

# MINUTES

## KITSAP COUNTY PLANNING COMMISSION PUBLIC HEARING June 14, 2005

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The Kitsap County Planning Commission met on the above-stated date at the Eagle's Nest Conference Center, 1195 Fairgrounds Rd, Bremerton, Washington 98311. Members Present: Tom Nevins, Michael Gustavson, Deborah Flynn, Monty Mahan, John Ahl, Lary Coppola, John Taylor and Dean Jenniges. Member Absent: None. Staff Present: Eric Baker, Jim Bolger, Dave Greetham, Patty Charnas and Planning Commission Secretary Holly Anderson. Nine citizens from the public were in attendance.

9:00 AM

A. Chair Monty Mahan called the meeting to Order and introduced the Planning Commission members present.

A.1 Announcement - At the Board of County Commissioners' public meeting on June 27, 2005, Commissioner Lent will be appointing Frank Mahaffay to fill the position vacated by Mark Flynn on the Kitsap County Planning Commission.

9:05 A.M.

### Approval of Minutes

B. May 10, 2005 and May 24, 2005 Minutes

Deborah Flynn submitted some comments and recommended changes, via email, to Chair Mahan and Holly Anderson. Anderson made changes based on correct terminology for motions made in formal minutes and on concurrence from legal counsel, Jennifer Forbes. A motion was made by Deborah Flynn and seconded Dean Jenniges that the minutes of May 10, 2005 be approved. THE VOTE: 5-3. Motion carried. John Taylor will be submitting an addendum to be attached to the minutes stating he intended to vote against removing the word "morals" from the ordinance.

1 Discussion continued regarding the Code amendment for Urban Low  
2 Minimum Lot Width, having both a substantive and procedural issue. The  
3 resulting vote on May 24, 2004 was a tie, 3 for and 3 against to change the  
4 lot width size countywide from 60 to 40 in Urban Low zones. Therefore  
5 there is no recommendation made to the Board of County Commissioners.

6  
7 Deborah Flynn said the substantive issue pertains to a question asked of  
8 Eric Baker regarding the minimum lot width for Urban Medium and Urban  
9 High. Baker's response at the time was that there was no standard. Her  
10 point is that there is a standard of 60 feet for both zones. Further on in the  
11 discussion, another motion was made to adjust minimum lot size in the  
12 Urban Medium zones to 40 feet from 60 feet. In essence, the Urban  
13 Medium is reduced because the Urban Low was reduced, making these  
14 two zones consistent. However, the fact is that no recommendation was  
15 made because of the tie. Finally, the information given prior to voting on  
16 Urban Low was incorrect because, in fact, there is a standard. Upon  
17 determining that Urban Medium has a 60-foot lot requirement as well, it  
18 seems as though there has been some misinformation and that it might be  
19 a good idea to revisit this particular Code amendment.

20  
21 Dean Jenniges explained his rationale that 60 feet would be preferable  
22 since ramblers are more popular on today's market.

23  
24 It was decided that Chair Mahan and Deborah Flynn would meet with Eric  
25 Baker to see if this issue can be resolved.\*\*

26  
27 A motion was made by Dean Jenniges and seconded by Tom Nevins that  
28 the minutes of May 24, 2005 be approved. THE VOTE: Motion carried  
29 unanimously.

30  
31 **C. Work/Study**

32  
33 **1. Fish and Wildlife Conservation Area section of the**  
34 **recently released CAO (CAO), second draft**

35  
36 Eric Baker – Brought the Planning Commission up to date on the Critical  
37 Areas Ordinance discussion. An excerpt from the Critical Areas  
38 Ordinance on the Fish and Wildlife Habitat section was distributed to the  
39 Commission.

40

- 1 • Michael Gustavson – Asked about definitions and other items  
2 needing clarification and was told these would be discussed at the  
3 next Planning Commission meeting on June 28, 2005.

4  
5 Patty Charnas – Department of Community Development staff, gave a  
6 PowerPoint presentation on the above-referenced section (Chapter  
7 10.300) of the Kitsap County Code. She began by illustrating on a large  
8 map several specific fish and wildlife habitat areas. These habitats are  
9 vulnerable to loss and degradation through human activities and are  
10 therefore a significant component of Kitsap County’s Comprehensive Plan  
11 and Countywide Planning Policies. Charnas’ presentation included  
12 discussion of proposed revisions to the classification, the development  
13 standards and supporting science for the revisions. First of all, a review of  
14 the revisions shows stream revisions adopting the new State rating of a  
15 classification system from the old 1 through 5, which was primarily based  
16 on flow, to the current “S” classifications or Shorelines of Statewide  
17 Significance, fish bearing and non-fish bearing but flow either year around  
18 or only seasonally. Also shown are the proposed buffer changes.  
19 Charnas continued illustrating changes from the 1998 ordinances,  
20 discussing subcategories under Saltwater and Lake Shoreline Designation  
21 and comparing the buffer width between 1998 ordinance and proposed  
22 2005 draft. She noted there was only one change in the Conservancy  
23 designation. Many of the 2005 proposed changes are driven by the  
24 cooperative, Best Available Science process, conducted both by the  
25 County’s Technical Review Committee and information from citizens  
26 subsequent to the Committee process. Riparian areas provide important  
27 habitat functions for fish productivity, survival and to assist in recovery of  
28 imperiled salmon stocks. Plants stabilize banks and prevent erosion and  
29 sedimentation and approximately 85% of birds and mammals of all sizes,  
30 at some point, use riparian areas for their essential life activities. Charnas  
31 displayed a newspaper article discussing the status of Washington  
32 waterways, some of which are improving while others are not. The article  
33 published by the Associated Press mentions Kitsap County as having  
34 some waterways that are improving while others are not. The County is  
35 working cooperatively with the State and other agencies to address the  
36 cleanup issues. Of key importance is a paragraph noting unbuffered  
37 stream corridor development diminishes riparian shade causing a  
38 detrimental impact. Charnas continued on with a bar chart indicating  
39 buffer widths needed to protect stream functions. Much of the scientific  
40 data was conducted in steep slope forestland areas where the  
41 environmental conditions are entirely different than lowland, urbanizing

1 areas such as Kitsap County. The data shown was reproduced from a  
2 Puget Sound lowland stream riparian Best Available Science review  
3 showing the range of buffer widths necessary to protect certain stream  
4 functions from the lower end, between 30 and 50 feet, all the way to 700  
5 feet for certain species of wildlife. Using this chart as a reference and  
6 overlaying Kitsap County's range of buffers, staff believes Kitsap County  
7 stream buffers provide for the broadest range of function and not just  
8 protection of one function over another.

9

10 Dave Greetham - Reviewed the next bar chart addressing stream and  
11 shoreline buffer flexibility, which also includes lakes and shorelines. He  
12 noted that some buffers are recommended to be increased. Staff has  
13 made every effort to build in flexibility with the buffers called Habitat  
14 Management Plan. This is a plan to determine what a property owner can  
15 do on site using flexible buffer widths. As with wetlands, this could include  
16 removing invasive species from the buffers, planting native vegetation and  
17 correcting past invasive practices such as storm water pipes directing run-  
18 off into a stream. This can be removed and possibly mitigated with riprap  
19 rock. These are some ways to reduce a buffer. Buffer reduction occurs  
20 when a property owner cannot meet the standard buffer width. Reduction,  
21 if need is proven, avoids applying for a variance through a public hearing  
22 process. In summary, staff is proposing a 50% administrative buffer width  
23 reduction through a Habitat Management Plan. If it is still not possible to  
24 meet this reduction, the variance process will be necessary. The Plan  
25 allows much flexibility before a variance becomes necessary. Staff or a  
26 qualified consultant can prepare the Plan and site-specific habitat  
27 conditions will help determine permit conditions.

28

29 • Jenniges – Thinks the County has increased everything by 50% and  
30 is now proposing a variance to bring it back to the original. Asked  
31 why a variance is not used from the original setback to bring it back  
32 further. Best Available Science also states that most sediment is  
33 mitigated within the first 30 meters from a stream. Also, wants  
34 further clarification of the large map and specific areas of concern.

35

36 • Greetham – Pointed out that anything with a bank more than ten feet in  
37 height, a 25-foot non-clearing buffer is permitted back from that. This also  
38 applies in ravines that can be found in many places in West Kitsap County  
39 in some of the more rural areas. Next, he addressed Jenniges' comment  
40 about first increasing then reducing buffers, Greetham said the proposed  
41 buffers were addressed by Charnas on the previous slide explaining buffer

1 widths to protect stream functions. Although some may not agree, this is  
2 what staff is recommending in an attempt to balance the goals. That being  
3 said, staff still recognizes that best science is what exists on each specific  
4 site. This is why an additional 25% has been added from the existing  
5 Code. The new draft ordinance allows for increased flexibility, site  
6 specifically. Greetham then further explained the large map as a  
7 compilation of all building limitations based on input from State agencies.  
8 Separate versions can be provided for the Planning Commission  
9 members.\*\* He identified the color codes and what they represent. The  
10 map does not show the proposed buffers being discussed today. He  
11 explained the process beginning with submitting an application and how  
12 the individual maps distributed at the last Planning Commission meeting  
13 are used to clarify what has previously been mapped. Buffers are already  
14 depicted on the site plan submitted with the permit request. Buffer widths  
15 can be shown on the large map with an additional overlay and can be  
16 provided at the next Planning Commission meeting.\*\*

17  
18 Charnas – Explained the final slide showing the remaining categories of  
19 Habitat Conservation Areas. These are not necessarily associated with  
20 aquatic eco systems and are called Class I and Class II Wildlife  
21 Conservation Areas. These may include eagle nests and heron rookeries.  
22 Class I areas have been mapped and documented. When an application  
23 affects these areas, a Habitat Management Plan is required to assist in the  
24 decision-making process. Class II areas may require a Plan.

25  
26 Greetham – To clarify what this means on a day-to-day basis, an example  
27 would be Class I, bald eagle, Class II, Heron rookeries and Osprey and  
28 there are not that many of these in Kitsap County. Bald eagle is the most  
29 common and a process has been developed with the Department of Fish  
30 and Wildlife (WDFW). The WDFW has allowed the Department of  
31 Community Development a one page plan that if the landowner agrees to  
32 it, they do not have to connect with the WDFW or prepare a site-specific  
33 plan. This moves an application through the process fairly fast. However,  
34 if the landowner does not agree with this plan, the Department of  
35 Community Development puts them in touch with WDFW so they can work  
36 through the issues of contention to develop an individual site-specific plan  
37 for eagle protection. These issues do not come up very often.

38  
39 Charnas – Concluded the brief overview by the Department and was  
40 prepared to respond to any questions or clarifications from the Planning  
41 Commission members. She noted that Eric Baker already addressed the

1 Departments envisioned next steps at the previous Planning Commission  
2 meeting.

- 3
- 4 • Jenniges – Mentioned specific streams coming from a plateau area  
5 of about 200 feet above sea level. Specifically he addressed Big  
6 Beef Creek which floods, runs down to Lake Symington, then down  
7 through a valley out into Seabeck. He asked what part of this  
8 environment is not effectively protected with current regulations.

9

10 Greetham – When a steep ravine exists, the buffer is 25 feet from the toe  
11 of the slope. That will not change. Lake Symington is so large that if a  
12 150-foot buffer is proposed, in most cases the 25 feet from top of slope is  
13 much larger than the 150 feet would be from the stream itself.

- 14
- 15 • Jenniges – When the dam was constructed in Lake Symington, it  
16 increased the flow of water from the lake that then undercut property  
17 causing a person's home to be declared unlivable. With this in mind,  
18 he asked why the landowner in this situation was not compensated  
19 for his loss.

20

21 Greetham – Is familiar with this case that has been in litigation for years. It  
22 involves a house sitting in the bend of a big stream and in such a situation,  
23 nature wants to eat away at the toe of the slope. The debate is how much  
24 of this situation was caused by the dam. This proposed Code would not  
25 affect this either way because that house was built prior to the County  
26 having a Critical Areas Ordinance and built closer to the stream than what  
27 would be allowed under current regulations.

- 28
- 29 • Jenniges – Referenced Big Beef Harbor and asked how the  
30 proposed regulations would correct a problem there. Thinks this was  
31 a natural occurrence.

32

33 Greetham - The buffers are so large there that the slopes will naturally fail  
34 in some areas on the road. The proposed Code changes are an attempt  
35 to address new development that does not exacerbate any existing natural  
36 issues. He referenced some specific cases where slides occur and homes  
37 are in jeopardy because they are built too close to the bank. Slides are a  
38 natural occurrence and staff is attempting to prevent additional sediment to  
39 water and prevent additional shading that should be retained.

40

- 1       • Jenniges – Next referenced Blackjack Creek and the depletion of  
2       Chum salmon over the years.

3

4       Greetham – Much of the area adjacent to Blackjack has been converted to  
5       farmland. In his fieldwork, he notes where animals roam the stream banks  
6       and choke out the gravel that the salmon need. Fish can still get through  
7       the water without the gravel.

8

- 9       • Jenniges – When larger farms were in production, fish were plentiful  
10       and there were no buffers. These farms no longer exist, everything  
11       is overgrown with natural vegetation and there are no fish. He  
12       believes the natural state at some point overtakes the productivity  
13       and enhancement of a stream.

14

15       Greetham – This debate involves science papers and how much of an  
16       affect natural buffers have on protecting the fish. When vegetation is  
17       removed from a creek area, the temperature increases causing problems  
18       for the fish. Asked Jenniges if his question was whether or not the newly  
19       proposed ordinance will do anything to further protect fish.

20

21       Jim Bolger – Statutorily the State dictates that the County considers  
22       anadromous fisheries in the Critical Areas Ordinance and Comprehensive  
23       Plan. The other consideration is over-fishing being one reason why the  
24       fish numbers have declined over time. It could also be a question of  
25       habitat degradation over time. Quantifying these numbers on individual  
26       systems is very difficult because it is most likely a combination of many  
27       factors. Ocean conditions are cyclic, sometimes favorable and sometimes  
28       not so favorable to fish. Patterns of food supply and temperatures change  
29       as well. It is not usually a matter of one specific factor but a number of  
30       factors that contribute to degradation in the number of fish returning to  
31       streams. A change in land use can be seen over time in the Blackjack  
32       Creek region, going from agricultural use to more urbanization. This  
33       creates new challenges that need to be mitigated such as storm water  
34       runoff, a leading problem for water degradation in the country at this time.  
35       There really is no one answer to this problem.

36

- 37       • Jenniges – Asked why the County is dictating a specific buffer  
38       distance as beneficial when the only information available is  
39       theoretical-based science.

40

1 Bolger – Reviewed the slide showing some natural functions the buffer  
2 areas provide to the stream systems. Staff tries to look at all functions and  
3 combine because ignoring other functions cannot isolate an individual  
4 function that needs protection. This is why staff has determined through  
5 review of Best Available Science that the numbers being proposed in the  
6 second draft are numbers that probably most adequately address  
7 protection of the largest number of functions associated with these  
8 systems.

- 9
- 10 • Jenniges – His point is that staff is dealing with Best Available  
11 Science and what he is speaking to is the character of these areas  
12 through the years based on personal knowledge. It seems that with  
13 all of the current and proposed protections, things are worse than in  
14 the past.
  - 15
  - 16 • Flynn – Prior to the existence of farms and population, there  
17 probably were fish in the streams too. It takes a long time for things  
18 to degrade and the correction process also takes a long time.

19

20 Greetham – Explained some jargon used. One meaning the logs that fall  
21 into the stream. This is one thing that slows down the velocity of the  
22 streams and helps prevent downstream cowering.

- 23
- 24 • Coppola – Since over-fishing has been a problem in the past, he  
25 asked if gillnet fishing at the mouth of the streams is being  
26 addressed.

27

28 Greetham – The County cannot address this, it is under the jurisdiction of  
29 the State Department of Fish and Wildlife (SDFW). The Critical Areas  
30 Ordinance does not hit this issue at all.

- 31
- 32 • Coppola – Asked if the County should and Bolger stated that the  
33 counties have no management authority over fishery stocks that are  
34 between the State and the Tribes. Over-fishing is not acknowledged  
35 as the problem but is a contributing factor.

36

37 Bolger – The Tribes and the State have implemented fishing regulations  
38 and reduced fishing especially on Endangered Fishing Act listed stock;  
39 specifically, Puget Sound Chinook and Hood Canal Summer Chum. Gill  
40 netting is identified as being one of the most selective fishing methods,

1 where only healthy stocks are targeted. Gorst Creek as an example is  
2 areas where hatchery supplementation is occurring.

- 3
- 4 • Coppola – Not convinced this is absolutely accurate. He then asked  
5 what happens to existing structures inside the proposed buffers after  
6 buffers are implemented.

7

8 Greetham – Any structure already existing is a grandfathered use. If it  
9 burns down, replacement can expand by 20% parallel to or away from the  
10 critical area and according to the zoning code. If someone wants to  
11 expand his or her dwelling beyond the 20%, the Habitat Management Plan  
12 comes into play. A trade-off such as replanting with native vegetation  
13 might be one solution for increasing beyond the 20%.

- 14
- 15 • Flynn – Asked for further clarification of the Water Type-2005 draft  
16 letter designations in Charnas' presentation.

17

18 Greetham – For years the State has had a 1 through 5-stream  
19 classification system, one being the largest. Now the Department of  
20 Natural Resources (DNR) is now using a plain English system so what  
21 was Type 1, is now S for the largest ones or shorelines or streams that  
22 would retain the 200-foot buffers. The previous types 2 and 3 are now F  
23 for fish bearing streams, the previous Type 4 or year around streams with  
24 no fish are now Np for Non-fish Perennial streams or year around with no  
25 fish and lastly the seasonal streams are now Ns or Non-Fish Seasonal.  
26 There are now four categories instead of 5 classifications. The major  
27 change being proposed between the old and the new is to eliminate the  
28 special treatment for the listed species stream unless they are the highest  
29 value streams, or the S's. A more simplified version is being proposed of  
30 50 and 150 in most cases with the 50% flexibility allowance with the  
31 Habitat Plan.

32

33 Bolger – A stream may have several water types associated with it  
34 depending on where one is in the stream system. The lower reaches may  
35 be a type S but upstream may drop back to an F or even an N moving  
36 further upstream. It is clear that one category does not necessarily  
37 categorize the entire stream.

38

39 Greetham – During the previous roundtable discussion, Coppola had  
40 asked why Type 5's are being proposed to increase, meaning seasonal  
41 streams from 25 to 50. One suggestion was that if the Type 5 go directly

1 into Puget Sound, why not keep them at 25 but if they go to a fish stream  
2 where more impact would be realized, possibly 50 would be more  
3 appropriate in this case. This is something for consideration and has been  
4 done by other jurisdictions.

- 5
- 6 • Flynn – Page 74, under Class I, Wildlife Habitat Conservation Area  
7 Standards, questioned the meanings of within ranges and habitat  
8 elements of Class I. She does not think the public will understand  
9 this either.

10

11 Greetham – Staff can work on clarification of the language. Basically, if it  
12 is on the map and identified by WDFW or some other source, then it is  
13 within the range element. Staff relates it as being within 200 feet under  
14 the existing Code and 250 under the new recommended Code. This is  
15 range for activity around for instance, a heron rookery; Class II.

- 16
- 17 • Flynn – There is something in the standards stating that all new  
18 development within ranges of habitat elements of Class I wildlife  
19 habitat. She did not understand the meaning of “within ranges” and  
20 “habitat elements of Class I” and how someone will know what that is  
21 when reading the regulations.

22

23 Greetham – WDFW updates maps used in the Department. If staff spots  
24 activity within 800 feet of an eagle’s nest or within 200 feet of anything  
25 else, WDFW is contacted. He will attempt to clarify the language Flynn  
26 questions to make it clear for the reader. He will also discuss the revised  
27 language with his colleagues to determine clarity.\*\*

- 28
- 29 • Flynn – The public needs to be able to read the regulations and  
30 understand what is required of them. Next Flynn asked a question  
31 about pesticides, fertilizers and herbicides on page 75. It states  
32 these may be used in WDFW conservation areas or their buffers.  
33 But it also states that these items may not be used except if  
34 approved by the EPA or the DOE. It appears to state the obvious.

35

36 Greetham – The Department does not usually know when this occurs but  
37 when it does take place within a buffer area and staff is made aware, it  
38 then has this language for reference.

- 39
- 40 • Jenniges – Also asked about these chemicals. If EPA states these  
41 pesticides can be used freely by air but if on the ground, only have to

1 worry about 40 feet, then why is government so worried about  
2 citizens managing their land out 200 feet. Thinks conflicting data  
3 exists that will create confusion and he has a document that states  
4 Kitsap County does not have any endangered species.

5

6 • Chair Mahan – Thinks the question is if a known pesticide is found  
7 within a buffer area, will the County’s Code Enforcement division  
8 enforce this violation or will it be referred to another agency.

9

10 Greetham – In a case he personally dealt with, he visited the landowner  
11 who voluntarily agreed to stop using pesticides in the buffer.

12

13 Baker – Code Enforcement has issued letters to people using non-EPA or  
14 DOE pesticides into a stream buffer. The grass survived without the  
15 pesticides. With County Code, if it is worth enforcing, believes it is best  
16 enforced by Kitsap County rather than a larger entity with conflicting goals.

17

18 • Gustavson – Entered photos into the record showing what Kitsap  
19 County Public Works is currently doing with broad-spectrum  
20 herbicidal sprays in waterways. Pictures are current, taken only four  
21 days ago.

22

23 Greetham – County Roads need to be consistent with regulations  
24 implemented by the Board of County Commissioners regarding buffer  
25 protection.

26

27 Bolger – Kitsap County has adopted a regional road maintenance plan in  
28 compliance with the ESA and he agrees that perceptions exist that the  
29 County Public Works is acting counter to what the citizens are being asked  
30 to do relative to pesticide and herbicides.

31

32 • Gustavson – Has paper he interprets to indicate that Kitsap County  
33 is exempt.

34

35 Greetham – For the Code, the aforementioned chemicals need to be  
36 avoided in buffer areas. If there is a way to clarify this, staff will do so.  
37 The Code does prohibit the use of chemicals in buffer areas. Confirmed  
38 that Gustavson is proposing the Code no longer prohibit use of chemicals  
39 in buffer areas because the County is not required to do so, according to a  
40 document he has. In response to Jenniges’ comment about unlisted ESA  
41 species in Kitsap County, Greetham said the County is no longer focusing

1 buffers on whether there is a listing or not, therefore this would become a  
2 moot point.

- 3
- 4 • Flynn – Pages 76 and 77 discusses trail uses. Appears to be too  
5 restrictive to not allow trails along streams, wetlands or ponds  
6 because it is a buffer. Expressed concern about disallowing streams  
7 within buffers.

8

9 Greetham – In staff’s current draft, trails are proposed. The intent of this  
10 language is to limit trails to a fairly moderate width. Item 4, stating where  
11 trails are allowed within buffers, trails should be allowed in the outer  
12 portion of the buffer, a minimum of 25 feet from the stream edge, except  
13 where a stream crossing point has been approved. This allows for a  
14 moderate strip of vegetation, with rooting capabilities and shading along  
15 the streams. There is no problem with trails within buffers.

16

17 Baker – Asked what language indicates trails are disallowed in buffers.

- 18
- 19 • Chair Mahan – Number one at bottom of page 76, would lead one to  
20 the conclusion that number 4 indicates this possibility.

21

22 Baker – Opening statement takes this option down to the point of provision  
23 for trails within buffers.

24

25 Greetham – Clarified that there is no intent on part of staff to limit or  
26 eliminate trails in buffers and if there is language that needs to be clarified  
27 to make this point clearer, staff will be happy to make changes.

- 28
- 29 • Flynn – Quoted number 4 as stating, “. . . Trails shall generally be  
30 located outside of the buffer and where they are permitted . . .” which  
31 suggests that streams as a rule will be located outside of a buffer.  
32 His would continue on to include the perception that if a landowner  
33 wants a trail next to or near a stream, they would need to approach  
34 the County for special approval. This seems to be over restrictive.

35

36 Baker – This is a good point relative to trails within buffers.

37

38 Greetham – Staff will attempt to clarify language on this issue to clearly  
39 indicate that trails are allowed within buffers.\*\*

40

1 • Coppola – Noted that the draft does not state either how trails are  
2 permitted inside of buffers.

3

4 Greetham – Staff will come back with recommended language.\*\* any  
5 concerns can be addressed on site.

6

7 • Nevins – Addressed statement where it says a function of the  
8 wetlands or streams can be eradicated with a trail. This needs to be  
9 clarified. Wished to discuss the pesticide issue to make a specific  
10 change. If changes are made, wants a full discussion.\*\*

11

12 • Chair Mahan – Assumed this discussion will take place at the  
13 session after next where specific changes are proposed for  
14 recommendation. This is a work/study.

15

16 Baker – The work/study sessions scheduled for the Critical Areas  
17 Ordinance are intended to document suggested changes and then  
18 presented to the Board of County Commissioners in the form of an errata  
19 sheet prior to the joint public hearing.

20

21 • Chair Mahan – Suspects that the use of pesticides and herbicides  
22 will take much time for discussion.

23

24 Baker – Anticipates the next work/study will be to consider the aquifer, etc.  
25 followed by everything else remaining. The last session should take up at  
26 least  $\frac{3}{4}$  of the meeting.

27

28 • Taylor – Asked for the sequence that the critical areas will go  
29 through and was told by Chair Mahan that this will be discussed  
30 later.

31

32 Bolger – Addressed an earlier comment made by Gustavson regarding the  
33 map and the USDA exemption. There is a footnote stating that, “ , , , the  
34 court ordered buffer zones apply to any estuary that is habitat or  
35 threatened or endangered . . .ESU (Evolutionary Significant Unit).” It also  
36 says that Streamnet (the data base that establishes the maps) does not  
37 identify estuary areas. One could look at the mouths of virtually held to the  
38 requirements of the EPA’s pesticide restrictions.

39

40 • Gustavson – This says that Public Works can spray them but  
41 citizens cannot.

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- Mahan – Said that Public Works may not be the appropriate target.
- Gustavson – Asked where a representative of Public Works was at the Planning Commission meetings since he believes they are the largest violators of what the CAO is attempting to fix.

Baker – Staff will check into this but cannot guarantee that Public Works is using harmful chemicals.\*\*

**BREAK**

- Chair Mahan – Asked that Baker give the Planning Commission members a quick overview and then continue the presentation.

Baker – Reviewed the remaining process for the ordinance. Following completion of today’s section, at the next meeting Part 3 will include the remaining portions of the Code not yet addressed as well as residual issues from the wetlands and stream sections. Following that, staff will be holding concurrent work/study sessions with the Board of County Commissioners during late June, early July. Next step will then be a joint public hearing with the Board of County Commissioners and the Planning Commission for the public to comment on the second public draft. At this public hearing, the second public draft will be presented along with an errata sheet (supplement) that is a table listing all issues changed for clarity. Examples would be questions asked today regarding pesticides, trails, etc. Various citizens and groups have presented issues for clarification and will be documented on the errata sheet. He emphasized this will not be a new draft, but a supplement only. Following the public hearing, he anticipates a number of possibly back-to-back Planning Commission meetings or even additional joint public hearings with the Board. The public hearings will most likely be held in the evenings. This will enable all public testimony to be heard and allow for progress toward deliberation and a final decision on the Critical Areas Ordinance. No dates have yet been set.

- Ahl – Asked for clarification on the joint public hearings followed by more Board stand-alone hearings.

1 Baker – Confirmed that the Board will hold a stand-alone hearing on the  
2 Planning Commission’s recommendations.

- 3  
4 • Jenniges – Received criticism on daytime hearings because  
5 everyone works during the day. Asked if there was any solution to  
6 this issue.

7  
8 Baker – On major issues such as the Critical Areas Ordinance, all joint  
9 public hearings will be held in the evenings.

- 10  
11 • Gustavson – Question whether staff will legitimately be able to allow  
12 adequate public participation on an issue as large as the Critical  
13 Areas Ordinance.

14  
15 Baker – This is an issue that needs further discussion.

- 16  
17 • Jenniges – Thinks this could be as huge as the “Farm” ordinance.  
18 This also dramatically affects people’s land. He has significant  
19 problem with buffers and believes the citizens will as well.  
20 Encouraged staff to start at 0 and work up instead of starting at 200  
21 and working down and to read through all Best Available Science.

22  
23 Baker - Planning Commission members will be provided with as much  
24 detail and information as possible. A significant amount of research has  
25 been conducted on Best Available Science received. Opinions with back  
26 up have been furnished from both points of view.

- 27  
28 • Chair Mahan – There is currently a Critical Areas Ordinance in affect  
29 that County staff works from as it applies to land use applications.  
30 The Planning Commission and County Department of Community  
31 Development staff is now working together to make changes to  
32 these regulations. Any significant ordinance will become more  
33 intense as decision time approaches. Everyone will not be happy  
34 with the outcome, however it is incumbent on the staff and Planning  
35 Commission to continue to move forward and make adjustments as  
36 necessary. The opportunities for large consensus building  
37 discussions are dissipating as the majority vote resolution of the  
38 ordinance is approaching.

- 39  
40 • Jenniges – Sees no flexibility. When talking about the final decision  
41 that people need to live by, he questioned how the perception that

1 citizens are not getting a fair voice in this matter is going to be  
2 resolved.

- 3
- 4 • Chair Mahan – Believes it is incumbent on the Planning Commission  
5 to make every attempt to adjust the language as best can be and  
6 make it as palatable as possible then have faith in the Board of  
7 County Commissioners to do their work at the final decision time.  
8 There will not be a consensus change. Not interested in elongating  
9 this process into two or more weeks to re-hear what arguments has  
10 already been heard.

- 11
- 12 • Jenniges – This is a personal property issue as well as an  
13 acceptability issue on the part of property owners and he doesn't  
14 believe that the current Best Available Science has considered this.  
15 It looks at the big picture on Best Available Science that will work,  
16 however science is theoretical in nature.

- 17
- 18 • Chair Mahan – Planning Commission' job is to advise and it is then  
19 in the hands of the Commissioners to act.

- 20
- 21 • Taylor – Asked about critical area issues in the cities, Bainbridge  
22 Island in particular. This ordinance seems to be the most volatile  
23 issue to come before the citizens in Kitsap County in a very long  
24 time. Looking back in time, this type of matter brings out the public.  
25 He asked staff what can be done to make the process more  
26 peaceful.

27

28 Baker – It will be a difficult issue for all reasons presented here today.  
29 Private property rights, investments, retirements are all at issue in this  
30 decision. On the flip side of this, is the protection of our natural resources  
31 for our children and our children's children, etc. The fairest way to  
32 approach this, as staff has always tried to do, is to consider testimony from  
33 all points of view, make the necessary adjustments keeping within the  
34 dictate of the Growth Management Act and then continue to work with the  
35 public on implementation. He emphasized that the State of Washington  
36 requires that counties complete a review of their Critical Areas Ordinances  
37 and that the best, Best Available Science, is being considered. Concern  
38 over impact to individual citizens' properties is always a difficult process for  
39 the decision makers.

40

1 • Taylor – Thinks it needs to be made very clear to the public that this  
2 process is mandated by the State and it is the State to which they  
3 should be taking their issues.

4

5 • Coppola – Thinks this is true and also thinks that the most volatile  
6 issue is Best Available Science and that it has the least credibility  
7 with the general public and perhaps some of the Planning  
8 Commission members. He sees it as twofold: A) Questioning the  
9 need for the entire process; and B) What constitutes Best Available  
10 Science. Staff needs to address the credibility issue of what  
11 constitutes Best Available Science and needs assistance in  
12 defending this process to the general public.

13

14 • Gustavson – The mandate that the Planning Commission and staff  
15 are working under is to review and update. It does state to increase  
16 or anything other than review and update.

17

18 • Nevins – Planning Commission's role is to also consider Best  
19 Available Science and wished to add the people have different views  
20 on what is best in Best Available Science.

21

22 Baker – Wishes Best Available Science was exact but it is not. Staff has  
23 looked at all variables to best protect and facilitate the interconnectivity of  
24 all issues as a whole.

25

26 • Gustavson – Noted on the map that zero buffers is not covered and  
27 the public will not like that. He suggested the chart is not expansive  
28 enough and that staff include zero buffers. Skagit County has zero  
29 buffers.

30

31 Bolger – Does not agree that Skagit County's zero buffers consider Best  
32 Available Science. He is not aware of what was used.

33

34 • Gustavson – Their ordinance held up in court. Might want to explain  
35 to Kitsap County citizens that other counties do have zero buffers.

36

37 • Chair Mahan – Suggested identifying extremes on both sides of the  
38 table.

39

40 Baker – Said that Skagit County has designated commercial, agricultural  
41 lands as opposed to Kitsap County having no commercial agricultural

1 lands. The current ordinance in Kitsap does have what would be termed  
2 zero buffers for historically utilized agricultural land. For instance  
3 throughout Olalla and Big Valley where there are no buffers on the  
4 streams are still allowed as grandfathered uses and he believes Skagit  
5 County's ordinance speaks to the historical use of land as agricultural.  
6 Many of Skagit County's streams are man-made. At Gustavson's request,  
7 Baker agreed to review the Skagit County case at public hearing.\*\*

8  
9 Greetham – Clarified that Skagit agricultural land is indeed grandfathered  
10 land. He also noted that the introductory chapter of Kitsap County's draft  
11 ordinance hits all historic grandfathered uses that will be reviewed at the  
12 next work/study on June 28.

- 13
- 14 • Jenniges – Kitsap County has a lot of tree farming that wasn't  
15 mentioned in the agricultural discussion.
  - 16
  - 17 • Flynn – Clarified what Baker said in that Kitsap County doesn't have  
18 any designated commercial agricultural lands.
  - 19
  - 20 • Jenniges – The County does have harvesting which is agricultural.  
21 Tree farming is a multi-million dollar industry and the property  
22 owners in these cases are very concerned about the proposed buffer  
23 requirements.
  - 24
  - 25 • Flynn – If the merits of zero buffering are to be discussed at the  
26 public hearing(s), the merits of the 656-foot buffer should also be  
27 mentioned. Everything should be brought out. Believes it beneficial  
28 that the Planning Commission goes a long way to project neutrality  
29 during the public hearing and therefore not bring up personal  
30 opinions and comments. The Planning Commission needs to really  
31 listen with an open mind and heart and try to understand what the  
32 citizens are saying and their perspective on things.
  - 33
  - 34 • Coppola – Asked if the County has done any calculations on the  
35 value of the land that will be going away from landowners.
  - 36

37 Baker – Have not looked at value but have looked at the number of lots  
38 that would be impacted and additional acres. Value would be tough to  
39 calculate based on current market conditions. Staff can provide  
40 information about the number of additional lots and acres.

41

1 • Coppola – Asked to see a dollar range.  
2  
3 • Chair Mahan – Some is lost already under current regulations.  
4  
5 Baker – Could possibly take it on a gross perspective, look at dollar value  
6 per acre for a rough estimate.\*\*

7  
8 • Nevins – Difficult to put value on functions. Understands if a specific  
9 amount of land is impacted, just not sure there isn't a way to show  
10 no decrease in value to a citizen. Determining value of wetlands is a  
11 very difficult undertaking.

12  
13 Greetham – Biggest hit to value is on the larger parcels containing  
14 wetlands that can be subdivided.

15  
16 Baker – There is a certain value depending on views, etc.

17  
18 • Gustavson – Suggesting consulting the Assessor for value of parcels  
19 per acre. Looking at the average of 100-foot buffer with 15-foot  
20 setbacks, he calculated that the total amount of property taken is  
21 valued at \$2 billion. It is no wonder people get upset about this  
22 issue. Gustavson continued with specific comments on the  
23 document Beginning with page 69, paragraph .305, suggesting that  
24 the wording be changed to quote court decisions that describe “no  
25 harm” to species, not taking away habitat. There are now court  
26 cases that allow construction within a habitat as long as there is no  
27 harm, no harm being defined as killing.

28  
29 • Chair Mahan – Understands that “No net loss” is also mentioned in  
30 the GMA that sends this guidance down to the counties.

31  
32 • Gustavson – The courts have both been strong in determining “no  
33 harm” and the State Supreme Court has also been very strong in the  
34 same direction. All the mentioned court cases follow this same  
35 thought line.

36  
37 Greetham – The State mandates what the County is to consider at this  
38 point. Thinks staff needs to consult the Deputy Prosecutor on this issue.\*\*

39  
40 • Chair Mahan – Is philosophically with staff.

41

- 1 • Gustavson - Next, page 70, line 5, regarding Open Space Tax  
2 Program should be Tax Incentive Program. He is working from the  
3 large version of the entire ordinance. He cannot review excerpt  
4 submitted on a meeting day and keep up. On page 70, line 26, there  
5 appears to be a conflict in definition of ponds and lakes; as he reads  
6 it ponds are less than and lakes are more than 20 acres in size. This  
7 is stated in the definitions and then interchanged throughout the  
8 document. Need to be consistent. Still on page 70, line 43, Habitat  
9 Conservation Areas, who identifies habitat and species of local  
10 importance.

11  
12 Greetham – Staff has completed a process to identify these but will clarify  
13 further.\*\*

- 14  
15 • Gustavson - Page 71, line 4, in middle of line, again identified by  
16 whom. Lines 23 and 28 of page 71, he has a serious problem with  
17 the term “Natural Vegetation” when hybrid vegetation can achieve  
18 the same function. “Natural or equivalent” would work. A classic  
19 example is the native vs. a hybrid rhododendron. They look the  
20 same to birds and fish. Confused on page 72, with the term  
21 Shorelines. Asked if this includes saltwater as well as lakes. Asked  
22 tat this please be clarified.

23 •  
24 Greetham – It does include lakes over 20 acres in size. Gustavson  
25 thanked Greetham, but thought this should be reflected in the document .  
26 Page 73, line 37, again the term “Native Vegetation” needs to be clarified.  
27 Same page, line 38, Calls for a 38-foot setback at the toe of a slope. He  
28 seriously questions rationale for this with the exception of a Geotech’s  
29 report being the driving force. Does not know if 25 feet on toe of bank has  
30 any impact on riparian areas or habit and thinks it to be an arbitrary  
31 number.

32  
33 Greetham offered to clarify this in the draft.\*\*

- 34  
35 • Gustavson - Page 74, paragraph 9, line 8, which carries through  
36 within the document. He has problems with this in that as the  
37 Planning Commission proceeds forward with justification for making  
38 buffers larger or smaller, buffer notice to title; strong exception to  
39 notice to title throughout the document. As the justification for  
40 buffers goes forward making them smaller or larger over time, the  
41 Notice to Title will cloud the title. It may be that the requirements

1 have changed but the notice will not have changed. Therefore he  
2 takes strong exception to this language and thinks it is improper  
3 treatment of people's property. Understands logic but has serious  
4 problem with a person getting his property taken in his mind and in  
5 the mind of the purchaser.

6

7 Greetham – Had many problems with this issue early on with a purchaser  
8 stating they didn't know. Needs to be looked at as a policy decision and  
9 that if buffer widths do change in the future, for instance in Kitsap County a  
10 buffer is reduced in size, then that new buffer could substitute whatever  
11 was reported prior to change of title.

12

- 13 • Gustavson – Staff may be able to change the verbiage in the future,  
14 relative to buffer width changes, then the new language could be  
15 transferred to notice of title. However, the way it reads now is a  
16 fixed boundary.

17

- 18 • Chair Mahan – Asked if recorded notice has to explain the width at  
19 the time of recording.

20

21 Greetham – Currently a reference is made to notify the land purchaser  
22 than there is a permanent critical areas land buffer on the property. It  
23 would have to go back to building permit file or title papers, if passed on, to  
24 identify the buffer.

25

- 26 • Gustavson – Because he will be out of town and miss the next  
27 meeting, he referenced page 113, Appendix E, line 40.

28

- 29 • Taylor – Also concerned about Notice to Title.

30

31 Greetham – It is in the Procedures Section, Section 100. None-the-less he  
32 will check this issue out and report back to the Planning Commission.\*\*

33

34

- 35 • Taylor –Understands the importance of correct information given to a  
36 purchaser or landowner. Like a computer, once information is input,  
37 it is very difficult to remove.

38

- 39 • Ahl – After asking if this was a part of the existing regulations he was  
40 told this has been in effect since 1994. Ahl then questioned if it will

1 be such a drastic change since the concept has been in effect for 11  
2 years.

3

4 • Gustavson – It may not be but he still would like the County to review  
5 the language.\*\* On Page 113, line 40, he referenced the wording,  
6 “As their free and voluntary act.” In fact, property owners are being  
7 held hostage in that in order to obtain their building permit, they must  
8 sign the document. This is not free and voluntary in his mind.

9

10 • Chair Mahan – Asked staff to check on this but was not sure the  
11 Planning Commission has the authority to change such language,\*\*

12

13 • Gustavson – Page 75 states that “Stream crossings require  
14 bottomless culverts” is an odd statement. The answer should be the  
15 County is proceeding on this.

16

17 Greetham – Concept of bottomless culverts is that one is less likely to  
18 disturb the gravel bed in streams.

19

20 • Gustavson - Page 75, line 34, the phrase “Native Vegetation”  
21 again. Same page, lines 45 – 47, feels strongly that if the use of  
22 chemicals was prohibited within the buffers, made the buffers quite  
23 small, wild life would be abundant. He asked staff how many  
24 existing homes have been removed from the habitat buffer area for  
25 eagle’s nests. He asked what happened to the eagle population in  
26 Kitsap County over the past 20-30 years. What things in this  
27 document would have caused this to happen?

28

29 Greetham – Without the State’s Fish and Wildlife Department’s eagle  
30 expert representatives being present, he could not give a definitive  
31 response. He did say that what the County does do is protect perching  
32 trees and limits activity near known nests.

33

34 • Gustavson – Listed an example of protecting eagle habitats within  
35 buffer areas.

36

37 Greetham – State has lifted some restrictions for instance because of the  
38 increase in Eagle’s nests. Construction timing has been removed and it is  
39 no just a matter of maintaining the habitat. – Will bring copy to next  
40 meeting.\*\*

41

- 1           • Gustavson - Page 77, line 41, “Herron rookeries and nesting sites.”  
2           He asked Greetham to turn to page 96, line 36 -41 and read it out  
3           loud.

4

5 Greetham – Read as follows, “These recommendations in the Department  
6 of Fish and Wildlife compared to habitat recommendations and species  
7 management recommendations to May 1991, shall not serve as  
8 mandatory standards or policy of this title, until such time as the  
9 Department of Fish and Wildlife holds public hearings on the  
10 recommendations and the State Wildlife endorses the recommendations  
11 following public hearings.”

12

- 13           • Gustavson – Pointed out that the conditions of the Washington  
14 State Administrative Code (WAC). Just above that however, it  
15 states that the conditions of the Washington State Administrative  
16 Code (WACs) do apply. The reference section lists the Great Blue  
17 Herron in this area. That document cannot be used from what  
18 Greetham just said. In the WAC, the Herron is not listed.

19

20 Greetham – The Herron is a State monitored species. He will provide a  
21 copy for Gustavson.\*\* Staff does not rely on buffers in the priority habitat  
22 just referenced by Gustavson.

23

- 24           • Gustavson – Based on the excerpt read by Greetham, he  
25 suggested removing this section completely and since it is currently  
26 not referenced at all. Again this is page 96 but is also referenced  
27 many times in the Critical Areas Ordinance. He read a list of many  
28 suspected violators of the environment, which in some cases did  
29 not turn out to be harmful.

30

- 31           • Flynn – Not clear what this has to do with the issue at hand.

32

- 33           • Gustavson – His point is that he is having problems justifying the  
34 science behind what staff has justified as Best Available Science .  
35 He wants to be sure the County is on firm ground and that it the  
36 decision of the Critical Areas Ordinance will hold up in court.

37

- 38           • Nevins – Things mentioned by Gustavson should be left as is until  
39 the entire Planning Commission has the opportunity to discuss.

40

- 1           • Flynn – At last meeting John Ahl recommended tying the affected  
2 land based on the Critical Areas Ordinance criteria, into open space  
3 program.  
4
- 5           • Greetham - Staff is scheduling a meeting with the Assessor on this  
6 issue. Hope to have a response for the Planning Commission at  
7 next meeting. In summary, this would be automatic as opposed to  
8 application to set aside land in the Open Space program.  
9
- 10          • Ahl – Asked what relieve is being considered.  
11
- 12          • Chair Mahan – The County does not have the capability yet to  
13 create an automatic transfer of land based on the Critical Areas  
14 Ordinance decision.  
15
- 16          • Ahl – Seems fair that the County’s taxpayers should share in the  
17 cost of this. That being said, there are certain land configurations  
18 that would not be safe to include in the Open Space Program.  
19
- 20          • Jenniges – Expressed concern about hypocritical practices on filling  
21 of one area thus killing everything there just because the proposed  
22 activity is proposed at another site. Point is that if wetlands are so  
23 important, why fill them in the first place.  
24
- 25          • Chair Mahan – Mitigation banking is a discussion that should  
26 happen, but not at this meeting.  
27
- 28          • Gustavson – Expressed concern over the “Reach of Government.”  
29 How far does the reach go and at what point are you beholding to  
30 the government. Looks like the United States is heading towards a  
31 totalitarian state, which is when property owners get upset.  
32 Governments exist to protect an individual’s property. As military  
33 personnel for 35 years, he vowed to protect country against  
34 enemies both foreign and domestic. If they are not doing this,  
35 government is not needed.  
36
- 37 Greetham – Reminded the Planning Commission members that the  
38 County is mandated to do this by State law.  
39  
40

**D. Miscellaneous Updates from the Department of  
Community Development**

Jim Bolger noted the hiring of Scott Diener as the new Community Planning Manager.

Subarea planning process – Staff has a process to receive reclassification requests by subareas. Pt orchard/SK Subarea Community Advisory Group voted to move the applications for Reclassification forward to the Planning Commission for recommendation. Meetings will be scheduled for individuals to state their case.

The next group of Reclassification Applications will be for the Kingston Subarea Plan, Phase II.

Taylor – two items for the chair

1. Volunteered to shorten the Rules and Procedures to fit on one page on the back of the agenda. Nevins suggested it be a separate document. Holly was asked to complete this task with Taylor prior to the upcoming joint public hearings.
2. Needs a more complete description on the agenda of items for consideration at Planning Commission.

**11:45 AM - No further business being heard, a motion was made by Deborah Flynn and seconded by John Taylor that the meeting adjourn. Motion carried unanimously.**

**APPROVED AND DATED this \_\_\_\_\_ of \_\_\_\_\_ 2005.**

\_\_\_\_\_  
**Monty Mahan, Chair**

\_\_\_\_\_  
**Holly Anderson, Secretary**

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**EXHIBITS**

- A. June 23, 2005 Agenda
- B. Kitsap County Critical Areas Ordinance Title 19 Kitsap County Code, Second Draft – Fish and Wildlife Habitat Conservation Areas (Chapter 19.300) dated May 17, 2005
- C. Kitsap County Critical Areas Ordinance – Second Draft, May 17, 2005, Fish and Wildlife Habitat Conservation Areas (Chapter 19.300) Supplemental
- D. 8"x10" colored photographs of natural vegetation alongside a wetland area
- E. Legal Notice for June 14, 2005 Planning Commission meeting