

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR JUNE 7, 2006

- A. OPENING BUSINESS
- B. PUBLIC HEARING - CODE AMENDMENT PROPOSAL FOR PROTECTION OF CRITICAL AREAS, MLA06-242
- C. DISCUSSION ON CODE AMENDMENT PROPOSAL FOR PROTECTION OF CRITICAL AREAS, MLA06-242
- D. 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 Dennis Schultz, Mike Whittaker, Bud Schindler, JD Gallant, Henry Werch, Peter Downey, and Edel Sokol. Bill Miller was excused.

DCD staff present were Rachel McHugh, Donna Frosthalm, and Cheryl Halvorson, secretary.

There were two members of the public present: Ross Goodwin of the DNR and Ron Melheim.

The minutes for May 17, 2006, were approved as amended. There was a spelling correction on Page 5 and a clarification in wording on Page 11.

Henry Werch asked for clarification about the commission's motion on May 17 concerning the no shooting areas issue. Jim Hagen explained that the commission's recommendation to the BOCC was to form a review committee to actually formulate the criteria, in addition to passing on the work of the No Shooting Areas Committee as a starting point. Mr. Werch was concerned that it had undermined the work of the committee. He stated that the committee had built into its recommendation the opportunity to include stakeholders on any particular issue, but the committee's recommendation was that the ordinance could be revised. His opinion was that the committee's ideas had been wasted and he did not understand why the motion had been passed in that way. Dennis Schultz responded that he did not think it went over that way at all. He stated that the committee's work gave the BOCC "food for thought", although the commission's recommendation was not what they expected, and got them thinking about the issue and how to do it. He stated that the BOCC realized that we could not just come up with a quick ordinance. Rachel McHugh stated the opinion that the BOCC would consider the committee's ordinance language, but she did not think they were ready to adopt an ordinance. Mr. Werch stated that, by passing on the recommendation in the way it was phrased, the BOCC may perceive the Planning Commission as being wishy-washy. Jim Hagen did not agree; he thought it related to the whole process. He stated that what the committee was tasked with was doing "leg work" to present to the full Planning Commission. He stated that the committee did not subvert the decision-making process of the full Planning Commission; the full Planning Commission would not necessarily "rubber stamp" the work done by a given committee. The work of a committee was presented to the full Planning Commission and then the group as a whole discussed it, and with added information and discussion, and arrived at a recommendation of the entire commission. So it really was a deliberative process of the entire body. While the work of the committee was very much valued, he did not think it had ever been assumed that a committee's work would be the final product. Mr. Werch agreed but added that it could be the final product as a time saver. He thought that committees were usually established to save time for the full body. If the group as a whole wanted to do work as a whole, then committees should not be formed. If committees were to be formed, then the group should agree that the committee's product would not have to be totally reviewed all over again, not that the full commission should not have input. He stated that his goal would be to reduce the amount of work and what he thought was wasteful rehashing of the same things over and over. Mr. Hagen did not think that anyone who had served on a committee in the past felt that their time had been wasted. The committee work had always contributed to a valuable outcome.

The Chair invited staff updates.

Rachel McHugh reported on the BOCC's actions concerning the No Shooting Areas issue. They directed staff to bring back a recommendation on what the next step should be. The BOCC also discussed the UDC Omnibus and set a hearing date.

Rachel McHugh reported that Al Scalf, Josh Peters, and Brent Butler were receiving a state award on the anniversary of the GMA relating to the county's work on agricultural best management practices.

Rachel McHugh introduced Donna Frosthalm, the DCD wetlands specialist. Ms. Frosthalm would address the wetlands section of the critical areas package.

Jim Hagen asked if there was a press release issued for this public hearing. Rachel McHugh replied that she did not know if there was a separate press release done. There was the legal notice, of course. Mr. Hagen suggested that for an issue of this importance and potential impact on people in the county there should be a press release in addition to the legal requirements for advertising. Edel Sokol commented that anytime you were taking this much land away from people, it should have additional outreach done.

Edel Sokol stated that it was disturbing to her that there was no public outreach being done regarding the UGA sewer planning. She asked if staff knew if such outreach was being planned. Rachel McHugh replied that she thought that Al Scalf and David Alvarez had talked about the issue, but she was not aware of any outreach at this time. She stated that she would check into the issue and get back to the commission. Cheryl Halvorson pointed out that Public Works was the department in charge of the sewer planning. Ms. Sokol stated that when the Planning Commission worked on the UGA, we had the biggest outreach ever done by the county. She described the outreach activities, adding that now people did not know what was happening. There was no outreach happening to keep the people of the community updated. Ms. Sokol stated that a rumor she had heard was that there was consideration being given to reducing the size of the UGA due to the sewer planning. She thought that was disturbing, given the work of the Planning Commission in arriving at that UGA boundary.

Jim Hagen stated that, on a related note, the UGA citizen's group had raised the idea of a county representative at their UGA booth at Hadlock Days. He stated that Kyle Alm had attended their booth last year to answer the public's questions. He knew there had been a PowerPoint presentation at a workshop a couple of weeks ago. He suggested that certain segments of that presentation, key issues, could be blown up onto poster boards for display during Hadlock Days. He thought it would be a good public outreach opportunity. Mr. Hagen suggested that, at this point in time, it may be appropriate to ask Public Works to have someone at the UGA booth at Hadlock Days. Perhaps someone from DCD could also be present to answer long range planning questions.

Bud Schindler asked about the BOCC's action on the three Port Ludlow issues reported upon at the last meeting. Cheryl Halvorson responded that she would send the pertinent BOCC minutes to the commissioners. Rachel McHugh stated that Barbara Nightingale was DCD's new planner in charge of Port Ludlow issues. She thought all three of those issues were still in her "court".

The Chair invited committee reports.

Dennis Schultz reported on the BOCC meeting regarding the No Shooting Areas issue. He stated that the BOCC were intrigued with the idea of a No Shooting Area Review Committee. The issue was left that the County Administrator and Al Scalf should carry on with the issue. Henry Werch stated that he thought the BOCC wanted an ordinance covering the enactment of changes. He thought the committee's examination resulted in putting together a procedure that would involve public comment that might lead to a solution to the problem without designating a no shooting zone, which was always a better way. He hoped they had the sense that the committee proposed the idea of considering a no shooting zone as coming from one of three sources: the Sheriff, the public via petition, or the BOCC themselves. Once the BOCC agreed that a particular area should be examined, then a committee of stakeholders would be appointed who could look at the problem and see if it was best solved by an ordinance or by something else. Mr. Shultz stated that another thing he brought up to the BOCC was that, if they designated a no shooting zone, the residents of that zone should be allowed to buy and put up signs around the boundary. Mr. Schultz stated that, so far, there had been no feedback from the Sheriff. Mr. Werch stated that enforcement, as had been talked about, was a problem. Ideally, if there was a problem that could be addressed without enforcement, the county and residents were better off.

Jim Hagen stated that one thing that came up during the last meeting was the dynamic of having a no shooting ordinance without any performance standards. All the ordinance did was set out a process for how to create, modify, or eliminate a no shooting area. There were actually no performance standards, such as density. Henry Werch responded that the committee did not think that belonged in an ordinance. He stated that the committee thought that by putting all that "stuff" in the ordinance, you built a box that made the whole thing more difficult. Edel Sokol stated that she had talked to some hunters about the issue who had said they would like to have some input into it.

Bud Schindler stated that the MPR Committee had not met as yet. He described what he thought would be a good way to start, which was to have something in writing for people to consider. He asked when we could expect to begin receiving products from Statesman to consider. He wanted the timing to be right. He stated that he would like to start meeting early in July, have a press release and probably a walk through of the site. Hopefully, at that point we would have something in paper form to start working with. Mr. Schindler referred to the EIS comments, stating that he was missing a few. Staff indicated that they would provide additional copies of the missing comment letters.

The commissioners and staff discussed the Planning Commission meeting schedule and when the commission would start review of the Comp Plan amendments. Cheryl Halvorson stated that she would send the commissioners another copy of the meeting schedule.

Peter Downey reported on the Shoreline Master Program update kick-off meeting for the Shoreline Technical Advisory Committee and the Shoreline Policy Advisory Committee. He stated that the technical committee would do its work first. Then the policy committee would take that work and design policy around it. There would also be a charette in October that would be open to the public.

The Chair invited public comments not related to the public hearing subject. There were none received.

B. PUBLIC HEARING - CODE AMENDMENT PROPOSAL FOR PROTECTION OF CRITICAL AREAS, MLA06-242

Jim Hagen opened the hearing by reading the public hearing procedure. He then asked for a staff presentation, introducing Donna Frosthalm.

Donna Frosthalm provided an outline of the genesis for the proposed code amendments. Many of the amendments resulted from the Second Settlement Agreement with Washington Environmental Council [WEC]. That agreement specified that the county would use the DOE Wetlands Guidance Volume II as guidance for our revisions. She stated that the biggest changes to the code did come from the DOE wetlands guidance. Those were the wetlands characterization or the wetlands ratings, the buffer widths, and the mitigation ratios. Most of the other changes were clarifications or updates. Jim Hagen asked staff to explain the highlights for the three main sections.

Donna Frosthalm summarized the wetlands section, stating that many amendments related to updating the referenced manuals. The exemptions were changed to add removal of noxious weeds. The wetlands protections section was the section that was changed most. It was the part that contained the wetland categories/ratings as well as the buffer widths. She stated that the provisions we had in the old code for reducing the need for a full delineation and wetland report was still there (Table 3-3). However, it had been modified to reflect the new buffer widths.

Jim Hagen asked if the 1.5 times the standard buffer width was from DOE. Donna Frosthalm replied that the provision was from our old code. Staff decided to keep it because staff thought it was a benefit to the landowners; it had the potential to reduce the wetland related costs to them. The revised buffer widths were from the DOE guidance, however.

Donna Frosthalm stated that there were now several factors that went into determining the buffer width, including the risk involved. While the buffer widths for residential use were going up, they were not as much as those for commercial or industrial uses. Ms. Frosthalm stated that there were additions for buffer width reductions, based upon the DOE guidance. She stated that all of the changes related to buffer widths came from the DOE guidance. She referred to Table 3-4C on Page 18, stating that there were provisions to try to help the more intense developers reduce their buffer widths.

Donna Frosthalm stated that most of the changes in the mitigations section related to clarifications or minor adjustments. The most notable revision was that the mitigation ratios were not quite as simple as before. She stated that the table came directly from the DOE guidance as well.

Donna Frosthalm stated that the special reports section revisions were intended to provide clarification.

Rachel McHugh stated that most of the critical areas amendments were in 18.15. However, there was one proposed amendment in 18.10.230, Definitions. There was one revised definition and two added definitions, all related to the proposed wetlands section.

Rachel McHugh stated that the amendments in Article VI-D were intended for consistency with the amendments in the specific category critical areas sections, such as wetlands.

Rachel McHugh referred to Article VI-G, Geologically Hazardous Areas. She stated that the big amendment in that section was the addition of channel migrations zones [CMZs].

Referring to Article VI-H, Rachel McHugh stated that there was a proposed amendment to change all references to "Fish and Wildlife Habitat Areas" to "Fish and Wildlife Habitat Conservation Areas". Another fairly significant change in that section was to change the stream typing to correspond to the new DNR system with corresponding buffer widths. She stated that the stream typing conversion table was described in the WAC (WAC 222-16-030). She stated that the county was not proposing changing to the DNR's standard buffer widths.

Dennis Schultz asked, if people who had their stream buffers or wetlands already delineated, if they would be grandfathered for future development. Donna Frosthalm responded that, with regard to wetland buffers, if someone already had a permit and/or a building based on the old delineation system, that building would be a legal nonconforming use. Mr. Schultz asked if the wetland delineation would have to be changed under the proposed amendments. Ms. Frosthalm replied that the wetland delineation would not change but the new buffer widths would apply to a new application for that property. In some cases, depending upon how close the structure was built to the wetland, you may have a situation where there was a nonconforming use.

Peter Downey commented that, under the new rules, the categories of wetlands did not correspond to the old categories, so the wetland category could change and the buffer could change. Donna Frosthalm responded that, while the buffer could change, the wetland would still be delineated within the same area. Mr. Downey stated that the wetland could go from a Category 4 to a Category 3 or Category 3 to a Category 1 under the new rules. Therefore, you could go from having a 25-foot buffer to something much bigger. Ms. Frosthalm stated that a Category 4 could not go to a Category 1, although she admitted that a Category 4 could go to a Category 3, but it could also be reversed as well from a Category 3 to a Category 4. She stated that the actual wetland delineation line would not change because that was using one manual. What would change was the buffer width measured from that line.

Dennis Schultz asked if there was something in the code that would allow a property owner to continue using their property as they had been using it under their previous delineation. Henry Werch stated that, certainly, someone ought to be able to put up a new structure on their property without jeopardizing anything that had been previously approved. Mr. Werch stated that the question was, if the new structure affected the existing buffer and delineation, whether what you already had approved for your property [delineation and buffer] applied to the new structure as well. Or, should the new structure conform to the new code? Mr. Schultz thought that a property owner who had a delineation and consequent buffers set up should be allowed to use those buffers in the future. He thought the new buffers would take away another big piece of a person's property. Jim Hagen asked if it would be similar to someone who bought twenty acres in 1990 and could build four houses, but did not actually build anything, and then a year later found that they could only build one house due to zoning changes. Donna Frosthalm replied that it would be a similar situation. She stated that complying with

GMA today could more than likely make a difference to some property owners. Peter Downey stated that the potential was there.

Jim Hagen stated that there was a provision for the Planning Commission to discuss the issue, but he wanted to continue with the hearing.

Rachel McHugh stated that the conversion table was at WAC 222-16-031.

Rachel McHugh stated that the Article VI-J, Special Reports, proposed amendments were for consistency with the category specific critical areas sections. She stated that the proposed amendment in Article VI-M, PRRDs, was to expressly allow for a broader range of environmental design for critical area protections for bonus densities with clustering.

Rachel McHugh stated that staff had received two comments from the public. One was delivered through Al Latham of the Conservation District via e-mail from Jim Marquardt. The other was from Peter Bahls of the Northwest Watershed Institute. The written comments would be mailed to the Planning Commission.

The Chair opened the public hearing to public testimony.

Ross Goodwin, DNR, stated that he had a general interest in the critical areas amendments. He stated that they would take the county one step closer to taking over conversion forest practices which impacted his workload quite a lot. He thought some of the comments from the Northwest Watershed Institute may have misinterpreted or misrepresented forest practices rules. He stated that he would be glad to answer any questions the commissioners may have.

Ron Melheim, Port Townsend, stated that he was looking at a piece of property on Center Road. It was ten acres. The Real Estate agent told him that there was 3.8 acres of usable land with the rest being wetlands, with one on one end and another on the other end of the property. He stated that he had gone to DCD but got no information whatsoever about the particular property. They told him that he needed a wetlands engineer to survey the property. They could not tell him the classification of wetland. He stated that the planner of the day was the one who alerted him to this hearing. He thought this land would be worthless under the new rules. He thought that if people bought land for their retirement home and it had a wetland, it may be that they would not be able to build. He thought it was stealing people's property. He did not think people were well informed, stating that he certainly was not and he was a small contractor, so he had more knowledge than some. He did not think the public notice had been sufficient.

There being no further public testimony, the Chair closed the comment portion of the hearing. He stated that the Planning Commission would accept written comments until June 14.

Edel Sokol suggested that the Planning Commission keep the written comment period open until the next meeting in order to allow further public comments.

Edel Sokol moved that the Planning Commission leave the written comment period open until June 21. There was no second.

The commissioners discussed the deadline for county action, which was July 18 under the Second Settlement Agreement. Peter Downey stated that the July 18

date was a legal requirement. Edel Sokol stated that this was such a big change for people's property that the Planning Commission should try to get more public input and more information out to the public. The commissioners and staff discussed whether the BOCC would hold a public hearing and the impact on the deadline. Also discussed was the impact on the deadline date if the Planning Commission continued the discussion until June 21 and did not make its recommendation until early July. Jim Hagen agreed that the Planning Commission was legally bound to make a decision, but there technically was not a deadline for the Planning Commission to make a recommendation. Mr. Downey stated that he had no problem with holding all the public hearings the Planning Commission could, but he wanted to make sure it was delivered to the BOCC in such a time that they could act within the legally mandated timeframe. Dennis Schultz stated that any comments received after the close of the Planning Commission's comment period (June 14) would go forward to the BOCC for their consideration.

Edel Sokol commented that the BOCC could choose to not have a public hearing because the Planning Commission held one. Cheryl Halvorson agreed, with the caveat that it only held true if the BOCC agreed with the Planning Commission's recommendation. Bud Schindler stated that it was not necessary that the Planning Commission make a recommendation to the BOCC. If the Planning Commission ran into a time issue, the commission could go to the BOCC without a recommendation. Henry Werch thought it would be a disservice to not make a recommendation. Ms. Sokol thought one public hearing was not sufficient, especially considering that the county would be taking someone's land away. Rachel McHugh thought only one public hearing was scheduled because of the timing constraint.

The commissioners and staff discussed the fact that the deadline for action was specified by the Second Settlement Agreement with WEC. Edel Sokol asked why the Planning Commission was just getting the material now, so late in the timeframe. Rachel McHugh stated that was the reason the Planning Commission was given the material at the last meeting, to give the commission more time to review it. Ms. Sokol stated that, yet, there was only one public hearing and one meeting to discuss it and make a recommendation, for such a huge impact to the citizens of this county.

Peter Downey stated that the Planning Commission could forward it to the BOCC with a recommendation that it not be adopted. He thought the repercussions of the changes could be monumental. He did not think they had been adequately aired. While he knew staff had done a good job of working on it, he thought that when DOE came up with the new definitions for the wetlands categories, they changed things radically. It caught a lot of people by surprise. Edel Sokol stated that the Planning Commission was supposed to serve the citizens and not DOE.

Jim Hagen stated that he had extensively read Volume I and Volume II from DOE and had still not found a connection between the point system for the rating and the need for the specific buffer width in terms of feet. He asked how a point system of 33, for example, translated to a buffer width of 250 feet. He stated that Volume II that WEC referenced was admittedly not best available science; it was guidance only. Volume I was based on best available science. He noted that the reference appendix listed 81 pages of reference materials but very few were relative to our circumstances.

Peter Downey stated that the other issue with the wetlands guidance from DOE was that it was guidance; they did not hold public hearings on it as such.

The idea was that they would not have to go through the Administrative Procedures Act because it was not a WAC that they were adopting; it was only a guidance. It was up to the counties to hold the public hearings. That was a huge issue too. Edel Sokol stated that this was such a huge impact issue to the public that she thought we should take the necessary time to air the issue properly.

Jim Hagen stated that the GMA required us to initially classify agriculture, forest, mineral, and critical areas. Under the RCW, part of that process involved a collaborative effort between representatives of cities, counties, developers, builders, owners of agriculture, forest and mineral lands, local economic development officials, and environmental organizations. His basic legal question was whether we had to do a similar collaborative process when you updated or amended those relative ordinances, because in this case we had been reduced to representatives of environmental organizations.

Rachel McHugh stated that, while she understood why the Planning Commission would want more public hearings, DCD had a legal responsibility to carry out the provisions of the settlement. While more public hearings might be beneficial, staff had a responsibility to meet the timeline.

Peter Downey asked about the nature of the settlement, whether we had to adopt this code as written. Rachel McHugh replied that the settlement was to incorporate best available science based upon the GMA and the WAC for regulations specific to critical areas. Mr. Downey stated that the problem was that DOE, when they adopted the new wetlands guidance, did not adopt it into the WAC. It was not a WAC; it was a guidance, which DOE had been very specific about. Therefore, the question was how the county could rectify that. Donna Frosthalm stated that the Settlement Agreement specified that the county must make revisions consistent with the guidance in Volume II. Mr. Downey stated that he was not happy about that.

Jim Hagen stated that the initial motion, which was not seconded, would only extend the written comment period. Edel Sokol stated that her intent was to hold another public hearing.

Edel Sokol moved that the public hearing be continued to the June 21 Planning Commission meeting with the public comment period being held open until the close of that hearing. Dennis Schultz seconded the motion.

The commissioners and staff discussed the timing of a Planning Commission recommendation in order to still meet the July 18 deadline of the settlement agreement. It was reiterated that the settlement specified that the county use Volume II of the DOE guidance in its revisions and the BOCC agreed to that.

The commissioners discussed the waiver provisions requiring 1.5 times the standard buffer width. That was a county option. Dennis Schultz stated that would result in the biggest takings of land. He asked who would determine the buffer width and how it would be done if someone opted for the alternative buffer with no delineation. Peter Downey stated that the commission could recommend changing that. The commission could recommend that it would be the maximum buffer only and not use a multiplier. He stated that the multiplier option that the county used before was based on the old guidance, which did not have the huge buffers. He suggested changing the county option so that the buffer would only be the maximum buffer required without a multiplier. Mr. Schultz stated that Table 3-3 increased the

buffers anywhere from 50% to 300%. Because the buffers were increased so much, he supported only using the specified buffers under the county option instead of multiplying them. Mr. Schultz stated that his question remained who did the field review to determine the wetland type and the associated buffer width if someone decided to use the waiver process. Donna Frosthalm replied that it would be the wetland biologist. If a wetland delineation had already been done, the line would remain the same. However, under the new system, the category would have to be determined as it may change. Mr. Downey stated that the code amendments said that county staff would make the determinations under the waiver provisions.

Referring to the motion, Peter Downey asked if the Planning Commission could then take action on June 21 in order to meet the timeframe needed to meet the settlement. The commissioners agreed that they could make a recommendation on that date, after the hearing was closed. Cheryl Halvorson pointed out that, under a continuation, another legal notice would not be required, but it would provide time to do a press release.

Jim Hagen offered a friendly amendment to the motion to continue the public hearing to include a press release in both the Leader and the Peninsula Daily News and that it lay out with more specificity the potential impacts of these amendments. The friendly amendment was accepted.

The motion as amended carried unanimously (8-0-0).

C. DISCUSSION ON CODE AMENDMENT PROPOSAL FOR PROTECTION OF CRITICAL AREAS, MLA06-242

Mike Whittaker moved that the Planning Commission schedule an additional meeting on June 28 in order to deal with the issue effectively. Edel Sokol seconded the motion.

It was agreed that the June 28 meeting should be devoted to the commission's deliberations and recommendation. It was also agreed that if the commission finished its recommendation on June 21, the June 28 meeting would be cancelled.

Bud Schindler commented that the Second Settlement Agreement was signed on January 18. He thought this issue could have been worked on for a longer period of time instead of pushing it through on a fast track now. While the Planning Commission had been busy, he thought the issue could have been pushed up a little in order to give more review time. Jim Hagen stated that he would expect the BOCC, after the year of the Omnibus process and their having the Omnibus package for six months and sending it back to the Planning Commission because of not enough time to review all of their questions, to be consistent with their earlier positions and strongly object to the short circuited process by which these amendments were being done and being ramrodded through. Donna Frosthalm stated that part of the reason for the delay from the January 18 signing of the settlement was that the county did not have a wetland biologist on staff. Another part of it was that Volume I and II were huge. It was just in May that DOE held a training session on the most important issues. In part, the county had been trying to get that information from DOE.

The motion to hold an additional meeting on June 28 carried unanimously (8-0-0).

Jim Hagen stated that a big part of the problem was that DOE just held a synopsis on Volumes I and II. Donna Frosthalm stated that they did so in early May. Mr. Hagen stated that the whole reason this petition occurred was that in 2004 the county did not update our critical areas ordinances based on best available science supplied by DOE that they were not able to explain or provide for another two years. He thought those were immensely important facts.

Henry Werch asked if we knew how much of the amendments, in fact, we must adopt in order to meet the terms of the Settlement Agreement, without the embellishments staff had added in order to achieve whatever staff wanted to achieve. Donna Frosthalm responded that staff had not necessarily embellished the amendments. She stated that what the commission was seeing, as far as wetlands were concerned, was taken directly from DOE. Mr. Werch thought staff had taken the most stringent (or liberal, depending upon which side you were on) approach to it, when we did not necessarily have to do so. Ms. Frosthalm stated that if a jurisdiction wanted to do something different from the DOE guidance, they must show the science that supported it. She stated that jurisdictions that had done something different had been appealed to the Hearings Board and the Hearings Board had basically upheld the DOE guidance.

Peter Downey stated that he supported changing Table 3-3 so that it only used the designated buffers instead of multiplying by 1.5 to 3 or 4 times. Edel Sokol stated that Mr. Schultz had said the same thing. She supported the idea as well. Rachel McHugh stated that the reason for the larger buffers on the table was to give people the option of choosing the waiver and not doing a delineation, but they would have to do the larger buffer. Mr. Downey stated that the problem with that was that the original concept was based upon the earlier buffers under the earlier DOE guidance. When we changed the guidance from DOE to these extremely large buffers, it no longer made sense to multiply them too. Dennis Schultz stated that it would now make the buffers two and three times larger than they were under the old buffers. He offered the opinion that all this was trying to do was that someone in the county wanted to cover their posterior by making the buffers as big as they possibly could be so the county would not get in trouble. Mr. Downey agreed, adding that it was too extreme and was not workable for most properties.

Edel Sokol supported following the recommendations of DOE, but to not recommend the other staff suggestions.

The commissioners and staff discussed the wetland boundaries. Jim Hagen stated that he had asked about the typical categories of wetlands in the county and the predominance of categories. He wondered if it was predictable for a landowner. Peter Downey stated the opinion that there would be many Category 1 wetlands in the forested wetlands areas in particular, especially in the West End. Mr. Hagen stated that one of his issues was that the best available science was so unclear and uncertain; it was frustrating. Donna Frosthalm stated that not all forested wetlands would be Category 1's. While there would be a lot of Category 1's, she guessed that many would be Category 2 or 3. She thought that most of the agricultural lands wetlands would be Category 3 with some being a Category 2. Edel Sokol stated that the landowners would have to hire a specialist to determine that. She stated that someone in King County hired a specialist, spent \$25,000, and was basically told that they could not develop their land. That opened a "whole can of worms" here. Mike Whittaker stated that it added thousands of dollars to the cost of a home when we were concerned about affordable housing. Ms.

Frostholm responded that she understood the commissioners' points, but added that she still had to work within the Settlement Agreement.

Jim Hagen stated that under Alternative 3-C of the DOE appendix there was a three pronged approach. You had to consider the types of adjacent land use and their potential impacts, the characteristics and category of the wetland, and how it scored for functions and values. He stated that it was a fairly complex process. He stated that the key point for him, for a landowner to know what kind of wetland he had and consequent buffer was the question whether county staff would go out and do that work for him. Or was the landowner required to do that? Dennis Schultz stated that if the landowner wanted to do the waiver, then county staff was supposed to do it. Donna Frostholm stated that was one option. She stated that it had worked both ways. One was to hire a wetland biologist to determine the wetland category, delineation, and buffer. She stated that there had also been times when she had gone out for someone who had their property staked where they wanted their house and determined where the wetland was, determined the category, and determined whether the house was far enough away. In that case, they would not need a wetland biologist. Mr. Schultz stated that the determined buffer area was "forbidden territory"; the landowner could not do anything with it and even had to put up a fence or a dirt berm. Ms. Frostholm stated that it was her understanding in talking with the planners that they had not required that. Mr. Schultz stated that was because the county did not enforce some of its laws. Henry Werch stated that he thought we should only enact laws that we could enforce.

Dennis Schultz moved that we amend Table 3-3 to show that the maximum required distance from the estimated wetland boundary be equal to the buffer widths specified in Table 3-4B for that type of category and land use. Edsel Sokol seconded the motion.

Dennis Schultz stated that the motion would also require modifying #2 and some other portions of the section. Peter Downey suggested that he could draft a new table so that it would look the way it should. Then the commission could actually take a motion based on the new table. The commissioners agreed with his suggestion and agreed to wait to take a motion on the issue.

Dennis Schultz withdrew his motion. Henry Werch asked if the commission would be in violation of the settlement in any way by doing what was proposed. Mr. Schultz replied that we would not; it was strictly a county option.

Jim Hagen asked about the mitigation ratios. He stated that the literature he had read talked a lot about creating, enhancing and restoring wetlands. He stated that the GMA did not say anything about restoring, enhancing or creating; it talked about protecting and preserving. He cited RCW 36.70A.172 as the pertinent law. He thought that was much different from creating, enhancing or restoring a wetland. While he understood that we were restrained by the Settlement Agreement, he wondered if there was any inconsistency there. He stated that the whole of Chapter 6 of Volume I dealt with mitigation and a lot of it was based on creation of new wetlands. However, GMA did not address that as a primary mandate for critical areas designations; it only talked about "protect and preserve". He thought we had to be consistent and compliant with the GMA requirements. He stated that the whole mitigation table addressed creating, enhancing and restoring, which was not consistent with the GMA. He thought that if we had to be consistent and

compliant with the GMA requirements, we should look at what the statutes required us to do. Donna Frosthalm responded that she was not as familiar with the specifics of the GMA statute; she would need to study it before commenting. She added that the mitigations referenced were standard industry practices, however. Mr. Hagen asked if that came from the DOE guidance. Ms. Frosthalm replied that it was verbatim from the DOE Volume II guidance.

Jim Hagen stated that an issue he had was that the Second Settlement Agreement was agreed to by the BOCC without any public input and the agreement was developed behind closed doors without any public input. Henry Werch stated that the Planning Commission could legitimately complain about that and express concern about it. But he still thought the commission could exercise its responsibility by exercising our best judgment, by doing everything possible to get public input, and by drawing on our own experience and knowledge to make recommendations within the bounds of what was possible. That was all the commission could do.

Donna Frosthalm referred to WAC 197-11-768 which referred to a connection to Volume II. It provided a bit more specificity.

Jim Hagen stated the opinion that it was an appropriate discussion on the process of planning in our county. Anytime an outside group wrote our policy and took our planning out of our local hands, it was bad for good planning.

Jim Hagen asked if all of the line-in material for the wetland amendments were taken from either Volume II or from the wetlands rating system. He asked if there were any generated within DCD. Donna Frosthalm replied that most were from the DOE guidance and they had the most significant changes. There were, however, some changes generated by DCD. She pointed out the DCD changes in the wetlands section.

The commissioners and staff discussed the wetland sizes in 18.15.325(2). Peter Downey commented that he did not like the county specifying the sizes because it was a huge change. Donna Frosthalm responded that under the DOE guidelines, those small wetlands still needed to be protected. So the proposal was DCD's attempt to balance the guidance from DOE and helping the property owners. Mr. Downey asked if DOE had approved the change. Ms. Frosthalm replied that they had not yet commented. She stated that other wetland biologists concurred that small wetlands provided functions and should be protected; they should not necessarily have exemptions because they were small. Henry Werch asked if "small" to them would be less than 2,500 square feet. Ms. Frosthalm replied that she was not sure that "small" was well defined. Mr. Werch asked why we chose 2,500 square feet. Ms. Frosthalm replied that staff was trying to come up with numbers that they were hoping DOE would not question. Mr. Downey asked why we cared if DOE questioned it or not. If they questioned it, then we could deal with it. He advocated setting the numbers where we wanted them to be and, if DOE challenged them, then we could deal with it. He stated that we did not have to cater to DOE on everything. He advocated leaving it as it was unless the county was directed otherwise. Dennis Schultz stated that if DOE had a minimum size, we could use that. Mr. Downey stated that using the 10,000 square foot size did not necessarily go against the guidance; the guidance was mute on it. Mr. Downey stated that the amendments were already onerous with the new definitions and new boundaries. If we also said we were getting rid of some of the exemptions as well, we were in for a "world of hurt" from our constituents. He was not convinced that it was good science either.

Peter Downey moved that 18.15.325(2) be changed back to the original language: "... all Category I wetlands, Category II wetlands 2,500 square feet or larger in size, and Category III and IV wetlands 10,000 square feet or larger in size, ..." Edel Sokol seconded the motion.

Henry Werch stated that he would be opposed to the motion if it did not allow for the identification of really critical wetlands as small as 2,500 square feet. But because it was a matter of how we defined it, he thought it was really onerous to say something as small as 2,500 square feet that really wasn't a very critical wetland had to have a very substantial amount of mitigation or buffer. Bud Schindler stated that he did not understand if it would be more restrictive or less restrictive. Peter Downey stated that it would be less restrictive. Mr. Schindler stated that it would depend upon what our inventory of such wetlands was. Edel Sokol stated that we did not have an inventory. JD Gallant offered the opinion that we should look at the entire picture before we reacted to any one provision. He suggested going through the entire process, since we were extending it for another two meetings, possibly, and then move on it. He stated that he had been through the document three times and still did not have a complete picture of it. He stated that he had some questions, primarily related to the waiver issue. He stated that there needed to be clarity in the document. Ms. Sokol stated that we could not change the DOE guidelines. She advocated that the DCD changes should be reviewed and/or eliminated and that we should just adopt the DOE amendments. Mr. Gallant stated that, while he understood Ms. Sokol's point, he liked wetlands and thought they were important. He stated that it was a complicated document. He stated that his point was that we should not necessarily take the very lowest road we could take. Perhaps we should take the high road in some cases. But it also needed to be clear so that people understood it. Mr. Downey stated that he was very supportive of the environment, but this was one issue he had dealt with a lot and it really rubbed him wrong the way DOE had done it. Mr. Gallant did not disagree. Ms. Sokol stated that the wetlands were still protected under the guidelines. Mr. Downey agreed, stating that no one was saying that we should not protect the wetlands. Mr. Gallant stated that his point was that before we jumped into each item for a vote, we should study the entire document first and then take motions. Some other commissioners agreed with that process.

Peter Downey withdrew his motion for now so that the commission could give it more study and take it up again later. He stated that he would write up his suggestion for consideration later.

JD Gallant stated that there was a reason why each of the changes was made. He stated that he would like to hear those reasons, because some of them may be valid. Peter Downey stated that staff had indicated the reason for the amendment under discussion was to make sure we had something that would be approved by DOE. He stated that his point of view was that he did not care. Donna Frostholm stated that she was not just trying to satisfy DOE. She stated that there was time and expense involved if something ended up before the Hearings Board. So staff was trying to walk that fine line between what she thought needed to be done to keep us out of that process and still try to remember that there were landowners involved. She stated that that particular change was not made just to make DOE happy above everything else. She stated that if the Planning Commission disagreed with that, it was fine, but she wanted the commission to be clear that the changes there were not just for DOE. Henry Werch stated that the Planning Commission worked best when it knew the reasons for the changes. Dennis Schultz stated that the old square footages were passed by DOE once.

Donna Frosthalm continued with her review of the DCD changes. Peter Downey stated that he had a problem with all of the compensatory mitigation language. He stated that he was working with DF&WL now and it did not work. The problem was that when you tried to do on-site and in-kind compensation, you ended up trying to replicate the wetland you've destroyed right where you destroyed it. Typically, if you could do that, you had enough room so that you would not have to have hurt the wetland in the first place. So you ended up trying to force something in a place where it would not work. That was why we had so many failures of compensatory mitigations. He stated that they were working on a policy with DF&WL right now on how to get better compensatory mitigation. He stated that he wanted to look at the section more closely and possibly would make suggestions for changes. He thought we needed to provide more opportunity for offsite mitigation. Donna Frosthalm stated that section was not proposed for changes; it had been in the code all along. The reason it was not changed was because, if you did not allow people to do onsite mitigation, you were forcing them to get more property. Mr. Downey stated that he was not saying you could not do on-site mitigation. He was saying that we should provide for easier ways of doing off-site mitigation. For instance, they were looking at the full watershed restoration plan with projects already identified in those restoration plans and being able to use compensatory mitigation dollars to fund those sorts of restoration projects. Jim Hagen stated that there was nothing preventing the Planning Commission from recommending changes to sections that were not proposed for amendment by staff.

Dennis Schultz referred to 18.15.285(3) regarding fish and wildlife habitat conservation areas. In (3) it talked about "Areas that contain habitats and species of local importance". He asked where that was defined and what the species were. He thought it had gotten Thurston County into a lot of trouble and was too vague. Rachel McHugh stated that she would need to ask Josh Peters about the question. Henry Werch suggested that it could be revised to state "species of local importance as defined by ..."

Bud Schindler asked if the amendments in the other sections, outside of the wetlands section, were DOE mandates or how many were DCD generated. Rachel McHugh stated that the stream typing and buffers were from the DNR and the CMZ material was from DOE. Donna Frosthalm stated that the CMZ material was related to the Settlement Agreement.

Jim Hagen stated that the Second Settlement Agreement referred to the First Settlement Agreement. He asked if staff knew the language in the First Settlement Agreement, whether it made reference to following DOE guidelines on CMZs. He stated that he had never seen the First Settlement Agreement. Peter Downey offered the opinion that the CMZ material was fairly innocuous and it made a lot of sense.

D. ADJOURNMENT

Edel Sokol asked if the new commissioners had received a copy of the Trottier report. She stated that it showed that we did not have enough commercial and industrial land. It was agreed that the secretary would provide a copy to the new commissioners.

Jim Hagen stated that the county had kind of gotten isolated on the critical areas ordinance but it was still a holdover from our whole Comp Plan update. It was part of the goals and policies of the GMA and was not isolated from

that. To an extent, he thought we should consider the interaction between all the goals. While we were obligated to follow the Settlement Agreement, we were also obligated to follow the GMA. They all had to be consistent with each other and work in harmony with each other. This critical areas amendment did not have precedence in importance over other goals. He stated that just because this was a settlement agreement, it did not mean it was appeal proof. Therefore, we did have to consider the entire mandate of the GMA goals.

Henry Werch stated that his reading of most of what was proposed was actually providing support in most cases of a process that would make it easier for the landowner. But some of the things the commission had touched on at this meeting in terms of measurements, etc. deserved a discussion. He thought that in the end the commission would probably be very supportive, but there were some things the commission needed to have clarified.

Donna Frostholm referred to the exempt category for wetlands. She stated that the guidance from DOE was not exactly clear. They talked about 1,000 to 4,000 square feet as a possible exempt category. But a Category IV wetland did exceed that. While the DOE guidance was not definitive, she did find the vague DOE words that guided staff's proposal.

The commissioners discussed the agenda for the next meeting. It would be the continuation of the public hearing and possibly formulating the commission's recommendation on the critical areas issue. If the commission did not complete its recommendation, the commission would hold an additional meeting on June 28.

Several commissioners apologized to Ms. Frostholm for the tone of the discussion, stating that they were not "picking on" her and she should not take it personally. They thanked her for her help and knowledge of the issues.

The meeting was adjourned at 9:30 p.m.

E. APPROVAL OF MINUTES

These minutes were approved this _____ day of June, 2006.

Jim Hagen, Chair

Cheryl Halvorson, Secretary