



## Clark County Planning Commission

Karl Johnson, Chair  
Matt Swindell, Vice Chair  
Bryant Enge  
Steve Morasch  
Bryan Halbert  
Eldon Wogen

---

### CLARK COUNTY PLANNING COMMISSION HEARING NOVEMBER 17, 2022 HEARING MINUTES

Public Service Center  
Council Hearing Room, 6<sup>th</sup> Floor  
1300 Franklin Street  
Vancouver, WA  
6:30 p.m.

#### I. CALL TO ORDER

##### Planning Commission Rules of Procedure

JOHNSON: Good evening, Planning Commissioners, members of the public and staff members. I would like to call this hybrid public hearing to order for Thursday, November 17th, 2022. My name is Karl Johnson, and I'm the Chairman of the Clark County Planning Commission.

The role of the Planning Commission is to review and analyze comprehensive plan amendments, zoning changes, and other land use related issues. We follow a public process including holding hearings during which the public has an opportunity to provide additional perspectives and information.

In legislative matters -- matters, excuse me, the role of the Planning Commission is advisory. The County Council will hold separate hearings, consider our recommendations and make a final determination.

The Planning Commission will conduct a public hearing tonight and take testimony. If any public comments were received before tonight's hearing, they have been sent to PC members and are entered into the public record.

County staff will present first and then the Planning Commission can ask questions. Next, we will invite the applicant to speak, if there is one, then members of the public who wish to provide testimony.

When we get to the public comment portion of our agenda, we will provide more information on how to participate both virtually and in person. However, if you are in person tonight and wish to provide comment on the hearing agenda, please sign up via the sign-up sheets in the back of the room.

During public testimony you will have three minutes to speak and remarks should be directed to the Planning Commission only. Please do not repeat testimony that has already been provided.

At the conclusion of the public testimony, staff and the applicant may respond to the comments and the public portion of the hearing will then be closed. The Planning Commission will then deliberate and make a recommendation to the County Council.

For both virtual and in person members of the Planning Commission and staff, please ensure that your microphones are muted unless you are speaking. Planning Commissioners, when you make a motion and or second a motion, please state your name for the court reporter.

Tonight, conflicts of interest, do any members of the Planning Commission have any conflicts of interest relating to the hearing items tonight? Hearing none, we will proceed with the roll call and any introduction of guests. Sonja.

## **II. ROLL CALL & INTRODUCTION OF GUESTS**

ENGE: HERE  
HALBERT: HERE  
MORASCH: ABSENT  
SWINDELL: HERE  
WOGEN: HERE  
JOHNSON: HERE

Staff Present: Oliver Orjiako, Community Planning Director; Jacqui Kamp, Deputy Director; Bart Catching, Planner II; Bill Richardson, Senior Deputy Prosecuting Attorney; Brent Davis, Program Manager II; Brian Apple, Engineer III; Christine Cook, Senior Deputy Prosecuting Attorney; Jenna Kay, Planner III; Jose Alvarez, Planner III; Ken Lader, County Engineer; Larisa Sidorov, Office Assistant; Sonja Wisner, Program Assistant; Steve Archer, Deputy Prosecuting Attorney II; and Cindy Holley, Court Reporter.

Applicant Present: Marty Snell, MacKay & Sposito

## **III. GENERAL & NEW BUSINESS**

### **A. Approval of Agenda for November 17, 2022**

JOHNSON: Next in general and new business, we're looking for an approval for the agenda for November 17th, 2022. Motion.

HALBERT: Bryan Halbert. I make a **Motion** to approve the agenda.

SWINDELL: Matt Swindell. **I'll second** it.

JOHNSON: We have a motion and a second. Sonja.

---

**ROLL CALL VOTE**

ENGE: AYE  
HALBERT: HERE or AYE  
SWINDELL: YES  
WOGEN: YES  
JOHNSON: YES

JOHNSON: Motion passes.

**B. Approval of Minutes for October 20, 2022**

JOHNSON: Next we'll take an approval or a motion for the approval for the minutes for October 20th, 2022.

SWINDELL: Matt Swindell. I move a **Motion** that we approve the minutes from October 30th.

JOHNSON: October 20th.

SWINDELL: Or 20th, excuse me.

WOGEN: This is Eldon. I **second**.

JOHNSON: Sonja, could we have roll call.

**ROLL CALL VOTE**

ENGE: AYE  
HALBERT: AYE  
SWINDELL: AYE  
WOGEN: AYE  
JOHNSON: AYE

JOHNSON: Motion passes.

**C. Communications from the Public**

JOHNSON: Right now we would like is there any communications from the public that are not, I repeat not on the agenda?

WISER: Larisa, can you share the comment instructions on the overhead screen. Thank you.

WISER: For attendees using their computer or Webex application, if you'd like to speak, please use the raised-hand icon. For attendees using the telephone, which is the audio only option, press star 3 on your phone's number panel to raise your hand. For those in person that would like to provide comment, please raise your hand. Once acknowledged, you may come to the microphone towards the front of the room.

Public comments are limited to three minutes per person in order to accommodate all speakers. Please provide your name. And, again, this portion of tonight's hearing is only for items not listed on tonight's agenda. Are there any people wishing to come forward on that? There are none, Karl.

JOHNSON: Seeing none. Are there any virtual people? Okay. Thank you. Seeing none, we'll move on to the public hearing items. And, again, a reminder for the public, if providing public testimony in person, please make sure you sign up on the sign-in sheet in the back. If you're joining remotely, once again, instructions will be provided.

#### **IV. PUBLIC HEARING ITEMS**

##### **1. OLR-2022-00147 Synchronous Covenant Release**

A proposal to fully release a covenant on two parcels, (195971005 and 195971010) approximately 2 acres with a Rural Commercial Comp Plan Designation and CR-1 zoning.

**Staff Contact: Jose Alvarez, [Jose.Alvarez@clark.wa.gov](mailto:Jose.Alvarez@clark.wa.gov), 564-397-4898**

JOHNSON: So first up, OLR-2022-00147, Synchronous Covenant Release. Staff tonight and their presentation will be Jose Alvarez and Bart Catching. Jose.

ALVAREZ: Okay. Thank you, Karl. Good evening, Commissioners. Can you hear me okay?

JOHNSON: Yes, we can.

ALVAREZ: All right. Next slide, please. So the proposal before you this evening is a full covenant release which is in 1980 there was an agreement to rezone the two properties that we'll be reviewing this evening to a specific bank use.

That agreement was modified in 2008 for professional office spaces and the applicant would like to have a full release of the covenant to allow for the underlying uses that are allowed in the CR-1 zone to take effect. So we'll just go over the background, what the proposed action is, the staff findings and then the process and next steps. Next slide, please.

So the site is located, as you can see on the map on the left where the black dots are, it's at the southwest corner of the intersection of N.E. 179th Street and N.E. 72nd Avenue. You can see an aerial photo on the right-hand side where the two dots are and there are two buildings existing since about 1980. The

next slide, please.

So, again, like I mentioned, the location of the site there are two one-acre lots with a building on each parcel and they are zoned CR-1 and have been zoned CR-1 since 1994 when the comprehensive plan was adopted. Next slide, please.

As I mentioned, in 1980 the site was zoned F-X and the original bank use was not allowed in that zone so there was a proposal to change the zoning to general commercial. And as part of that general commercial is a very broad commercial zone and so part of the agreement was to limit the use to the bank use.

Again, as I mentioned in 1994 the comp plan was adopted and the zoning was changed to CR-1 which is the most restrictive commercial zone that we have in the county and it was just to recognize existing commercial uses in the rural areas outside of rural centers. The next slide, please.

In 2008, there was a modification of the covenant to expand it to allow for a broader category of professional office uses. The site-specific zoning regulation is considered a Concomitant Rezone Agreement and in order to release it, it has to go through the Type IV process and requires a hearing with the Planning Commission and subsequently with County Council who will ultimately make the decision.

The County Code cited there, 40.560.020(E), has the applicable criteria for the releases of these types of covenants. So next slide, please.

So the findings, so this is Criteria A that the full covenant is going to be consistent with the current zoning regulations and the comprehensive plan recommendations as I mentioned. There's no specific use proposed at the site at this time. The release of the covenant would allow for the uses that were allowed in the CR-1 zone that has been applied to this site since 1994. So we find that this criterion has been met.

B, that there are adequate public/private services available to support development of the site. This, again, is in the rural area and so for the services that are allowed in the rural area, those are available at the site. Again, the site is located at the intersection of some major crossroads, major principal arterials. So we find that this criterion has been met. Next slide, please.

So whether this release of the covenant would unreasonably impact development undertaken on nearby properties in reliance upon the covenant commitments, like I said, the current CR-1 zone has been in place since 1994 so any development around this site has been done with that in mind or in place. There hasn't been any change in the zone or comp plan. So we find that that criterion has been met.

And Criterion D only applies to a partial release of the covenant and since this is a full covenant release that criterion is not applicable. Next slide, please.

So we find that all of the criterion have been met and we are making recommendation that you make a recommendation, the Planning Commission makes a recommendation to the County Council to approve this proposal. Next slide, please.

So subsequent to this hearing we have a hearing scheduled with the County Council December 6th. Next slide. That concludes my presentation. If you have any questions, I'd be happy to answer those at this point.

JOHNSON: Thank you, Jose. We'll walk through this to make sure everybody gets the opportunity. Bryant Enge, do you have any questions for Jose?

ENGE: I do not have any questions for staff at this time.

JOHNSON: Thank you. Bryan Halbert, do you have any questions?

HALBERT: No questions.

JOHNSON: Matt Swindell, do you have any questions?

SWINDELL: None at this time.

JOHNSON: Eldon Wogen, do you have any questions for staff?

WOGEN: No questions.

JOHNSON: Okay. I don't either except to say once again, Jose, thank you for a good presentation. With that said, we will now open the public hearing portion of testimony. Sonja.

### **Public Testimony**

WISER: Good evening members of the public. Please note to be a party of record you must submit written testimony before, during, or prior to the close of tonight's hearing; or provide oral testimony at the public hearing; or request in writing to be a party of record.

No person shall be a party of record who does not furnish their full name, e-mail address, or Post Office mailing address. If written comments were provided prior to November 17th, 2022, they were submitted to the PC members and posted on the Planning Commission website.

This hearing is being transcribed by a court reporter so please spell your last name and speak slowly. Public comment is also limited to three minutes. So we will begin with the Webex callers first. We will start with those participants that have been joined remotely via computer or telephone. Please raise your virtual hand or press star 3 on your phone to let us know you would like to provide comment.

Larisa, are there any people calling in?

SIDOROV: No, it looks like there's nobody online.

ALVAREZ: Marty -- Marty is the applicant.

SNELL: I had my hand up. I don't know if you saw it virtually.

SIDOROV: Oh, yeah, we see it now.

SNELL: Thank you. So for the record my name is Marty Snell, I'm a consultant with MacKay Sposito. That's M-a-r-t-y, S-n-e-l-l. MacKay is M-a-c-K-a-y. Sposito is S-p-o-s-i-t-o. I'm calling in on behalf of the applicant and I'd just like to say thank you for working with staff.

I was at the work session where Jose gave a presentation, did the same thing tonight, so I am here to support the application and the recommendation for approval. So if you have any questions for me, I will gladly take them.

JOHNSON: Thank you, Marty. At this time is there any questions for the applicant? Hearing or seeing none, we'll move on. Is there anybody else in the virtual?

WISER: Okay. We will begin with Webex callers first. Larisa, are there any members that have called in via Webex or on the phone?

SIDOROV: I do not see anyone with their hand raised.

WISER: Okay. Then we will begin with in-person comments. We will begin with the participants in the hearing room. When we call your name on the sign-up sheet, please come up to the front. Karl, I don't believe any people were signed in on the sign-up sheets on this.

JOHNSON: Okay. Thank you.

WISER: There are no more wishing to testify so we can return it to you. You signed up on the critical areas. Did you -- the Critical Areas Ordinance, is that what you signed up on?

JOHNSON: Do you have a comment on this one, sir?

WISER: But, Oliver, that's a different hearing item. Okay. Okay.

JOHNSON: So we'll get it straightened out. So I have four people signed up on the Critical Areas Ordinance. I just want to make sure that's what we want. So Jim Byrne, are you here?

BYRNE: Yeah.

JOHNSON: Jim, you're on the critical --

BYRNE: I'm only testifying on the Critical Areas Ordinance.

JOHNSON: That's great. Thank you. Is it Jeff Tapani?

TAPANI: Yeah.

JOHNSON: Jeff, are you going to comment on this one or the critical areas?

TAPANI: I'm just commenting on the (inaudible).

JOHNSON: On -- on this. Why don't you come up. Can you come up to the microphone, please. Thank you. Can you go ahead and pick that one there and then state your name and --

TAPANI: Yeah. I'm Jeff Tapani and I own that --

JOHNSON: Can you get a little closer. There's a court reporter and she's copying what you're saying, she's hearing what you're saying, yeah.

WISER: You can sit down.

JOHNSON: You can sit down if you'd like to.

TAPANI: All right. I have that piece of property at 17707 N.E. 72nd and I was just liking to seeing if I could get that rezoned at the same time or when it's available. I got an electrical business and we've been in Clark County for many years and it's been good to me but I'd like to put my business over there.

JOHNSON: Oh, okay. Great.

TAPANI: So that's all I got to say on that. I don't know if this is part of this corner that we're talking about.

JOHNSON: Yes, I believe it is.

TAPANI: Yeah. And I put a letter in too so it's there.

JOHNSON: Okay. Great.

TAPANI: Thank you.



JOHNSON: Thank you for your -- go ahead.

HALBERT: Jeff. Bryan Halbert here. I just want to make sure we are talking about the same corner.

TAPANI: Yeah.

HALBERT: The one with the two buildings. So you plan to move your business into one of those two buildings?

TAPANI: No. No. I got a piece of property across the street and it's right behind Manor Grange on 72nd. So right there there's a barn back there and I've been using it for electrical.

HALBERT: Okay. Okay. Great. Okay. Sorry, I just misunderstood what your --

TAPANI: Yeah. Yeah. No. Okay. Thanks.

HALBERT: Thank you, sir.

JOHNSON: Thank you. Teresa Hardy, just for clarification are you signed up to speak for the Critical Areas Ordinance? Okay. Thank you. And Devon, I can't read this, Devon, is that you? Are you for this, are you talking -- okay. Thank you, Devon. Come on up. State your name into the microphone for the record.

ROWE: Yeah. Devon Rowe, R-o-w-e, is the name.

JOHNSON: Thank you.

ROWE: And really just a question on the rezoning or the release of the covenant. Would you help for those of us who aren't planning professionals to understand, what are the uses that are currently not allowed with the covenant that would become, you know, released so sort of what are the types of activities that now become realized on the property that currently are not?

JOHNSON: Right. Jose, could you address that, please. Jose, are you there?

ALVAREZ: Sorry, I was muted. Larisa, could you go to the presentation, within the presentation. I think I have an embedded link that takes you to a list of uses that are allowed in those two zones. Scroll up. I think it's on the third, next slide, keep going, right there. So if you can click on the CR-1 that's highlighted.

SIDOROV: I don't think you can, Jose.

ALVAREZ: Okay. All right.

SIDOROV: Oh, there you go.

JOHNSON: Oh, there we go.

ALVAREZ: All right. So this is the table that shows the allowed uses in the CR-1 zone. A lot of it is really dealing with the size and scale, assisted living facilities, markets that are smaller in size. Can you scroll down, Larisa.

ROWE: I actually did look at this table but my question what are -- what -- I wasn't -- I couldn't tell which of these, which ones were in the covenant or which of these were done.

ALVAREZ: No, the only ones -- okay. The only -- the only -- the only things allowed by the covenant currently are professional office uses.

ROWE: Oh, okay. So only -- so somewhere on this list there's professional office uses. And so none of these other -- so now this opens it up to anything on this list?

ALVAREZ: Correct. Yes.

ROWE: Okay. And I understood there's no current request for a use at the site?

ALVAREZ: Correct.

ROWE: Okay. Thanks.

JOHNSON: I think it's for sale. I just, I drove by it the other day.

ALVAREZ: Yeah.

### **Return to Planning Commission**

JOHNSON: Yeah. Any other questions? Thank you very much, Devon, appreciate you coming by. Okay. Is there any other people from the audience that would like to speak? Okay. Hearing none, I'm going to close the public testimony and we've also heard from the applicant, so I'd like to bring it back to the Planning Commission. Are there any Planning Commissioner comments? I'll go through name by name. Bryant Enge, do you have any comment on this?

ENGE: No, I don't.

JOHNSON: Thank you. Bryan Halbert.

HALBERT: No. No comments or questions.

JOHNSON: Great. Thank you. Matt Swindell.

SWINDELL: No comments.

JOHNSON: Eldon Wogen.

WOGEN: No comments.

JOHNSON: And I have no comments. With that, I'll take a motion. Make sure Cindy knows who's giving the motion.

SWINDELL: This is Matt Swindell.

ENGE: This is Bryant Enge. I'd like to make a **Motion** to support staff recommendation to release to, for the Synchronous Covenant Release OLR-2022-00147.

SWINDELL: Matt Swindell. I'll **second** it.

JOHNSON: So we have a motion and a second. Sonja, could you please give us a roll call.

#### **ROLL CALL VOTE**

ENGE: AYE

HALBERT: AYE

SWINDELL: AYE

WOGEN: AYE

JOHNSON: AYE

JOHNSON: Motion passes 5/0.

#### **IV. PUBLIC HEARING ITEMS, continued**

##### **2. CPZ2022-00010 Critical Areas Ordinances updates for Wetland and Fish and Wildlife Habitat Conservation Areas**

A proposal to amend Clark County Code Chapters 40.440 and 40.450 by combining the two chapters into a single ordinance for streamlined administration and which will include adding an administrative variance and updating "Best Available Science" consistent with current Washington Department of Fish and Wildlife Priority Habitat and Species Management Recommendations and Department of Ecology guidelines for wetlands.

**Staff Contact: [Brent Davis](mailto:Brent.Davis@clark.wa.gov), [Brent.Davis@clark.wa.gov](mailto:Brent.Davis@clark.wa.gov), 564-397-4152**

JOHNSON: So with that, we will conclude that portion and move on now to CPZ2022-00010 which is the Critical Areas Ordinance update. Tonight April Furth and Brent Davis will be presenting from staff. April or Brent.

DAVIS: Good evening, Commissioners. My name is Brent Davis. I am the Wetland and Habitat Review Manager in the Community Development Department. I'm going to be talking tonight about the Wetland and Habitat Ordinance update. Next slide, please.

So in terms of my presentation, I'm going to give some background on why we're doing an update and then give a general overview of -- of what's included in this proposed update and then dive a little deeper into some specific details and then talk about the timeline moving forward and then any questions that the Commission may have. Next slide, please.

So by way of background. The Growth Management Act requires a review of critical areas ordinances every eight years. And under the Growth Management Act, we are required to include Best Available Science and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish.

And in terms of this update, there's two significant changes to Best Available Science that we are taking into consideration. One is New Riparian Habitat Management Recommendations from the Washington Department of Fish and Wildlife. And the other is known departures from Ecology's Best Available Science for Wetlands that has been identified by Ecology in our code since 2006.

In addition to that, we received an update to their Best Available Science Recommendations at the end of October so we've -- we're taking those into consideration as well and there will be more on that at the end of my presentation. And we haven't done a substantial update of our wetland or habitat ordinances since 2006. Next slide, please.

So we've been before Council at two work sessions; one in the fall of 2020 and one this fall back in September and in both cases Council directed staff to pursue updates that conform to State agency guidelines.

Also, we currently have two separate ordinances. One for wetlands and one for habitat. We implement them in a combined fashion. They often overlap on individual properties. And we're taking this opportunity to combine the two ordinances to streamline procedural elements and address inconsistencies and conflicts between the two codes when they overlap. Next slide, please.

So in terms of overview of the changes for wetlands, the major changes are focused on wetland buffer alterations, reductions, and mitigation for buffer impacts that currently don't comply with Ecology guidelines. Major changes for habitat are primarily focused on riparian habitat.

Fish and Wildlife's new management recommendations are changing the way that that riparian areas

are defined. Currently, they're fixed widths from the edge of the stream and the new recommendations are transitioning to what's called "site potential tree height," which is essentially the estimated capacity of the soil to grow trees to a specific height.

Other changes that we're looking at is simplified compliance for existing and ongoing agriculture and performance with -- with Department of Commerce guidelines. Next slide, please.

And then as I mentioned, we're combining the two ordinances into a single code which will require repeal of the existing codes and replacement with a new chapter. We're creating uniform submittal requirements for wetlands and habitats, as well as procedures. We're making sure that the mitigation approach is consistent between the two.

And we're making exemptions and reasonable use assurances consistent as well. And then we're also codifying some current practices that aren't explicitly addressed in the current code. Next slide, please.

So more specifically, we're revising the language related to the mitigation sequence. This is the requirements in SEPA Commerce guidelines and as well as Shoreline to proceed through a sequence of avoidance, minimization of impact, and then looking at mitigation.

So the idea is, is that you do everything you can to avoid impact altogether. If you can't, you work on your design to minimize your impact, and once you've arrived at the place where you've got the smallest impact that can support your project, then you can talk about mitigation.

Other changes, exemptions in the current code and automatic buffer adjustments for small wetlands are more or less going away. That's in order to be consistent with Ecology guidelines.

Exemption for existing ongoing agriculture is being simplified. Particularly the habitat ordinance for riparian habitat right now has a complex scheme that was developed in 2006 when there weren't any State guidelines that talks about site-specific agricultural habitat protection plans and -- and a bunch of infrastructure around how to help people create those plans. And the current guidelines for -- for counties like Clark County that are not participating in the voluntary stewardship program is to allow exemptions if operators are following current NRCS BMP Guidelines.

We are also providing a couple other options just recognizing that some operators do have farm plans. So if somebody has a farm plan in place, that will qualify for an exemption. And there's also an option to come to the county to get a site-specific stewardship plan. Again, that's just -- just an option.

And then with regards to wetland buffers, buffer reductions are proposed to be limited to 75 percent of the buffer width. Again, this is to conform with Ecology Guidelines. Greater reductions still can be achieved, but they require converting a portion of the wetland to replace the buffer that's being reduced which we generally call indirect impacts and it requires wetland mitigation instead of buffer mitigation.

Next slide, please.

And as I mentioned, the riparian habitat widths are proposed to be based on site potential tree height and the tree height is defined based on the soil mapping and the NRCS soil survey. Those are -- that's empirical data that's been developed over the years for the different soil types and their capability to grow conifers.

We're also adding a minor exception process for a ten percent administrative variance as part of our reasonable use assurances. This provides for those smaller variances a little bit of additional flexibility in approval criteria and we're modeling that after a minor exception in the City of Vancouver's Critical Area Ordinance.

We're streamlining submittal requirements for ministerial reviews which are our Type I processes, primarily for single-family residence home construction. We're giving landowners the option to allow the County to do all the difficult work of assessing the site and helping them with a mitigation plan as opposed to having to hire professional services.

We currently do this but it's not really codified and so we're here, we're formally codifying it, and we'll have a record that the landowners have selected this option as well as materials that explain the, you know, the ramifications of that.

In addition, landowners will always have the option at any point in the process to -- to go out and get their own experts and -- and bring that information back in for -- for their review. We're also providing clear and consistent standards for all of the technical and legal documents that are required for various parts of the review process.

Clear and consistent reasonable use assurances for single-family residences, rural land divisions, and public infrastructure, and utilities. These reasonable use assurances are in the current code. The language between wetland and habitat is a little different and the process and procedures can be different. So we're trying to streamline that so it's we do it the same way for both.

And we're codifying mitigation maintenance and monitoring standards. Both codes currently have language that require maintenance and monitoring and mitigation, but there's really no detailed standards of -- of how to do that so we're providing minimum requirements for how long a monitoring period needs to be, what type of schedule monitoring needs to be done on those sorts of things. Next slide, please.

In addition, there's a few changes we need to make to other parts of the code in conjunction with the proposed amendments. One is we're revising the definition of isolated wetlands in Title 40 and the change here is to exclude wetlands that are within or adjacent to habitat areas. Right now that exclusion only applies to streams.

So any -- any wetland that's adjacent to a priority habitat will not be considered isolated. The only impact this really has is for very small wetlands. In the current code they're exempt. In the proposed amendments, they're exempt from the mitigation sequence but they still require mitigation and they also don't require wetland buffers. So this change in definition will only affect those -- those very small wetlands and when those -- those exemptions will apply.

We also have to make a few changes to the fee table. We're not changing any of the fees. We're simply renaming some of the existing fee items to align with changes in language in the code. And then we also need to do a shoreline amendment which is the next item on tonight's agenda. It's a separate process. Next slide, please.

So in terms of the project timeline, as I mentioned earlier, we had a Council work session in September. We've had a couple of -- of public meetings, one for the general public and one aimed specifically at -- at professionals where we essentially went over the same information we're going over here to and took questions.

We had a work session with the Planning Commission two weeks ago and we're here at your hearing tonight. And then we're looking now to schedule Council work session I believe it's January 18th with a target hearing date of February 3rd.

And then once -- once it's adopted we'll be submitting the approved version to Ecology. And Ecology's process there, they -- they don't have any final approval authority, it's simply part of the process we're required to do to ensure that they -- they have the adopted version so they can decide whether they want to appeal the adoption or not. Next slide, please.

All right. Well, that's the end of the slides. But I do want to go over a few things that have changed since the work session and to specifically to address some of the items that we discussed in the work session. So, Sonja, did you get the memo that I sent earlier this evening?

WISER: You sent to the Planning Commission?

DAVIS: I sent it to you.

WISER: I'm not sure.

DAVIS: Okay. Is that something -- could we get that in the -- in the record now?

SIDOROV: Give us a second, Brent.

DAVIS: Yeah, no problem.

WISER: Brent, was this the one from the Department of Commerce?

DAVIS: No. Hang on a second. Let me -- no. It was 5/22, this evening. It's a Memo/Staff Report Addendum.

KAMP: Hey, Brent.

DAVIS: Yes.

KAMP: This is Jacqui. I might suggest -- well, I'm sure Sonja's probably got it in her e-mail box, but we could probably give you presenter rights if you just wanted to pull it up and kind of walk through your responses. Does that make sense for everybody?

SIDOROV: Jacqui, I think we just found it.

DAVIS: I think we found it.

WISER: Jacqui, we found a memo at 5:22 p.m. I did not send it out to anybody, but I can open it up tonight.

DAVIS: All right. Thank you.

JOHNSON: Okay. It's up, Brent.

DAVIS: Okay. It's not showing up on my screen yet. Oh, I can -- I can work from -- okay.

SIDOROV: Hey, Brent. I think it's going to be easier if I -- if I give you presenter rights and you'll just share it from your screen because we can see it in the room but you guys won't be able to see it.

DAVIS: Okay.

SIDOROV: Here, let me -- let me make you presenter here.

DAVIS: Right. All right. I got to figure out how to select the screen. Okay. All right. So can everybody see --

JOHNSON: Yes, we can see it.

DAVIS: -- the memo? Okay. Great. Thank you. All right. Sorry about the delay there. So, like, I apologize for the lateness of this. We got Fish and Wildlife's comments late yesterday and so that was a majority of the hold up, but, anyway...

So what -- what I'm doing here is addressing two different things. One is some minor revisions to the



draft that was -- was sent out to the public and is in the record for tonight based on comments we received yesterday from the Department of Fish and Wildlife as well as some changes related to the October update from Ecology that I mentioned in the work session.

So in terms of changes for to address WDFW comments, just to summarize them and then I can show them in detail. They asked us to reference the WAC where we refer to Best Available Science in the ordinance to clarify the meaning of Best Available Science.

They've also suggested that we use a 100-foot riparian habitat area for seasonal streams to provide water quality protection for those streams. And then also they asked us to expand the authority for the responsible official to consult with Fish and Wildlife on developing mitigation guidelines.

This is not project-by-project consultation but consultation at a programmatic level when we're developing guidelines for the various habitat types. They wanted us to expand that authority to all aspects of compensatory mitigation. The way it was proposed in the code it was only applicable to establishing the amount of mitigation that should be required.

And then changes to address Ecology's Best Available Science update from October are specific to the buffer reduction that can be granted for a change in land use intensity. In the -- in the public draft that was released, there's a table of potential impacts and mitigation measures and the intent is that to get a buffer reduction you need to be able to -- you need to do all those things to the extent that it makes sense to do that on your project.

In addition to that, Ecology also wants us to include a requirement to provide 100-foot vegetated corridor to another wetland, priority habitat area, or other conservation area and there's criteria for what that means and that specific one would only be required for wetlands with moderate or high-habitat function based on the scoring in the wetland rating form. And so -- so I've proposed some revisions to address that.

In addition, that there are also some changes to the table of the impact and mitigation measures because they changed some wording and made some changes to that table as well. And before I go over those in detail, I also did want to circle back.

At the work session, some Commissioners asked about the relative change in the proposed riparian habitat area in the rural area versus the urban area. I had given a general number of 4.7 percent of additional acreage in the county that would come under regulation, and so I did that analysis and it actually turns out -- and actually I adjusted that analysis for the 100 feet that was recommended by Fish and Wildlife for the seasonal streams.

And when I did that analysis, it turns out that the impact in the rural area is an increase of an additional 5.2 percent of the total county land area, but in the urban area it's actually a slight decrease. And that's -- that's not too surprising because we're talking the changes are primarily on non-fish bearing

and, you know, smaller streams in the upper reaches and so it's not surprising that there's more affect for that in the rural area.

And in terms of how this could potentially impact the vacant buildable lands model, essentially with the minor and slight reduction in the urban area, it's likely that -- that any proposed expansion areas would have a similar stream density.

And if -- if that's the case, then there really wouldn't be any impact to the vacant buildable lands model or -- or the urban growth areas so it certainly could, you know, would be more of an issue potentially for -- for rural areas.

However, we have the reasonable use assurances that protect the density for rural land or short plats in the rural area as well as guaranteeing homes on individual legal lots, so...

In terms of the specific changes proposed in the code, I've got them here. Since you haven't had a chance to see them, I'll go through them quickly. So in order to address the reference to the WAC for Best Available Science, this is on Page 1, Line 4 of -- of the draft code, it's just essentially inserting a reference to the applicable WAC.

And then the next change on Page 6, Line 168, is I'm proposing to change all of the seasonal non-fish bearing waters to a 100-foot riparian zone for water quality protection. Fish and Wildlife's letter recommends the change for the Site Class IV and V streams.

However, in thinking about site potential tree height and the functions that extend, you know, that are other than water quality, the proposed values that we had really don't provide much value in terms of protecting any of those other functions.

And I -- I discussed this with Fish and Wildlife and they didn't put it in their letter but -- but when we had our meeting they did not -- they were not opposed to this change so I'll circle back with them on that.

And then revision for the wetland buffer land use intensity reduction is on Page 17, Line 526. So we're -- all the code language here in blue is taken directly out of the model code from the updated Ecology guidelines for this particular item and the criteria for this 100-foot vegetated corridor that it either needs to provide a direct connection to priority habitat, mitigation site, wildlife refuge, national, county, or state park where their management plan has designated natural areas, natural forest or natural area preserve.

Other possibilities for that corridor is if there's a project identified in a watershed plan. And then another alternative could be if it's in a shoreline area that doesn't meet these other criteria where development is prohibited in accordance with the Shoreline Master Program.

And then lastly, this is just kind of a -- kind of a catchall, that there's somebody has some sort of area

that has a conservation status that's not consistent with the above criteria that's recognized by Department of Fish and Wildlife, that could also qualify. So in terms of the -- the changes to the impact and mitigation measures for -- for the reduction.

So the table in the draft code just identified the type of impact and listed some required measures. Ecology made some changes to how that was formatted and added an additional column to clarify, give some more concrete examples of what type of activities might create those types of impacts and then made some changes to the mitigation measures so this table just reflects those changes.

And then the last one, the consultation with Fish and Wildlife for habitat mitigation guidelines, I put the entire section in here so you can see the context. That's on Page 19, Line 595. The actual change is down here at the end. This -- this sentence in Paragraph 4 was actually the last sentence previously in Paragraph 3.

So by putting it here in Paragraph 4 this consultation not only applies to the mitigation amount, but the location of where mitigation can be allowed in addition to the type of mitigation actions that might be appropriate for a specific type of priority habitat and -- and -- and also defining what each of these are for those specific habitat types.

So it's, you know, fairly pretty minor -- minor change. The provision grants the responsible official the authority to consult with Fish and Wildlife but it does not require consultation.

All right. So that's -- that's all of that. So I guess I can give the screen back and I've stopped sharing. All right. So are there any questions?

JOHNSON: Okay. Let's start off. Bryant Enge, do you have any questions?

ENGE: Not at this time.

JOHNSON: Bryan Halbert, do you have any questions?

HALBERT: Hey, Brent, thanks. A great presentation and a lot of code changes. And we've seen a lot of public comments come through about specific conditions that might apply to someone's property and I'm not sure that I've understood how they are each impacted by the revisions of the code and -- and I'm not sure that I saw responses from you to those individual property owners and -- and are you aware of them and have you responded to them and how -- how -- how these codes affect or don't affect their properties?

DAVIS: Yeah. Well, we've responded to one -- one in particular the -- I think it was -- make sure I get the gentleman's name correct here. I apologize. I need to track this response down.

HALBERT: Brent, Bryan here again. Would it be okay if I ran a few of the names by you and maybe a

couple of their topics?

DAVIS: Yes. Sure.

HALBERT: So Mr. O'Connor who really didn't think that the code changes that we're proposing went far enough and that they violate the Federal laws and -- and regulations and policies and he also was concerned about eliminating the Best Available Science but it seems like you've incorporated the Best Available Science into the zoning code.

DAVIS: Okay. I -- I have not responded directly to Mr. O'Connor yet, but what I can say about Best Available Science is the statute says that we need to include Best Available Science. And then it -- it -- the WAC further defines criteria in under which jurisdictions, you know, can make decisions that do not solely rely on the Best Available Science and bring in other policy considerations such as the other goals of the Growth Management Act and -- and so, you know, the -- the changes that I've seen most of the comments about in terms of not going -- not being consistent with Best Available Science is related to the riparian habitat and the non-fish bearing streams.

And I just, you know, want to emphasize that we have discussed our proposal with Department of Fish and Wildlife and their letters generally supporting our approach, so... And they recognize that the, you know, the potential impact to the amount of land that can be encumbered by with the non-fish bearing streams and so while their -- their science, you know, doesn't make that distinction, they understand the -- the ramifications and understand that jurisdictions may have other considerations.

HALBERT: Can I pull out another one here?

DAVIS: Sure.

HALBERT: Sure. Kind of a fun one. A Casey O'Dell in Camas wanting some amendments that would allow them to use mechanical equipment to maintain the flow through their property.

DAVIS: Yeah. I had seen a comment from one of the other neighbors I believe in that area, a Mr. Kripalani, and I have -- I have responded to Mr. Kripalani. And so the situation in that specific location is there's a relatively large Category I wetland, it's mapped by the U.S. Fish and Wildlife Service in the National Wetland Inventory and it's also mapped hydric soils.

We have -- we know it's Category I because we did a determination on one of the properties in 2015 and that we made that determination based on the wetland rating form, and there -- there is a ditch at least in parts of that wetland. We can see it on historic aerials in areas that had been cleared and used for agriculture in the past and, you know, the -- the changes that we're proposing with this update don't really change how that area is regulated for the types of things that, that these landowners are concerned about, you know, in terms of being able, you know, maintaining the ditch.

We do have an exemption for -- for maintenance. However, what we find in a lot of these cases is that,

that situations like this they haven't been maintained for many, many, many years and, you know, it's not a situation where they've been continually maintained and they're providing a certain function.

It's they may have provided a historic function and somebody would like to go in and -- and restore that function but it hasn't been maintained sufficiently up till now to really qualify as what we would consider normal maintenance.

You know, there are also some of the other concerns were related to managing noxious or invasive vegetation. The exemptions for that allow those activities as long as you cannot damage the natural capacity of natural, native vegetation to reproduce or you're using equipment that doesn't disturb the soil.

So, essentially, you know, hand tools are the simplest but, you know, small power equipment even like low pressure ground impact type equipment could -- could be used to qualify for that exemption.

In addition, there are options for a stewardship plan. Somebody could come in and just get a permit to do a restoration project on their site. We actually have the ability to waive fees if it's truly a restoration project.

However, because of the Category I wetland, any of that work that would rise to the permit level would probably require some sort of professional assistance because, you know, Category I wetlands under our current code were prohibited from approving any application that has -- has any kind of impact to those. They're designated for the highest priority of protection, so...

And I think there was another suggestion in one of those comments that, you know, that the County should look at is this thing globally and come up with some sort of plan or something that would help out all of the landowners and, you know, we don't really have any provisions in our code to do that sort of thing.

Certainly the landowners could ban together and do this as a single application if it was something that required a permit. We have legal requirements, you know. We need permission from all of the property owners that want to be involved.

And there is one complicating factor in this case, there is at least one of the parcels within the City of Camas' jurisdiction so we wouldn't be able to -- to do anything for -- for that parcel in particular.

But, yeah, I -- I -- I certainly need to reach out to those other landowners and respond to those specific concerns. We have not done that yet.

HALBERT: Yeah. Brent, it seems like in your presentation you talked about County staff actually helping through some of the streamline process if they were making permits. Does that also extend to some of these areas where you would take a look at the condition and help them with a plan for

maintaining it or --

DAVIS: Yeah. I mean --

HALBERT: -- contacts in their district?

DAVIS: Yeah, it depends on the extent of what they're trying to propose and how much -- how much potential temporary impact it could have. If it rises to the level where it needs State and Federal permits, which a Category I wetland, it could potentially do that, we certainly would not be able to -- to help folks out, but, you know, if -- if somebody wanted to do this some sort of stewardship plan, yeah, that would -- that would fall in that category where they could have us give them that assistance.

HALBERT: That's a great offer. So the Casey O'Dell one was where the beavers have dammed up their historical drainage ditches over the past 25 years and backed up the water and I think they were looking for -- would they still be allowed -- I don't know how beaver dams and ditches are addressed in the code, but they were wanting to find out could they use mechanical equipment to remove the dams, open up the ditches again?

DAVIS: Yeah.

HALBERT: Or maybe that goes back to what you said, it hasn't been maintained for 25 years.

DAVIS: Yeah. And -- and beavers, you know, beavers are part of the natural process and, you know, that's -- that's definitely one that's a challenge and that's also something that would probably rise to the level of needing permitting from the Department of Fish and Wildlife potentially or -- or the Corps of Engineers depending on if it's, you know, if it's in a stream certainly could rise to the level of needing a permit from the Department of Fish and Wildlife for a -- as a hydraulic project.

And so the circumstances there it would be that it -- yeah, it would have to be a functioning ditch that, that has been maintained and -- and, you know, that there's clearly an identifiable problem with that ditch not being able to function as it has been maintained to do, you know.

You know, I think that the challenge that we run into is a lot of these ditches are still jurisdictional because they are actually in a wetland or they're -- they're carrying natural stream flow and are designated as a stream because of that, so, you know, that's -- that's why these things can get -- get pretty challenging for landowners, you know.

It's not that we're not sympathetic to their concerns. It's just that, you know, it's -- it's a regulatory challenge and not just with the county, but, you know, with other agencies as well.

HALBERT: I'll bet. And, Brent, I'll bet while you were wrapping up your amendments at 5:22 tonight and sending them out, did you see Ecological Landscape Service or Ecological Land Services letter

regarding steep slopes in riparian zones and the possibility that a steep slope more than 30 degrees off of a riparian zone really shouldn't be included in the riparian zone after the -- at the top of the slope?

DAVIS: So, yeah, actually that comment is -- I believe is specific to wetland buffers. There was some comments about riparian areas as well.

So one of the things in the current code in our definition of functionally isolated wetland buffers it has language that talks about vertical separation, and Ecology specifically asked us to remove that and -- and that doesn't mean that we can't consider those types of factors. It just means that that it's not an automatic.

So, essentially, you know, it means that, you know, it leaves some discretion with the responsible official to assess what constitutes functional isolation based on -- on, you know, those circumstances.

But there are a lot of functions that actually some -- that some of the science argues you would need a bigger buffer because you have steep slopes because for -- for sediment removal, for water quality, the steeper slopes, the water doesn't slow down and the sediment, you know, it takes a lot longer distance for the sediments to get removed, you know, so...

So that's why we took that out is, is because Ecology indicated that it wasn't consistent with -- with their guidelines, but that doesn't mean that in specific circumstances we can't consider it like, you know, if there's a, you know, there's a really steep slope and, you know, a sheer break and we know the water isn't draining down that slope because of the topography, then it would certainly make sense to consider that. The comment with regard --

HALBERT: But, Brent --

DAVIS: Oh, sorry.

HALBERT: But and that's where you come in or your team comes in and evaluates a site based on its actual conditions and -- and not always applying the specific Ecology rules to a zone or a --

DAVIS: Well, Ecology doesn't -- isn't telling us that we can't consider those. It just -- they're just telling us we can't have it as a -- as an automatic --

HALBERT: Exemption.

DAVIS: Yeah. Essentially, yeah.

HALBERT: Okay. Okay. Thanks. I think I'm done for right now. Thanks, Brent. There's more comments and coming and, boy, it's a lot to take in. And I also understand that Ecology does dictate a lot of what we're dealing with today and take some of this out of our control of being able to apply

sometimes what we think is common sense with their -- with their rules. So thanks for navigating us.

JOHNSON: Thank you, Bryan. Up next for questions, Matt Swindell.

SWINDELL: Hey, Brent. Actually, I was wondering if you were able to see the comments made by David Morgan who what we all refer to as Morgan's Landing out in Ridgefield. He had some comments and some language that he suggested in -- in this. Have you had a chance to see that?

DAVIS: I have. I did get a chance to look at his comments. I would certainly like to have a conversation with him, you know. He has a very specific interest and I understand that and, you know, we're -- we're working with him on his -- his banking project right now.

So the way I read his comments, I think he and I have a different interpretation of the language and so I'd just like to discuss that with him and -- and see if we can get on the same page and that that may result in some proposed adjustments to the -- to the language.

But, you know, essentially the way that -- that I read it is that for that banking credits or fee in lieu credits, which we currently don't have any in the county, are -- are the preferred mitigation option as long as it's ecologically appropriate and that's -- that type of language is actually generally built into the banking instrument for an individual bank which is the legal document that establishes the bank and determines how they generate credits and when credits can be used.

And in terms of permittee, you know, in current mitigation where the -- where the permittee is doing the, you know, mitigation on their site, the way I read the code it says that, that in order for them to be able to do that there either has -- they either can't have access to a banking option for the type of impact that they have, or if they do, that it -- we have to be able to make a finding that that banking option is not ecologically appropriate for their particular impact.

And I think he's reading it that -- that it's not quite so clear and I just want to make sure that -- that he and I are on the same page. We're -- we're in dialogue because he's -- he's working on approval process for some, you know, banking with wetlands as well as priority habitat. So I can certainly reach out to him, we just got those comments I believe yesterday and, yeah, you know, yeah.

SWINDELL: All right. Well, I -- I don't know him that well. I've only seen him in a few meetings in Ridgefield dealing with their site out there and the only thing I do know about this gentleman is that he is absolutely 100 percent a good steward of the land and I -- I take what he says to heart and -- and really put a lot of stock in what he has to say.

So, anyway, if you're talking to him and you guys are working with him, that's great. I just want to make sure that his comment did not get overlooked. Thanks.

DAVIS: Yep.



JOHNSON: Thank you, Matt. Eldon Wogen, comments? Questions?

WOGEN: Some other comments we had was from a gentleman, Jim Barnes. He said that the changes would have a major impact to smaller properties to be developed for single-family uses, and I think you made mention of that, Brent, in your memo that these changes are going to have an impact to buildable land. Which changes had the most impact to the buildable lands of all these changes?

DAVIS: Well, in terms of single-family, you know, particularly for rural landowners it's the riparian habitat changes and that -- and that's -- that's also going to have a, you know, some impact on -- on developers, but as I indicated with the memo, the overall impact in the urban area is actually a slight reduction in total riparian area.

But in -- in the rural areas when you get into the -- the non-fish bearing waters the changes particularly for perennial streams they're going to be pretty significant.

And at the time Mr. Barnes made his comments, you know, we were -- it was with what's in the public draft where we had a little bit different scheme for the seasonal streams than what -- than the revisions I went over based on Fish and Wildlife's comments, but the difference between the two isn't -- isn't that great.

So in the rural area we're talking about an increase that's adding about 5.2 percent of additional acres in the county that will be subject to riparian area regulation and that 5.2 percent is not an increase from the current amount, it's 5.2 percent of the counties land area, the rural land area which is about a 13 percent increase from the -- the current code, you know, as far as -- at any rate, so...

So it is a significant impact and what it really boils down to is, we're going to be doing more reasonable use assurances to ensure that people can build a home on their property. We're probably going to be seeing more reasonable use assurances for short plats and pushing, you know, more of those short plats to cluster developments in order to try to avoid those larger riparian areas, but we still have those options and they still -- we still provide those guarantees.

We still guarantee rural land divisions can achieve the density that they're zoned for and that individual landowners can build homes on legal lots. So, you know, they made some of those particularly challenging lots maybe more constrained, they may not be able to have a yard or much of a yard, but when we look at those reasonable use assurances, you know, we look at -- at the -- the reasonable use assurance, you know, grants a home and normal accessory structures.

So in the rural area, it's pretty common for people to have a detached garage or shop. We generally include that, you know, in those reasonable use assurances and find a way to -- to get people, you know, to be able to build those and find the place on the site that has the least impact.

And we also then -- we also apply a cap on -- on how much mitigation we require especially now that we

have a lot of banking credits available because mitigation can get very expensive very quickly and so to try to make it reasonable for people we generally are tying how much mitigation we're required, you know, to the valuation of what they're building and -- and the building division has evaluation calculator that they use to determine the building fees and we use that same calculation to estimate the value of what they're building and then we take a -- we essentially put a limit on a percentage of that.

And that's not something that's in the code, it's a reasonable use assurance consideration. And right now we're -- we're using about, I believe, it's 7.5 percent of that valuation is like the maximum. If their mitigation cost is going to exceed that then, you know, we set it and we have a way to convert, you know, if they're going to do planting, how much planting that translates into and that sort of thing.

WOGEN: And so --

DAVIS: Yeah. Does that answer your question?

WOGEN: Yeah, I think so. It just flies in the face of other work that we've done earlier this year about buildable lands and affordable lands and we're just, and regulations --

DAVIS: Certainly --

WOGEN: Yeah. And --

DAVIS: And that's part of it -- oh, go ahead.

WOGEN: Go ahead.

DAVIS: That's part of the conversation that I had with Fish and Wildlife yesterday is that, you know, we -- we have other GMA goals about affordable housing and about limiting growth and, you know, and these types of changes make achieving those goals more challenging because, you know.

WOGEN: Absolutely. So then I have another question. So one of the changes, wants to change the define riparian zones by the site potential for tree height; correct?

DAVIS: Yes.

WOGEN: But then -- but then like in your memo and you mention like 100-foot setback for seasonal streams. Now is the change for riparian zone going to apply to seasonal streams too besides potential for tree height. Does that make sense?

DAVIS: Well, I mean -- yeah. No, that does. And so what I propose because of those conflicts with those other GMA goals for -- for non-fish bearing streams in general is to reduce the riparian zone from the site potential tree height and for -- so, yeah.

And so for the seasonal streams, the current proposal is to change, you know, is to set that riparian zone at 100 feet. In the current code, it's at 75 feet and the 100 feet is based on Fish and Wildlife. It's still based on Fish and Wildlife science.

It's essentially what they've -- they've determined is the minimum amount necessary to protect the water quality in those seasonal streams and down -- downstream fish bearing waters.

WOGEN: All right. So you're proposing to use 100-foot setback instead of the site potential tree height for seasonal?

DAVIS: Correct. Yes. And that still ties back to Fish and Wildlife's management recommendations, it's just not the full height -- site potential tree height.

WOGEN: All right. Thank you.

JOHNSON: Thank you, Eldon. So my I think we talked about this in the work session that basically that we've kind of kicked this can down the road, those are my words too, and basically we have to do this; is that correct?

DAVIS: Well, I mean, I think there's -- there's a high amount of risk for not doing it. You know, the -- the -- the statute says we have to include Best Available Science.

We have to give special consideration to the conservation and protection of anadromous fisheries and the -- the Hearings Board and the courts have established that State agency guidelines are pretty much the high bar that's been set for Best Available Science and so anything we do that that is less than that requires justification and homework and documentation in the record and presents, you know, presents a risk for an appeal and being, not being in compliance with the GMA and, so...

I'm at a pretty good level of comfort with what we've proposed here because we know that that it's addressing Ecology's concerns that they've specifically expressed about our code and we also have an understanding with Fish and Wildlife in terms of, you know, what we're proposing for -- for those riparian zones and some of the other minor changes in our habitat code.

JOHNSON: Okay. Thank you. So now there's, of course, not an applicant so we'll open the hearing for public testimony. Sonja.

### **Public Testimony**

WISER: Good evening members of the public. Please note to be a party of record you must submit written testimony before, during, or prior to the close of tonight's hearing, or provide oral testimony at the public hearing, or request to be a party of record.

No person shall be a party of record who has not furnished their full name, e-mail address, or Post Office mailing address. If written comments were received prior to November 17th, 2022, they were submitted to the PC members and posted on the Planning Commission website.

This hearing is being transcribed by a court reporter so please spell your last name and speak slowly. Public comments is limited to three minutes. So we'll start with the Webex callers first and those participants that have joined remotely on the computer or telephone. Larisa, do we have any people calling in?

SIDOROV: I do not see any raised hands.

WISER: Okay. Thank you. So next we'll start with in person comments and begin --

SIDOROV: Oh, sorry. One just came up.

WISER: Okay. Thank you.

SIDOROV: Richard Dyrland, I will unmute you now.

DYRLAND: Dyrland. I live at 27511 N.E. 29th Avenue, Ridgefield, Washington. Wetland and habitat protection and their proper functioning are directly related to the effect of climate change in the Pacific Northwest.

In Clark County over the last 20 years, we have observed and documented significant losses in wetland area, water infiltration, and different types of water and land associated habitat. This is a historical review of our aerial photos covering Clark County along with ground-truthing and related data verify this as well as other forms of habitat impacts. The impacts of these are far reaching and continue at an increasing rate.

Recharge of major aquifers such as the Troutdale is decreasing, well-water depths are dropping, in addition to the areas and functional loss of wetlands and habitats. The proposed County wetlands and habitat ordinance update are currently -- as currently drafted and proposed will apparently make things worse because the proposed new guideline criteria use buffers that reduce the current amount of area and habitat that it is required to protect and -- and allow functioning effectively.

Related to this is also the current (inaudible) of an improper use of the termination of nonsignificance or DNS designation finding and review of project application.

JOHNSON: Excuse me, Richard. Richard, can you -- this is Chairman Karl. Can you slow down just a little bit? We have somebody that's recording this. And you're doing great. Can you go just a little bit slower if you wouldn't mind, sir.

DYRLAND: Okay. Thank you.

JOHNSON: Okay. Thank you.

DYRLAND: Okay. The nonsignificance or DNS designation finding and the review of the project applications and the lack of using a finding that an environmental impact analysis called a "SEPA" is needed.

Classic examples in Clark County are the Chelatchie Bluff's mining overlay expansion application in the headwaters of Cedar Creek which is a tributary of the North Fork Lewis River and also the series of DNS findings relating to the ongoing building expansion along the east and west roads of 179th Street.

And in addition, we have a major ongoing problem with a noncompliance of statewide legally required concern concurrency funding and its related infrastructure completion requirements before any housing or business related construction is started.

I respectively -- respectfully urge you not -- do not recommend the approval to reduce the buffer and other related wetland and habitat improvements. By not approving a reduction, we further prevent a long-term negative series of impacts related to water quality and quantity as well as the damaging affects related to climate change.

There is no shortage of new data and information that supports the need for the proposed use of new updated Best Available Science. Clark County is already in an ongoing deficient condition and trend.

Changing wetland and habitat ordinances to that which reduce existing wetland protection boundaries and habitat protection would be an egregious, far reaching mistake that no amount of so-called mitigation could correct. Thank you for your time.

JOHNSON: Thank you, sir.

SIDOROV: And I do not see anyone else's hand raised.

WISER: Thank you. So now we'll begin with in person comments. We will now begin with participants in the hearing room. When we call your name on the sign-up sheet, please come up to the front and provide your name and address for the record. If you do not wish to provide public testimony, please say so. Karl, can you call the participants on the sign-in sheet to come forward.

JOHNSON: Yes. Thank you. Jim Byrne. You're up first, Jim. Thanks for waiting.

BYRNE: My pleasure. Good evening. Habitat is the key to wildlife. This slogan was written on WDFW trucks when I first started working for them. I put in 28 years as a fish biologist so I walked and snorkeled many of Clark County's rivers and streams.

The Growth Management Act states critical areas ordinances are required to include Best Available Science and give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fish. The intent of this law is to protect the functions and values in wetlands, shorelines, and riparian areas.

New riparian habitat management recommendations from WDFW in 2020 have refined -- have redefined riparian habitat based on site potential tree height as opposed to a fixed width base on stream function as Bryan said. This is the new Best Available Science.

The associated SEPA for this ordinance also states that Best Available Science needs to be incorporated. Staff does not have an option to consider or revise Best Available Science. Counties must include Best Available Science, period. Staff appears to disregard State law.

In a November 2nd presentation to staff and professional consultants, staff determined that their, quote, "Type N reductions are a departure from Best Available Science," unquote, and that's Slide 10, the second bullet and they revert back to buffer widths associated with stream types.

There's a Friends of Clark County letter that was sent to you yesterday, I believe. It has that particular slide on it. This is exactly what the Department of Ecology and WDFW are attempting to avoid.

Additionally, in that same presentation staff proposes to, quote, remove the requirement to defer to WDFW recommendations for project review, and that was on Slide 8, the second bullet. Fortunately, this does not appear in the latest round November 3rd's issue of slides. Thank you. But we question the intent of including this in the first place.

WDFW should provide review of all project decisions and staff should follow their recommendations. The County Council direct staff to, quote, "pursue updates that conform to State agency guidelines," unquote. That was Slide 4, the first bullet, and this means, namely, WDFW's site potential tree height. The solution appears obvious to us.

The Growth Management Act and County Council both say use Best Available Science and follow Washington State agency guidelines. What staff has proposed does neither.

On November 2nd of 2022, staff organized a professionals meeting on the upcoming ordinances. Only staff, DEAB members, and employees of local engineering and consulting companies were invited. No one from the Department of Ecology or Department of the Fish and Wildlife were invited. No members of the public, Sierra Club, Friends of Clark County, Clark Skamania Fly-Fishers, Trout Unlimited were invited, nor were you invited. Is that fair? I don't think so.

The public are allotted three minutes for testimony while members of the development community get to actually direct county code. Clark County claims inclusion and public participation. If so, that meeting was a terrible example.

Friends of Clark County recommends writing the new ordinances using Best Available Science and WDFW site potential tree height methodology. Commissioners, please do not allow staff to improvise Best Available Science. Thank you for your time.

JOHNSON: Thank you, sir. Teresa Hardy.

HARDY: Good evening. My name is Teresa Hardy, H-a-r-d-y. I'm coming here again kind of like I came last time, a little bit about process. We already heard that from two of our speakers.

If we're looking at public engagement and the importance of that, especially when it comes to land use, and our wetlands, and our forest, and our critical areas, and all of that, having one -- and this you don't really have any control over, but it's probably one of our only opportunities to say this, I did share this at a County Council meeting, to have one public meeting that was kind of just a brief overview.

And then the next meeting was that professional meeting that Mr. Byrne's just made reference to and there was no one from the environmental community involved in that, and DEAB on October 6th, November 2nd was involved in that meeting and then again on November 3rd.

I went back and I listened to those DEAB meetings and I read the minutes and in the October 6th meeting there's a lot of information shared from the Department of Ecology and Fish and Wildlife, but unless one even has any knowledge of the role that DEAB plays in all of this, you wouldn't even know what information was shared.

So we as the public have been moving along with this with the understanding that in the SEPA and what they're saying is that Best Available Science and consideration of current Washington Fish and Wildlife priority is really important.

Here's the determination of nonsignificance and -- and so we are un- -- you know, we understand that Ecology and Fish and Wildlife play a crucial role but what does the public actually hear about that.

I actually had to go to the Department of Ecology website and I found Meghan Tait, who was actually the Regional Director for Clark County. She does Clark County, Cowlitz, Skamania, and one other county, and then she directed that Rick Mraz is working closely with Clark County on the critical areas ordinance update.

But -- but we have to go in and do that kind of research ourselves to be able to kind of know what's really going on and -- and when I actually talked to Meghan Tait, I said, well, you know, we're supposed to be, you know, we understand once again that -- that the Department of Ecology and Fish and Wildlife are crucial in this, but where's that information?

And so she said to me, well, you can go to Wetland Guidance for Critical Areas Ordinance update. Well, that's 72 pages. So I guess I -- my question is, is that if this is important and environmental group input

is important, then why in this process does the public just have the first meeting where there's really no detail yet and then there's a professional meeting, a meeting with DEAB again, the work sessions we can't participate in so the public only ends up really finding things out in a hearing when you have three minutes to talk.

And it's, you know, if we're really going to say we have public engagement, it needs to be educated. Public engagement is just not for people just to complain about something they don't know anything about. I did go ahead and print copies of the beginning part of what we're actually using for Ecology, which is the Wetland Guidance For Critical Areas, and this is the October '22, their new guidance directions.

And one of the things I think it's kind of -- it's a -- it's a broader look at this is -- I'm going to actually read this to you. "Wetlands play a vital role in the overall wellbeing of Washington State. Washington's wetlands protect water quality, reduce flooding, provide aquifer recharge for drinking water and other uses and provide critical habitat for fish and wildlife as well as carbon sequestration."

But there's another part of this that I think is an overarching thing that we need to keep in our mind and that is wetlands also provide many social values including recreational opportunities, esthetic benefits, sites for research and education, and cultural resources important to tribes.

So I think in conversation, we need to keep some of these, you know, as part of the overall thinking. And then there's one more thing and then I'm pretty much finished and that is on Page 7 under these guidelines it says, "Watershed characterization. Land use planning and permit decisions usually incorporate information gathered at the site but not the watershed as a whole. This means decisions are rarely informed by an understanding of ecosystem processes or watershed conditions. Over the long term this can result in cumulative impacts that significantly affect the health of terrestrial and aquatic ecosystems; therefore, is beneficial to plan in consideration of broader watershed scale that may extend outside your jurisdiction boundaries."

And then the only other thing that I do kind of want to address is is land use in the County which ties back into the DNS's. We're seeing a lot -- a lot of projects, not just in the County but in the City getting these DNS's. Well, once they get a DNS, you don't really have to consider any habitat considerations and these DNS's, the public rarely knows about them. There's that comment period and then it closes, so...

So we can say that DNS's are important, but if -- I mean, SEPA is important, but if we're giving DNS's, we're not really considering our habitat and our wetlands. And then I want to make one final comment.

Coming here tonight after what I just said with the lack of public being able to be engaged in this process of actually kind of gaining information and understanding it, you know, all that detailed information was presented tonight. I mean, I wonder how even you listening to all that can absorb all that and make any really, you know, any sound decision from it when this stuff is all very technical.



So maybe in the future we can have a few more sessions. I mean, a few more, maybe, meetings with the public where it's not in the beginning. It's kind of farther along in the process so people can really absorb all this and you can absorb it and we really come from a better decision-making place. Thank you.

JOHNSON: Thank you very much for your comments. Okay. That's all I have on my list. Does staff -- okay. So with that, we'll close public testimony. And then, staff, is there any response to the testimony? Okay.

### **Return to Planning Commission**

JOHNSON: Hearing none, we'll bring it back to the Planning Commission for deliberation. Comments? Bryant Enge, comment or questions?

ENGE: Just a comment. I think it's a very complicated subject matter to have that the participants just shared. The technicality of it and the expertise lies in staff and regulatory agencies and their summary to us in terms of what the major issues are and I think that Brent, Brent, I want to applaud you in terms of all the different ways I think you were being pulled and how you considered the different elements in terms of the findings that you have presented and -- and the way that you continue to consider in terms of the input from conservationists, from the regulatory agencies, from landowners and from developers. So I appreciate your expertise. Thank you. That's all.

JOHNSON: Thank you. Thank you, Bryan. Bryan Halbert, questions? Comments?

HALBERT: Yeah. As we heard tonight, this is a complicated process and I -- I think I was at -- we were even talking earlier that an additional workshop on this or additional time to absorb this would be helpful in more of these complicated processes here.

So I hear what you're saying and I agree that we could use more time. I also agree that Brent has done a fabulous job of trying to balance not only the priority habitat needs but also the needs of the County at the same time and the Growth Management Act and I applaud you, Brent, for taking all that into account.

And really I think that's all my comments. It is -- it is a lot to absorb and -- and there were a lot of comments and I'm not sure how we get this out and educate more of the public before these hearings, but there's a lot of times when the public isn't all that interested in absorbing 72 pages of ordinances before it gets to this point, so... Okay. I'm done. Thank you.

JOHNSON: Thank you, Bryan. Matt Swindell.

SWINDELL: Brent, actually I -- I have a question, if I could. I wanted to get some just some clarification to make sure I'm understanding the riparian. The differences between the 100 foot and the height of the tree, there's some question of Best Available Science in that.

If I'm understanding correctly, we're being -- the Best Available Science says to go off the type of soils that will produce a tree that grows to a certain height and I think what you're proposing is to go to 100 foot, stay with 100 foot, is that accurate, or are you proposing to go to the -- to the Best Available Science?

DAVIS: So it -- so for shoreline streams and fish bearing streams, we are proposing to use the site potential tree height. And for non-fish bearing streams, for perennial non-fish bearing streams we're proposing to use two-thirds of the site potential tree height and that's -- that's based on -- on the fact that our current code has a two-thirds reduction from the prior management recommendations that our current code is based on.

And then for seasonal streams, we are proposing to use 100-foot riparian zone to provide adequate protection for water quality functions in those seasonal streams. And I think the key thing in terms of -- of Best Available Science is that, you know, we have -- we have discussed these -- this proposal with Department of Fish and Wildlife and they are largely supportive of that.

They still acknowledge that their recommendations are to use site potential tree height for regardless of water type, but they also recognize that, you know, that poses some challenges with regard to the rest of the GMA goals.

SWINDELL: Okay. That -- that was going to be my next question is what -- what I couldn't remember what their comments were. So it sounds like you've had that discussion and they've said, okay, we've recommended this but we understand and recognize what you're trying to accomplish by reaching other GMA goals --

DAVIS: Correct.

SWINDELL: -- by doing what you're doing? Okay. Thank you for that clarification. That's what I was looking for. Thank you. And great job. This is -- it's a lot, and I -- and I have to agree that more time -- it's always best to have more time if we could and have more open dialogue with the community, you know, prior to this.

I've always felt like it's -- it's -- it is a rush. I don't want to say rush, but it is just kind of a bing, bing, bing and we're on to the next thing and -- but understanding staff has tons of things to get done and -- and whatnot just that balance, so... Anyway I -- I just wanted to make sure that -- that our testimony -- that her testimony I felt like I did somewhat agree with that as well. Thank you.

JOHNSON: Thank you, Matt. Eldon Wogen, comments? Questions?

WOGEN: Only the comment that, you know, this is a typical conflict. We, on one hand, we have wetlands environment as our speakers have brought up today, preserving those, the quality of life here in Clark County and it goes against the buildable land goals that Clark County has and makes more lands available for build.

In my opinion, it looks like staff has done a good job trying to build a balance between that. They'll preserve the wetlands that we have and be realistic about we still need to have buildable lands. So I think Brent has done a pretty good job of advocating for that and so, yeah, that's my comment.

JOHNSON: Thank you, Eldon. And I -- I think I echo most of the sentiments here. With that said, I would be happy to hear a motion, if possible.

SWINDELL: Matt Swindell. I make a **Motion** that we approve CPZ2022-00010, Critical Areas Ordinance updates and for Wetland and Fish and Wildlife Habitat.

HALBERT: Bryan Halbert and I **second** that motion.

JOHNSON: We have a motion and a second. Sonja, can you please give us a roll call.

**ROLL CALL VOTE**

ENGE: AYE

HALBERT: AYE

SWINDELL: AYE

WOGEN: AYE

JOHNSON: AYE

JOHNSON: Motion passes. And we'll conclude that portion of our hearing. Gentlemen, it is 8:15 right now, do we want a break or do we want to keep ripping through this?

HOLLEY: I need a break. I need a ten-minute break, Karl, please.

JOHNSON: All right. Cindy, that's what I was thinking. We'll take a ten-minute break and come back here at about 8:25. Okay.

HOLLEY: Thank you.

JOHNSON: You're welcome.

(Pause in proceedings.)

**IV. PUBLIC HEARING ITEMS, continued**

- 3. CPZ2022-00011 Floodplain Ordinance Update** – The update is a requirement of a Community Assistance Visit by the Department of Ecology in conjunction with the Federal Emergency Management Agency (FEMA) and is necessary for the county to retain its Community Rating and continue receiving current reductions in flood insurance policies.

**Staff Contact: Brian Apple, [brian.apple@clark.wa.gov](mailto:brian.apple@clark.wa.gov), 564-397-4061**

WISER: We're ready.

JOHNSON: Okay. Here we go. We're moving on to Item Number 3, CPZ2022-00011, and that's the Floodplain Ordinance. Staff will be presented by Ken Lader and Brian Apple. I don't know which or both. Gentlemen.

APPLE: Good evening. My name is Brian Apple and I am an Engineer III in the design section of Public Works, but more importantly I'm also intimately involved in the floodplain program for Clark County and I'm here today to speak about a necessary Floodplain Ordinance update. Next slide, please.

So the requested action -- the ultimate requested action is, of course, to amend the adopted flood hazard area ordinance and in particular tonight to receive a recommendation of approval and have that forwarded to Council. But before I talk - or next slide, please - but before I talk about the ordinance, I'd like to present some background information regarding the floodplain program itself.

The National Flood Insurance Program or NFIP requires the community to adopt and enforce floodplain management regulations, an (inaudible) regulate development and flood hazard areas and this requirement is an order for the community to be eligible for federally backed insurance policies.

The Community Rating System or CRS is a national program that was developed by FEMA in order to recognize and encourage communities and state activities that go above and beyond the minimum requirements of the National Flood Insurance Program.

So if we look at Table 110-1, if you just do the minimum requirements of the NFIP, your community is placed as Class 10. As you can see a Class 10 community receives zero percent premium reductions in their flood insurance policies, but as you implement additional programs and measures, you receive credit points and the community arises up in the CRS Class.

Currently, Clark County is a CRS Class 5 which corresponds to a 25 percent reduction for flood insurance premiums within the special flood hazard area or floodplain and 10 percent reduction in policies outside of the floodplain. Next slide, please.

There is new CRS Class 8 Freeboard Prerequisite. So, in other words, communities needs to adopt this freeboard prerequisite in order to be classified as a Class 8 or better. The prerequisite itself is a one-foot freeboard requirement including machinery and equipment for all residential buildings constructed, substantially improved, and/or reconstructed in the Special Flood Hazard Area.

And as I mentioned, if this prerequisite is not adopted, the community will automatically downgrade to a Class 9. As I mentioned, Clark County is currently Class 5. And in addition, the County already currently requires a one-foot freeboard requirement on the buildings or the structures themselves only. So this new update will basically add this requirement to machinery and equipment. Next slide, please.

Back in last May, there was a mandatory audit of the County's floodplain program through the Department of Ecology and FEMA. This audit was known as The Community Assistance Visit, and overall the audit went very well.

It stated that the County's procedures are effective, the staff is knowledgeable, have a thorough understanding, but there was one minor deficit that was found in the audit and that was that the ordinance needed minor updates to bring it into compliance with this new CRS Class 8 freeboard requirement in addition to the FEMA model ordinance for the State of Washington and this model ordinance essentially identifies basic minimum Federal and State regulation requirements that must be contained in any local flood regulation. Next slide, please.

So, overall, the floodplain code updates include, as mentioned, the inclusion of machinery and equipment into the one-foot freeboard requirement. An update to the list of definitions. The addition of two sections within the ordinance.

One, a penalty for noncompliance which essentially provides a maximum of a \$500 fine for each violation; and a severability section which essentially states that if any one part of the ordinance is found to be unconstitutional that does not mean the entire document itself is unconstitutional.

And, in addition, there was a freeboard requirement that was applied to AO zones using depth number provided. And what an AO zone is are basically shallow flooding zones that flood through sheet flow off slopes and the flooding is typically between one and three feet in depth and that depth number -- the depth number would be one -- one, two, or three to -- to identify what that flood depth actually would be.

In addition, one update was to include that lowest floor in any unnumbered A zone needs to be at least two feet above the highest adjacent grade. Now to explain this a little bit. An unnumbered A zone is essentially an area where the base flood elevation cannot be reasonably obtained.

And so recognizing this and trying to provide another route for landowners to develop, they have added this update which essentially says, okay, well, if there's not a BFE, then the lowest floor has to be two feet above the highest adjacent grade which is essentially just two feet above the highest natural

elevation next to your proposed walls. So the intent is that you're not allowed to build in a hollow if you don't know what the base flood elevation is.

And the final update is the inclusion of livestock sanctuary construction standards. And this sounds more major than it actually is. The standards themselves are listed below and essentially it's two things.

One is that the sanctuary area is sized appropriately for the number of livestock, and the second is that that area is elevated sufficiently to protect that livestock which is typically one foot above the base at flood elevation.

And this standard was included in order to codify another route that livestock owners whose land is within the floodplain gives them another route in order to secure the livestock in the event of a flood.

Currently the other two is, you know, securing in a barn or securing in a barn, transporting them away, or letting them loose, so this just gives another area for them to secure their livestock in the event of a flood. Next slide, please.

So a little bit on the timeline. On November 3rd we had the work session. The hearing tonight. We will have a second Council work session in January of 2023. At some point after that, we will have the Council hearing.

And, you know, the end product with hopefully the County adopting the ordinance and submitting the approved ordinance to Ecology. Next slide. Thank you for your time and I'll now open it up for any questions for either me or Ken.

JOHNSON: Okay. Thank you. Starting off, Bryant Enge, do you have any questions?

ENGE: Yeah, thank you, Karl. Hey, quick question, Brian. Will these changes maintain our existing class or will we move up a class or two?

APPLE: These changes will maintain our existing class. Basically if we do not apply it, we'll go from Class 5 to a Class 9.

ENGE: Thank you, Brian.

APPLE: You're welcome.

JOHNSON: Bryan Halbert.

HALBERT: Yeah, that was my question exactly. Are we -- so we're going to maintain our Class 5 rating. You mentioned Class 8 ratings and the equipment but that was just that minimum standard and we

exceed that quite a bit. Okay. Yeah. Thanks, Brian. Great. Great job.

APPLE: Yeah. Yeah. No. What -- what I had mentioned was we need to add just the inclusion of machinery and equipment into our current standard. We already have the buildings with the freeboards. We already have half of it in our standards. We just need to add the remaining part. And that's -- that's -- that's the (inaudible) Class 8 prerequisite so that's where the Class 8 came in.

HALBERT: Yeah. Thanks, Brian. That's great.

JOHNSON: Next Matt Swindell, questions? Comments?

SWINDELL: No questions. Great presentation. Thanks.

JOHNSON: Eldon Wogen, questions for staff?

WOGEN: No questions.

JOHNSON: Thank you, Eldon. I don't have any questions. Great job, Brian. I appreciate your time there. With that said, we will now -- we don't have an applicant, of course, so we'll now open the hearing for public testimony. Do we have anybody virtually? Actually, we'll let you do your thing again. Sorry, do your script.

### **Public Testimony**

WISER: To be a party of record you must submit written testimony before, during, or prior to the close of tonight's hearing, or provide oral testimony at the public hearing, or request in writing to be a party of record.

No person shall be a party of record who does not furnish their full name, e-mail address, or Post Office mailing address. If written comments were received prior to November 17th, 2022, they were submitted to the PC members and posted on the Planning Commission website.

This hearing is being transcribed by a court reporter so please spell your last name and speak slowly. Public comment is limited to three minutes. So, Larisa, are there any Webex callers?

SIDOROV: I do not see any Webex callers with their hands raised.

WISER: Thank you. And, Karl, we do not have any participants in the hearing room or anybody on the sign-up sheets to come forward.

JOHNSON: Hearing that, we will now close public testimony and then, of course, there would be no response to the testimony. So I'd like to bring it back to the Planning Commission for deliberation. Bryant Enge, do you have any questions? Comments?

### **Return to Planning Commission**

ENGE: Yeah, I just want to follow-up on that previous question. Brian, what does it take to go from Class 5 to Class 1?

APPLE: Oh, you know, that is a hard question to answer on the spot. It -- it would actually take a -- a large amount of effort. Currently, I believe King and Pierce County are still Class 2s and they -- they have -- they have quite a few additional programs going on than we do right now, so... It would be a very heavy lift to get to a Class 1. Now that being said, that doesn't say that we can't get to a Class 4 which would give us another 5 percent reduction.

LADER: And if I might add to that, Ken Lader, County Engineer. It's a great question and we actually had looked at what it might take to get to Class 4 and even that required some -- some pretty significant changes for us in our program that we felt we didn't really have the staff resource to support or maintain in -- in order to bring that to the community, not for the value that it would provide, so...

We have looked at it and I think, Brian, if I'm not mistaken, we're -- we're pretty close kind of on the cusp of -- of 5 but not -- not close to the -- to the edge of 4, if that makes sense.

APPLE: Yeah. No. I -- I believe you're right. I think we're -- we're more comfortably like into, you know, low to mid-5 range and we're not -- yeah, we're not knocking on Class 4's door at this point.

LADER: That's a great question though.

APPLE: And just to note, in between each class is 500 extra points.

JOHNSON: Bryan Halbert, questions? Comments?

ENGE: Excellent. Thank you, Ken. Thank you, Brian.

APPLE: You're welcome.

JOHNSON: Sorry about that, Bryant.

HALBERT: Yeah, Bryan Halbert. No -- no comments at this time.

JOHNSON: Thank you, Bryan. Matt Swindell.

SWINDELL: None at this time.

JOHNSON: Eldon Wogen.



WOGEN: No comments.

JOHNSON: Thank you, again, gentlemen, for the presentation. I have no comments. So with that, I would be interested in a motion.

HALBERT: Sure. Bryan Halbert here. I'd make a **Motion** for CPZ2022-00011 that we recommend approval.

JOHNSON: Sonja, can we get a roll call, please. Oh, sorry. We're waiting for a second.

SWINDELL: Matt Swindell. I'll **second** that motion.

JOHNSON: Now, Sonja, can I have a roll call.

#### **ROLL CALL VOTE**

ENGE: AYE

HALBERT: AYE

SWINDELL: AYE

WOGEN: AYE

JOHNSON: AYE

JOHNSON: Motion passes 5/0.

#### **IV. PUBLIC HEARING ITEMS, continued**

- 4. CPZ2022-00012 Shoreline Master Program Amendments (CCC 40.460)** - This is a proposal to amend the Shoreline Master Program (SMP) Chapter 40.460 Clark County Code. The proposed changes are recommended to 1) align with updates to the critical areas code in other chapters of Title 40, 2) address inconsistencies between the county shoreline code and Shoreline Management Act, and 3) incorporate updated information. Proposed changes would update code text related to the following topics: flood hazard areas; wetlands and habitat conservation areas; forest practices; substantial development dollar threshold; residential repair, maintenance or modification in floodway or channel migration zone; and exemption denial appeal process.

**Staff Contact: Jenna Kay, [jenna.kay@clark.wa.gov](mailto:jenna.kay@clark.wa.gov), 564-397-4968.**

JOHNSON: And now we will move on to Item Number 4, CPZ2022-00012, Shoreline Master Program update. Staff presentation tonight will be by Jenna Kay. Jenna.

KAY: Good evening. For the record, my name is Jenna Kay with Community Planning and I am presenting on CPZ2022-00012, Shoreline Master Program Code updates. Joining me this evening are Oliver Orjiako, Community Planning Director, and I think Brent Davis may still be on the line, the County

Shoreline Administrator. Next slide.

This evening I'm going to provide some background information on the project. A summary of the proposed code changes. An overview of staff findings and recommendations. And review where we're at in terms of process. Next slide.

As you may know, the Shoreline Management Act is one of the State's land use laws and it provides an overarching framework of goals and policies which emphasize water dependent uses, environmental protection and public access.

Implementation of the Act is through local Shoreline Master Programs which are developed and adopted locally and also approved and adopted by the State Department of Ecology.

Shoreline Master Program policies are included in Chapter 13 of the comprehensive plan. Regulations are included in Chapter 40.460 of Clark County Code. And there's also a shoreline map which shows where these policies and regulations are applicable.

A county Shoreline Master Program only applies to unincorporated areas in Clark County that fall within shoreline jurisdiction. Water bodies and their associated shore lands are included in the master program if they meet certain lake size or river flow thresholds. There are close to 300 miles of shoreline in County jurisdiction and that corresponds to nearly 25,000 acres that fall under the program. Next slide.

As you heard earlier this evening from Brent Davis and Brian Apple, there are two updates to critical area -- areas ordinances that are driving the timing of these shoreline amendments. So those previous two hearings related to flood hazard areas and wetland and habitat conservation areas are why are we -- why we are proposing shoreline code updates now.

Neither of those critical area ordinance amendments can become effective in shoreline management areas unless the Shoreline Master Program is also amended. We are also using this opportunity to address inconsistencies between the county code and Shoreline Management Act that staff had discovered recently and also to incorporate some updated information. Next slide.

There are seven topics covered in the proposed code package. First, staff are proposing to disaggregate the flood hazard areas critical areas ordinance from the Shoreline Master Program or SMP so that the SMP does not interfere with specific National Flood Insurance Program process requirement.

The flood hazard areas ordinance will still apply in shorelines and flood hazard review and permitting when applicable will still take place in shoreline areas, but the actual flood hazard ordinance code will no longer be incorporated as part of the Shoreline Master Program code and no longer require an amendment such as this that requires Ecology approval in order to become effective in shoreline areas.

The second bit of code changes in this proposal are to amend the wetland and habitat conservation code section in the Shoreline Master Program so that they align with the wetland and habitat conservation code ordinance updates that Brent discussed earlier this evening. Next slide.

There is also a proposal to delete an SMP exemption that relates to forest practices that is inconsistent with the Shoreline Management Act and to add some clarifying language related to forest practices.

There's also a proposed code change to update the dollar threshold for development that is a -- for development that is considered a substantial development under the Shoreline Master Program. This dollar threshold is determined by the Office of Financial Management and was updated this past summer. Next slide.

There is a proposed change regarding residential development in floodways and channel migration zones including sewage disposal systems to allow for repair, maintenance, and modification if certain conditions are met.

Currently, the County's code provision is stricter than the relevant WAC and staff recommend making county code more consistent with the WAC. The WAC allows for repair, maintenance, or modification of an existing legal use within a floodway provided that such actions do not further limit channel migration, cause significant ecological impact, or increase flood hazards to other uses.

There's also a proposal to create a local administrative appeal process for shoreline exemption denials consistent with other Type I ministerial decisions. As code is currently written, the only recourse for an applicant who receives a shoreline exemption denial is to go to court and so the proposed change would add a local administrative appeal process where the applicant could appeal the decision to the Hearing's Examiner. Next slide.

And, finally, the proposal also includes addition of references to the State Hydraulic Code. These changes are at the request of Washington Department of Fish and Wildlife staff. Adherence to the hydraulic code is already required under the Shoreline Master Program, so adding these references is making the code more clear and assisting with streamlined implementation. Next slide.

The Shoreline Management Act administrative code outlines specific criteria that Shoreline Master Program amendments must meet in order to be approved by the Department of Ecology. So those criteria are outlined on this slide and there's a lot more detail in the staff findings in the staff report, but in summary staff found that the proposed changes are consistent with the four criteria.

Before wrapping up, I just wanted to note that we received, I think, seven comments related to these proposed changes which have been forwarded to you and I'm glad to talk more about those or answer questions during the discussion portion of the -- of the hearing. Next slide.

In terms of process. Today is November 17th and your recommendation will be forwarded to the

County Council for consideration at a work session and hearing in early 2023. And as I mentioned, Shoreline Master Program amendments do also need to be approved by the Department of Ecology to become effective so that will happen after Council adoption in 2023. And that is it for me. I'm happy to answer any questions. Thanks.

JOHNSON: Thank you, Jenna. So we'll go down the list again. Bryant Enge, questions for staff?

ENGE: Jenna, could you elaborate a little bit more on proposed change Number 4?

KAY: So the Substantial Development Dollar Threshold, that one?

ENGE: Uh-huh.

KAY: Sure. So, yeah, in the Shoreline Management Act, they use a term called "substantial development" which, you know, in order -- a shoreline substantial development permit is basically the sort of the standard permit for a shoreline project, but to be considered substantial development it needs -- the project needs to cost -- the development project needs to cost over a certain amount -- a dollar amount.

So that amount previously was at \$7,047 and the Office of Financial Management adjusts that periodically, I think it's every five years, and this summer it was updated to \$8,504. So that proposed change is just adjusting the value based on the Office of Financial Management adjustment.

ENGE: Thank you, Jenna. It sounds like inflation or something. Okay. Thank you.

JOHNSON: Bryan Halbert.

HALBERT: Hey, Jenna. I'm not sure I saw the comments, could you like run through them really quick or just give a quick over, oh, description of what people were concerned about.

KAY: Sure. So I think some of the comments from my project got intertwined with some of the projects of Brent's project so I will -- but I can highlight those.

So I also received comments from some of those folks over near Camas with who had specific questions about their properties so when you spoke to Brent about those during his hearing. And when we looked into those properties we -- we realized they actually aren't in the shoreline management area so I redirected them to Brent to talk to them about wetlands.

So there have been a couple of comments from those property owners, I think there are two property owners in that area. There's also a couple of comments from Department of Fish and Wildlife staff.

So we actually got their initial comments early enough that the last like change Number 7, those

hydraulic code amendments, are based on their feedback so their just request was, you know, to make it easy because they're the ones issuing these hydraulic permits that they were looking for places to help us align our code with their permitting process to help streamline that so that's reflected in the code changes.

And I'm skimming really quick if I'm forgetting. What else is in here. I think that's -- I believe I've touched on all of the comments received, but if anyone notices something I have not mentioned, please feel free to chime in.

HALBERT: Yeah. Thanks, Jenna. I think they were lost in the in Brent's riparian zone and wetlands and they all got confused so, yeah, thanks for updating that. And just it sounds like very little concern from the public over these proposed changes. Thanks.

JOHNSON: Matt Swindell.

SWINDELL: No questions at this time.

JOHNSON: Eldon Wogen.

WOGEN: So, Jenna, do I understand, then, correctly that all shoreline waters will be defined by the site potential tree height then?

KAY: Brent, I will start, but if you are still on you may want to -- to chime in. So the site potential tree height is just applicable to defining riparian areas.

So the with the proposed changes, the -- the riparian, the new proposed riparian area approach that Brent described for shoreline waters with the adoption of the proposed code amendments that I presented would -- would apply. I did not say that very clearly.

But, yes, the site potential tree height would come into effect in along shoreline waters as well with these proposed code changes. And, Brent, please feel free to elaborate on that.

DAVIS: Yeah. I think that the important distinction to make is that the -- the site potential tree height is not redefining the shoreline area. So there will be cases where the -- the riparian habitat extends beyond the shoreline management zone where -- and the shoreline management zone is defined by the 200-foot setback from ordinary high watermark.

For class -- site Class II soils, that riparian zone would extend another 35 feet beyond that shoreline area and so we'll essentially have to issue a separate critical areas permit for any development in that outer 35 feet.

WOGEN: All right.

JOHNSON: Thank you. I have no questions. Jenna, good job. I appreciate all the time you put in on this. With that said, we will now open public testimony. Bring it to you, Sonja. Go ahead.

### **Public Testimony**

WISER: Good evening members of the public. Please note to be a party of record you must submit written testimony before, during, or prior to the close of tonight's hearing, or provide oral testimony at the public hearing, or request in writing to be a party of record.

Also, no person shall be a party of record who does not furnish their full name, and address, or Post Office mailing address. If written comments were received prior to November 17th, 2022, they were submitted to the PC members and posted on the Planning Commission website.

This hearing is being transcribed by a court reporter. Please spell your last name and speak slowly. Public comment is limited to three minutes. Larisa, are there any Webex callers present?

SIDOROV: I do not see anyone with their hand raised.

WISER: Okay. Thank you. Karl, there are no in person people comments on the sign-up sheet so we will return it to you.

JOHNSON: Thank you. We will close public testimony and move it back to the Planning Commission. Bryant Enge, do you have any comments or questions?

### **Return to Planning Commission**

ENGE: No. Jenna, thank you for the information.

JOHNSON: Bryan Halbert.

HALBERT: No comments or questions.

JOHNSON: Matt Swindell.

SWINDELL: No comments.

JOHNSON: Eldon Wogen.

WOGEN: No comments.

JOHNSON: Thank you. I have no comments. And with that, I would entertain a motion.

SWINDELL: Matt Swindell. I **Move** that we approve CPZ2022-00012, Shoreline Master Plan Program Amendments as presented.

HALBERT: Bryan Halbert. I'll **second** that motion.

JOHNSON: Sonja, we have a motion and a second, can we get a roll call, please.

**ROLL CALL VOTE**

ENGE: AYE  
HALBERT: AYE  
SWINDELL: AYE  
WOGEN: AYE  
JOHNSON: AYE

JOHNSON: Motion passes 5/0. That will conclude this portion of our hearing.

**V. OLD BUSINESS**

None.

**VI. NEW BUSINESS**

None.

**VII. COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION**

JOHNSON: I do have one really quickly, I wanted to say thank you to Aldo Lampson-Veranzo officially too for his service and hope, wish him the best moving on, so we'll miss him. And with that, anything else, gentlemen? We are adjourned.

**VIII. ADJOURNMENT**

The record of tonight's hearing, as well as the supporting documents and presentations can be viewed on the Clark County Web Page at:

***<https://clark.wa.gov/community-planning/planning-commission-hearings-and-meeting-notes>***

Television proceedings can be viewed on CVTV on the following Web Page at:

***<https://www.cvtv.org/program/clark-county-planning-commission>***

Minutes Transcribed by:

Cindy Holley, Court Reporter – Rider & Associates Court Reporting

Sonja Wiser, Program Assistant – Clark County Community Planning