Meeting reconvened from September 6, 2012 at 9:04 a.m. by Chair Mitchell Howard

ROLL CALL

Dean Enell, Val Hillers, Mitchell Howard, Leal Dickson, Jim Hall, Wayne Havens, Mike Joselyn.

Planning staff present: Robert Pederson – Director, Karen Stewart – Shoreline Master Program Update Coordinator.

Others present: David Pater – Department of Ecology, Mark Johnson, consultant for the County on the SMP update from Environmental Science Associates (ESA)

ITEMS FROM THE PUBLIC

No Comments

Continued Business:

Continued from Thursday, September 6, 2012:

Island County Shoreline Master Program Update

Shoreline Management Act of 1971
“…prevent the inherent harm in
an uncoordinated and piecemeal development of the state’s shorelines.”

RCW 90.58.020

Continued Public Hearing and deliberations on updated Shoreline Master Program
Planner Karen Stewart provided the Commission a handout for discussion:

**Expansion of Existing Residential Structures within Shoreline Setback**

Development in the shoreline setback may be allowed under ICC 17.05A where the area of a lot outside of the standard shoreline buffer, building setback, side setbacks, and any critical areas or buffer is less than 2,200 square feet. In most cases, buffer enhancement is required with such development.

**EXAMPLE 1**
- Existing structure outside of shoreline setback
- Buildable area < 2,200 square feet
- Expansion within shoreline setback allowed
- Expansion > 200 square feet
- Buffer enhancement required next to water

**EXAMPLE 2**
- Existing structure within shoreline setback
- Buildable area < 2,200 square feet
- Expansion within shoreline setback allowed
- Expansion < 200 square feet
- Buffer enhancement not required

**EXAMPLE 3**
- Existing structure within shoreline setback and buffer
- Buildable area < 2,200 square feet
- Expansion within shoreline setback allowed
- Expansion > 200 square feet
Ms. Stewart began by explaining the handout provided to the Commissioners was a document in response to public testimony as well as testimony from the Commission. The graphics will be used to illustrate to future staff reviewing shoreline applications, as well as assist the public now, as an aid to help visualize what the changes would be as proposed by the new regulations for residential development.

It is related to the setbacks and buffers from the Ordinary High Water Mark and relates to expansion of existing residential structures.

This document shows three different examples that were presented to the Commissioners in previous meetings, but have now been fine tuned and put in a size that is being proposed to be included directly within the Code.

Director Pederson added by imbedding it in the body of the language to illustrate how it works and how it is measured will eliminate the need to refer to an appendix, as has been done in the past, which will avoid confusion or the chance the appendix would get separated from the Code.

Ms. Stewart asked the Commission to keep in mind the example refers to existing residential structures and the expansion is also limited by the common line setback.

Commissioner Hall asked if in example # 2, where it shows no buffer enhancement is required, would an addition in this example require a variance.

Mr. Pederson replied that it would. He further stated this needed to be rechecked because if you are following the existing line of the building, that would be the established setback and under the current regulations it would require a variance.

Commissioner Hall stated this didn’t seem fair to him, it is penalizing the person who was choosing a smaller addition by requiring them to go through the variance process.

Mr. Pederson stated that was why he wanted to go back and check the language on this one.

Chair Howard asked Ms. Stewart what else was new.

Ms. Stewart Advised
- The Draft Cumulative Impact Analysis has been posted to the website
- The County has completed the SEPA review.

Chair Howard re-opened the hearing continued from September 6, 2012 for public comment.
Susan Bennett, 2191 Gossridge Rd., Freeland
Commented on:
- The Critical Area Ordinance as it relates to the Shoreline Master Program.

Mr. Pederson responded that this effort would not be a change to the Critical Areas Ordinance, Chapters 17.02 and 17.02A of Island County Code. As a result of court decisions and legislative action, the Shoreline Regulations would become the Critical Area Ordinances for the County within the shoreline jurisdictions of the County.

The one aspect still needing work is the Fish & Wildlife Habitat Conservation Area Ordinance and the consultant will be working on this aspect for the plan. The framework of this ordinance, as established by the Shoreline Master Program, will be spread across the rest of the landscape to match what is in the shoreline jurisdiction.

Ms. Stewart provided examples of how the consultants and staff have been attempting to address this issue. It is one of the major parts of Code that have been modified, such as in 17.05A.090. Section C, entitled Environmental Protection and Critical Areas and the added section of standards, related to critical saltwater habitats.

She also pointed out this draft is suggesting that for the shoreline areas the same mechanisms that are in place now will be kept, which are terms the Commission is familiar with, requiring Biological Site Assessment of what the features are that need to be protected in the area. The existing structure will be kept in place, but because there are new standards, it will be different.

She further explained that in part this is happening to update the Fish & Wildlife Habitat portions of the Code and in part in response to comments from Department of Ecology. They have a team of scientists that review the Master Program, including a wetland biologist.

Ms. Stewart directed the Commission’s attention to Table 3., which she felt was germane to the overall conversation. It is the minimum shoreline buffers, setbacks, lot width, and maximum impervious surface limits. The maximum impervious surface limits are not currently in Code. Looking at some of these mechanisms and dimensions that have been included within the table are new regulations to protect the fish and wildlife.
TABLE 3. Minimum Shoreline Buffers, Setbacks, Lot Widths, & Maximum Impervious Surface Limits

<table>
<thead>
<tr>
<th>Shoreline/Resource Type</th>
<th>Shoreline Environment Designation</th>
<th>N</th>
<th>RC</th>
<th>UC</th>
<th>SR</th>
<th>SRLG</th>
<th>HI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Marine buffer</td>
<td>measured landward from OHWM on marine shorelines (feet)</td>
<td>125</td>
<td>75</td>
<td>50</td>
<td>30</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>Lake buffer</td>
<td>measured landward from OHWM on lake shorelines (feet)</td>
<td>130</td>
<td>80</td>
<td>80</td>
<td>30</td>
<td>N/A</td>
<td>NA</td>
</tr>
<tr>
<td>Steep slope buffer</td>
<td>measured landward from top of bluff on marine shorelines with slopes greater than 40% (feet)</td>
<td>50</td>
<td>30</td>
<td>30</td>
<td>30</td>
<td>N/A</td>
<td>50</td>
</tr>
<tr>
<td>Steep slope buffer</td>
<td>measured landward from top of bluff on marine shorelines with exceptional feeder bluffs (feet)</td>
<td>50</td>
<td>50</td>
<td>50</td>
<td>30</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td></td>
<td>Setback, measured landward from the most landward of the required marine, lake, or steep slope buffer (feet)</td>
<td>25</td>
<td>25</td>
<td>25</td>
<td>45</td>
<td>40</td>
<td>20</td>
</tr>
<tr>
<td>Minimum lot width</td>
<td>(feet)</td>
<td>150</td>
<td>150</td>
<td>60</td>
<td>60</td>
<td>60</td>
<td>0</td>
</tr>
<tr>
<td>Maximum impervious</td>
<td>surface (percent of lot within shoreline jurisdiction)</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>30%</td>
<td>40%</td>
<td>80%</td>
</tr>
</tbody>
</table>

Environment Designations

N: Natural
RC: Rural Conservancy
UC: Urban Conservancy
SR: Shoreline Residential
SRLG: Shoreline Residential Lagoon Communities
HI: High Intensity

Note: The Aquatic designation does not have a minimum buffer or building setback.
Susan Bennett,

- Expressed Whidbey Audubon’s thanks to the Commission, Planning Director, and the Planner for such an immensely improved Shoreline Master Program. She stated they were only concerned with the legalities and the opportunity for lawsuits the County cannot afford.

Jeanne Hunsinger, 4639 Saratoga Rd., Langley

Commented on:

- 17.05A.100.F.2, Forest Practices, she requested this section be reviewed by the Planning Commission. After the May draft, F.2 was added and the distinction between how non-conversion and conversion forest practices became obscured. Not all forest practice Type IV permits are related to conversions.
  - The basis for much of the current Washington State regulations is the 1999 Fish and Forest Report, which was hammered out through an intense rigorous negotiation process which included the environmental representatives, the Department of Fish and Wildlife, the Indian Tribes, and the timber industry. Forest practice rules were developed with the forestry operations in mind. In contrast in Island County regulations were developed with commercial, residential, and agricultural uses in mind.
- Request to use the May version of the draft and abandon F.2.

F. Forest Practices

1. To be consistent with WAC 173-26-241(3)(e), the County shall rely on the Forest Practices Act (RCW 76.09), its implementing rules, and the 1999 Forest and Fish Report as adequate management of commercial forest uses within shoreline jurisdiction, except for forest conversion activities, and in shorelines of statewide significance.

2. Forest practice conversions and other Class IV-General forest practices, where there is a likelihood of conversion to non-forest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed’s hydrologic system.

3. When forest lands are converted to another use, there shall be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values such as navigation, recreation, or public access.

Mr. Pederson stated the topic needed some research and the Commission would be provided with some written materials. There is another policy issue regarding a provision in the law that the County has been asked to consider exercising, which is to declare the entire County as likely to convert. The impact of that is effectively that the County would become the responsible official for SEPA for Forest Practices within the County instead of DNR.

Discussion continued.
David Pater stated the inclusion of F.2 did come at the suggestion of DOE, but said it would be possible to include the recognition of Class IV conversions by supplementing F.3 and make it clear it is just for conversion and not for non-conversion.

- Ms. Hunsinger continued, stating that Mr. Erickson has been pushing for this County to be declared likely to convert, in order to control all the forest practices. She wanted to go on the record saying they have a tree farm between 950 – 1,000 acres and they are not at all in favor of this happening. The community around them likes having this tree farm.

**Pamela Hill, 6675 Wahl Rd. Freeland**  
Commented on:

- Her specific parcel and tidelands; approximately 365 feet of shoreline and over 20 acres of tideland. Mr. Halwig from the Department of Ecology in a letter dated February 1, 1995 stated this was one of the premiere natural shorelines on Whidbey Island. Based upon the habitat value she requested this property be changed to the Natural Designation from Natural Conservancy. The tidelands have a very high index for forage fish, the cove contains an exceptional feeder bluff, and the cove has a high forage fish suitability index.

**Dennis Gregoire, 5249 Raindrop Lane, Freeland representing the Port of South Whidbey**  
Commented on:

- Possession Point Park (map provided)
- Robinson Road public beach area with existing boat launch ramp (map provided)

  > He wanted these areas changed to Recreational Designation. He wants to protect the public access to the shoreline. The Port of South Whidbey was created by the citizens of South Whidbey to provide boating facilities to increase public access to waters of Puget Sound.

- The Inventory needs to reflect the nature of the ‘high energy’ conditions on Whidbey Island resulting from wind, current, tides, erosion bluffs, etc., and how this impacts the operation, maintenance, repairing, and improving of priority public access facilities, specifically boating facilities, including marinas and trailer boat launching ramps.
- Concerned about needing more time and would like to have a work shop with South Whidbey interests to review all of the documents before the Commission moves further.
- Normal repair and maintenance of public infrastructure (i.e. storm water drainage systems, shoreline protective structures for priority public access facilities).

Commissioner Enell stated he felt Mr. Gregoire is looking for some regulatory relief on maintaining the boat launch areas.
Matt Kukuk, 4530 Latham Way, Clinton
Commented on:

- The need for the port areas to have a special designation and then establish the types of uses permitted, different in that zone, tailored for their specific uses. In this manner they would not have to get a permit for simple repair or maintenance.
- The issue of repair and maintenance, if the areas needing repair equals too much area; it is treated as a new structure, which in some cases means that new structure would not be allowed. He found this to be a concern.
- Bulkhead, generally replacement is considered repair the method of repair. Concerned this falls into the same category as his previous comment.
- Wanted to know if there was going to be an easier process or an incentive for softshore armoring versus hard armoring.

Ms. Stewart replied that on page 27, the matrix indicates the incentive is the time of permit process. It is permitted across the board for non-structural which contrasts with structural.
- Concerned about the 3 year policy guideline from Ecology that a structure will be in imminent danger of erosion within 3 year as indicated by a geotech report. Retreat rates are defined in inches per year, yet a storm incident can take away 10 feet. He is concerned that if a homeowner has to wait until they can prove they are in imminent danger it will be too late for softshore armoring.

Mr. Pater from Ecology stated that in DOE’s guidelines on stabilization, it appears it is the structural stabilization that seems to focus more on demonstrating the need and he would look into the matter further. The stabilization section is the most challenging part of the guidelines to address within any SMP; they will take a second look and provide a little more clarity.
- Community needs more time to evaluate this and provide more input before the Planning Commission makes a decision.

Recess

Planning Commission comments:

Commissioner Havens asked if the new subdivision of more than 4 lots will require public access easement for a public beach or a private beach. This needs to be made clear; if it is going to a private beach it will cause problems.

David Pater stated that public access will be site specific; it may be on a bluff for example and the access would be to the view of the water. The requirement has been discussed within his agency from other jurisdictions expressing some of the same concerns. He stated he thought there was a bit more flexibility in some cases community access might be ok. It is also more appealing to smaller communities.
Commissioner Enell asked for more information on the Class IV forest practice permits. He felt a recreational district to allow the Port to provide recreation would be good. Softshore armoring early as opposed to hard armoring later when the structure is in imminent danger, he felt had value and should be looked at.

Commissioner Howard asked about NRCS standards and practices in regard to agriculture. There have been contradicting testimony regarding this topic and would like to know the facts.

Mr. Pater replied that any requirements or recommendations would apply to new agricultural practices since existing agriculture is exempt. He would look into this further.

Commissioner Hillers asked if there were State standards for BMP’s for aquaculture, stating the term BMP is widely used, but not very precise.

Mr. Pater agreed and replied that getting more specific about which BMP’s relate to what is a good idea. He stated he would discuss this with the water quality program at DOE.

Commissioner Hall asked about non-conforming structures and DOE’s presentation that stated the long term goal was that they would be eliminated in the future.

Mr. Pater replied the statement was overly broad. Legislation was passed as an indirect response to that presentation that does a better job of recognizing and continuing existence of non-conforming uses. The SMP guidelines don’t really deal with non-conforming uses, they rely on an older part of State law which details management of non-conforming uses. DOE encourages local governments to have non-conforming use standards. There is a degree of flexibility, to continuing these non-conforming uses in their current state. The key is not expanding and encroaching further into buffers and setbacks.

Commissioner Hall further stated that he wanted to know what flexibility the Planning Commission has to incorporate language in the SMP that assures the public their use of their property will not be restricted.

Mr. Pater replied there is the option of incorporating some generalized language to that effect within Shoreline Master Programs, but it doesn’t mean that the rest of the standards that have been in existence for many years under 173.7080 don’t apply.

Commissioner Dickson stated that during the public hearings he has heard the public comment stating that we are not addressing global warming, sea level rise, etc.; he felt a statement needs to be in the SMP with an expression of concern with perhaps a recommendation that it be addressed more specifically in the next update.
Ms. Stewart replied the State DOE has provided a handout related to sea level rise and it is covered in the Goals and Policies:

6. Sea level rise and increased frequency and magnitude of extreme storm events as a result of climate change should be taken into account when considering and evaluating shoreline uses.

Commissioner Enell stated he felt it should be expanded to include setbacks and anything which would be associated with loss of property due to sea level rise.

Mr. Pater stated there is some guidance on the topic, but the issue has not made it into the State SMP guideline requirements.

*Commissioner Dickson moved to adjourn for the day and continue these deliberations to September 25th, Commissioner Enell seconded, motion carried.*

Meeting adjourned at 12:04 p.m.

Respectfully submitted,

Paula Bradshaw