JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR SEPTEMBER 21, 2005

A. OPENING BUSINESS

B. DELIBERATIONS/RECOMMENDATIONS ON 2005 COMPREHENSIVE PLAN AMENDMENT FINAL DOCKET

C. ADJOURNMENT

A. OPENING BUSINESS

The regular meeting was called to order at the WSU Learning Center at 6:30 p.m. by Chair Jim Hagen. Planning Commission members present were Allen Panasuk, Bud Schindler, Edel Sokol, Mike Whittaker, Dennis Schultz, Phil Flynn, Peter Downey, and Bill Miller.

DCD staff present were Josh Peters, Kyle Alm, and Cheryl Halvorson, secretary.

There were two members of the public present. Only one, Sue Schroader of OPG, signed the guest list.

The minutes for August 31 and September 7, 2005, were approved as submitted.

There were no staff updates presented.

Edel Sokol apologized for not notifying the Planning Commission that she would be absent from the September 7 meeting.

The Chair invited committee reports.

Bud Schindler, UDC Committee chair, stated that staff was now distributing the committee meeting minutes via e-mail to the Planning Commissioners. He provided a summary of the topics for the last meetings.

The Chair invited general public comments. There were none received.

B. DELIBERATIONS/RECOMMENDATIONS ON 2005 COMPREHENSIVE PLAN AMENDMENT FINAL DOCKET

MLA05-60, Olympic Property Group (Tala Point area):

The amendment was to rezone approximately 250 acres in the Tala Point area from RR 1:20 to RR 1:5.

Jim Hagen pointed out that the amendment had been tabled at the last meeting. He reviewed the actions of the commission at that meeting. The amendment was tabled in order for the Planning Commission to hear a presentation on the Planned Rural Residential Development [PRRD] provisions of the UDC, which was a possible condition for approval.

Staff provided information on PRRDs. Staff provided two handouts on the issue. One was a memo from staff explaining PRRDs. The other handout provided examples of how a PRRD might look. Kyle Alm explained that a PRRD would require a certain percentage of a parcel to be set-aside in open space with the building lots being smaller in size. Staff discussed the possible density bonus that could add dwelling units in a PRRD.

Mike Whittaker asked if there would be any property tax benefits to the open space area. Josh Peters replied that there was the potential for the reserve area to be in the open space tax program. Jim Hagen asked if there would be a similar benefit for a standard subdivision. Mr. Peters replied that subdivisions could be created creatively. He stated that there was some provision for flexibility in creating reserve tracts within a normal subdivision. However, a typical "cookie cutter" subdivision divided into 5-acre parcels that did not create an open space of sufficient size would not

normally qualify for any tax program. On the other hand, if you had an actual set aside through a legal document, possibly even managed by a third party such as the Land Trust, depending upon the use and benefit of that open space, there could be a density bonus. There must be a public benefit in having the open space.

Allen Panasuk asked what the advantage would be to the applicant to do such a subdivision [a PRRD]. He also asked if the applicant had been asked if they would accept such a condition. Josh Peters responded that he had first contacted the Deputy Prosecutor to be sure there would be no violation of any procedural rules. He reported that he had then contacted the applicant who indicated that their first choice was what they had applied for, but they did not necessarily object to a PRRD condition. They did have some questions about how the subdivision process would work, however. He stated that he had suggested they contact DRD with those questions.

There was a brief discussion about the potential density bonus. Bud Schindler commented that he thought it would be attractive from a financial standpoint. Allen Panasuk stated that the reason he asked was because, on paper, it sounded more beneficial. However, if the applicant was opposed, he questioned why the Planning Commission would require such a condition. Josh Peters responded that one of the reasons staff mentioned the alternative in other cases was because of physical constraints on the property. In the Skurdal case, the property was next to forestlands, so there was a required buffer. Also, there was a geologically hazardous area issue. In this case, there was a steep slope issue, but it was only on one section of the property. There was a potential water issue. From a water resources perspective, it might be better to have cluster housing served by one common water source, instead of having wells dug all over the peninsula. He reported that staff had tried to get more information from the Department of Health about wells and water systems in the area, but had received no specific information. Mr. Peters stated that staff was still recommending denial of the amendment application. In a sense, an alternative would be to have a clustered subdivision and retain some of the open space.

Jim Hagen offered the opinion that, if a PRRD was an attractive alternative, the applicant would pursue it on their own. He stated that he was not very concerned about suggesting possible alternatives. He thought the commission was faced with a fairly straightforward question of granting an upzone from RR 1:20 to RR 1:5. He stated that the Planning Commission recommendation was for a non-project rezone. If the application was approved, then the applicant would go through the process for developing the land. That was when the mitigations for water and steep slopes would occur. He stated that the question before the Planning Commission was what the criteria was to upzone this property and whether it met those criteria.

Jim Hagen referred to a Planning Commission minority report from 1999, which was similar in that it was submitted as one parcel but had been identified by staff as individual lots. The question was how it should be treated, as one parcel or as individual lots. He also referenced a court case, Clark County Citizens United v. the Western Hearings Board. One of the significant rulings that came out of that case was that 1:5 was an allowable density throughout the rural area. He offered the opinion that we sometimes got too focused on the Hearings Board decisions as precedent, but we should also consider court cases. He pointed out that a recent state Supreme Court case (Viking v. Holm) unanimously identified the limitations on authority the Hearings Board had in specifying what densities qualified as rural. He

stated that, based on precedent, there were three upzones from RR 1:20 to RR 1:5 in 2002. He thought the discussion at the last meeting about the economic benefit in increased taxes of upzoning the property was important and was a justifiable part of the discussion in examining whether or not to approve the application. He stated that another finding of the court in Viking v. Holm was that, while it may interfere with some goals of the GMA, it may further other goals. He noted that the GMA planning goals were in no priority. Consequently, he thought it was within the commission's purview to take into account the economic impacts, especially when one of our County Commissioners had said at an EDC meeting that we may have to identify how many jobs we actually needed because many people were moving here who did not need jobs. He stated that it was recognized that transfer payment recipients were being identified in rural land strategies as an economic benefit.

Dennis Schultz stated that we were seeing it from both sides. On one hand, expanding the tax base was a benefit to developing the land. He stated that a standard, "cookie cutter" subdivision would result in a checkerboard with people doing their own thing on their 5-acre parcels. If we went with a PRRD, we would be setting aside dedicated open space, which would preserve the landscape and the rural character. Yet the developer would get more building sites than they had before. He did not think it would affect the financial status of the project. He thought it [a PRRD] was a very positive thing that they could sell.

Bud Schindler offered the opinion that, if the applicant got the rezone, the market demand would dictate that the developer not put it together in a "cookie cutter" manner. The developer would determine how they could get the "most bang for the buck". Today, there was a demand for visual pleasure, nice roads, and buffer areas. He thought they could take a smaller amount of land in a pleasing environment and sell it for more than they could get for a larger amount of land that was not in a pleasing environment. He thought that if the county allowed the rezone and allowed the applicant to have free rein in how they went about developing it, it would be put together in a way that would be most pleasing to the public.

Peter Downey stated that the applicant would put it together in the way that they could get the most money from it, which might not be in the best interests of the people of the county. Those were two different things. There was the business interest and the public interest. He stated that it was RR 1:20 right now. We were considering rezoning it to something that had much more development potential. If we were going to do that, we should be careful about what we did and be sure it served the people of the county well.

Bud Schindler stated that restricting it to 1:5 would limit it to the number of parcels you could create, unless you went to a clustered environment. He thought that if we gave them free rein to put the parcel lines where it was most pleasing and to divide it in a manner that was most pleasing, you would have the same number of parcels, but it would be put together in a manner that demanded the best value.

Allen Panasuk stated that the 5-acre lots surrounding this property had houses on a majority of them. He stated that we could not control whether the trees were cut or not. Concerning water issues, he stated that the DOE meeting had shown that wells would be limited to irrigating one-half acre. So, you would have a 5-acre parcel where only one-half acre could be in yard. He commented that he found it interesting that this county tried so

desperately hard to stop the producers from feeding the county tax money. He referred to the state and county average incomes, stating that the county average was 58% of the state average. He thought if you had a producer who wanted to develop some land, probably selling it in the half million-dollar range and then put a million dollar house on it, it would provide a tremendous tax base to support the county. He did not understand why we should make it so hard for a producer to do something with their land. He added that, of course, they wanted to make money.

Peter Downey stated that, right now, they had the opportunity to develop that land as it was currently zoned. But, they were asking for a change in zoning on a very large piece of property. He thought it was incumbent upon the county to ensure that, when that plan came in, it also benefited the county. If we were going to give them more value to that property through the upzone, the county should be getting something in return. He stated that a PRRD would get you something in return. You would have some planned development there that would preserve open spaces or places where you might have community access that you did not have before. You would have a better outcome for the county, and the developer would have a better economic situation than they would have otherwise.

Bud Schindler did not agree. He thought that, if they clear cut the property and put logging roads in there, and then tried to sell it, they would not get anything for it. He stated that they had to develop it in a smart manner if they were going to sell it and get the kind of money they wanted to get out of it.

Jim Hagen respectfully disagreed that the county was giving them something by restricting them to 1:5. He thought the zoning prior to GMA in this area was probably 1:1. He stated that it had been identified by the courts that 1:5 was an acceptable rural zoning that provided stewardship. He stated that there were, in fact, opinions that 1:10 and 1:20 zoning was really what lead to true rural sprawl. He thought this rezone would contain sprawl, considering its location to existing development and existing services. We were not talking about something that was out of the way that would have to be its own self-contained development.

Allen Panasuk moved that the Planning Commission recommend approval of the rezone application for MLA05-60. Mike Whittaker seconded the motion.

Edel Sokol stated that the Comp Plan found that we did not have enough 5-acre zoning in this county. She thought the Comp Plan encouraged more 5-acre lots.

Peter Downey pointed out that by requiring a PRRD, you would actually end up with more buildable lots on this piece of property but with some dedicated open space. He thought that was a win-win situation. If you just approved a straight 1:5 rezone, there was no assurance that there would be any open space left in the subject area at all. That was essentially the decision the Planning Commission was making.

Bud Schindler stated that with 1:5 you would be bound to have open space because people would not develop the whole five acres. He questioned how much of that five acres would be used for a house. Peter Downey stated that a further question was how much would be converted into pastureland or cleared for other reasons. It was unknown. Dennis Schultz stated that you only had to look at the 5-acre parcels in the Shine area. One may preserve

the woods very nicely while another had clear-cut it all. So you would get every variation. He stated that you did not see that in Port Ludlow because they had restrictions on cutting trees. There would be no such restrictions in this case. He stated that a PRRD with dedicated open space would prevent uncontrolled clearing of the land. Mr. Schindler stated that supported his premise that you would get the best economic value for the land if you allowed the developer to do that. It was to the developer's advantage to use the PRRD scenario. They would get more units through the density bonus, it would be more aesthetically pleasing, with nice roads, and would give them the "most bang for the buck". He thought the developer would realize that and would probably go for it. Mr. Downey countered that was not what was being proposed. The commission was only talking about a straight 1:5 zoning. The motion did not ask for a PRRD.

Phil Flynn stated that he was amazed at the thinking that 5-acre zoning was a "cookie cutter" kind of environment with no open space. He stated that he lived on 2.5 acres and his neighbor had one acre. He was concerned that in a few years we would be talking about 10-acre zoning because five acres was too crowded. He thought that was ridiculous. He stated that the proponent had a proposal and he thought we should let them do what they wanted with the property. If it did not "fly" with the Planning and Building departments, they would "shoot them down" for whatever inappropriate activities they may ask for. He stated that it was not the Planning Commission's job to plan how they should develop their property. The question was whether it was a good idea to do it. If the concern was economics and what the county would get, he pointed out the difference in value in Port Ludlow now compared to 10, 20 or 50 years ago. He stated that Marrowstone Island property was now selling for $1 million to $1.25 million. He stated that if the county decided to allow the rezone, we should let them do what they wanted to do without presupposing every detail of the development. He stated that they could decide they wanted to cluster the development with the rezone as proposed.

Mike Whittaker stated that a term that kept coming up was "affordable housing". He stated that was an alien concept with all the regulations we had.

Dennis Schultz moved that the motion be amended such that the Planning Commission would recommend approval of the application with a very strong recommendation that they do a PRRD. Bud Schindler seconded the motion to amend the original motion.

Bill Miller stated that he did not think a "strong recommendation" would carry that much weight; he did not see any benefit to it. Allen Panasuk agreed. He stated that, as Mr. Flynn said, if you had someone wanting to develop some land, we did not know the physical conditions of that land. We did not know where the road system would go. He agreed that some of it was steep. If you could not put a 5-acre parcel there, the chances were that the developer would come to the county and modify their subdivision proposal. It would be in their best interests to do that. He saw no reason for the Planning Commissioners, who were not developers, to tie the developers hands as to how they should develop their property. While he would not vote for the amendment to the motion, he thought what the amendment wanted would happen anyway.

Dennis Schultz stated that whatever the Planning Commission did, it was a recommendation to the BOCC. They would make the ultimate decision.

Bill Miller stated that it was intuitive that they would need roads and utilities to the created parcels. He asked if the development costs were all borne by the developer and consumer or whether the county bore some of the costs. Dennis Schultz replied that, in many cases, the developer built the roads and then dedicated them to the county. Bud Schindler referred to the Deputy Prosecutor's packet of information where it talked about Amendment #99-13 from 1999. That information addressed requiring a transportation study, which he thought would also apply in this case. They would also have to do other studies, such as a stormwater management plan and an aquifer recharge area study.

Mike Whittaker stated that during the last discussion on this case, he had been concerned about the water issue. He stated the belief that was beyond the commission's scope. He thought that the development review would address the issue. He thought the commission's scope was to see if it was a viable proposal and then vote on that. He thought there were plenty of checks and balances on the developer as the case moved forward.

Bud Schindler stated that the BOCC would know by the Planning Commission minutes that the commission was contemplating a PRRD. They could choose to go that route. He thought the minutes would spark a discussion at least.

The motion on the amendment to the original motion failed with three in favor, six opposed, and no abstentions (3-6-0).

The Planning Commission then took up the original motion to recommend approval of the amendment as proposed (from RR 1:20 to RR 1:5). The motion carried with seven in favor, two opposed, and no abstentions (7-2-0).

The Chair altered the agenda to reverse the order of the next two amendments since there were OPG representatives present and no representatives for the Hopkins/Barber amendment.

MLA05-61, Olympic Property Group (Shine area):

The amendment was to rezone three parcels of approximately 158 acres in the Shine area from Commercial Forest 1:80 (CF 1:80) to a combination of Rural Residential densities (RR 1:10 in the northern portion and RR 1:5 in the southern portion).

Kyle Alm reported that during staff's research into the parcel, it was discovered that the property did not lie wholly within the water service area. It appeared that approximately one half of the property was outside of the water service area. He stated that it was difficult to check because there was no legal description of the water service area. He stated that the staff recommendation was for denial of the amendment because a majority of the parcel was not within the water service area.

Mike Whittaker asked about the significance of the water service area. Kyle Alm explained that when the county originally designated commercial forest lands, that was one of the designation criteria. The criterion said that if a majority of the parcel was within a water service area, it should not be zoned as commercial forest. That criterion had remained throughout the history of commercial forest designation criteria. Mr. Whittaker asked if the southern half of the property could be re-designated. Mr. Alm replied that the whole parcel, including the southern half, was currently designated as Commercial Forest. He stated that the water service area did not

encompass a majority of the parcel. He stated that a majority of the parcel must be within the water service area in order for it to not be designated as Commercial Forest. Edel Sokol commented that we could not really be sure about where the water service area line was located on the property, so we could not really be sure that a majority of the parcel was within or outside of the service area. Mr. Alm agreed that we could not really say for sure, but it looked to be pretty close to one half.

Jim Hagen stated that, according to some of the material provided to the Planning Commission, the entire parcel was projected to be served by the water service area at some time in the future. Josh Peters corrected that was the case at one time and was the information provided by the applicant. However, the water service area had been finalized and now encompassed approximately one half of the parcel.

Allen Panasuk asked, if it were over one half, there would not be a problem. Josh Peters responded that was one perspective. However, the parcel had gone through a Hearing Examiner process. At that time, it was recommended against rezoning the parcel. The BOCC chose not to rezone the parcel at the time. He stated that the water service area was less than was originally projected.

Jim Hagen stated that a 68-acre parcel was granted the rezone by the Hearing Examiner in 1997 on the basis of a vested water system. He asked whether the water service area boundary that was now in place was in place in 1997 when the Hearing Examiner made his recommendation. He asked whether the circumstances had changed regarding whether or not a majority of the property was within or outside of the water service area. Josh Peters responded that, at the time, the area was projected to be within the future water service area. Then after the Water Utility Coordinating Committee [WUCC] process and the amendment to the Coordinated Water System Plan, including approval by the state Department of Health, the water service area boundary was finalized and established. He stated that the boundary had not been officially finalized until early 2005. Mr. Hagen stated that the boundary was now in place; it was no longer projected. Mr. Peters agreed, stating that the "future" part of the boundary was now gone; it was now the boundary. Mr. Hagen stated that did constitute a significant change in circumstances from when the Hearing Examiner heard the petition. Mr. Peters stated that it was, in fact, significantly less than was originally proposed; the projected future water service area was much larger than what it was subsequently finalized at.

Bud Schindler stated that, while this was all well and good, if you did not have PUD water available, you had to drill a well. So the parcels that were not served by PUD water would have to find another water source, just like any other parcel outside of a PUD service area.

Jim Hagen stated that part of the commission's consideration was the designation criteria for Commercial Forest land. The last one was that a majority of the parcel should be located outside of any community water service system. He stated that if the subject property did not meet all of the criteria, it could not be designated CF. The question was whether this property was 48.7% in or was it 50.45% out. Part of the question was how flexibly or how strictly we interpreted the criterion. He stated that, in his opinion, a majority was 50% plus one inch. He thought that, looking at the map, it looked to him like half of the parcel. While we could not be sure, it was relevant to the commission's decision-making. He offered the opinion that the fact of the presence of a water service area, in combination

with other factors, brought into question whether the parcel should be in a CF designation.

Jim Hagen stated that another criterion said that the land should consist primarily of Forest Grades 1 through 4 as met by the DNR. He stated that, taken by itself, seemed to apply to this case. However, it was related to productivity and whether a parcel had long-term commercial significance. That was really the reason to designate land as commercial forest. To him, that brought into play other factors. He stated that the GMA said that CTED shall define the guidelines for how our resource lands would be designated. He stated that, in fact, Jefferson County's forestlands designations were based upon an analysis of local conditions following CTED guidelines. He referred to Table 1.4 on Page 4-3 of the Comp Plan, which contained the "Guidelines for Classification of Forest Resource Lands in Jefferson County". Those guidelines addressed proximity to urban and suburban areas and rural settlements. Another of the guidelines addressed protecting forestlands of long-term commercial significance from encroachment by incompatible uses (rampant development pressures). He reviewed some of the other guidelines. He stated that you could clearly see on the map by the platted development just to the south of the subject property that it was heavily developed. He thought that the development pressure in the area precluded commercial logging from taking place on that property. Combined with the water service area issue, there were two criteria that were not met.

Dennis Schultz stated that you had to draw the line somewhere as to what was forest and what was residential. If the county rezoned this parcel, he asked what would stop the next CF parcel from asking for a rezone too. At some point, you had to say you were going to preserve it for commercial forestry. He stated that the DNR property would probably remain in forestry. He stated that the other property the commission had addressed probably made sense, but somewhere you had to draw the line and quit converting forestland to residential.

Bud Schindler stated that creating a transition from an area of development to commercial forest was reasonable. He thought a transition would be RR 1:5 on the south side and RR 1:10 on the north side against the CF. He thought that sounded like a reasonable transition. Again, if the county decided that we would not develop any forestland henceforth, the pressure of the people coming into the county would be reduced.

Dennis Schultz stated that we already had a buffer of RR 1:5 abutting the proposal site. They were proposing another RR 1:5 area followed by an RR 1:10 area. If the objective was a transition zone, he suggested designating the proposed RR 1:5 as RR 1:10 instead and leaving the proposed RR 1:10 area as CF. He stated that this proposal would only add to the RR 1:5 zoning when we already had 1:5 to use as a buffer. Peter Downey stated that we required a buffer setback on the RR land from CF land.

Jim Hagen stated that this county had 88,000 acres of commercial forestland designated in East Jefferson County. That did not count the West End. He stated that he looked at the combined proposals and acknowledged that it was a hard decision for him because it was a significant change in land use. He stated that the two proposals together constituted about ¼ of 1% of all the designated forestlands in the East County. He stated that he was very conscious of the incremental concern. He stated that we could do this kind of rezone every year for twenty years and possibly get up to 2% of the designated forestlands.

Dennis Schultz countered that if you looked at the land use map, there was no CF land on the Quimper Peninsula or on the Miller Peninsula. On the east side, there were some small blocks of CF. He thought what Mr. Hagen was suggesting would eventually eat up all of those blocks in a domino effect.

Mike Whittaker stated that there were concerns with this particular site about its viability for continuing in commercial forestry. He cited as examples the nearby development pressure, steep slopes, proximity to the shoreline, and the need for a transition area between the CF designation and development. He stated that it seemed to him that it was a viable proposal.

Jim Hagen stated that the forestlands were not meant to be designated as a buffer. They were meant to have long-term commercial significance. They were meant to be harvested and replanted and harvested again. They were not meant to be a buffer. Otherwise, we would have a different designation. He thought that was something to consider along with the significance of the existence of the water system. The question was whether this parcel was viable forestland of long-term commercial significance.

Dennis Schultz stated that if you looked further along Highway 104, there was a lot of forest land that had been logged and replanted and was starting into the cycle again. Bud Schindler countered that as you got closer to the bridge, there was more development. He stated that there was quite a lot of development pressure in this area because of the proximity to the bridge and Kitsap County amenities. That was why Port Ludlow was growing so much, stating that at one time there was a lot of commercial forest around Port Ludlow.

In answer to Edel Sokol's question, Jim Hagen reviewed the other CF designation criteria. They had to do with being more than one half mile from a UGA, the MPR, or a Rural Village Center; minimum parcel size of 80 acres; part of a block of 320 acres or more in size; and being in the timber tax program. He stated that, while this parcel did not meet the exact criteria, it was clearly within proximity to developed areas.

Peter Downey stated that you either "played by the book" or you didn't. He stated that the code was very specific about what was required for a CF designation. None of those factors would dictate that this parcel should not be designated. Jim Hagen countered that it only took not meeting one criterion to take it out of a CF designation. Mr. Downey stated that he understood that, but we should not say that it should be out of the CF designation because there was some development around it. Mr. Hagen agreed, but referred to a 1997 Hearing Examiner ruling on a petition for some property near Quilcene. The report said it was 1.5 miles from the center of the Quilcene RVC but it was really in doubt whether the criterion meant boundary to boundary. He thought it could easily have been ½ a mile from the RVC boundary. He agreed that the subject parcel did not meet the criteria "by the book". Mr. Hagen thought there were two legitimate criteria called into question about whether this parcel should have been designated as CF.

Bud Schindler moved that the Planning Commission recommend accepting the application as proposed. Edel Sokol seconded the motion. There being no further discussion, the motion carried with six in favor, three opposed, and no abstentions (6-3-0).

MLA05-38, Hopkins/Barber (Toandos Peninsula area):

The amendment application was for a redesignation of an approximately 90-acre parcel located on the Toandos Peninsula from CF 1:80 to RR 1:20. Kyle Alm stated that the proponent's argument related to the designation criterion concerning Forest Land Grades 1 through 4. He stated that the Forest Land Grades map was incorporated into our Comp Plan and clearly showed that the subject property met the criterion for Land Grades 1 through 4. He stated that the agent's contention was that the property could not be logged at certain places because of physical constraints. That was not one of our criteria, however. He stated that the only criterion the agent listed that may not be met was specifically the soils. Mr. Alm stated that the three soil types the agent listed were also shown on the Comp Plan map. Those soils were present throughout East Jefferson County commercial forest lands.

Kyle Alm stated that there had been a lot of discussion about the Woodland Groups and Site Classes. He stated that both were derived from the same original measurements. He stated that Site Index was measured by the USDA using core samples, measuring tree height and estimating their growth rate. They then projected that out over 50 and 100 years. He stated that the soil types were included in the Site Indexes. He stated that what the agent had shown in his memos was the Woodland Groups and the Woodland Groups matched up to Site Classes and Forest Land Grades. He stated that it really did not match up like that. He stated that the WAC also used the Site Classes and the Site Index based on the Soil Survey to determine those designations. In short, this parcel met every criterion for designation as Commercial Forest land [CF 1:80]. He stated that every soil type on the property was very productive for commercial forestry. He stated that the DNR forest practices application showed that it was very productive for the amount of acreage that was logged. He stated that it was at least as good as any site for growing forest products according to the information supplied by the DNR.

Mike Whittaker asked about the contention that the soil types were used by the DNR to tax land as opposed to the quality of the soil for raising trees. Kyle Alm responded that was not necessarily true. He stated that Forest Land Grades were no longer widely used. He stated that he did not speak with anyone at the DNR or the Department of Revenue that was actively involved in using them. They now used Site Class instead, which depicted productivity based upon the soil type. The forestland was taxed based on the productivity of the land. Regardless of whether or not that was the original intention, the county did use them for the Comp Plan designation criteria. That was adopted policy.

Bud Schindler asked about the Site Class for the specific parcel. Kyle Alm looked through the application materials but could not immediately find an answer. Mr. Schindler stated that his question concerned whether there was a conflict between the way the applicant portrayed the parcel and the way the state portrayed it in terms of Site Class. Mr. Schindler stated that staff was saying it was a reasonable piece of forestland and was a reasonable producer. The applicant was saying that it was not and that it should not have been classified as forestland in the beginning. Mr. Alm responded that the USDA Soil Survey grouped soils into Woodland Groups. He explained the coding for the forestland group's numbers related to the specific parcel. Those codes related to Site Classes. That matched up with the Site Classes 1 through 4 in the WAC.

Jim Hagen stated that, as he read all the information on the debate about Site Classes, etc., it raised the concern with some of what he was referring to about flexibility in conjunction with the long-term commercial significance issue. He stated that the commission should consider what it was like on the ground to harvest the trees. One discrepancy that jumped out to him was the difference between the county's figures and the applicant's figures of the average board feet [bf] per acre and how it was calculated. The applicant had said that 40 acres had been logged. The county used it as a 40-acre portion of the whole parcel and came up with an average of 18 thousand board feet [18 mbf] per acre, which was an acceptable average on the Toandos Peninsula. However, the applicant said that the 40 acres that was harvested was over the entire 90-acre parcel, so the average should be about 8 mbf per acre, which was really under the average for the Toandos. Josh Peters responded that he would characterize the argument by saying that staff consulted with the DNR forester for the region. He told staff that this land was equally as productive as any other forestland in the area. He stated that Mr. Alm had shown the Planning Commission a soils map showing that the soils on the subject parcel were the same as the soils on the other forest lands. He stated that staff's contention was that this land was equally as productive as any other forestland. Kyle Alm stated that the DNR application was an estimate. It was not a total of what was actually harvested. He stated that it did not say anything about how much of the property was logged at the time. He stated that staff did supply an aerial photo of the property, which showed that it had been pretty significantly thinned. Mr. Alm stated that, although it was a 90-acre parcel and the estimate only showed 40 acres being logged, the DNR still used the same methodology for determining the productivity of other applications. So it was still comparable to the other forest parcels. In answer to Edel Sokol's question, Mr. Hagen explained that the 40 acres in the DNR application was actually 40 acres spread over the entire 90 acres.

Dennis Schultz stated that the contour map indicated to him that a lot of the property was probably not log-able anyway. Kyle Alm stated that much of the agent's contention was that the land was physically constrained. He stated that you really did not know that until you applied for a permit. He stated that was not a criterion in the Comp Plan either. He stated that if a property was constrained by steep slopes or other critical areas, the policy direction was to downzone it and not upzone it.

Bud Schindler asked about the criteria for the RR 1:20 districts, stating that it seemed to suggest that it would be unique to this property. Jim Hagen read the designation criteria which indicated the RR 1:20 designation was appropriate as a buffer in areas adjacent to UGAs and designated forest and agricultural lands of long term commercial significance as well as protecting areas identified as possessing area-wide environmental values which constrained development, such as shoreline areas or steep and unstable slopes. The district was also used to protect the land from premature conversion to higher residential densities prior to its normal use.

Mike Whittaker stated that the proposal was to make four 26-acre pieces with one home site each. He stated that he had not gone for a site visit, but from the material provided, he thought it was predominately steep slopes. He offered the opinion that one home site per 26 acres was probably about all the land could handle.

Jim Hagen stated that something he heard at critical areas workshops and at the DOE open house was that there was not only pressure to protect forest

lands from residential use, but there was also environmental pressure to protect forest lands from being used as forest lands because of runoff, the inability of the aquifer to recharge, damage to habitat, etc. So the presence of steep slopes on this property might keep it from being used for commercial forestry.

Dennis Schultz stated that the applicant specifically stated in the application that they wanted to combine this 90-acre parcel with two other smaller parcels and re-divide the combined property into four building sites. He thought the two smaller parcels were basically unbuildable. He stated that we were not talking about one house on 20 acres. Jim Hagen stated that the applicant's plan would create four parcels out of 105 acres.

Staff and the commissioners discussed the steep slopes issue for the applicant parcel and the adjoining smaller parcels that ostensibly would be combined. Josh Peters stated that the map indicated that the two smaller parcels were within a moderate and a slight landslide hazard feature. That suggested that, while there were slopes, it would be surprising to say they were unbuildable on a moderate and a slight landslide hazard area. Dennis Schultz noted from the application that about half of the subject parcel was constrained by either steep slopes of up to 50% or by a stream, which effectively prevented much of the parcel from being logged.

Jim Hagen stated that the issue came down to a "he said, they said" issue. He stated that all that information about soil grades was related to productivity and connected GMA statutes. He read the GMA definition of forest lands: "Forest lands means land primarily devoted to growing trees for long term commercial timber production on land that can be economically and practically managed for such production." While he appreciated the work of the DNR and one heard about the massive profits derived from commercial forestry, it was really a pretty risky venture. He thought it was a lot safer to put your money in a CD.

Dennis Schultz stated that the definition and description implied that the owners wanted their land to be in forestry. If someone had commercial forest land but did not want to be in the forestry business, they could very easily say it did not apply; that they were not practicing forestry on the land. He stated that forestry required a certain amount of stewardship of the land for the long term. If people did not want to do that, then ostensibly it would no longer meet that criterion. In that case, anyone who wanted out of forestry could just stop practicing forestry on the land and say it was not a viable forest anymore. Josh Peters pointed out that, in this case, the property was enrolled in the forest tax program and they were practicing forestry on the land, at least until now.

Jim Hagen stated that another thing he considered about conversion was the issue of more intense uses on the land. He offered the opinion that building four houses on the land was no more of an intense use than logging it. He supposed that was a debatable argument. Bud Schindler stated that logging could be really tough on the land if it was not done right. He thought that if it was developed with houses under the applicant's suggestion, it would not be as harmful as logging it would be.

Josh Peters stated that staff, in the staff report, did not argue against the rezone based on the fact that there would be more environmental impact because of housing development, although it should be noted that a significant portion of the soils were not suitable for home development.

What staff was saying was that the property was much the same as much of our other forest lands and so, from staff's perspective, recommending approval of this rezone would have implications for the county's forestlands policy.

Peter Downey stated that staff was essentially saying that the reasons the applicant gave that the land was not adequate land for forestry due to the soils was not a valid argument. Josh Peters responded that staff was suggesting that, based upon the information we had, the argument was not valid. Not only that, if that argument was accepted in this case, the circumstances would be remarkably similar to much of our other designated forestlands. He stated that staff would anticipate having other applications making the very same argument, which would make it difficult to say "No" to those arguments if we said "Yes" to this argument.

Peter Downey moved that the Planning Commission recommend denying this application. Dennis Schultz seconded the motion.

Edel Sokol asked whether the other two lots were unbuildable. Kyle Alm stated that one was a 5-acre parcel. Josh Peters stated that the two parcels were not technically part of this application. He stated that, while it was possible that what the applicant was saying was true, there was really no way to know if they were unbuildable without going through development review. Jim Hagen stated that the application materials proposed combining the two smaller lots with the 90-acre parcel and re-dividing in order to get four lots. He assumed from that, that the two small parcels were unbuildable. Kyle Alm stated that was their assertion in the application, but we did not have to go by that. Mr. Peters pointed out that the landslide hazard map indicated only a slight hazard on one of the parcels, so potentially that parcel was developable. While it was possible the applicant was correct, he would not recommend going on their assertion without further investigation. He did not think there had been an attempt to develop those properties. If there had been an attempt, the Planning Commission had not been shown that information as evidence that the smaller parcels were unbuildable. Peter Downey stated that, according to the topographic map, the larger lot of the two appeared to have some more flat ground on it. The smaller lot might be difficult.

Jim Hagen stated that, meaning no disrespect to the conclusion staff came to in their recommendation, he thought this was a legitimate gray area about whether or not the parcel should be designated forestland. He thought it was debatable and that each side could make arguments that the parcel qualified. Something else he heard reference to throughout all of the recommendations was that granting the rezone would trigger a domino effect. He was not certain, stating the belief that it was speculative. He stated that, going back to the three 1:20 to 1:5 upzones that occurred three years ago, he did not know that had triggered a mad rush of upzones. Dennis Schultz countered that we were seeing a domino effect with this years amendments. He stated that we had done it with the other OPG amendments in Tala Point and the Shine areas. He questioned what would prevent anyone from coming in next year with a similar application. Mr. Hagen stated that we were talking about thousands and thousands of acres in this county in forestland. He supported keeping our forestlands. However, the notion that it would all be gone would not happen. Mr. Hagen pointed out that the staff analysis found that, because the proposals were not geographically close together, the cumulative impacts were less than they could otherwise be.

Peter Downey stated that the difference with the Shine and Tala Point amendments was that they were in areas of higher development. This application, however, was in a very remote part of the East County. As such, it might be a better use for the land to stay in forestry.

Mike Whittaker asked for Mr. Downey's reasoning for his motion. Peter Downey replied that there were two reasons. First, their supposition that the soils on the property would not support forestry had been shown to be a false supposition. The soils did support forestry, had supported forestry, and probably will support forestry in the future. Second, this was a very rural, remote part of the county and forestry was a good use for this property. He thought the highest and best use for this property was probably forestry.

Bill Miller stated that he understood that the property owner had put the property into an open space, forestry type use commitment. Kyle Alm stated that the property was currently enrolled in the open space timber tax program. Mr. Miller stated that he recognized that when he went into any business, he probably had a greater opportunity to fail than he did to succeed. It was not the Planning Commission's job to make the applicant a good forester; he had to work at it.

Allen Panasuk asked for clarification about the tax program. Josh Peters stated that the property was enrolled in the open space timber tax program to gain tax benefits because the property was being used for commercial forestry. Then the applicant made a commercial forestry forest practices application to log the property. He explained that there were two types of forest practices applications. One was a commercial forestry application where you committed to replanting. The other was called a conversion where the owner said they were going to convert the land to some use that was incompatible with commercial forestry. The county got involved in the conversion applications. In this case, when the landowner did that process just a few years ago, they did a commercial forestry application rather than a conversion. Mr. Panasuk asked what benefit the property owner got from that. Mr. Peters replied that they benefited through lower taxes because the property was enrolled as open space timber. Also, it was a much less cumbersome and expensive application process for the forest practices permit rather than doing a conversion. Dennis Schultz stated that if they converted the land out of the open space timber program, they would have to pay back taxes.

Kyle Alm read a portion of the DNR foresters e-mail to the county that said that tree-growing conditions on the Toandos Peninsula were at least as good as anywhere else in East Jefferson County. Mr. Alm stated that one of the goals of the GMA was to preserve productive commercial forestland. He stated that the Comp Plan laid out the designation criteria and this parcel clearly met all of them. He read the designation criteria from the Comp Plan.

Allen Panasuk asked about the property ownership at the time it was enrolled in the timber tax program. Josh Peters stated that he did not know. He stated that the current owner was a local property ownership group. Kyle Alm stated that the property was originally enrolled in the timber tax program in the 1970's.

Jim Hagen stated that the crux of the whole debate seemed to be the soils criterion. Josh Peters asked for the specific reasoning for that opinion. Mr. Hagen thought there was a dispute about what percentage of the land was Forest Land Grade 4 or better based on the soils maps the applicant had

supplied. Bud Schindler stated that the applicant supported the position that the land may not be suitable as forestland. Mr. Peters stated that there was no analysis besides a conversion table that had any backing to it. There was no theoretical foundation for converting from a certain table to another as presented in the application. He stated that he was curious about why that was compelling compared to other information.

Mike Whittaker discussed a healthy forest, stating that you could tell by looking that a tree was not a viable, healthy tree. He stated that the land grade situation certainly cast some doubt in his mind. He also thought it was important to put some perspective on the open space forestry situation. He stated that going way back to the 1930's or so, people invested in land. The best way to defer taxes was to put it in the timber tax program. He stated that anyone who had land of a certain size and could get it in an open space tax program typically did so in order to lower their taxes. If it was not viable land in terms of commercial forestry, and there was certainly a question about whether this land was, he questioned whether the county should hold the owner hostage if he did not want to continue in forestry. If the property was not good forestland, then what was the point? Conversely, if it was good prime growing forestland, the request should be denied.

Peter Downey stated that they had already logged the property. It was a matter of whether they would replant and continue to manage it.

Jim Hagen stated that he was making a connection between soil types and productivity, which he believed was what the criteria inferred. He stated that we had this number of 18 mbf, which was average for the Toandos Peninsula. That had been disputed. He referred to a DNR Site Index chart showing tree height at age 50. For a Land Grade 4, the height would be 90 to 95 feet and they were talking about 20 to 25 mbf per acre. That was clearly in excess of the productivity for this site. He thought that was another of those gray areas. The question was whether the Barber parcel was 18 mbf or 8 mbf. Kyle Alm stated that chart was for a 50-year growing period, which was not typically practiced. Josh Peters stated that Mr. Hagen's original statement was about the soils and whether they were productive or not, but Mr. Hagen kept going back to the forest practices application. Mr. Hagen stated that they were inter-connected. Mr. Peters agreed, but added that the classification criteria was the soil grades vis a vis forest production. The information we had clearly showed that the soils were graded moderate to high for forest production. Mr. Hagen stated that the criteria, the whole reason for having forestlands, were for long term commercial significance. He thought the discussion was getting side tracked. The question was whether this parcel was really a viable forest parcel. While you had to consider the soils, you had to connect that to productivity, because productivity was the criterion for designation. Mr. Peters stated that staff referred to the charts and tables because that was what was presented to the county by the applicant. He stated that his question was why, in the end, Mr. Hagen found the soils argument to continue to be compelling.

The question was called for. The motion to deny the application failed with four in favor, five opposed, and no abstentions (4-5-0).

In order to complete the Planning Commission's action on this amendment, Peter Downey then moved that the Planning Commission approve the proposal as stated. Mike Whittaker seconded the motion. There being no further discussion, the motion carried with five in favor, four opposed, and no abstentions (5-4-0).

In answer to Allen Panasuk's question, Josh Peters described the remaining process. Mr. Panasuk asked that staff notify the Planning Commission when the BOCC held their hearing on the docket.

Peter Downey stated that he would likely formulate a minority report on the Tala Point decision. Jim Hagen stated that he would encourage anyone to write a minority report on any of the issues that had a minority position.

Jim Hagen suggested the Planning Commission discuss some of the findings for its report to the BOCC. Edel Sokol suggested that a committee be formed to address the findings.

Jim Hagen referred to the Pepper property. He stated that there were two issues and he knew the Hearings Board had addressed them, at least partially. He stated that he had read the criteria for LAMIRDs several times. He wondered when the criterion for the built environment on a parcel came into play, because what he read in the statute was the characterization of a logical outer boundary for an area delineated by predominately the built environment (emphasis added). He stated that there were also provisions to include undeveloped or vacant land in the LAMIRD. He wondered how you could simultaneously have a built environment, whether that was some structure or underground utilities or even a commercial water tap, on an undeveloped or vacant property. He stated that the Hearings Board had taken a turn and applied that built environment requirement to individual parcels, and he did not see that in the statute. Josh Peters responded that the criterion was put into the statute in 1996 or 1997. He stated that the LAMIRD criteria had been continuously applied in many jurisdictions over the three regional hearings boards. Other factors had entered into the placements, including the fact that the built environment could include underground structures. He stated that one thing that was instructive for Jefferson County was that, in the past, the county had been denied by the Hearings Board on redrawing a LAMIRD boundary because the Hearings Board called it "outfill" as opposed to "infill". He stated that we could draw a logical outer boundary and have some vacant parcels in there, as long as it was not predominately vacant parcels, and that would be called "infill". "Outfill" occurred when you had a logical outer boundary and then added a vacant parcel to the outside of it.

Bud Schindler stated that he had noticed that of the twelve rural crossroads only three provided for undeveloped land for infill. He stated that the presumption of staff at the time was that a developer would either re-develop an existing developed parcel or negotiate with the owners to subdivide parcels in such a manner to allow for further development. He thought it sounded like a no growth policy. He stated that we had all these LAMIRDs, but they were structured such that there was no room for infill. If someone wanted to develop a business and they could not find a property inside a LAMIRD, they were forced to look outside the LAMIRDs. He thought that fundamentally violated the GMA by forcing people to seek sprawl instead of keeping them concentrated within the LAMIRDs.

Jim Hagen stated that there was a total of 16.75 vacant acres available for infill in all of the rural crossroads. That was less than an acre a year over the 20-year planning horizon.

Dennis Schultz stated that there were several nonconforming commercial uses in the Four Corners area and described some of them.

Jim Hagen stated that the GMA statute talked about the criteria for LAMIRDs. He stated that the Hearings Board cited three dates for LAMIRD designations: the July 1, 1990, enactment of the GMA; the date the county adopted the goals of GMA planning; and date the county submitted its population figures to the OFM. He stated that staff had said that the designation of the property did not matter, but that property was designated commercial on all three of those dates. He stated that the Hearings Board had found that creating the designation could not be used as the sole criterion. He thought it could be argued that it did not necessarily exclude it from designation. He thought what we were talking about was expanding a logical outer boundary. The question was whether that was really outfill under the circumstances.

Edel Sokol pointed out that the Trottier report had found that the county had downzoned too much commercial land.

The commissioners and staff discussed the Planning Commission's report to the BOCC. It was agreed that staff would draft a template for the report with some general findings and then the commissioners, or the Chair, would write the findings specific to the individual amendments.

C. ADJOURNMENT

Dennis Schultz stated that he would miss the next two meetings due to business conflicts.

Josh Peters reported that the next meeting would be devoted to the public hearing on the UDC Omnibus.

Phil Flynn referred to the sixteen acres that were vacant in all of the crossroads for infill in the county. There may be issues with the vacant land being in the wrong place or there not being contiguous parcels or other problems. He asked if it was possible for the Planning Commission to suggest a Comp Plan amendment addressing the LAMIRDs and allow a certain amount of outfill. Jim Hagen stated that it would be something for next year's cycle. He stated that it was possible for an individual Planning Commissioner to suggest such an amendment. Mr. Flynn stated that if the current situation was such that it allowed no growth, then the county should address it. Peter Downey stated that it was not no growth; it was growth management. The problem with not having enough commercial land zoned was that we got all these "cowboys" out there doing nonconforming uses.

The meeting was adjourned at 8:50 p.m.

D. APPROVAL OF MINUTES

These minutes were approved this _____ day of October, 2005.

_____ _____

Jim Hagen, Chair Cheryl Halvorson, Secretary