THURSTON COUNTY PLANNING COMMISSION

Minutes
May 4, 2005

1. Call to Order

Commissioner Kohlenberg called the special meeting of the Thurston County Planning Commission to order at 7:02 p.m. Everyone present provided self-introductions.

   a. Attendance

   Members Excused:  Joyce Roper, Craig Ottavelli, George Darkenwald, and Chris Lane.
   Staff Present:  John Sonnen, Nancy Pritchett, and Cheri Lindgren, Recording Secretary,
                  Puget Sound Meeting Services.
   Others:  Tom Cook

b. Approval of Agenda

Commissioner Cole moved, seconded by Commissioner Lyman, to approve the agenda as presented. All in favor. Motion carried.

2. Public Communication Not Associated For Topics That Have Not Been Docketed As Quasi-Judicial

There were no public comments.

3. Briefing: Critical Areas – Geologic Hazard Section
   Staff: Nancy Pritchett

The Planning Commission began its review of Geologic Hazard Areas with Table 6-1 on page 7 of the 12/29/04 draft.

Commissioner Lyman questioned the difference in standards between landslide and marine...
hazards for utility facility on page 8. Ms. Pritchett explained this was carried forward from the current ordinance. Additional protection is extended to marine bluffs in light of the possibility of habitat damage due to a slide.

Chair Kohlenberg stated that a utility facility should be prohibited in both types of the hazard areas. Commissioner Musser requested further clarification. Chair Kohlenberg explained it doesn’t seem likely a utility facility would be required within the critical area of a bluff. The Planning Commission agreed to prohibit utility facility in landslide and marine bluff hazards.

Commissioner Lyman referred to agricultural activities on page 7 and stated the general requirements as outlined in A on page 12 do not require an approval. If there are additional provisions that apply, those should be noted in the table. Ms. Pritchett stated staff will follow-up and ensure they are tied to a permit.

Chair Kohlenberg questioned how general requirements will be applied when there is no permitting process. Mr. Sonnen replied the key thing with conversion from a low intensity to a high intensity agricultural use is anything that could be of concern for a geologic hazard area. Chair Kohlenberg suggested drainage could be a concern. Mr. Sonnen said agricultural drainage is listed under drainage ditches. Beyond that, there could be stormwater facilities related to structures, which should be picked up under stormwater. Chair Kohlenberg stated she expected to see more in the erosion hazards section for activities related to agricultural practice. Mr. Sonnen confirmed staff will follow-up.

Commissioner Lyman asked why construction of agricultural drainage ditches is allowed in the erosion hazards area, and expansion and construction of existing roads are allowed in the landslide and marine bluff areas. Chair Kohlenberg said they may be designated areas but not hazards. Steep slopes are not always landslide hazards. Ms. Pritchett referred the Planning Commission to U 1 on page 28 which states, “Road alignments shall avoid landslide hazard areas and marine bluff areas and associated buffers, except where there is no alternative and safeguards will be employed to minimize the risk if slope failure and potential habitat degradation, consistent with a geological assessment.” A brief discussion of U 2 also on page 28 followed.

Ms. Pritchett reported current ordinance requirements were also carried forward for agricultural building, construction of stormwater retention/treatment facility, construction of temporary sediment control ponds, and construction of surface water conveyance system on page 9 for landslide and marine bluff hazard areas. The Planning Commission agreed the activities should be prohibited in landslide hazards as well. Ms. Pritchett reported there are references to “L” that will be corrected to “M” where applicable in the table.

Chair Kohlenberg asked if removal of wind throw trees will be added on page 10. Ms. Pritchett confirmed the addition.

Commissioner Lyman indicated there were other provisions for marine bluff hazards and asked whether those were incorporated within the applicable sections. Mr. Sonnen replied there is only
one section that pertains to hazard areas and it doesn’t address preventive measures to avoid wind throw. It could include selective limbing that wouldn’t affect the vitality of the tree. There are provisions for removal of hazard trees if there is an emergency. If it is not an emergency, an assessment will be made to determine appropriate measures. Commissioner Cole stated if a tree has branches that are hazardous, the tree shouldn’t be prohibited from being treated the same as a danger tree. Mr. Sonnen replied the section allows for minimal measures to prevent the hazard. If those are not sufficient, then the tree can be removed. The definition could include removal of defective branches as part of the hazard tree. Commissioner Lyman suggested vegetation language from marine bluff should be incorporated into landslide hazard areas. Mr. Sonnen stated staff will incorporate edits to ensure a consistent approach.

Chair Kohlenberg said she doesn’t believe the construction of a new well or on-site sewage disposal system should be permitted in either the landslide or marine bluff hazard areas. Commissioner Lyman indicated they are allowed only if there is no minimally sufficient area on the property outside the hazard area and/or buffer to accommodate the well. Chair Kohlenberg said she believed the reasonable use exception will address the scenario. Mr. Sonnen replied if there is no other way to accommodate the well or on-site sewage disposal system outside of the critical area, it will be allowed in the least impactive area.

Ms. Pritchett suggested item #2 on page 21 should be consistent with language in the riparian section.

Commissioner Lyman reported previous staff did not incorporate all of the language changes discussed by the subcommittee. Mr. Sonnen reported language related to important habitat and species within the marine section will be sent to members for review when staff has completed its work.

Discussion of reasonable use of property specific to the ability to construct a septic system outside of a critical area followed. Mr. Sonnen explained if a property owner is not allowed to develop a legally established lot, the county has to compensate the owner. It is up to the individual property owner to initiate a “taking” claim and the county could either settle or defend the decision.

Commissioner Lyman asked where replacement of the on-site septic system would be allowed as long as it was outside of the critical area. Chair Kohlenberg replied it is allowed in an area that is of the least impact to the hazard. Mr. Sonnen confirmed if the system needs to be replaced; it is required to be accomplished in the least impactful method. In most cases, it would be located outside of the hazard area.

Commissioner Lyman said she would like the language to clearly state that the on-site system is to be placed outside the critical area. If it’s impossible to stay outside of the critical area, then it will be constructed in the least impactive way. The Planning Commission agreed. Commissioner Paradise said it is not always necessary to completely replace a failed septic system. Commissioner Lyman stated she is referring to a replacement system.
Chair Kohlenberg suggesting replacing “may” with “shall” in section M on page 22.

Chair Kohlenberg questioned why some of the columns on page 10 of the table are blank. Ms. Pritchett replied “blank” means “not applicable.” Mr. Sonnen added “n/a” could be included in future revisions to avoid confusion.

Brief discussion of mine hazards along shorelines and shoreline protective structures followed. The Planning Commission agreed shoreline protective structures within mine hazards should be allowed subject to county review and approval. Mr. Sonnen stated staff will provide the applicable requirement under Section 17.15.730.

Discussion of the mineral extraction code ensued. Commissioner Lyman said it would be helpful if applicable language developed for the mineral extraction code could be included within the critical areas ordinance. Staff who worked on the mineral extraction code may have more knowledge of potential impacts. Mr. Sonnen explained that technical committees were asked to evaluate what they believe the hazards to be. A stakeholders group worked on the mineral extraction code, which may not be rooted in best available science (BAS). When an omission has been encountered that could potentially affect the stability of geologic hazard areas, staff has requested the technical subcommittee provide recommendations. Ms. Pritchett reported Tim Walsh with the Department of Natural Resources (DNR) has the expertise on geologic and mining hazard areas.

Chair Kohlenberg suggested prohibiting mineral extraction for both landslide and marine bluffs, and potentially for erosion hazards. Gravel mining is a dangerous activity as it impacts drainage that impacts slope stability. Mr. Sonnen reported intensive uses on the property that have the potential to affect critical areas require an assessment to determine the potential and give the approval authority the ability to mitigate the impacts. This could be treated similar to intensive uses elsewhere, and drainage implications could be assessed.

Discussion of prohibiting mineral extraction in volcanic hazards followed. Chair Kohlenberg suggested mineral extraction in volcanic hazards could be allowed subject to county review and approval under the geologic hazards chapter, and per applicable requirements under Section 17.15.730. Mr. Sonnen stated the most restrictive provision would apply.

Discussion of required review and approvals necessary for habitat enhancement/restoration followed. Chair Kohlenberg referred to item 3 on page 12, which states applications shall contain all information necessary. The section does not state where an applicant applies. Mr. Sonnen stated the administrative section explains an applicant is required to obtain a critical areas permit.

Commissioner Lyman questioned the reference to 14.38.050 under fill on page 11. Mr. Sonnen said the reference is in the building code. Commissioner Cole suggested adding “per the International Building Code.”

Chair Kohlenberg suggested the title of Table 6-1 should read: “Allowable Uses and Activities
in *Lots Containing* Geologic Hazard Areas.” Mr. Sonnen explained that on property where a critical area is located, specific assessments are completed to determine where the buffer is located. The regulations pertain to the buffer. Ms. Pritchett stated her notes reflect the title should read: “Allowable Uses and Activities in Geologic Hazard Areas and Associated Buffers.” The Planning Commission agreed.

Commissioner Lyman asked why the mine hazard column is blank for asphalt plants and cemeteries on page 11. Staff indicated they will follow-up and asked the Planning Commission to review all activities and determine if all are appropriate to include.

Commissioners and staff discussed item 1a on page 14 regarding authorization for emergency use. The Planning Commission concurred to retain the language as drafted.

Ms. Pritchett referred to item b. i. on page 16 and suggested clarifying that conversion harvest foresting applies to Class IV Forest Practice and Conversion Option Harvest Plan (or COHOP). These are the two forest practice permits the county regulates. Additionally, “are subject to review and approval by DNR” should be added between “permit” and “shall.”

Commissioner Cole asked if the section related to hazard trees will be added. Ms. Pritchett replied it will be added.

Commissioner Lyman referred to item 2. a. ii. on page 17 that states in part: “… Tree removal is allowed to eliminate hazard trees, to otherwise protect the integrity of the bluff, to provide pedestrian access to the beach, or to improve a view... In improving a view, non-hazard trees in excess of four inches DBH...” She said she has a concern with “to improve a view.” Additionally, the diameter of the tree shouldn’t matter. Trees perform a service in hazard areas and shouldn’t be removed to improve a view. Mr. Sonnen stated the issue is that owners of view properties want the view they paid for. The question is whether tree removal can be done without jeopardizing the stability of the slope. Commissioner Ottavelli previously suggested including language the City of Olympia has developed that any limbing performed will not jeopardize the survival of the tree. Commissioner Lyman indicated the section is addressing the removal of trees. Commissioner Paradise added tree topping destroys trees and should not be allowed. In response to a comment from Commissioner Cole, Mr. Sonnen stated the words “to avert a hazard” could be inserted between “removal” and “or.”

Commissioner Lyman said she is not opposed to thinning of the limbs but is opposed to thinning of the trees. Commissioner Paradise indicated she would like to see thinning of trees for a view corridor allowed with standards and supervision by an arborist. If it’s not allowed, the property owner will wait until the project has been completed and then thin the trees. Mr. Sonnen suggested requiring a geological assessment. Ms. Pritchett stated an engineer could determine soil stability and an arborist could determine whether the tree is viable.

Chair Kohlenberg suggested gardening for personal consumption should be defined. Removal of trees and perhaps gardening in the hazard area should not be allowed.
Commissioners and staff discussed who has the expertise to determine which trees could be removed for thinning purposes. Commissioners Cole and Paradise agree thinning should be allowed, but not removal of trees for view corridors. Commissioner Paradise stated she has seen people remove trees prior to obtaining a permit because they know it will not be allowed. Mr. Sonnen noted owners may be more willing to wait if they know ahead of time they can obtain expertise in creating view corridors.

Chair Kohlenberg suggested going forward with the proposed language. The issue can be revisited following input from the public hearings. Commissioner Paradise suggested language similar to allowing tree removal provided it doesn’t jeopardize the bluff. Commissioner Cole questioned how tree removal could be controlled if it is permitted. Ms. Pritchett suggested requiring review by a geotechnical professional and hydrologist. The Planning Commission agreed to permit tree limbing.

Commissioner Lyman indicated that if there are experts who can evaluate all of the factors and the county can depend on the expertise that the stability will not be compromised, she would be agreeable for allowing the removal of some trees. Otherwise, she is opposed. Mr. Sonnen suggested including an option providing for tree removal with geotechnical and hydrologist analysis. Commissioner Lyman requested staff ask the experts who could best provide this type of determination. The Commission concurred if such an expert exists, staff will include the option. Otherwise, no change to the language is requested.

Commissioner Lyman requested item 2 on page 18 should be revised to read in part as follows: “… unless the deck, porch, or patio is already covered by a legally existing, permanent roof structure…” Commissioners agreed with the proposal.

Commissioner Lyman referred to item 5 and suggested the last sentence should read, “The approval authority may prohibit intensification of a use if s/he determines that it would increase the hazard or the risk.” The Planning Commission concurred with the proposed language.

Commissioner Lyman referred to item H 1 on page 19 and asked for an interpretation for the phrase, “there is not minimally sufficient buildable area.” There was significant discussion of the 5,000 square foot requirement. Mr. Sonnen stated the Planning Commission previously discussed if there is confidence in the geotechnical professional with third party review, there isn’t a reason to require a minimum size. Commissioner Lyman said she wants to make clear the county is requiring the necessary expertise. Discussion of hold harmless clauses, disclaimers, and limitations provided in geotechnical reports followed. Chair Kohlenberg voiced agreement with Commissioner Lyman. The geotechnical professional should make statements without qualification.

Further discussion of minimally sufficient building area and 50-foot buffers followed. Chair Kohlenberg stated adjacent counties are not allowing encroachment into the buffer area without a reasonable use exception.

Commissioner Lyman requested copies of the tapes from the April 27, 2005 meeting.
Commissioner Cole said paragraph 1 under H is referring to replacement or relocation of nonconforming structures. Mr. Sonnen stated at the last meeting, the 5,000 square foot minimum was deleted. Also, if a geotechnical professional demonstrates it is absolutely safe, a buffer of less than 50 feet would be permitted. Under equal protection of the law, the owner of a non-conforming structure should be allowed to demonstrate the same thing.

Commissioner Lyman stated paragraph 2 under H is in direct contradiction with the marine habitat area. Chair Kohlenberg said the replacement referred to the whole structure. Mr. Sonnen replied it pertains only to the damaged section. A structure is defined as anything human built. Further discussion ensued. The Planning Commission agreed to strike item 2 in its entirety under H on page 19. Staff will review other changes that may be necessary in light of the language removal.

Chair Kohlenberg mentioned that the Edgewood and Pierce County ordinances have a much more detailed version of what should be provided in the assessment letter. She believes the more specific the county can be, the better. Mr. Sonnen suggested members work together and flag the issues the Commission would like staff to consider for the next meeting.

Ms. Pritchett explained Pierce County’s engineering staff developed the assessment letter criteria. County staff was concerned about requiring the same level of detail, as it doesn’t have staff with the same expertise that will be reviewing the engineering reports. Chair Kohlenberg said it’s preferable to be specific and let the engineers know what the county wants to see. The third party reviewer then understands what should be included.

Commissioner Lyman indicated if the county doesn’t know what it’s asking for, there may be things that should have been required that weren’t. The more requirements that can be listed on paper, the better.

Chair Kohlenberg shared her viewpoint that the engineers will provide only the minimum of information required. Mr. Sonnen said there is a provision in the administrative section that states the approval authority can waive report requirements if they are not necessary for a particular situation. Chair Kohlenberg said she will work with staff to further develop detailed assessment letter requirements. She added the City of Edgewood was very concerned about impacts to adjacent properties.

Ms. Pritchett referred to the minimum buildable area references on page 21 and whether they should be deleted if the geotechnical report determines the site is buildable. Chair Kohlenberg asked what if the report documents no building should occur in the buffer area. Mr. Sonnen stated a reasonable use permit would apply. There is a suggested 1,500 square foot ground floor limit on the size of a residential occupancy. The Planning Commission should evaluate if this makes sense for all types of critical areas.

Commissioners and staff discussed subdivision of land, whether existing lots and lots that haven’t been subdivided will be treated the same, and cumulative impacts. Commissioner
Lyman said her concern is beyond the scope of reviewing one project. County staff has relayed to her that the county cannot compel the property or project to consider cumulative impacts. The county can only compel the applicant to consider impacts specific to the project. A project in isolation may not create a significant hazard. However, cumulatively if there are a number of projects over a period of time, that may have a significant impact. The county has no mechanism to consider the cumulative impacts, which is her fundamental concern.

Mr. Sonnen clarified under existing regulations; the county has limited ability to consider cumulative impacts. He is not aware of anything that would preclude the Planning Commission from including language requiring cumulative impacts of a project to be addressed. Staff will check with legal counsel and follow-up. Commissioners expressed interest in developing language requiring cumulative impacts to be addressed.

Ms. Pritchett referred to item #5 under general requirements, which states, “Avoid increased threat to adjacent properties. Development in geologic hazard areas shall be designed so it does not increase the threat of the geologic hazard to adjacent properties beyond predevelopment conditions.” Chair Kohlenberg suggested the county should enact a minimum buffer that cannot be encroached upon. Vegetation and trees within the buffer are critical.

Commissioner Lyman stated she would like to see new language related to key issues for the next meeting.

Commissioner Lyman reported she will e-mail her questions to staff. One issue of concern is the conveyance of stormwater as discussed on page 22. There is no discussion included about mitigation of impacts from conveyed water.

Staff and Commissioners reviewed the May 18, 2005 meeting agenda.

5. **Staff Updates**  
*Staff: John Sonnen*

- Jennifer Hayes has been promoted to Senior Planner as of May 4, 2005. The Associate Planner position has been advertised and closes on May 20, 2005.

- Attorney Allen Miller is in the process of drafting a response to the Growth Management Hearings Board appeal from Future Wise.

- Staff and Commissioners briefly discussed e-mails submitted related to members’ involvement in the Capital Facilities Plan process.

- Staff is interested in soliciting input from the Planning Commission concerning its comfort level with details provided in the minutes. Commissioner Lyman indicated she has no issues with the content of the minutes, but is concerned about the timing of when minutes are provided to the Commission. Chair Kohlenberg said she likes the additional detail. Mr. Sonnen confirmed he will follow-up with staff on the availability of minutes.
6. **Calendar**

Who will not attend the following upcoming Planning Commission meetings?

1. **May 18, 2005 – Briefing:** Critical Areas – Administrative sections/follow up.
2. **May 25, 2005 – Briefing:** Open space application. Briefing: Critical Areas – Follow up (Commissioner Cole will not be attending).
3. **June 1, 2005 – Hearing/action:** Open space application. Briefing: Critical Areas – Follow up (Commissioner Cole will not be attending).

7. **Adjourn**

Chair Kohlenberg adjourned the meeting at 9:30 p.m.

Liz Kohlenberg, Chair  
Tom Cole, Vice Chair

Prepared by: Cheri Lindgren, Recording Secretary, Amended May 18, 2005  
Puget Sound Meeting Services