

**ISLAND COUNTY PLANNING COMMISSION
SUMMARY MINUTES
COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA
MONDAY, March 28, 2016**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>	<i>Val Hillers</i>	
	<i>Dean Enell – Chair</i>	
	<i>Karen Krug</i>	
<i>District 2</i>	<i>Jeffery Wallin</i>	
		<i>George Saul</i>
	<i>Darin Hand</i>	
<i>District 3</i>	<i>James Caspers</i>	
	<i>Beth Munson – Vice Chair</i>	
	<i>Scott Yonkman</i>	

Meeting was called to order at 2:00 p.m. by Vice Chair Beth Munson.

ROLL CALL

James Caspers, Val Hillers, Beth Munson, Jeffrey Wallin, Karen Krug, Darin Hand, Scott Yonkman

MINUTES:

None to approve at this time.

Planning staff present: Hiller West, Director of Community Development; Keith Higman, Interim Director of Long-Range Planning; Beckye Frey, Long Range Planner; Meredith Penny, Long Range Planner.

DIRECTOR'S REPORT

Director Higman noted that there are four upcoming public meetings regarding Urban Growth Areas (UGAs) and Joint Planning Areas (JPAs). The first meeting takes place this evening, March 28th at 6:30 p.m. at the South Whidbey High School Commons. The following meetings are scheduled: March 29th at 6:30 p.m. at the Coupeville Recreation Hall, March 31st at 6:30 p.m. at the Whidbey Water Service in Freeland and finally April 5th at 6:30 p.m. at the Oak Harbor Elks Lodge.

ITEMS FROM THE PUBLIC

Susan Bennett
2191 Goss Ridge Road, Freeland

- Ms. Bennett asked if wetlands and water, and items brought by Whidbey Environmental Action Network (WEAN) to the Growth Management Board were the only items that were going to be discussed as part of the Critical Areas Ordinance (CAO) for this current update. She hoped that logging regulations and protection of prairies would also be discussed, but she stated that she doesn't think that's going to happen.

- Director Higman replied that the CAO Update is limited to items that are not associated with Fish and Wildlife Conservation Areas work. He noted that protection of plant communities is being discussed as part of the Fish and Wildlife work, and said that this will be addressed at a future Planning Commission meeting. The regulation of logging is done through the state Department of Natural Resources (DNR), and locally through clearing and grading permits and review. These can fall under Critical Areas, particularly if there is a conversion of the land involved. The clearing and grading permit process is addressed through Title 11 of Island County Code, some of which is overseen by the Planning Commission, but some items are overseen by the County Engineer. He stated that we do not have specific conversations scheduled as part of this process to evaluate clearing and grading activities in Island County.

Steve Erickson, Whidbey Environmental Action Network (WEAN)

- Mr. Erickson first addressed Fish and Wildlife items that were discussed before: Reasonable Use and Emergency definitions, and limitations on Agricultural Exemptions. He stated that the Planning Commission had wanted to create different language on Agricultural Exemptions. He asked what the status of those possible changes is.
- He noted that, referencing the Needs Assessment and Gap Analysis, major permitted wetlands impacts are happening through logging. He believes that the County has a fair amount of control that it doesn't exercise in this matter. The County could be denying development following logging. He stated that logging can be done under a non-conversion permit, which means the landowners do not intend to develop the land subsequent to logging. Then they get a retroactive clearing and grading permit. This process greatly lowers the protections for Critical Areas and cuts the public out of the loop. He opined that some people have developed this to a fine art. He stated that the County has a fair amount of leverage that it refuses to use, by keeping a huge loophole for after-the-fact conversions, referencing code section 270. He would like to see this loophole tightened up.

Chair Enell arrived at 2:10 p.m.

- Steve Erickson continued, stating that these issues, especially connectivity in habitat were a large part of TAG discussions from the Fish and Wildlife Update in 2014. He stated that a long list of items had been deferred from that time, and should be addressed now, in the context of the overall update. He noted that these items are not just Critical Areas regulations, but also general land use regulations. One proposal this year he would like to see move forward is to designate Rural Lands of Long Term Significance, lands that are least desirable for development within Urban Growth Areas. He would like to see more conscious planning in restoring connectivity in habitat throughout the Island in areas that do not fall within an Urban Growth Area. Some areas are very vulnerable like the area around Freeland in terms of north-south connectivity, the isthmus of Greenbank and areas south and southwest of Oak Harbor. If those areas are blocked, there will be no connectivity between north and south, and land critters will be stuck.
- Mr. Erickson then referenced the Needs Assessment and Gap Analysis, asking by what criteria were the needs determined.

- Director Keith Higman responded by noting that staff was prepared to answer Commissioners' questions regarding the definition of "Emergency" and "Reasonable Use." Staff was also prepared to discuss how long a piece of agricultural property could remain undeveloped, and at what point it could still be considered Existing and Ongoing.
- Director Higman then addressed Mr. Erickson's comments on the Needs Assessment and Gap Analysis. He noted that staff had asked the consultant, Environmental Science Associates (ESA) to itemize the recommendations in order of what is mandatory and what is optional. This will make it easier for policy makers to set policy. It helps the Commissioners to understand what recommendations carry greater weight, but that all are up for consideration.
- Mr. Higman then noted there is history in logging activity that results in future development and if the Planning Commission wants to have those discussions, staff will put those on future agendas. He agreed that environmental protections are certainly less for properties that are logged under a non-conversion permit.

Marianne Edain, WEAN

- Ms. Edain elaborated on Mr. Erickson's logging comments. She stated that the Department of Natural Resources has jurisdiction over non-conversion permits. If a property owner declares their intentions for any use other than forestry, then Island County has jurisdiction.
- She noted that Island County has a provision that a non-conversion applicant signs paperwork stating that there will be a six-year moratorium on development. However, the applicant can simply ask the Auditor to remove the moratorium.
- She stated that many of the uglier clear cuts on the south end of the Island are a result of this provision, and that the agency with jurisdiction over these non-conversion permits (DNR) is not restrictive. Ms. Edain elaborated that the DNR has no problem with logging occurring in wetlands or steep slopes, and that Island County has no say in that. She would like to see Island County take jurisdiction over these cases, but the County believes it would be too expensive and consume too much staff time. Then she stated that class II and III non-conversion permits, by definition, will not have an adverse environmental impact. She noted that Oso was logged under a Class III permit with devastating effect.
- Ms. Edain would like to see Island County help WEAN go to state legislature to ask that state law require that environmental review be done before allowing these types of permits. She said that Island County and DNR are not doing enforcement on one particular clearing and grading operation that has no permit on file with either agency.

Chair Enell asked for further comment, and when none was forthcoming, closed public comment.

NEW BUSINESS

WORKSHOP – REVIEW OF DRAFT NEEDS ASSESSMENT AND GAP ANALYSIS

Chair Enell noted that this process is to help develop Critical Areas Ordinance (CAO) Updates, in accordance with the Growth Management Act. He then asked staff to begin their presentation.

- Meredith Penny, Long Range Planner stated that Planning staff are leading an effort to review and, if necessary, update Island County’s Critical Areas regulations as part of the Comprehensive Plan Update that is ongoing. She noted that the report under review currently is the third in this process and is based on the two previous reports: Best Available Science (BAS) and Existing Conditions. Today’s process will identify recommended regulatory revisions and optional actions.
- Ms. Penny confirmed that today’s report had been through the Technical Advisory Group (TAG) process. She stated that the Planning Department had received one formal comment from a TAG member and this comment had been incorporated into information being presented today. She noted that the final document will incorporate comments from the TAG, the Planning Commission and the Board of County Commissioners.

Ms. Penny then began her presentation (below):



Island County
Critical Areas Ordinance Update



DRAFT Needs Assessment and Gap Analysis Report

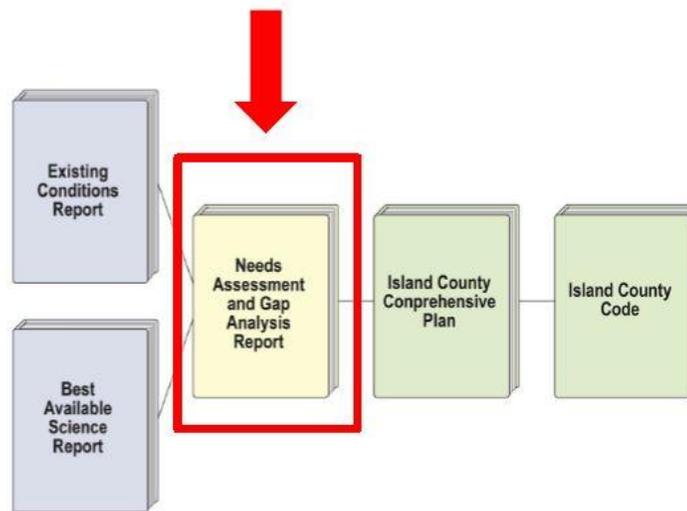
Planning Commission Workshop

March 28, 2016

Project Status Update

- **Summary presentation of DRAFT Needs Assessment and Gap Analysis Report**
- **Preliminary TAG Feedback**

Project Overview (Reminder)



Needs Assessment and Gap Analysis

- **Wetland Rating, Regulations, and Monitoring** (Chapter 2)
- **Surface Water Quality Impacts and Monitoring** (Chapter 3)
- **Groundwater Resources and Quality Protection** (Chapter 4)
- **Public Safety and Property Risks from Geologic Hazards** (Chapter 5)

Categories

	Recommended Revisions
	Optional Policy Considerations

Wetland Rating, Regulations, and Monitoring

	<p>Consider specifically requiring the use of the federal manual for wetland delineation.</p>
	<p>Consider requiring compensatory mitigation for temporary impacts to wetland functions that will last two or more years.</p>
	<p>Consider prohibiting reduction of wetland buffers below 75 percent of the standard buffer width.</p>
	<p>Consider alternative mitigation strategies with a focus on watershed scale planning and management.</p>
	<p>Refine wetland monitoring program; appoint task force to address.</p>

Surface Water Quality Impacts and Monitoring

	<p>Consider public education strategies that emphasize the importance of water quality and effective surface water management.</p>
	<p>Although on-site infiltration is often the preferred approach for development, where warranted, further consider use of LID and green stormwater infrastructure approaches in specific watersheds.</p>
	<p>Incorporate incentives into the adaptive management framework (ICC 17.02.040.L.6).</p>

Surface Water Monitoring Program

- Evaluated in the *Existing Conditions Report*
- Potential improvements identified by TAG, County staff, and consultant team:
 - **Reprioritize Monitoring Efforts** – focus on source identification activities in specific watersheds
 - **Adjust Monitoring Locations** – select based on risk to local resources of interest/value and incorporate watershed characterization results, other new information.
 - **Improve Pollutant Source Identification through New Tools and Partnerships** – technical tools and ongoing relationships.
 - **Employ New Water Quantity and Habitat Monitoring Protocols** – permanent stream gages on Maxwelton, Glendale, and Kristoferson Creeks. Integrated with groundwater monitoring.
 - **Improve Public Outreach About Program** – informational materials and annual reporting on County website.

Groundwater Resources and Quality Protection

	<p>Available groundwater level trend data are often over 10 years old and are thus not necessarily indicative of recent trends. Areas could be identified where enhanced time-series groundwater level data could be useful.</p>
	<p>Seawater intrusion monitoring is comprehensive, but could be improved by increasing the compliance of data submittal by public water systems and expanding measurement of groundwater elevations (or clarifying the significance of existing measurements) in selected areas.</p>
	<p>Metering pumping from water-supply wells provides data from the larger water systems, but data are not reported from the smaller systems or domestic wells. Agricultural groundwater use estimates are relatively inaccurate. Improvements to the accuracy of this data could be explored.</p>
	<p>Review all forms of proposed development for effects on water availability.</p>

Public Safety and Property Risks from Geologic Hazards

	In next SMP amendment or update, consider increasing setbacks and/or prohibit development in areas vulnerable to bluff retreat or shoreline retreat and landslides.
	In next SMP amendment or update, consider expanding tsunami hazard protections.
	Provide specific development standards for areas vulnerable to seismic events.
	Provide clarity on the variable risk posed to areas above, below, and on unstable or potentially unstable slopes.
	Use and/or adopt multiple sources of available maps and information regarding for landslides, soil liquefaction potential, and tsunami hazards as screening tools during permit review.
	Use County's 2007 and 2014 LiDAR in refining hazard identification.
	Consider notification requirements for geologically hazardous areas (i.e., property sales and/or title).
	Clarify intent and purpose of geotechnical reports for steep/unstable slopes.

Next Steps - Report Review Logistics

- Input from TAG, PC & Board
- Feedback incorporated
- Policy and Regulatory Memos Drafted

WETLAND RATING AND IDENTIFICATION SYSTEM

Discussion clarified the following points:

Wetland Delineation:

- Commissioner Krug noted that the County had developed a Wetland Rating and Identification System in 2008 and had spent a lot of money doing so. She wondered whether that program had had a chance to prove itself yet, and would prefer to enhance that program rather than adopting a new set of regulations.
 - Ms. Penny responded that the Wetland Rating and Identification System that the County had developed in 2008 is separate and different from Federal Wetland Delineation. Making changes in this area would only clarify in code that we are using the Federal Wetland Delineation Manual in shaping our policy.

Compensatory Mitigation:

- Island County has recently updated the Fish and Wildlife Habitat Conservation Area (FWHCA) regulations, which affect stream buffers. Within this, Compensatory Mitigation is required. ESA has recommended that we bring our Critical Areas – Wetland regulations in line with our FWHCA regulations.

Prohibition of Wetland Buffer Reduction below 75%:

- Commissioner Krug expressed that she would prefer we keep our current way of determining wetland buffers. She stated that the current system is site specific and more appropriate for Island County.
- Historic Waterfront properties will not be impacted by changes to this area, since those properties are within the jurisdiction of the Shoreline Master Program.
- Buffer width standards would apply to new development only.
- Island County Code offers buffer averaging on properties with development. This provides the benefit of being able to judge the buffer quality in addition to its width.
- Washington State Department of Ecology's science based guidance states that buffers shouldn't be reduced under 75%

Consider Alternative Mitigation Strategies:

- Director Higman stated that if a watershed is losing function it makes sense to mitigate within that same watershed, but in some cases may not be feasible. He referenced the state highway bridge to Camano Island, which involved impacts to Critical Areas, but the mitigation was done in Dugualla Bay.

Refine Wetland Monitoring System:

- Mr. Higman noted that much work has been done to evaluate wetlands in Island County. This process included visiting known wetland sites every year to record changes over time, looking at vegetation then categorizing these wetlands as natural, developed or other perturbations that may be associated. This program had not been implemented fully and had not been as valuable as was hoped. He stated that this wetland vegetation monitoring program is in our Code, but since we're not putting the information we gather to good use, perhaps it should be removed.
- Ms. Penny noted this item had been discussed at the TAG meeting. TAG members had concerns about whether this program should be continued or modified in some way.

- Commissioner Caspers asked if wells adjacent to wetlands had been tested.
 - Mr. Higman responded that no, because of the complexities of water flow and filtration. If adjacent wells are tested, the results wouldn't be reliable.

Commissioners recommended that the Planning Department move forward on refining the Wetland Monitoring System.

SURFACE WATER QUALITY IMPACTS AND MONITORING

Discussion clarified the following points:

- Keith Higman noted that when this program started back in 2006, we didn't have baseline data established. But now that we have that data, we only need to collect comparative data, so resources can be shifted to other priorities. Today this program is funded entirely by Clean Water Utility resources.

Public Education Strategies that Emphasize Water Quality Importance:

- TAG members recognized that the first step in the Adaptive Management approach for Surface Water Quality Monitoring Program is public outreach and education.
 - Mr. Higman noted that these efforts can be hampered by lack of funding and resources. However, one good strategy for boosting public outreach is to make data more available on the County's website.

Low Impact Development (LID) and Green Stormwater Infrastructure:

- Director Higman outlined the history of this issue, stating that a previous Board had included Low Impact Development standards in the development regulations. The creation of the Clean Water Utility helped to move those standards forward.
- These programs have not been fully implemented. One phase of the Clean Water Utility that has been funded but not fulfilled is the hiring of an LID Watershed Basin Coordinator in the Public Works Department and another staff in the Department of Natural Resources.
- Mr. Higman stated that staff are already moving forward with this item, but asked Commissioners if LID should be applied proscriptively or should it be incentivized?

Commissioners agreed they would like to see it incentivized.

Adaptive Management Incentives:

- Ms. Penny noted that the TAG report gave some background on this issue, and said that incentives would have to be tailored to specific uses.

GROUNDWATER RESOURCES AND QUALITY PROTECTION

Discussion clarified the following points:

- Director Higman stated that Island County has one of the most progressive groundwater monitoring programs in Washington State. The seawater intrusion work we do here is unlike any other community in the State. That said, ESA wasn't able to find areas that needed significant improvement, so were only recommending very minor improvements.

Enhanced Time-Series Groundwater Level Data:

- Mr. Higman explained that groundwater data is often affected by the pressure fluctuations of pumps turning on and off. Island County has several wells that are not pumped, specifically for the purpose of avoiding this fluctuation. These wells are monitored throughout the season to see if there is any seasonality with respect to groundwater. Time-series is the length of time in which we are collecting continuous data.

Improved Seawater Intrusion Monitoring, Improved Accuracy of Agricultural Groundwater Use; Review Proposed Development for Effects on Water Availability:

- Mr. Higman stated that these items will be part of a conversation later on and recommended going into detail at that time.

Chair Enell asked for public comment.

Steve Erickson, WEAN

Mr. Erickson raised the following points:

- The County has its own unique Wetland Rating System. This raises the cost to property owners, should they have to hire a consultant who must learn the County's system.
- Compensatory Mitigation: The issue is whether compensatory mitigation should be required for impacts that last two years or less. Under GMA basic standards, the County is required to prevent a net loss of function of Critical Areas, specifically Wetlands in this case. The County has addressed this in updates to the Fish and Wildlife Ordinance, and now should do the same for wetlands.
- Buffer Reductions: The current Island County system is site-specific, including the type of wetland, the landform involved and intensity of use being taken into account. Mr. Erickson urged that policy should match Best Available Science.
- Wetland Monitoring Program: The sample was biased, since the County could only gather data from some properties. The County didn't implement this program as it was designed. It would be a better use of resources to redesign the Wetland Monitoring Program to detect problems and fix them.
- Surface Water Monitoring: WEAN advocates for getting more advanced equipment, and placing automated data collection systems on major streams. This would increase the quality and accessibility of collected data.

Diane Hennessey, DOE

Ms. Hennessey raised the following points:

- Wetland Monitoring Program – Optional, Alternative Mitigation Strategies: The DOE provided a \$250,000 grant to Island County to address Critical Areas Ordinance items. One component of this was to assess each of the watersheds in Island County, using a tool that the DOE developed. County staff turnover issues have reduced the effectiveness of this assessment. The DOE advocates planning from a watershed point of view to avoid having to mitigate impacts in other watersheds.

- One option is to have developers pay into a mitigation bank for unavoidable impacts. One example of this is the Lummi mitigation bank. The idea here is to look within your watershed, where can you get the most environmental benefit.
- Prohibition of wetland buffers below 75%: In 2013, DOE published a buffer study. The study revealed that buffers in Washington State have become smaller than Best Available Science recommends.
- Surface Water Quality Impacts and Monitoring: Under the Fish and Wildlife Habitat analysis that was done, there is an outline of how you might address adaptive management framework.

Bobbi Lindemulder, Snohomish Conservation District

Ms. Lindemulder raised the following point:

- Wetland Buffers: property owners can access programs that may allow smaller, higher quality buffers in certain conditions.

Steve Erickson, WEAN

Mr. Erickson raised the following point:

- Existing Wetland Buffers: There are good reasons for going with larger buffers initially, because impacts tend to narrow buffers over time. Scientific recommendations have gotten watered down and there is now no room left for further reductions.

Chair Enell closed public comment.

PUBLIC SAFETY AND PROPERTY RISKS FROM GEOLOGIC HAZARDS

Discussion clarified the following points:

- Director Higman said that some of the recommended changes in this area may be addressed by Shoreline Master Program (SMP) amendments. The next SMP update is scheduled to occur in 2020 and these items could be addressed before that time.
- Regulations in this area used to revolve around what was done at the top of a slope, but since the Oso slide, we now need to evaluate development activities at the bottom of a slope as well.
- Much of these Geologic Hazard Area issues will be addressed within the SMP, especially for new development. Changes in this area would focus more on addressing redevelopment.

Provide Development Standards for Seismic-Vulnerable Areas:

- Mr. Higman noted that there is a Seismic Hazard Area in Bush Point, and there are currently no standards that guide what type of development should be allowed in this area.
- ESA will provide policy packages on options for addressing changes in this area.

Setbacks in Vulnerable Areas; Expand Tsunami Protections; Provide Clarity on Risk Near Unstable Slopes; Use Screening Tools for Hazard Areas; Use County's 2007 & 2014 LiDAR to Refine Hazard Identification:

- These items were not elaborated upon at this time.

Consider Notification Requirements for Hazard Areas (i.e., Property Title):

- Director Higman suggested expanding this area to include more public outreach and education, such as publishing Hazard Area maps on our website.
- During the development review process, hazard maps are used to inform property owners of Steep and/or Unstable Slopes. There is also a requirement for developers or property owners to sign an affidavit attesting to their knowledge that they're building in a Hazard Area. Commissioners would like to expand this to provide notification to current property owners as well as notification at title transfer or property sale.

Clarify Intent and Purpose of Geotechnical Reports for Steep/Unstable Slopes:

- Commissioner Yonkman noted that Island County has some good regulations in place for building near steep slopes, with a default setback of 100 feet, unless the property owner obtains a Geotechnical Report.

Chair Enell asked for public comment.

Diane Hennessey, DOE

Ms. Hennessey raised the following points:

- Ms. Hennessey noted that many counties have Hazard Area setback requirements that are included in their CAO. She acknowledged that there are buffer and setback requirements within the SMP, but she would like to see Island County include setback requirements within the CAO, if there are other vulnerable areas to consider.
- She noted that if these items are added to the CAO now, they can be adopted into the next SMP update later.

Marianne Edain, WEAN

Ms. Edain raised the following points:

- This topic called Managed Retreat. Island County is seeing climate change, sea level rise and greater storm impact as there is more logging. Island County has to pick up the pieces from unwise development in the past. There are problems in this area because of Reasonable Use exceptions, and people keep requesting help in these unstable areas.
- We need to look at a larger, overarching policy that will manage retreat of infrastructure from clearly foreseeable risks. WEAN would like to see notice on title of property to warn buyers when they are purchasing at-risk properties.

OLD BUSINESS

FISH AND WILDLIFE HABITAT CONSERVATION AREAS

Definitions of Reasonable Use and Emergency:

- Planner Meredith Penny recommended that the Planning Commission direct staff to address definitions of Reasonable Use during the upcoming code cleanup process.

- Ms. Penny noted that staff had been asked to research definitions of Emergency. She observed that in the past, Island County has followed the definition of Emergency from the table of exemptions in 17.02B.300, but had been subject to the Director's discretion. If the Planning Commission would still like to create a more specific definition of Emergency, that could also be accomplished within the code cleanup process.

Extensions of Abandonment of Existing and Ongoing Agricultural Activity or Operation.

- Ms. Penny said that research indicates that federal guidelines hinge on whether wetland function and wildlife habitats have returned. A Biological Assessment will help determine if this is the case. If the Commissioners would like to make changes to this area, staff recommends that they adopt changes as written with an amendment to suit their time-frame preference.

Bobbi Lindemulder, Snohomish Conservation District

Ms. Lindemulder raised the following points:

- Federal guidelines, as part of the Clean Water Act, state that an agricultural property would be considered abandoned if there has been lack of maintenance for more than five years AND wetland functions and wildlife habitats have returned.
- Some Farm Bill programs have less stringent regulations for prior-converted properties than Fish and Wildlife Habitat Conservation Areas regulations, so if we tighten up our regulations, we may create a potential conflict.
 - Commissioner Krug commented that we should try to maintain flexibility but still comply with federal law.

Further discussion clarified the following points:

- The main focus of Abandonment of Existing and Ongoing Agriculture regulations is to protect stream buffers. So if an agricultural property hadn't been used nor maintained for five years, then a 75-foot buffer would be reinstated around streams on the property.
- Island County's regulations are under review because of a Growth Management Hearings Board Order. This regulation had been challenged because our adopted Code had allowed for a possible unlimited time extension. The Order mandated that we define exactly how long this extension could be.

Steve Erickson, WEAN

Mr. Erickson raised the following point:

- Since these regulations were adopted in 1998, there has been a five-year standard in every other county in Washington State. Federal law and most counties in the United States follow this same standard. If exemptions are to be allowed, it should be a permit process, not written into Fish and Wildlife Habitat Conservation Areas updates.

Commissioner Caspers exited the meeting at 4:23 p.m.

Commissioner Hillers moved to remove the extra two-year extension, keeping the five-year standard, plus an option for an additional three-year extension at the Director's discretion if there have been extenuating circumstances. Commissioner Krug seconded the motion. Motion carried unanimously.

Commissioner Krug moved to direct staff to define Reasonable Use and Emergency as part of the overall code cleanup process. Chair Enell seconded the motion. Motion carried unanimously.

HOUSEKEEPING AMENDMENTS TO TITLES 16 & 17; FINDINGS OF FACT

Proposed findings were reviewed.

Commissioner Hillers moved to approve Findings of Fact on Recommendations to Approve Housekeeping Amendments to Titles 16 & 17. Commissioner Hand seconded the motion. Motion carried unanimously.

Commissioner Krug moved to adjourn, Commissioner Enell seconded, motion carried unanimously.

Meeting adjourned at 4:28 p.m.

Respectfully submitted,

Allegra Clarkson