

MINUTES

KITSAP COUNTY PLANNING COMMISSION PUBLIC HEARING June 28, 2005

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, Monty Mahan, Lary Coppola, John Taylor, Frank Mahaffay, Deborah Flynn and Dean Jenniges. Member Absent: Mike Gustavson and John Ahl. Staff Present: Eric Baker, Jim Bolger, Scott Diener, Dave Greetham, Patty Charnas, Arnica MacCarthy, and Acting Planning Commission Secretary Brynan Pierce. Eleven 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 including new member from Central Kitsap, Frank Mahaffay. Chair Mahan welcomed Mahaffay to the Planning Commission.

Chair Mahan adjusted the agenda, first noting that item C4is continued to the next Planning Commission meeting.

9:05 A.M.

Approval of Minutes

B. June 14 Minutes

A motion was made by Tom Nevins and seconded by Deborah Flynn that the minutes of June 14, 2005 be approved. THE VOTE: Motion carried unanimously.

C. Work/Study

1 Review and discussion of the Second Draft of the revised Critical
2 Areas Ordinance. The specific areas of discussion are proposed
3 regulations applying to:

- 4 . Geologically Hazardous Areas (19.400),
- 5 . Frequently Flooded Areas (19.500) and
- 6 . Critical Aquifers (19.600) sections.

7
8 **Eric Baker – Introduced Scott Diener as the new Manager of**
9 **Community Planning noting that Diener will be responsible for the**
10 **subarea plans coming forward this year.**

11
12 **Diener - Looking forward to working with the Planning Commission**
13 **and hopes to personally meet every member as quickly as possible.**

14
15 **Baker - Informed the Planning Commission of Renee Beam is leaving**
16 **her position as Shoreline Administrator for the County and joining**
17 **the Peace Corp. Baker invited the Planning Commission members to**
18 **a farewell gathering at the courthouse tomorrow.**

19
20 **Baker - This is part three of a four-part work/study schedule to**
21 **discuss the Critical Areas Ordinance Second Public Draft. Today's**
22 **discussion will include: Critical Aquifers, Frequently Flooded Areas,**
23 **Geologically Hazardous Areas and the Definitions and Process**
24 **Areas of the current Code. Part four that is scheduled for the next**
25 **Planning Commission meeting on July 12, 2005, will be a catch-all of**
26 **remaining issued related to the Critical Areas Ordinance.**

27
28 **Patty Charnas – Addressed the Frequently Flooded Areas (19.500).**
29 **She briefly explained this section of the ordinance, as staff handed**
30 **out a hard copy of a slide presentation prepared for today's**
31 **discussion. Charnas presented a brief overview of sections of stand-**
32 **alone subject matter in the ordinance needing additional clarification;**
33 **namely, wetlands and fish and wildlife section. The balance of the**
34 **ordinance not yet presented to the Planning Commission will be**
35 **addressed at this work/study session and it bears repeating that**
36 **Kitsap County is required to update and revise its Critical Areas**
37 **Ordinance pursuant to the Growth Management Act (GMA). The**
38 **update process is to be cooperative and based on Best Available**
39 **Science (BAS). She referenced page two that identified sections to**
40 **be discussed today. First, Section 400, Geologically Hazardous**

1 Areas, page 3. Staff has updated classification categories of
2 Geologically Hazardous areas to go from Geologically Hazardous
3 areas and areas of concern to the more straightforward high versus
4 moderate. The classification criterion remains the same, specifically
5 percent slope present, soil type and other geological characteristics.
6 Language clarifying view thinning is also included in this chapter.
7 The document incorporates by reference language addressing
8 recently approved data and revisions from 2002. For example,
9 Title15 of the Kitsap County Code, Flood Hazard Areas Ordinance
10 includes consideration for anadromous fish where appropriate.

- 11
- 12 • Jenniges - Questioned the specific area in the photograph
13 being used in the presentation and was told it was the Chico
14 area.
- 15

16 Charnas – Proposed revisions to the Critical Aquifer Recharge
17 section, are confined to improvements made in mapping techniques.
18 Staff is now using light distancing and radar for lidar mapping to
19 assist in identifying water bearing surface geology to better identify
20 critical aquifer recharge areas. The draft ordinance proposes an
21 expanded zone of influence for proposed activities that may threaten
22 groundwater. The requirement for a hydro-geological force that
23 could threaten these and other activities remains the same as the
24 current ordinance. The final three sections are procedural in nature.
25 Chapter 100, the Introduction and Approval Procedures, remains the
26 principle guidance on permit application, review and processing with
27 respect to critical areas. Further, the procedures on reasonable use
28 exceptions and variances remain mostly unchanged with the
29 exception of improvements made to land use applications.
30 Expanding the zone of consideration for critical areas is proposed to
31 change from 200 feet to 250 feet. The second draft proposes to
32 extract and specifically enumerate all words, terms and phrases used
33 in the definition section. Obsolete and unused words, terms and
34 phrases have been removed. Certain terminology has been updated
35 to be more aligned with statutes and administrative rules and specific
36 attention has been given to those definitions that detail specialties
37 called out in special report; namely, licensed geologists, hydro-
38 geologists, wetland specialists, fisheries biologists and wildlife
39 biologists. Lastly, Chapter 700, Special Reports, again provides
40 more detailed guidance when certain thresholds are met or triggered
41 for special reports. Improvements and updates have been made to

1 reflect those improvements to the Wetlands section and also to the
2 Habitat Management Plan. These constitute the balance of the
3 proposed amendments.
4

5 Dave Greetham – Offered to go through each chapter for the Planning
6 Commission members or respond to any questions. He reiterated
7 Charnas’ reference to the 200 vs. 250-foot zone of consideration for
8 critical areas. He noted this is not a buffer but a net of review for
9 something within that distance of a critical area, a closer review must
10 be conducted. The 250 reflect the fact that 250 feet is the largest
11 buffer available under the proposed code for category one wetlands.
12

- 13 • Lary Coppola – On behalf of Commissioner Michael Gustavson
14 who was unable to attend this meeting, Coppola read several
15 comments and suggested edits into the record.
16

17 Dave Greetham – Agreed to respond to the questions as they were
18 asked and Coppola would read the suggested edits into the record.
19

- 20 • Coppola – Gustavson questioned why Geological Hazardous
21 Areas, page 80, was considered part of the proposed Critical
22 Areas Ordinance. He thinks it belongs in the Building Code and
23 should be deleted from this ordinance.
24

25 Dave Greetham –The State Growth Management Act identified the
26 Geological Hazardous Areas as one of five areas that local
27 jurisdictions have to include in the Critical Areas Ordinance. The
28 Building Code does address seismic hazards and some basic
29 building setbacks. What it does not get at is site- specific local
30 geologically hazardous areas. It is too generic in scope.
31

- 32 • Coppola – Line 11, same page, Greetham already explained.
33 Page 81, again questioned the 250 feet, already explained. Page
34 82, line 12, Areas of Moderate Geological Hazard, native
35 vegetation buffer. Gustavson questioned why it has to be
36 native. Addressed statement that the Department may decrease
37 the setback and Gustavson asked, based on what, Geotech’s
38 report or degreed scientist report. In other words, who decides
39 if the Department may decrease setbacks and what is the
40 decision based on.
41

1 Greetham - The Department of Community Development has a
2 buffer, building setback modification section in this chapter. The
3 geological and geotechnical report determines the reduced setback.
4 Staff sets starting points and the report reduces if applicable.

- 5
- 6 • Coppola – Believes Gustavson’s concern is that if dealing with
7 Best Available Science, he wants assurance that scientists, not
8 technicians, are making the decisions.

9 •

10 Greetham – The State now has licensed geologists as well as
11 engineers with a specialty in technical evaluation. This draft
12 attempts to clarify that in the definition section.

- 13
- 14 • Coppola – Page 82, Toe of Slope Building Setback,
15 construction within 200 feet, Gustavson asks why so much and
16 what supports this? He thinks it should be deleted and asked if
17 a building will fall down or the slope fail?

18

19 Greetham – The Toe of Slope Setback is challenging since there is no
20 concrete number to use that fits all toe of slope situations. He gave
21 an example on Bainbridge Island where a house slid and people lost
22 their lives. The Building Code only had a very small setback
23 requirement of 20 feet maximum. In the reference example, 20 feet
24 was not enough. The new draft language is intended to allow review
25 of site-specific maps and other data available, case-by-case, and
26 enable staff to determine if a larger setback is warranted. If deleted,
27 there would be no other guidance tool other than the very minimum
28 setbacks required in the Building Code. The 200 feet is the area of
29 review. If a structure is proposed within 200 feet of the toe of the
30 slope, then the application is open for review of conditions in the
31 200-foot area. Beyond 200 feet, it is not cycled through the shoreline
32 section of the Department for review.

- 33
- 34 • Coppola – D.2, page 82, Vegetation Removal, Gustavson does
35 not thing the sentence, “Total buffer thinning shall not exceed
36 twenty-five percent.” Gustavson does not think this has
37 anything to do with critical areas.

38

39 Greetham – Staff is trying to provide guidance for a reasonable
40 amount of buffer removal while still maintaining a slope with stability
41 along the shorelines. In no way is this language attempting to

1 prevent joining views on shoreline properties. This can also be
2 reviewed with the geological site-specific report. If the geologist
3 says it is okay to remove 50 or 75%, then that falls under the site-
4 specific recommendation under this Code. This falls under Critical
5 Areas because it deals with stability of slopes on shorelines.

- 6
7 • Chair Mahan – Asked if the guidance received from the State
8 enable the Critical Areas Ordinance to consider safety for
9 dwellings. He believes this is the underlying issue.

10
11 Greetham – This is more for view thinning but section 100 does
12 address dangerous tree removal. Public safety is part of this. The
13 intent of this chapter in the Critical Areas Ordinance is to enhance or
14 protect public safety.

- 15
16 • Deborah Flynn – If vegetation removal can increase erosion it
17 can also be a problem for water resources. Relative to the
18 section under discussion, she questioned ability to enforce
19 regulations. Has witnessed several incidences where people
20 are clearing areas along the shoreline. A person doesn't have
21 to obtain a permit unless they are performing some type of
22 specified activity.

23
24 Greetham – Zoning Code Enforcement division of the Department of
25 Community Development deals with these situations daily.
26 Complaint calls are received in the Department followed by site
27 inspections and conversations with landowners. When a person
28 applies for a building permit, the buffers are clearly defined.
29 Homeowners who have been on the site for a very long time perform
30 often-unauthorized clearing.

- 31
32 • Jenniges – Talking about opening up views as opposed to the
33 geological aspect. Thinks the question is why are these issues
34 addressed in the Critical Areas Ordinance when they are
35 already covered in other public ordinance.

36
37 Greetham – If the underlying intent of the Code is safety of the slope
38 and to prevent erosion into waterways, how much view thinning can
39 occur on the slope and still maintain the natural functions while
40 respecting the homeowner's view. Staff is attempting to achieve this

1 balance. This number can be changed but a guideline needs to be
2 established because of on-going view clearing activities.

- 3
4 • Coppola – If it is just guidance, then it should be rewarded.

5
6 Eric Baker – Goal is to protect the health of trees that pull a
7 significant amount of water from the soil. If a point is reached where
8 a tree is no longer draining the soil and is unhealthy, then it becomes
9 weight on the slope. These recommendations are trying to maintain
10 integrity of trees on the slope and protect the view.

11
12 Greetham – Also trying to produce something to allow staff to
13 approve view thinning in a geological area without having to go to
14 the expense of a geologist. The wording can be adjusted for
15 clarification.

- 16
17 • Coppola – Suggested wording clarification to the existing draft.
18 Also some clarification in language is needed in the 200-foot
19 review area. Next, at top of page 83, it states that an erosion
20 and sedimentation control plan needs to be prepared by a
21 professional engineer, Gustavson asks that the document
22 specify exactly what kind of engineer, i.e., geotechnical or
23 structural land, etc. This is the end of questions and
24 comments for Chapter 19.400, Geologically Hazardous Areas.
25
26 • Chair Mahan – Suggested to keep with only geological in the
27 above-referenced request.
28
29 • Jenniges – Thinks geologically hazardous areas fall into two
30 major categories; mudslides (stability of soils) and
31 earthquakes (seismic). Does not understand if slide issue has
32 been adequately addressed. Also no homes in this area that he
33 is aware of, have been destroyed by seismic activity. However,
34 what he is hearing from business community is that they are
35 getting weighted heavily with permits on seismic control of
36 their buildings. Asked where is the justification to implement
37 the requirements.

38
39 Greetham – This is the area of the County Code, Title 14, Kitsap
40 County Building and Fire Code, that blends in with the International
41 Building Code. This is where the seismic issues appear. This Code

1 merely reminds citizens as to what is applicable. Understands there
2 was a fair amount of water damage in the 2001 earthquake. Cannot
3 provide statistics as to the amount of damage to homes since then.
4

- 5 • Jenniges – Why does the County place such emphasis on this
6 issue when there is no historical data to substantiate all of the
7 requirements.
8

9 Greetham – Believes the County’s Building Official might see this
10 otherwise.
11

12 Charnas – This is a good time to re-emphasize what Greetham is
13 saying that this is a part of the Kitsap County Building Code. The
14 GMA, Description and Discussion, requires the staff to address this
15 issue and staff believes it has been given some level of attention.
16 However, the point is well taken that most of the identification,
17 delineation and activity dealing hazardous seismic areas is confined
18 in the Building Code, Chapter 14.04.
19

- 20 • Chair Mahan – Responded to Jenniges’ comments stating that
21 although he understands his point about lack of statistics for
22 seismic-related damage requiring the stated degree of
23 protection, the difference between geologic time and people
24 time is quite disparate and an historical record does indicate
25 large-scale seismic activity in this area. When and if that
26 happens, the extra money spent will not be remembered but a
27 home that slides into the water will.
28
- 29 • Jenniges – There comes a point in time when practicality must
30 be considered relative to construction.
31

32 Greetham – The County is making every attempt to achieve the
33 balance between practicalities and prevention/preservation.
34

- 35 • Jenniges – Difference between man-made erosion versus
36 nature’s erosion and that the language should be based on a
37 common-sense approach.
38

39 Greetham – Fish and Wildlife section Chapter 300, has provisions for
40 protecting homes from erosion.
41

- 1 • Flynn – Bottom of page 83 references clustering requirements.
2 Although she is aware of the meaning it may not be familiar to
3 citizens. Suggested either clustering of houses or performance
4 based development.

5
6 Greetham – This can be easily clarified. The idea is to not penalize
7 people with steep slopes on their property by limiting their
8 development, rather to allow flexible lot sizes to cluster development
9 and hoping they will be able to get the same number of units as
10 subdivision would provide.

- 11
12 • Jenniges – Page 83, item I, Development Risk Standards, he
13 asked for definition of significant risk.

14
15 Greetham – Believes this comes from the Building Code but staff will
16 provide some clarification for the Planning Commission.

- 17
18 • Taylor – Throughout the document the word “shall” thereby
19 leaving no flexibility. May is also occasionally used. He asked
20 if it was the Department’s goal to make the verbiage inflexible
21 and thought the overall document seems rigid and inflexible.
22 Questioned if this type of restrictive language makes the
23 document more enforceable.

24
25 Greetham – The intent is to start with a “shall” and then clarify
26 moving into the “may.” For instance the view clearing thinning
27 discussion started with shall and staff worked towards a may. Staff’s
28 intent is to clearly define where flexibility exists, and where it does
29 not once the starting point is set. He provided a good example
30 relative to the distance from the toe of the slope.

- 31
32 • Coppola – Experience with Building Code is when it says
33 “shall” it is inflexible. Would like to see more clarification in the
34 ordinance noting shall as the starting point.

- 35
36 • Chair Mahan – Asked for comments on Frequently Flooded
37 Areas.

- 38
39 • Coppola – Commented on behalf of Commissioner Gustavson.
40 He thinks this section should be deleted because it is covered
41 in the County’s Stormwater ordinance.

1
2 **Greetham – This relates to the GMA requirement for identifying**
3 **frequently flooded areas as one of the five areas staff is required to**
4 **include in the Critical Areas Ordinance. The reason staff did not**
5 **include the entire chapter in this document is because Kitsap County**
6 **has had a flood ordinance in affect since the early 1980s. This was**
7 **updated in 2003, FEMA was satisfied and provided a letter to that**
8 **affect. This section is being more heavily scrutinized that previously**
9 **since heavy flooding in the Midwest. He explained the process for**
10 **routing applications for construction in these areas.**

- 11
12 • **Flynn – Pages 85-86, suggested correction to sentence**
13 **structures and had suggestions to make it read better. She said**
14 **she would submit it in writing. Next, page 87, Development**
15 **Standards, seems confusing because Additional Requirements**
16 **have Category I and II broken out into sections and the**
17 **language under Development Standards seems to be**
18 **redundant.**

19
20 **Greetham - Staff will review this.** This is a technical chapter. The**
21 **way it works is that time is measured for how long it takes if**
22 **someone dumps a pollutant into the ground before it reaches the**
23 **aquifer or well nearby. Maps are obtained from the PUD and Health**
24 **District. Staff must look at activities on page 89 that affect the**
25 **aquifer and determine if a well can be place in an aquifer area.**
26 **Believes Flynn’s point is that it appears that the general and site-**
27 **specific standards do not flow very well.**

- 28
29 • **Flynn – Read Standards for Development, 19.600.615, A, into**
30 **the record page 87, relative to a hydrological report, the**
31 **language of which seems contradictive for example, why**
32 **require a hydrological report on a something that is prohibited.**

33
34 **Greetham – Explained the waiver clause as interpreted by staff.**

- 35
36 • **Flynn – Thinks it would make more sense if something was**
37 **written up separately and specifically for categories I and II**
38 **without the general language at the beginning, unless there are**
39 **other areas that are not categories I and II, that apply to this**
40 **section of the ordinance. Asked Greetham if there are other**
41 **areas in the ordinance with categories I and II.**

1
2 **Greetham – Staff will review Flynn’s suggestions and concerns.****

- 3
4 • **Tom Nevins – Also thinks a citizen could be concerned about**
5 **removing water from a well with only ten years of protection. At**
6 **some point, an explanation is needed as to why that level of**
7 **protection is needed.**

8
9 **Greetham – That would be why ten years vs. twenty years. He did not**
10 **have an answer to this question. Department of Community**
11 **Development relies on the PUDs and Health District for this**
12 **information. Staff will check on why these entities chose 10 versus**
13 **20-year protection.**

- 14
15 • **Chair Mahan – Requested something in writing if a**
16 **representative from the PUDs and Health District cannot attend**
17 **a Planning Commission meeting.**
18
19 • **Nevins – Asked if there are test wells around the zones within a**
20 **10-mile to determine if contaminated water is traveling towards**
21 **them. He asked how this was determined.**

22
23 **Greetham – If a project is proposed within an aquifer recharge area,**
24 **test wells are required. More clarification can be provided.****

- 25
26 • **Coppola – Gustavson has one other question on this section.**
27 **Page 89, number 73 L, LOSS category. He wants to know**
28 **what this stands for.**
29
30 • **Flynn – On the Development Standards section, page 87, Item**
31 **A talks about the need for a geological report. B and C are**
32 **more process items, i.e., who will be notified. Thinks the**
33 **organization of this section could be reworded for clarification.**
34 **For instance, who will do what and who will be notified and**
35 **under what circumstances. Further, when is a report required**
36 **and what purpose does it serve. What uses and when are uses**
37 **prohibited.**

38
39 **Greetham – Staff will review and consider Flynn’s suggestions.****
40

1 • Flynn – Needs to be worded so that someone applying for a
2 permit can understand the wording.

3

4 • Jenniges – Page 1, Aquifer Recharge Areas. He asked if these
5 are not mostly considered watersheds in Kitsap County.

6

7 Greetham – Watersheds more accurately defines an area than drains
8 toward a certain basin. Recharge areas have drinking water aquifers
9 underneath for wells that need protection.

10

11 • Jenniges – Page 86, Hansville Aquifer Recharge Area, 3.a. Read
12 a portion discussing the Hansville aquifer recharge area as a
13 significant potable water supply deemed highly susceptible to
14 the introduction of pollutants. Asked if this wasn't true for all
15 aquifers.

16

17 Greetham – Not necessarily as some are more so than others. In the
18 early 90's, following research performed by the PUDs, it was
19 determined that much of Hansville is a large sand spit. The PUDs
20 requested the Board to call out the Hansville area for special
21 consideration because of so much of the sand causing quick
22 infiltration. Prior to the existing Critical Areas Ordinance, the Board
23 adopted a special Hansville Aquifer Recharge Area Ordinance to
24 assure staff closely watches any potential pollutants in that area.
25 Housing is not considered a pollutant source.

26

27 • Jenniges – Page 86, 3.b. Begins with "In the future. . ." He
28 asked what is meant by this phrase.

29

30 Greetham – The intent of this phrase is that if any more highly
31 susceptible areas were identified on the maps, i.e. Hansville, these
32 areas would then be added to the Code. It is to allow for periodic
33 updates to the map as they are discovered.

34

35 • Jenniges – Page 87, 19.600.615, A., he asked if there currently
36 are any hydro-geological reports available and if there is a map
37 identifying critical recharge areas and a map identifying
38 existing polluted wells.

39

1 **Greetham - Department of Community Development has a map**
2 **identifying the recharge areas and hydro-geological reports are also**
3 **available.**

- 4
- 5 • **Jenniges – It seems it would be to the benefit of the County and**
6 **local well drillers, to have a map identifying well heads and also**
7 **those that are polluted.**

8

9 **Greetham - Wells are also on Department of Community**
10 **Development’s map and the Health District must also have such a**
11 **map.**

- 12
- 13 • **Taylor – Typo on line 12, page 86.**
- 14
- 15 • **Chair Mahan – Suggested moving the discussion to Section**
16 **19.700.705, page 90, Special Reports.**
- 17
- 18 • **Flynn – Page 90, 19.700.705, A., 1 It appears the old language is**
19 **used here and thinks it would clearer to read if this language is**
20 **separated out for consistency.**
- 21
- 22 • **Coppola – Same page, item C, Special Reports – Responsibility**
23 **for Completion, first sentence begins with “The applicant shall**
24 **pay. . .” Gustavson thinks this is wrong because if the**
25 **applicant has to pay for preparation of special reports or test**
26 **and for cost incurred by the County to engage technical**
27 **consultants or staff for review and interpretation of data and**
28 **findings submitted by or on behalf of the applicant, then the**
29 **applicant should get to choose the consultant hired. If the**
30 **County chooses then the County should pay.**
- 31
- 32 • **Taylor – This issue was addressed about three years ago.**
33 **Thought it was settled. The County maintains a list of third-**
34 **party outside contractors and the applicant can select from this**
35 **list. This allows for the applicant to make the selection from**
36 **this list. From the County’s perspective, however, it does little**
37 **good to have an outside consultant perform the work if the end**
38 **product is not acceptable to the County. This issue should be**
39 **resolved in the beginning. This can be compared to appraisals**
40 **on homes being conducted by a bank-approved appraiser.**
41 **Perhaps this issue needs to be revisited.**

1
2 **Greetham – Thinks Taylor might be talking about lists of wetland and**
3 **geological consultants presented to the applicant when a report is**
4 **needing outside expert review a third party expert is polled. The**
5 **Department does not have a geologist on staff or in other cases, a**
6 **hydro-geologist. How to more accurately use the “shall” and “may”**
7 **is noted when the County typically pays for the report in this case.**
8

- 9 • **Coppola – The other issue besides the applicant being able to**
10 **select his own expert, Gustavson also thinks it is possible that**
11 **the list provided by the County could contain bias on the part**
12 **of some or all of the consultants. Again addresses the Best**
13 **Available Science or whose science is best, this situation is**
14 **that on a smaller scale.**
15

16 **Greetham – The County’s list is not exclusive. People are advised**
17 **that if they know of a qualified consultant, have them submit their**
18 **qualifications and if they qualify, they are more than welcome to**
19 **apply.**
20

- 21 • **Chair Mahan – In the circumstances just described, he thinks**
22 **the County should pay the consultant’s costs.**
23
24 • **Jenniges – Agrees since most of these cases involve the**
25 **County challenging the applicant and gave rationale for his**
26 **thoughts in the matter. Also he thought the word ordinance**
27 **was spelled wrong on line 37, page 90. However, it is spelled**
28 **correctly.**
29

30 **Greetham – Noted staff would take a look at this recommendation.**
31

- 32 • **Coppola – Page 91, line 17, Gustavson thinks that two hundred**
33 **fifty feet is too much and if it is within the scope of review, it**
34 **should be called out. Page 92, Section F, Gustavson asks**
35 **where is the Kitsap County Wetland Atlas referenced here and**
36 **can the Planning Commission obtain a copy. The County**
37 **continues to state there is no accurate inventory of wetlands.**
38 **There either is or isn’t. If there is or isn’t.**
39

1 Greetham – recommended changing this to the Kitsap County
2 Geographic Information System maps that again, are not necessarily
3 accurate.

- 4
- 5 • Coppola – Then this needs to be spelled out as well.
- 6

7 Greetham – Staff estimates that the National Wetlands Inventory
8 Mapping and the Hydro soil mapping that staff uses starting points in
9 wetlands are probably 60-75% accurate. This can be delineated
10 more.

- 11
- 12 • Coppola – Does this also mean that there are places identified
13 as wetlands that may not be?
- 14

15 Greetham – Possibly, but very rarely finds this. Again, it is just a
16 starting point.

- 17
- 18 • Chair Mahan – Prior to continuing with the front half of the
19 ordinance, he reference the issue of 250 feet possibly being too
20 much for review. Asked if a poll could now be taken of each
21 Planning Commission member on this issue.
- 22

- 23 • Jenniges – Thinks the number is arbitrary because if reviewing
24 the first 200 feet, why add on 50 feet behind.
- 25

- 26 • Frank Mahaffay – I think 200 feet makes more sense. The more
27 a review is set up the more restrictive issues become
28 depending upon who is staff on the project. Thinks 200 feet is
29 better.
- 30

- 31 • Coppola – Agrees. Also thinks 200 feet is arbitrary.
- 32

- 33 • Flynn – Seems the maximum buffer is Type A wetlands is
34 flexible, can be reduced or increased, therefore thinks 250 is
35 sensible for the most sensitive wetlands.
- 36

- 37 • Taylor – Suggests keep it at 200 feet.
- 38

- 39 • Nevins – Given the inaccuracies of the wetland boundaries,
40 does not think it unreasonable to keep it at 250 feet. Allows for
41 more protection.

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- Chair Mahan – Flynn raises a very good point but 200 feet seems adequate.
- Coppola – Page 96, line 10, regarding a performance bond being required by Department of Community Development in an amount necessary to provide for future site monitoring and possible corrective action required for compensatory mitigations. Gustavson thinks it should be paid with interest at the prevailing commercial CD rates for the time money was held. In other words, if the County is going to hold onto someone’s money, they need to pay him interest on it. Line 15 that addresses if the approved mitigation is not completed or fails to meet its success standards, who determines what the criteria for success is?

Greetham – Usually the Wetland staff person will give a percentage in the wetland report indicating the success rate for a particular site.

- Coppola – Who determines the percentage?

Greetham – If monitoring is required, a wetlands consultant will determine the success rate.

- Coppola – Is this person a degreed engineer?

Greetham – Section 100 defines the criteria for a wetlands consultant. Wetlands do not require engineers.

- Coppola – Does this mean that an applicant’s success or failure is dependent on a wetland consultant’s opinion. This is a yes or no question.

Greetham – It is also staff’s responsibility to catch errors in judgment made by the consultant. If agreement is not reached, the Department of Ecology will step in to resolve disputes.

- Chair Mahan – Agreed with Greetham that it is usually clear whether the applicant succeeds or fails to meet regulations. It is usually the applicant’s own consultant doing the monitoring.

- 1 • Coppola – If it is the applicant’s consultant making the
2 determination then it should be spelled out somewhere in the
3 document.
4

5 **Next section, 19.700.720 – Habitat Management Plan**
6

- 7 • Coppola – Page 96, line 35, relative to “bald eagle protection
8 rules outlined in WAC 232-12-292. . .may serve as guidance for
9 this report. The recommendation in the Washington
10 Department of Fish and Wildlife, Priority Habitat and Species
11 Management Recommendations,. . .shall not serve as
12 mandatory standards or policy of this title, until such time as
13 the DOFW holds public hearings on the recommendations and
14 the State Wildlife Commission endorses the recommendations
15 following the public hearings.” Gustavson thinks this does not
16 make sense in that all that is left is the bald eagle. What about
17 all of the other species? To clarify, Coppola said that in one
18 part it states all the regulated fish and wildlife species are
19 habitat affecting subject property and then here only
20 recommendations for the bald eagle are addressed and nothing
21 else. That the two sections are contradictory.
22

23 **Greetham – The State has specifically identified the species.**
24

- 25 • Chair Mahan – This was discussed at the previous meeting.
26 Gustavson stated he believed the Fish and Wildlife Habitat
27 recommendations were not to be followed.
28

29 **Charnas – Staff researched Gustavson’s comments from the last**
30 **meeting. The Priority Habitat Species List, much like many**
31 **publications issued for the State oversight agencies, were never**
32 **intended to be rule making. They are issued instead as guidance.**
33 **This is how staff uses them, referenced for the County’s guidance.**
34

35 **Greetham – As opposed to the fact that the State has specific rules**
36 **governing bald eagles.**
37

- 38 • Coppola – This appears to be worded so that it gives the bald
39 eagle specifications for all of the other species.
40

- 1 • Jenniges – Page 193 of the minutes, states that Gustavson
2 thinks decisions should be based on court decisions that
3 describe no harm to species and not removing habitat. This is
4 the entire issue. The concern has always been that the County
5 has placed emphasis on buffers, etc. for habitat. The concern
6 Gustavson has is that court decision state harm to the species
7 not the habitat. Gustavson furnished an example of where a
8 bald eagle living next to someone’s home. Jenniges thinks
9 clarification needs to be given for harm to species versus
10 habitat.

11
12 Greetham – Staff will address this with legal counsel.

- 13
14 • Coppola – Page 96, item B, “The habitat management plan shall
15 contain a map prepared at an easily readable scale, showing:”
16 followed by a list of items. Gustavson’s notes state that without
17 this, Best Available Science is suspect and buffers are
18 arbitrarily determined. So-called “science” is used to support
19 pre-determined outcome, not a truly scientific one. Further, that
20 without paragraphs A, B, C and D, there is absolutely no basis
21 in reality or scientific support.

22
23 Greetham – Noted that staff disagrees with Gustavson on this issue.
24 Staff is trying to provide guidance for what goes into the plan.
25 Without this guidance, an applicant may have trouble knowing where
26 to start. Best Available Science is what will take place on a site and
27 this report will hopefully tell staff and this is where site-specific
28 analysis comes into play. This then becomes the Best Available
29 Science.

- 30
31 • Coppola – If the Best Available Science used is suspect, it
32 taints the entire application.

33
34 Greetham – Does not agree with “suspect” as this is a site-specific
35 study.

- 36
37 • Jenniges – This goes back to the buffer issue. He had
38 previously mentioned that staff has approval from the State to
39 determine buffer criteria for Kitsap County. The State says
40 what is a recommended buffer and that they are not pre-
41 determined. However, he has a report from KAPO by Dr.

1 Crittenden who basically states that the buffers were pre-
2 determined. Because of this, he still believes that when
3 working with buffer issues, it would be better to start with zero,
4 not 200 feet and work upward. Believes this would be a more
5 desirable approach.

6
7 Greetham – Clarified that staff’s buffers do not reach from zero to 250
8 feet but do start at the 30 to 50 foot range.

- 9
10 • Jenniges – Gustavson also noted previously that agricultural
11 areas have gone to zero. He also referenced court cases where
12 zero buffers were authorized due to the fact that not all
13 agricultural chemicals are deemed harmful to salmon streams.
14 This information is based on the WSDA court case, subject
15 Buffers: The final ruling in Washington Toxic Coalition, et al, v.
16 EPA. This case establishes, with some exceptions, 20-yard (60
17 feet) buffers for ground application of certain pesticides is
18 allowed around salmon supporting waters.

19
20 Greetham – This issue is addressed in Section 100.

- 21
22 • Coppola – Page 98, Section 19.700.725, Geotechnical Report
23 and Geological Report, Gustavson states that this entire section
24 does not deal with anything critical and that he thinks it belongs
25 in the Building Code.

26
27 Greetham – This was discussed earlier. There is some overlap but
28 the County is required to put geologically hazardous areas in the
29 Critical Areas Ordinance.

- 30
31 • Coppola – Page 105, Section 19.700.730, Hydrogeological
32 Report, Gustavson says that no current technology is being
33 addressed or considered, i.e., green building, low impact
34 development, etc.

35
36 Greetham – This is primarily a water quality rather than a water
37 quantity section. Water quantity and low impact development will be
38 addressed in the County’s Storm water Manual. Not only the
39 Homebuilders but the County is starting some work in that area.

40

- 1 • Chair Mahan – Asked for confirmation that low impact or green
2 development has not been adopted by the County as yet.

3
4 Greetham – Currently when someone is proposing an alternative that
5 is low impact and less restrictive as far as the amount of stormwater
6 mitigation will be required. The County has a grant to allow more
7 work in the stormwater area.

- 8
9 • Coppola - Could these be expected to appear in the next Critical
10 Areas Ordinance version?

11
12 Greetham – Or in the Stormwater Manual, Title 12.

- 13
14 • Coppola – Page 107, Category II Wetlands, B.3 and 4, who
15 defines the terms “high quality” wetlands and “significant” peat
16 systems in these two items.

17
18 Greetham – The County has imported the State’s DOE rating system,
19 word for word. He will research this with Kitsap County’s wetland
20 expert.

- 21
22 • Coppola – Page 108, same question: define “significant.” Also
23 on number 7, “Wetlands contiguous with salmonid fish-bearing
24 water, including streams where flow is intermittent”, Gustavson
25 asked that since streams are not rated in any other category,
26 which determines what impact is to intermittent streams.

27
28 Greetham – Begins with State’s Fish and Wildlife map then moves
29 into site specific monitoring. If a noted seasonal stream is flowing in
30 mid-July or August, it is assumed the map is correct. Maps are
31 updated always with new information

- 32
33 • Coppola – Page 113, Gustavson questions the words “free an
34 voluntary” when signed by the applicant believing none of this
35 to be free and voluntary.

- 36
37 • Noted – Again noted this issue has already been addressed at
38 the last meeting.

39

- 1 • **Chair Mahan – Understands Gustavson’s concern with this and**
2 **asked staff to consult with attorneys as to whether a notary**
3 **block can be changed.**
- 4
- 5 • **Jenniges – Knows this was discussed previously but wonders if**
6 **there has been any action taken.**
- 7
- 8 • **Chair Mahan – There was a concern over notice to title when**
9 **buffer requirements may change. If an applicant puts a notice**
10 **to title with a fixed number of footage showing, will a future**
11 **owner be compelled to go with this same footage forever. In**
12 **other words, is it legal to cloud a title because the rules**
13 **change?**
- 14

15 **Greetham – This is an issue staff can discuss with counsel.**

- 16
- 17 • **Chair Mahan – Assured his colleagues that clarification will be**
18 **provided on this issue.**
- 19
- 20 • **Mahaffay – Sees the Critical Areas Ordinance as a difficult**
21 **process and cautioned staff for accuracy in the notification**
22 **process.**
- 23

24 **Greetham – Due diligence always prevails on the part of staff when**
25 **sending mailings and posting notifications.**

- 26
- 27 • **Chair Mahan – Requested clarification on the before-mentioned**
28 **concerns prior to the next meeting on August 2, 2005.**
- 29
- 30 • **Coppola – Would like to hear directly from legal counsel.**
- 31
- 32 • **Mahaffay – Suggested staff talk with a title company.**
- 33

34 **Chapter 19.100 – Introduction and Approval Procedures**

- 35
- 36 • **Coppola – Title 10, Critical Areas Ordinance, questioned why is**
37 **“Critical” not defined and who does this. Page 3, Policy Goals,**
38 **5. “Protect critical areas and their functions and values by**
39 **regulating use and management within these areas and**
40 **adjacent lands.” Gustavson questions how much land does**
41 **this consist of and who decides.**

1
2 **Greetham – In part, this is determined by adjacent lands.**

- 3
4 • **Jenniges – Commented on wetlands asking if they are critical**
5 **attributes and how does one justify filling in a wetland. He**
6 **asked if it were not a fine line of sanity passing an ordinance**
7 **because of the basic concern that the citizens will be critical of**
8 **content and critical if it is not passed.**
9
10 • **Chair Mahan – The theory is that some wetlands are more**
11 **critical than others. The current process is to concentrate on**
12 **contiguous wetland properties rather than isolated ones in the**
13 **County. Relative to passing the ordinance, the County wants to**
14 **leave it open for public comment without going into too much**
15 **detail.**
16
17 • **Jenniges – Ask if there were provisions in the process where**
18 **property owners could build on wetlands without having to pay**
19 **\$X amount of dollars to develop his own property. People are**
20 **reluctant to enter into any activity because of possible legal**
21 **action.**
22
23 • **Coppola – Page 4, item G., Gustavson wants to know who**
24 **determines the two hundred fifty feet for review of critical areas.**
25 **He considers this a land grab and asked about compensation.**
26 **Gustavson then questioned if the wetlands are located on your**
27 **neighbors property but not yours, if it affects your property.**

28
29 **Greetham – Staff needs to define the above-stated question and also**
30 **needs to clarify the 250 feet determination.**

- 31
32 • **Coppola – Page seven, line 40, Gustavson Thinks the line**
33 **should be deleted that states, “one-time only expansion of the**
34 **building footprint does not increase by more than 25 percent**
35 **and that. . .”**

36
37 **Greetham – Staff has already considered rewording this sentence. In**
38 **this instance, the County lifted language from another code that was**
39 **liked, but may be changed again.**

40

- 1 • Jenniges – Commented that there is still language on soil
2 restriction in the draft.

3
4 Greetham – The Storm water Code still applies.

- 5
6 • Coppola – Page 8. Section B. line 34, regarding existing non-
7 conforming structures that are damaged or destroyed,
8 Gustavson thinks the time constraint to substantially complete
9 reconstruction of “within 28 months” should be changed to 60
10 months or no time limit. He thinks the process could easily
11 take this long. Gustavson also thought there are homeowners’
12 issues associated with Section C, Danger Tree Removal. There
13 is the possibility of foreclosure with no insurance.

- 14
15 • Jenniges – Questioned if a person could not pay if
16 reconstruction is still grandfathered in.

- 17
18 • Mahaffay – Expressed concern of one-time only expansion
19 language.

20
21 Greetham – This is part of the new language and staff will research
22 the language. These are important regulations and staff is
23 considering all comments. The County needs to strike a balance and
24 Greetham suggested adding some grandfathering language into this
25 section.

- 26
27 • Coppola – Page 9, Section 19.100.135, Variances, number 1,
28 lines 14-16, relative to special circumstances applicable to
29 property, including size, shape or topography. . . Gustavson
30 thinks should be deleted because of the Scarelina case. Next,
31 number 2, granting of variance will not result in substantial
32 detrimental impacts to the critical area, to the public welfare nor
33 be. . .nor be contrary to the goals, policies and purpose of this
34 title. Gustavson also thinks this paragraph should be deleted
35 because it is unknown as to who determines “public welfare.”
36 Lastly in this section, Gustavson references No. 5, and
37 questions the words, practicable (define this word – not in
38 dictionary) and reasonable (who defines reasonable).

39
40 Greetham – There needs to be a safety valve regarding the intent.
41 This is a complicated legal issue.

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- Coppola – Page 10, line 25, 19.100.140, Reasonable use exception. Gustavson wants to know who defines “reasonable.” Building a single-family home should be minimum “reasonable.” Page 11, A. 2., Gustavson asked for the definition of “or affected party.” Page 11, B.1., “Any appeal regarding a decision to require, or not require a special report shall be made within ten working days. . .” Gustavson thinks it should be 60 days and expanded if new information comes to light. The same for B.2., 60 days, and used the Southworth Post Office as an example.

- Flynn – Asked if there is a definition of who is affected?”
- Jenniges – Ask if this is part of the public notice.

Greetham – The County does not have limits on who is notified. There are guidelines and in addition, citizens call and ask to be placed on the notification roster.

- Flynn – Asked if the parties affected by the action or believe they are affected, notified by the County.

Greetham – Replied that anyone on an interested parties list is notified and additionally, he thinks it would be a good idea to expand the appeal time as mentioned above. He believes the time limit to be an error and would recommend it changed from 10 to 14 days.

- Coppola – Asked if critical areas cross a road.

Greetham – Believes the buffer is cut off at the point of the road.

- Coppola – Page 12, 19.100.150, Critical area and buffer notice to title. Next to the last sentence beginning with, “These standards will be referenced on the approved notice to title. . .with land in perpetuity.” Gustavson asked why cloud the title and questioned if this is legal. Harris wanted to know who removes the cloud if the rules change.

Greetham – Did not know the answer to this question.

- 1 • Coppola – Page 12, item C., regarding application for
2 development proposals, last sentence states “. . .by an
3 authorized agent.” Gustavson wants to know who is the
4 authorized agent. He also asked again if a critical area crossed
5 the road and if the authorized agent superseded the vacation of
6 a road by Public Works. Page 13, line 16, the word “consistent”
7 is misspelled. Same page, line 40 under 19.100.160, Inventory
8 provisions, last sentence wording “tribal governments,” asked
9 why are tribes included. The decision is on non-tribal land.
10 Page 15, line 18, Critical Areas is not mentioned in the
11 document. Gustavson thinks it is not a definition since it is not
12 defined in the document. Page 18, 19.150.155, Best Available
13 Science, Gustavson states this is still under debate and should
14 be tabled for an alternative desired result. Page 19, 19.150.180,
15 Channel Migration Zone (CMZ), Gustavson noted that the
16 Tahahuya River is only the one in Kitsap that fits in this
17 category so why not specify just this river. Pierce County does
18 this.

19
20 Greetham – There are other rivers that meet this criterion.

- 21
22 • Coppola – These are streams, not rivers. The rivers need to be
23 cited.
24
25 • Coppola - Same page,19, Section 19.150.205, Critical Area
26 Buffers. Gustavson asks, protection of what. According to
27 WAC an WDFW Policy 4802, it must be listed and match
28 requirement of specific animal at that specific location. Same
29 page, Section 19.150.215, Critical Areas, Gustavson asked for a
30 definition once again of the word critical and believes it is not
31 always critical. Same page, Section 19.150.220, Critical Area
32 Protection Easement. Gustavson states title issue again,
33 “critical” for specifically what. Page 20, “nursing homes”,
34 Gustavson questioned why these are listed. He then asked if
35 this included assisted living, retirement communities and over
36 55 communities.

37
38 Greetham – Referenced the Building Code for this issue and said that
39 endangered species should not be listed.
40

- 1 • Coppola – Page 20, line 21, thinks the word “stormwater”
2 should be deleted. Section 19.150.265, Endangered Species
3 (state listed). Gustavson thinks this section should be specific
4 to the area only. Line 23, “Extraordinary hardship”, Gustavson
5 asked for a definition. Section 19.150.325, Fish and wildlife
6 habitat. Gustavson asked who decides what is critically
7 important and asked if the listed species are native to a specific
8 stream, etc. and if not, why is the section in the draft ordinance.
9 Page 23, line 15, Section 19.150.365, Geologist. Gustavson said
10 this is defined in the WAC, Fish Biologist is not. Section
11 19.150.375, Gustavson asked for a difference between Geologist
12 and Geotech. He also said this section should be two
13 paragraphs. Section 19.50.385, Grazed Wet Meadows.
14 Gustavson questioned line 41 that states, “as non-native
15 wetland species such as soft rush and buttercup. . . .”
16 Gustavson said buttercup is not a native species. He also
17 asked why the County should be concerned with non-native
18 plants. Page 26, 19.150.470, Native vegetation. Gustavson
19 question the definition of Native. He asked, from what point in
20 time. He said that blackberries aren’t native to this region but
21 oak trees are.

22
23 Greetham – Did not know the answer to this general question.

- 24
25 • Coppola – Page 28, line 4, Section 19.150.520, Practicable
26 Alternative, states in part, “. . .an area not owned by the
27 applicant, , ,” Gustavson questioned what about the person
28 who does own the property and what happens to him.

29
30 Greetham – If the person is willing to sell he can purchase another
31 home at a different site.

- 32
33 • Coppola – Page 28, Section 19.150.525, mentions a Priority
34 Habitats and Species Database, Gustavson asked for a copy to
35 which Greetham replied that h has one to give.
36
37 • Page28, Section 19.150.530, states in part, that . . .”priority
38 species are included state-wide of state proposed endangered,
39 threatened or sensitive species. . .” Gustavson thinks the word
40 “proposed” in this context is going way too far.
41

- 1 • Page 29, line 1, 19.150.565, Reasonable Use. Gustavson thinks
2 the definition for reasonable use is too vague and asks who
3 defines “reasonable.”
4

- 5 • Page 29, Line 17, Regulated Use or Activity. Gustavson states
6 this section to be species specific.
7

- 8 • Page 29, Line 39, Section 19.150.605, Sensitive Species.
9 Gustavson questioned species native to the state of
10 Washington and mentioned gray whales and sea lions.
11

- 12 • Jenniges – Thinks this section is too broad.
13

- 14 • Coppola – Page 31, line 15, Section 19.150.675, Wetland
15 Determination. Gustavson questioned why a wetland
16 determination does not require a formal delineation. He asked
17 who determines what notice is given to owner.
18

19 Greetham – This is determined by delineation. See page 32 for
20 qualifications for Wetlands Specialist and Wildlife Biologist. Many of
21 the qualifications have been questioned.
22

- 23 • Coppola – This is all of the questions he has on behalf of
24 Gustavson.
25

- 26 • Chair Mahan – Asked if these individuals have been with
27 certain organizations and if so, how long.
28

- 29 • Jenniges – Asked if were true that is a specific type of degree
30 associated with these titles.
31

32 Charnas – Staff has checked into this matter.
33

- 34 • Taylor – The discussion needs to take place about who is
35 qualified because this is very important. Who makes the
36 determination and are they licensed.
37

- 38 • Dr. Crittiten - Commented that a bachelor’s degree is required.
39 Biologist is a science and the standard for qualification is by
40 the public record.
41

- 1 • Flynn – Staff may be able to cover this concern by specifying a
2 degree; at least a B.A. and specify what in what discipline.
3

4 Greetham – Next steps: Potentially a meeting to discuss in detail the
5 remaining meetings. This will be the Planning Commission’s
6 decision. Changes can be voted on by the Planning Commission.
7

8 Greetham - Responded to questions such as when is the joint public
9 hearing with the Board of County Commissioners. He thought late
10 July or even later possibly.
11

- 12 • Flynn – Following the past three work/studies on the Critical
13 Areas Ordinance, the Planning Commission should be able to
14 make technical changes and consider public testimony.
15

- 16 • Nevins – There have been comments about native vegetation
17 and it needs to be discussed because of the level of
18 importance. Following the public hearing with citizen’s
19 comments, the Planning Commission can review the
20 recommended changes.
21

- 22 • Chair Mahan – Best approach is to have staff review the
23 comments to date.
24

- 25 • Taylor – With the combined public hearing.
26

- 27 • Chair Mahan – He will be in touch with Greetham and Baker for
28 next steps and an agenda for July.
29

- 30 • Flynn – Wished to add an addendum to the May 24, 2005
31 minutes.
32

33 11:40 AM - No further business to discuss, the meeting was
34 adjourned.
35

36 APPROVED this ____ day of _____, 2005.
37

38 _____
39 Monty Mahan, Chair
40

41 _____
Holly Anderson, Secretary

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EXHIBITS:

- A. Agenda for June 28, 2005 Planning Commission work/sudy**
- B. Second Draft – Critical Areas Ordinance**
- C. Marked up copy of Second Draft – Critical Areas Ordinance from Mike Gustavson**
- D. Kitsap County Critical Areas Ordinance Power Point**
- E. Letter from KAPO, Tim Matthes, dated June 28, 2005**
- F. Addendum to Planning Commission minutes of May 24, 2005 submitted by Deborah Flynn**
- G. Article from the Jefferson County Conservation District Newsletter entitled, CREP Accomplishments are Growing.**
- H. Legal Notice for the June 28, 2005 Planning Commission work/study**