

**PLANNING COMMISSION
 COMMISSIONER'S HEARING ROOM, COUPEVILLE, WA
 TUESDAY, JUNE 10, 2014**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>		<i>Val Hillers – Chair</i>
	<i>Dean Enell</i>	
	<i>Mike Joselyn – Vice Chair</i>	
<i>District 2</i>	<i>Jeffery Wallin</i>	
	<i>George Saul</i>	
	<i>Leal Dickson</i>	
<i>District 3</i>		<i>Wayne Havens</i>
	<i>Beth Munson</i>	
	<i>Scott Yonkman</i>	

Meeting was called to order at 9:04a.m. by Vice Chair Joselyn.

ROLL CALL

George Saul, Dean Enell, Leal Dickson, Mike Joselyn, Scott Yonkman, Jeffery Wallin, Beth Munson

Minutes:

April 8, 2014

Commissioner Enell moved to approve the minutes as written, Commissioner Yonkman seconded, motion carried unanimously.

Planning staff present: Dave Wechner – Planning Director, Brad Johnson – Long Range Planner, Will Simpson – Long range Planner, Jamie Hartley – Critical Areas Planner

ITEMS FROM THE PUBLIC

NONE

DIRECTOR'S REPORT

Dave Wechner informed the Planning Commission that they will be receiving monthly updates that are given to the Board and is a general update of what is happening in the Planning Department.

OLD BUSINESS

Continuation of Public Hearing from May 27, 2014 – The Planning Commission will hold a public hearing on proposed amendments to the Island County Comprehensive Plan and Development Regulations to protect Fish and Wildlife Habitat Conservation Areas.

Commissioner Joselyn discussed the public comment. On May 27th, 2014 the Planning Commission closed the public testimony portion of the hearing with a motion and a vote. Since then written testimony has been received by staff and in one case directly by Planning Commission members via e-mail. Additional testimony beyond the close of the public testimony period should not be considered at this time since it was not available to anyone else and others who might have taken advantage of a similar opportunity did not because they followed the

Commission's directions to close the public testimony portion of the hearing. Staff informed the Planning Commission that such testimony be received and members should acknowledge whether they received and or read it. The Board may consider any testimony or documents received by the County even after the stated closure of the Planning Commission hearing but it is the Director's recommendation that additional testimony that additional testimony received after the closing public testimony be simply acknowledged but not considered as part of the decision by this Commission.

Director Wechner further clarified the item discussed by Commissioner Joselyn. It is a procedural part of making the record clear as to what was considered in the during the Planning Commission's deliberations. When the public testimony was closed on May 27, 2014, it draws a bright line in the sand. There are those that walk away from that hearing thinking the opportunity for public testimony is now over due to Planning Commission closing that portion of the testimony. The problem with e-mail comments or submitted written documentation or any other comments in any other format received after that is that it is not available to the public for deliberation, it is not presented as a whole, some Commissioner members may read those documents and others may not or received very late in the process. There needs to be a point that allows the Planning Commissioners to deliberate on what has been received and not continue receiving new information along the way. He also reminded the Planning Commission that anything that is received after their close of public testimony can be considered by the Board as part of their decision. Legislative decisions are a little more open than a quasi-judicial hearing. He is recommending the Planning Commission look at the testimony received in the previous hearings, consider it and deliberate and if they wish to with their recommendations and findings to the Board of Commissioners acknowledge that additional testimony was received and whether or not they wish to consider it during their deliberations.

Commissioner Yonkman asked Dave Wechner if anyone who wishes to submit their public comment or speak to the Board of Commissioners would be able to do so.

Director Wechner responded to Commissioner Yonkman that the Board would need to open that door and he believes that they wish to have a public hearing on this item and will likely conduct their own hearing and receive public testimony. If that is the case that is the appropriate time to hear it. But once the Planning Commission did as they did on May 27, 2014 to close the public testimony, it is his recommendation to stand by that decision because it does take away the opportunity from those that followed their direction.

Commissioner Enell asked Director Wechner if it was customary if a hearing is continued the public testimony is continued along with that until the next meeting.

Dave Wechner responded to Commissioner Enell if it was part of the motion to continue and keep the written record open or to continue the public testimony portion of the hearing but it was specifically closed on May 27, 2014.

Commissioner Enell stated that they were perhaps hasty in closing the public testimony and then continuing the hearing.

Commissioner Joselyn informed the Planning Commission that they will begin the deliberations.

Commissioner Enell said that they received comment from staff and consultant that they should not consider habitat under the fish and wildlife regulations unless it is dependent on that habitat. He is not totally convinced of that. He has read the WAC's and things from the Department of Fish and Wildlife and would like to share them. It is a little cloudy area and does appreciate how staff came up with the recommendation.

- US Fish and Wildlife Service
 - The first paragraph begins: Working with others to conserve, protect and enhance fish wildlife, plants and their habitats for the continuing benefit of the American people.
- Federal Endangered Species Act
 - The purposes of this act are to provide the means where by the ecosystems of by which endangered species and threatened species depend may be conserved.
- Washington State Dept of Fish and Wildlife
 - To preserve protect and perpetuate fish wildlife and ecosystems while providing sustainable fish and wildlife recreational and commercial opportunities.
- The WACs have a lot of provision and can be confusing to read since it does say different things in different parts of it.
- Can create local areas of importance and thinks that would be the area that some members of the public are concerned about.
 - The prairies.
 - The oak woodlands.
- He has been told that those areas have been designated as an area of local importance.
 - Brad Johnson stated they are not presently designated as areas of local importance.
- Jamie Hartley discussed and explained the Au Sable prairie area and its designation as a habitat of local importance.
- Brad Johnson stated that any development in a Fish and Wildlife Habitat Conservation Area aside from the riparian areas and others that are specifically listed still requires the preparation of a biological site assessment and habitat management plan. The idea is that some of the more general habitats of local importance require more site specific analysis to determine what the impacts would be and what the appropriate management strategy is and those are the protection standards that are applied to any habitat of local importance.

Commissioner Dickson asked Brad Johnson that on the May 27, 2014 meeting, there was quite a bit of testimony and some questions from the Commissioners about ecosystem protection, he would like to have him summarize how those concerns where addressed and does he think that with this document combined with the other aspects of planning policy would adequately protect these ecosystems such as the prairies and the oak woodlands.

Brad Johnson responded to Commissioner Dickson the project before them is conceived as a fairly limited mechanism to address the Growth Board order and not intended to be an all-encompassing look at all of Island County's land use regulations. It does contain what is considered to be the standards necessary to meet the minimum requirements of Growth

Management Act (GMA). The recommendations are standards that retain existing protections for habitat of local importance and have upgraded the buffers and protection standards to meet minimum requirements of the GMA.

Commissioner Enell read a section from the WAC to get it into the record. WAC 365-190-130, Counties and cities should identify, classify and designate locally important habitats and species. Counties and cities should consult current information on priority habitats and species identified by the Washington state department of fish and wildlife. Priority habitat and species information includes endangered, threatened and sensitive species, but also includes candidate species and other vulnerable and unique species and habitats. While these priorities are those of the Washington state department of fish and wildlife, they should be considered by counties and cities as they include the best available science. The Washington state department of fish and wildlife can also provide assistance with identifying and mapping important habitat areas at various landscape scales. It is a wonderful document and a vast improvement than what has been available in the past. He would like to be sure that the act is used as well. It has been stated that the 2016 GMA update would be appropriate to address this but he would like to emphasis that they do have that and it is fairly unique in Island County and hope to put in protective measures to keep those habitats around. He also wanted to say that the document is wonderful and is a vast improvement of what is available and does not want to lose sight that this is a very worthwhile and important update.

Commissioner Yonkman wanted to thank Brad for keeping them focused on what the task was at hand.

Commissioner Enell asked that Brad if he can speak a few words about the 2016 GMA Update and how appropriate it might be for people who are concerned about these habitats and would that be a better time to address this issue.

Brad responded to Commissioner Enell that it has been staff's contention is not that prairies and oak woodlands are not important ecological systems, landscapes or important to the people of Island County. That has not been the suggestion, it is the need to focus at the task at hand which is a limited update required by the GMA to get Island County into compliance. There are limited resources and trying to focus on the 2016 Update, that is where the opportunity to bring all of these things together and look at them comprehensively. He suggests to those members of the public that are concerned about protecting prairies and oak woodlands, that there are multiple mechanisms available through the comprehensive planning effort to address those habitats. Principally, all the critical area regulations, wetlands, fish and wildlife habitat, integration of the Shoreline Master Program for recharge areas. There is a grant received from the National Estuary Protection grant which will fund additional work on critical areas. He also discussed the funding programs, prioritizing conservation areas and open space.

Commissioner Enell asked Brad if it would be possible to do an overlay of some of these prairie areas and designate some of them as critical areas and get the more protection.

Brad Johnson responded to Commissioner Enell that it is definitely one mechanism that may be used.

Commissioner Wallin made the motion to adopt the proposed Island County code dated May 27, 2014.

Brad Johnson said there were two versions of the code and one would need to be adopted then staff would prepare the findings of fact as discussed in the previous meeting.

Commissioner Yonkman Brad if the two options where described in Exhibit C received May 23rd, 2014.

Brad stated that bullet 11 is regarding riparian buffers, should be reduced the other version retains the buffers as originally proposed. Also attached to the memos was Exhibit A-1 and A-2.

Commissioner Yonkman read both proposals.

Further discussion and clarification regarding the two exhibit option continued.

Commissioner Yonkman asked Brad for clarification regarding both paragraphs read and are consistent with Best Available Science and feels they are both contradictory. In his experience and from testimony heard, Best Available Science does not say Island County is doing a poor job of protecting the environment based on the current setbacks and buffers. Based on that understanding he would prefer to see Option B adopted; the problem he sees in that option is that it does not allow for buffer averaging or buffer reduction and he would like to see that incorporated into that option. It does not mean that those allowances can happen but at least it allows investigating to see if there can be ways to mitigate any particular buffers that are in the code. He also stated that there is a need to be very careful to acknowledge the ability for people to use their land in the best manner.

Commissioners Enell and Dickson both asked Commissioner Yonkman if Option B allows for averaging.

Commissioner Yonkman responded to both Commissioners his concern with Option B is that this is allowing for the higher level of buffers and understands there is averaging and mitigation, he just does not see that Best Available Science supporting that option.

Additional discussion regarding buffer averaging and flexibility in both options being proposed continued.

Commissioner Yonkman asked Brad if they go with the currently proposed setbacks can they get back to the minimum setbacks.

Brad answered Commissioner Yonkman's question the maximum reduction allowed was 20% that would be allowed through the reduction or averaging provisions.

Mr. Hartley stated looking at the big picture the advantage to having a fixed buffer from a regulators perspective is the buffer is known. The code is trying to push you out of the buffer to

the extent possible on a property. If there is a need to be in the buffer there needs to be justification as to why it is necessary to be in the buffer and how the impacts will be minimized.

Commissioner Yonkman said they cannot walk away from the word flexibility and people's ability to use their property and property rights is very important. He does not like a fixed buffer because there is no flexibility it makes it easier to administrate. If a lower range of buffers are generally working then go with that option to allow some averaging to allow flexibility. People will push for the minimum but if they can't demonstrate what they are proposing is not harming the environment or critical area then they need to be told no. There are so many folks out there that believe they have critical area or an endangered species the last thing they want to do is come forward with that information and instead go underground afraid of the restrictive regulations. Somehow this needs to get turned around so the public believes that the regulatory bodies are really for them and not against them.

Jamie responded to Commissioner Yonkman there is flexibility with both circumstances. If there is going to be a reduced buffer, the applicant would need to demonstrate that reducing the buffer will not have a negative impact on the critical area. If the proposal is in the buffer there is a different standard, there needs to be a justification on why it is necessary to be in the buffer.

Commissioner Enell favors the high-end larger buffers without the flexibility. He thinks the overall net benefit in Island County would be greater that way. There would be the unfortunate side of that would be some mitigation which would be harmful and would be allowed. The overall net benefit with the larger buffers is there for a reason and is there to protect critical areas. He agrees with Commissioner Yonkman that it is a tough question.

Commissioner Dickson asked Commissioner Enell if they go with Option B which is the higher buffer there is flexibility to lower the buffer.

Commissioner Enell replied to Commissioner Dickson to a degree there is flexibility under a Reasonable Use Permit.

Brad Johnson provided some clarity to the Planning Commission. There is flexibility in both options. In the option without the buffer averaging and reduction provisions there is still the ability to do a large number of things that are exempt activities within a critical area and are listed in the table in the Code. There are activities that are listed as permitted uses. Those are activities which can occur in a critical area buffer with a permit. Then are the variance provisions that would allow someone who was unable to gain reasonable use to their property through the variance process. Those features are common to both versions of the code. The only difference lies in the averaging and reduction provisions. There is flexibility built into both of them. One provides an additional measure of flexibility for a permit applicant. It is staff's contention that either of them would result in about equal benefited impact.

Commissioner Joselyn said they would be taking a poll amongst the Planning Commissioners to see which option they favor. Commissioner Saul, Option A; Commissioner Enell, Option B; Commissioner Dickson, Option B; Commissioner Yonkman did not like either option;

Commissioner Wallin, Option A; Commissioner Munson, Option A; Commissioner Joselyn, Option B.

Scott Yonkman would like more time. He does not mean to be contrary but even with what Brad Johnson just explained to them, which was helpful; he would like to be able to study a little more. If he would have to vote today, he would vote for Option A.

Brad suggested to the Planning Commission if there are minor changes that would make them more comfortable with the ordinance they can pass them along to the Board. He asked Commissioner Yonkman from the perspective of an applicant what specific ideas would he recommend.

Commissioner Yonkman responded that it would take some study to do that intelligently. He just knows of a situation that he is currently working on that is a 6 acre property and wants to build a single family residence. They have been in the permit process for 4 years and they are in a reasonable use situation and it has been amazing the difficulty to achieve finding a spot on this 6 acre property to build a home. It is not simple and he would need to research in order to figure out what could have been done differently and smooth. He does not feel prepared to come up with any language to insert that would help this ordinance.

Commissioner Enell says they entertain making two motions, one for Option A and one for Option B.

Commissioner Dickson asked Commissioner Enell how he proposes to make the motion.

Commissioner Enell clarified his suggestion stating he would make a motion for one of the options if it did not pass then there would be a motion for the other option.

Brad said that would be an option to forward along their recommendation for their first choice and second choice to the Board of Commissioners. When they were preparing the case studies for the presentation the consultant asked the County to review their permit files for instances where there were stream buffer permits. There are very few instances in Island County where there are buffer reductions for streams. It is very common for wetlands or shorelines. But generally the rural areas the lot sizes are large enough and the streams are smaller or less protected type. Frequently there are a 5 or 10 acre lot and a buffer at the low end of the range, when it comes to the stream buffer that is not normally the biggest constraint that ends up on the property. It certainly is a concern for property owners when they get into the 2016 update and start discussing the wetland buffer and how all of these different buffers work together and that is really the crux of the issue, when there is someone that has a property that has wetlands, streams and may also have shorelines and all the different options start to get difficult.

Jamie said there have been some Public Works projects involving culvert replacements and working in the stream itself as well as the buffer. It is pretty rare and it is a fact that there are not that many streams in Island County relative to the mainland.

Commissioner Yonkman stated he has seen wetlands that affect most of the properties, with the recent disasters and slides people are more willing to set back from critical areas. He asked Commissioner Enell about a comment he made about mitigation being often a bad thing perhaps he does not understand it but his understanding about mitigation is just the opportunity to make trade-offs to mitigate working with a property owner and create some habitat.

Commissioner Enell responded to Commissioner Yonkman that perhaps he should have used the word averaging instead of mitigation. He does think mitigation is a wonderful thing, averaging is less scientific.

Commissioner Yonkman would like to see both options be available to the property owner.

Jamie said that mitigation was first defined in the 70's at the federal level. Part of mitigation is avoiding the impact and then minimizing if the impact cannot be avoided.

Commissioner Yonkman says his goal is just to build as much as possible through the regulation that shows people they are for them and want to work with them. Perhaps it is already there but many people he runs into and work with do not feel that and he would like to see that shift. He wants people to engage in the process to protect the environment. There is a need to have language to show that Island County does care and that their land rights are a priority.

Director Wechner suggested that there has been a fair amount of discussion amongst the Commission members between Option A and Option B and asked staff to go through it one more time for clarification to the public.

Brad Johnson read the two versions of the findings of fact that were forwarded to the Planning Commission.

- Exhibit C
 - Buffer Option A: Planning Commission would be finding that the buffer widths at the low end of the range are the most appropriate for Island County absent the buffer averaging and reduction provisions. Under that scenario the buffers established would be 100 feet per type S stream, 75 feet for and NP stream, and 50 feet for a NS stream.

Commissioner Yonkman asked what the different stream abbreviations are.

Jamie Hartley explained to the Planning Commission the abbreviations for the stream typing.

- F – Fish bearing stream
- N - no fish but water drains to water that contains fish
- NP – Perennial but non fish bearing stream
- NS – Seasonal stream

Brad Johnson continued discussing the table which appears on page 28 of the proposed code under Section 17.02.B.420.C is a table that identifies all the riparian buffers and lists 4 types of streams: NS, NF and NP. The type S streams are the streams that are in Shoreline Jurisdiction

and under the Shoreline Management Act. Type F is a Fish bearing stream, under the proposed reduced buffers the buffer would be 100 feet, under originally proposed buffers it was 150 feet. The NP stream which is the Perennial but non-fish bearing stream in both instances the buffer would be 75 feet. NS which is the seasonal stream under the larger buffers would be 75 feet and under the reduced buffers it would be 50 feet. The options that were presented to the Planning Commission in Exhibit C where Option A, they would be the reduced buffers without the averaging reduction provisions.

- Buffer Option B would be the originally proposed larger buffers with the averaging and reduction provisions. The averaging reduction provisions would allow to a 25% reduction in the buffers.

Commissioner Yonkman said that the information is helpful to him, if he sees it correctly that the differences between the two options are not that great.

Commissioner Enell made the motion to adopt Option B which allows buffer averaging as proposed, Commissioner Dickson seconded, motion was failed 2 to 5 with Commissioners Enell and Dickson in favor and Commissioners Munson, Yonkman, Joselyn, Wallin and Saul opposed.

Dave Wechner reminded Planning Commission when making a motion, if limiting a motion to Option A or B for that particular portion a more focused motion on an element of the overall package will need a follow up motion that adopts the entire package with that option incorporated.

Commissioner Yonkman addressed Brad and Dave that he does not feel prepared to offer an amendment to the language at this point. He is not sure how they can move forward and do they have any suggestions before another motion is made or perhaps it is not possible.

Brad Johnson responded to Commissioner Yonkman that the Planning Commission can recommend anything to the Board they chose to recommend. It would be staff's recommendation that any provision which allow the reduction of the buffer below the low end identified in the Audit and Policy document would not be defensible. If Option A was chosen any amendments that were entertained to that would be purely procedural and not result in the ability to reduce buffers below the low end of the range. With that said that any provision below the provision would not be defensible.

Director Wechner added to Brad Johnson's comments the actual language that the Planning Commission is proposing is part of their decision to the Board of Commissioners and can be accompanied by a finding that expresses a concern, raises a potential issue, essentially an advisory finding. At this point given the fact that the Planning Commission is mulling over a sort of how to make this decision and how the elements of their recommendation to the Board it would be his suggestion to take a short recess to allow them to think things over and with any motion include a finding that justifies a motion that will be on the table for their vote. That finding would be added by staff to the final written recommendation to the Board.

Commissioner Wallin asked Director Wechner if he can continue with his previous motion or can he amend it.

Director Wechner asked Commissioner Wallin what his motion was.

Commissioner Wallin moved to accept the draft ordinance but failed to clarify which option was been selected.

Director Wechner recommended Commissioner Wallin restate the motion including the option that he favors and any additional finding that he wishes to make.

Commissioner Wallin made the motion to recommend adoption of the proposed Island County code for the Fish and Wildlife Habitat Critical Areas Update with Option A from the Findings of Fact as proposed, Commissioner Munson seconded, motion carried unanimously.

Commissioner Yonkman asked staff for some clarification after thinking about Option A if there is opportunity for mitigation within that as it is written.

Brad Johnson responded to Commissioner Yonkman that the permitted uses section would allow the establishment of single family homes and a number of other uses within the buffer provided sufficient appropriate mitigation was provided as would the exempt section.

Commissioner Yonkman wanted to remind the public if they wish to make further comments regarding this issue they do have that opportunity when the Board of County Commissioners meet.

Director Wechner responded the Board of County Commissioner does need to adopt code in a legislative session. The extent which the Board will take additional public testimony or comments on this issue is the Board's discretion. The way the code is designed or legislative issues the Planning Commission's recommendation will obviously weigh heavily in the Board's decision. They can make a decision to adopt the Planning Commission's recommendation outright and would anticipate in this case given the amount of public interest, the Board will likely have their own public hearing and accept testimony but it is not something he can guarantee.

Commissioner Yonkman asked if it would be the consensus of this Commission to encourage that.

Commissioner Dickson suggested it should be added to the Findings of Fact.

Director Wechner agreed with Commissioner Dickson that it should be considered in the Findings of Fact and take a vote on that to direct staff to include the Finding of Fact in the their final decision.

Commissioner Enell made the motion to recommend that public hearing before the Island County Board of Commissioners would consider various aspects of this Fish and Wildlife report as being subject to approval to address concerns by the public, Commissioner Yonkman seconded, motion carried unanimously.

Commissioner Enell wanted to express as he did earlier that it is a very good document in his view. It is much improved in comparison to what is available.

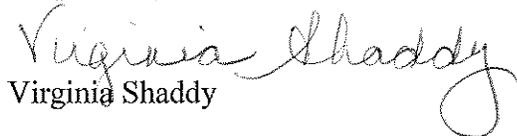
Brad Johnson wanted to make a final note to thank the members of the Technical Advisory Group all of whom put in countless hours on a voluntary basis to contribute to this effort and he thinks that the finished product really reflects their input. He thinks that it was fortunate to have people in the community to volunteer their time.

Commissioner Enell made the motion to add a finding in the Findings of Fact recognizing that some discrepancy or ambiguity exists under state law to protect habitat or species that do not have a primary association with a threatened, endangered or sensitive animal species and directing the Planning Department to clarify it during the 2016 Comprehensive Plan Update, Commissioner Dickson seconded, motion carried unanimously.

Commissioner Yonkman moved to adjourn, Commissioner Wallin seconded, motion carried unanimously.

Meeting adjourned at 10:30 a.m.

Respectfully submitted,


Virginia Shaddy

