opportunity for both confusion and litigation. Second, the failure to address the intensity rating for NR uses on lots greater than 5 acres could be interpreted to omit these uses from regulation altogether as far as wetland buffers are concerned, again creating a situation that is both confusing and with a high potential for litigation. We propose that these problems be corrected by simply making the initial intensity rating for all Non-Residential uses "High," regardless of lot size. Our rationale is that NR uses encompass a huge variety of different kinds and scales of land use. "Non-Residential" is defined in the zoning code:

17.03.040 Definitions.

Non-Residential: Describes the Use of a Structure for Commercial, Institutional, Light Manufacturing or similar Uses. Non-Residential is not used to characterize Agricultural/Farm or Forest Uses.

The range and scale of potential NR uses possible in the Rural zone vary so greatly in terms of potential size and character that it is impossible to characterize their potential intensity based only on their being classified as "Non-Residential."[1] For example, a "Public/Community Boat Launch" is not comparable in intensity to a 500 person Church. A "Communication Tower" is going to be very different in land use intensity from an "Equestrian Center." For that reason, we propose that all proposed NR uses be considered initially as being high intensity. Based on the specifics of the use and site, the intensity rating can then be adjusted as appropriate.

Proposed changes (deleted language is shown struck through and proposed new language is underlined):

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[1] Some of the NR uses specifically allowed in the Rural zone are:
Accessory Uses; Fire Stations; Major and Minor Utilities; Water Tanks; Public/Community Boat Launches; Campground and Recreation Vehicle Parks; Communication Towers; Equestrian Centers; Home Industries; Kennels; Storage Facilities; Animal Shelters; Churches; Essential Public Facilities; Gun Clubs and Shooting Ranges; Private or Public Schools; Surface Mines.

17.02A.090 D. Land Use Intensity

The appropriate Buffer for a Wetland will, in part, be determined based on the intensity of a Development Proposal . . . The Planning Director shall determine Land Use Intensity as follows:

1. High Intensity
   a) All Residential Uses and Structures located on Lots less than one (1) acre in size shall typically be classified initially as high intensity;
   b) All Non-Residential Uses and Structures ~~located on Lots equal to one (1) acre but less than five (5) acres in size~~ shall typically be classified initially as high intensity;

   . . . . .

2. Medium Intensity
   ~~a) All Non-Residential Uses and Structures located on Lots equal to one (1) acre but less than five (5) acres in size shall typically be classified initially as medium intensity~~;