

**PLANNING COMMISSION MEETING
MAY 20, 2004
MINUTES**

I. CALL TO ORDER

The meeting was called to order by Chair Heckerroth at 7:05 p.m. Other Commission members present were Gale Ousele, Merrienne Hoffman, Bruce Lovelin, Joan Marti, Charlie Swan and Terry Jones. Staff present were Bill Campbell, Director of Community Development and Lisa Phipps, Coastal Resource Planner.

II. APPROVAL OF MINUTES FOR APRIL 8, 2004:

Commissioner Jones motioned for approval of the April 8, 2004 minutes. Commissioner Ousele seconded. Motion passed unanimously.

III. OLD BUSINESS: Signing of order PC-04-01 to expand RV Park at Tax Lot 3402 of Section 5AC, Township 2 South, Range 10. Applicant Lighthouse Investments, Owner Jack Clevenger.

Chair Heckerroth moved this to the end of the meeting in order to move forward with the Riparian Ordinance.

IV. NEW BUSINESS: Amends Section 4.080 with Section 4.085, Resource Area Riparian Overlay Zone which applies only to those lands zoned Farm (F-1), *Small Farm Woodlot 20 (SFW-20)* or Forest (F), and only for those activities that are not associated with normal farm practices as identified for exclusive farm use *and the North Coast Basin Agricultural Water Quality Management area Plan (SB1010)* or forest practices as regulated by the Northwest Forest Management Plan or the Oregon Forest Practices Act. Section 4.080 applies to all other lands. Bill Campbell, Director and Lisa Phipps, Coastal Resource Planner.

Chair Heckerroth read the Legislative Proceedings.
There were no challenges of the Planning Commission.
There were no conflicts of interest or any bias to be declared by any commission member.

Mr. Campbell, Director of Community Development began by showing the Planning Commission and the public the different areas being affected by this amendment on a map.

Mr. Campbell stated that there had been additional written testimony received on this date. **He explained that this is a result of Periodic Review Task 10,**

mandated by DLCD/LCDC, which requires the county to update and amend the Tillamook County Comprehensive Plan, Goal 5 Riparian Habitat Policies and the the Tillamook County Land Use Ordinance, Section 4.080-Requirements for Protection of Water Quality and Streambank Stabilization, to be consistent with state rules and statutes promulgated to provide protection to riparian habitats under Statewide Goal 5-Natural Resources. This extends and includes riparian habitats under Goal 16-Estuarine Resources, and Goal 17-Coastal Shorelands. There were several extensions granted. The final extension expired on December 31, 2003.

A draft ordinance was presented to the public at the end of October, 2003, and noticed for public hearing in November/December 2003. In November the Board of County Commissioners determined the draft was not ready to move forward and was tabled until January, 2004 for a determination of whether the process could be completed by **June 30, 2004**. Mr. Campbell clarified that the County is not creating two ordinances, but amending and clarifying the present ordinance. Mr. Campbell showed on the map the areas that are not being covered in the amendment of Section 4.085 but are covered in the Comprehensive Plan Amendment.

The amendment does not address coastal shorelands at this time, they will be covered in Phase II through the inventory process and the ESEE analysis. Mr. Campbell used the map that show the streams that have been inventoried by the Department of Fish & Wildlife where there is documentation of fish presence. When non-farm, non-forest activities are proposed, these streams will be subject to the protections established in this ordinance. Mr. Campbell explained the main concept is to apply **Administrative Rule 660-023-0090** to these areas. Mr. Campbell then went over the **Draft of Goal 5, Natural Resources-Text and Policies**. He stated it is important to note that the County determination of the quality of the Riparian Resource is based upon a watershed approach to the riparian areas that will be categorized in four different areas:

- **Area one** includes the mainstem of all the perennial rivers, estuaries and lakes greater than one acre.
- **Area two** applies to all other perennial streams.
- **Area 3** is applicable to intermittent streams with a definable channel that has been inventoried and where the presence of fish has been documented.
- **Area 4** applies to man-made ditches.

He discussed County Stewardship, a Key Socio-economic Factor. He stated the Goal 5 Plan Policies are the main element to the Goal 5 section of the Comprehensive Plan. There are nine policies recommended for incorporation into the plan. A current Comprehensive Plan Policy directs Tillamook County to undertake an inventory of riparian habitat and provide protection of the same. Mr. Campbell asked if there were any questions by the Planning Commission.

Commissioner Lovelin asked Mr. Campbell to speak more about the purpose and need. Mr. Campbell explained in greater detail the riparian area protections as

stated in Goal 5 and Goal 17. Commissioner Lovelin stated he was trying to determine the role of the Planning Commission if this is mandated by DLCD. He asked Mr. Campbell to explain what was working and what wasn't working. Mr. Campbell stated our riparian protection is very good and that the volunteer services in Tillamook County are second to none in the State of Oregon. He further explained that Periodic Review goes back to 1994 or 1995 and included an updated Riparian Provision at that time with Ordinance 4.080 being adopted just prior to that. Mr. Campbell explained further that sanctions could be considered if the mandated task is not completed by June 30, 2004. These sanctions could involve the imposition of Safe Harbor provisions on all waters in the county. He explained that this is a serious mandate that could require the repayment of grant funds of approximately \$58,000.00. Other sanctions could be imposed. Mr. Campbell stated this is a mandate of State Law and that the county will not be exempted from it.

Commissioner Marti asked for an example of where this amendment would apply. Mr. Campbell explained that it applies to non-farm and non-forest uses. There has only been one non-farm dwelling approved in Tillamook County since 2002, and it was not known if it was in a riparian area. Commissioner Marti asked if these rules would apply if there was a conditional use request. Mr. Campbell stated that if it was a non-farm activity it would apply. Commissioner Swan asked Mr. Campbell if Tillamook County told the State we were not going to comply, what has the cost been to the county. Mr. Campbell replied that there had not been an indication of what the sanctions would be. Mr. Campbell further indicated he could not at this time state what the cost of completion to date had been in terms of staff time, etc. Mr. Campbell further explained even if we paid imposed sanctions, the mandate would not go away. There was additional discussion regarding Safe Harbor and possible imposed sanctions. Commissioner Hoffman asked if the provisions in the amendment were more or less stringent. Mr. Campbell stated the proposed draft was less stringent than what the State ordered mandates might be. Commissioner Hoffman stated she was concerned about some of the comments submitted by people that had been on the Director's Focus Group. Mr. Campbell talked about the huge commitment made by this group and he would let them speak for themselves. He noted they are speaking as individuals, and not as a group this evening. Commissioner Jones asked about the criteria of suitability of soils. Mr. Campbell stated soil criteria is not incorporated into the policy. There was discussion regarding possible objectors. There was discussion regarding coastal shorelands and the planning for primary and secondary housing. Commissioner Jones was concerned if the county would have enough land for housing development. Commissioner Lovelin asked why the ESEE analysis was not incorporated in this section of the draft. Mr. Campbell explained how the criteria was addressed and why this would be provided in the next phase. Commissioner Lovelin asked if we adopt the ordinance would the same standards apply for the remainder of the county? Mr. Campbell explained there would be different standards set for different areas. He explained how this would apply and how they would be protected for future use. He used Pacific City

as an example. Setbacks in this area are now 50 feet, however the state requires a setback of 75 feet per Safe Harbor. He explained how the ESEE analysis could be used to show how residential uses would constitute a conflict with Goal 17. Commissioner Hoffman asked what the status of the ESEE analysis was. Mr. Campbell explained they had aggregated the inventory and the analysis and were going through the elements making a determination of significance with an appropriate level of protection. The information has been compiled, a matrix and preliminary analysis was done in concert with the Director's Focus Group and work will continue upon completion of this element.

Lisa Phipps, Coastal Resource Planner for the Department of Community Development continued. She addressed Commissioner Lovelin's concerns regarding Safe Harbor. She explained Safe Harbor wasn't included in the original rule, but was offered as an alternative in 1996.

Ms. Phipps then went over the staff report. She stated the criteria for an ordinance amendment is fairly broad. She explained the only part of the task that has been completed and will soon be out of date is the educational flier that was handed out. She stated that the intent of this process is for the protection of the riparian resources and that much of it was covered in Mr. Campbell's amendments to the Comprehensive Plan where it addresses quality and quantity. She explained the determination of significance for Safe Harbor applies where there is an average annual flow of 1000cfs or if the stream is fish-bearing and has less than 1000cfs.

Ms. Phipps went over the recommendations made in the Staff report.

Staff recommends the Planning Commission recommend to the Board of Commissioners that they adopt Ordinance Amendment OA-99-07(33) and amend the Comprehensive Plan Goal 5 (exhibit F), based upon the listed findings and conclusions of the staff report and public testimony received.

Staff also recommends that the Planning Commission consider the following recommendations for inclusion in the Comprehensive Plan:

- *To further encourage restoration activities, the County supports the replacement of fish passage barriers with fish-friendly tidegates and culverts as well as bridges, the planting of native riparian vegetation, the placement of large woody material where appropriate and under the guidance of the Oregon Department of Fish Wildlife, and the use of "soft" streambank stabilization measures.*
- *To maintain up-to-date inventories as information is provided through fish presence surveys utilizing the ODFW survey protocol.*

Staff further recommends the following language be considered for inclusion in the Ordinance:

- *The following activities shall be allowed outright subject to consultation and concurrence with Staff;*
 1. *Replacement of fish passage barriers with fish-friendly tidegates and culverts as well as bridges per ODFW Fish Passage Standards, as authorized under ORS 509.610.645.(See Oregon Department of Fish and Wildlife Guidelines and Criteria for Stream-Road Crossings (October 23, 1997);*
 2. *The planting of native riparian vegetation;*
 3. *The placement of large woody material where appropriate and under the guidance of the Oregon Department of Fish and Wildlife; and*
 4. *The use of “soft” streambank stabilization measures.*

Ms. Phipps went over the Draft of the revisions of the Riparian Ordinance, Section 4.085.

She explained the current ordinance, 4.080 applies to all zones. It was decided to remove the farm and forest zone from the current riparian ordinance, Section 4.080 and separate it. She explained the significant differences in this ordinance are:

- Incorporation of policies already used;
- Setbacks

Ms. Phipps explained to the Commission how fish presence was established. She then went to Page 4, Section (D) of the revision and stated this was an area where there seemed to be a lot of confusion. She explained (D)(2) of this section takes into account the other five major rivers in Tillamook County as well as all the smaller creeks and streams that will be inventoried. She wanted to clarify that these five rivers are included in the proposed section. She explained in Section (D)(3) where it included the upland edge of the wetland, the wetland would have to be determined to be in a riparian area corridor. If this is determined, the setback would not apply. Ms. Phipps went over Section (D)(4) explaining that the ordinary high water line can be determined on a steep cliff but is harder to define on a gently sloping bank. Ms. Phipps stated Section (E)(3) was redundant and her recommendation would be to remove it from the draft. She explained that the Development Permit process, as defined in Section (H), is the process currently in place.

Ms. Phipps stated DEQ has recommended 75 foot buffers along all five rivers that empty into Tillamook Bay and the entire length of the Nestucca and the Nehalem Rivers. This would help to achieve their mandate of lower water temperatures and bacterial counts. She explained safe harbor is very clear that a 75 foot setback should only apply to those rivers that have average annual flows of greater than 1000 cfs. She addressed the question raised of what the presence of fish meant. The Department of Fish & Wildlife and the Department of Forestry consider that all bodies of water are fish bearing until shown otherwise. The compromise to the State is fish presence has to be observed during the protocol

period, generally the spring or fall. If they are not observed during this period, it will be determined fish are not present.

Ms. Phipps answered the questions of the Planning Commission regarding the Staff Report and the Draft Ordinance.

Chair Heckerth opened the meeting for public comments.

He explained to the public the Commissioners would keep track of questions raised and ask them to staff at the end of public comments.

He asked comments be kept to three minutes.

PUBLIC COMMENT:

1. Loten Hooley, P.O. Box 394, Netarts, OR 97143
Mr. Hooley is opposed to the ordinance. He stated after 5 years of work Phase I is only 2 months old. The last 58 months have been addressing Goal 5 Rural Residential Lands. He does not think this Phase I is necessary or needed as criteria is already established through the permitting process. He does think we need a separate document regulating farm and forest use in a riparian overlay. He stated Phase II can determine the ESEE analysis, and the setbacks in the farm and forest areas. Mr. Hooley stated he believed there had been misrepresentation regarding the first phase of the draft as they thought it was addressing Rural Residential properties.
2. Leslie Pittman, 24744 Trask West Rd., Tillamook, OR 97141
Ms. Pittman is opposed to the ordinance. Ms. Pittman was a member of the Director's Focus Group. One of her concerns is that this ordinance is not required by DLCD Goal 5. She went over the letter she submitted to the Planning Commission.
3. Doug Rosenberg, 8660 Valley View Dr., Tillamook, OR 97141.
Mr. Rosenberg was representing Tillamook Bay Habitat & Estuary Improvement District and they are opposed to the ordinance. He stated it does not support the district's objectives of habitat and estuary improvement to the Tillamook Bay Watershed. He went through the letter submitted to the Tillamook County Board of Commissioners dated May 17, 2004.
Commissioner Lovelin asked Mr. Rosenberg how this ordinance has a negative impact for estuary improvements. Mr. Rosenberg explained woody debris catches and clogs the rivers causing gravel bars. This multiplies the problems, creating an increase in flood waters. Mr. Rosenberg stated the worst thing for bank stabilization was growth. If you look at the dikes maintained by the Corp of Engineers you will see no growth except for long rooted grasses along the banks.
4. Rob Trost, 9510 Whiskey Creek Rd., Tillamook, OR 97141
Mr. Trost is opposed to the ordinance. He spoke to the fragile environmental economics of the county. Mr. Trost was an original member on the Riparian Advisory Committee. He stated it was very discouraging that after 60 months of work we are back here and that nothing has been accomplished. He felt the

county should bite the bullet and inventory the resources using the matrix as outlined by the State of Oregon.

5. Don Hurd, 502 Stillwell, Tillamook, OR 97141

Mr. Hurd is opposed to the ordinance. Mr. Hurd has been a resident of Tillamook County since 1959. Mr. Hurd went over written testimony he submitted to the Planning Commission. He was a member of the Director's Focus and had several issues regarding the draft.

At 9:40 p.m. Chair Heckerath called a ten minute recess.

The meeting reconvened at 9:57 p.m.

6. Bob Rees, P.O. Box 1196, Tillamook, OR 97141

Mr. Rees is in favor of the ordinance. He was one of the original members of the Riparian Advisory Committee. He didn't hear any testimony pertaining directly to Goal 5. Mr. Rees depends on the fishing industry for employment. He stated we have lost 8% of our natural fish resources and a lot of this is a result of the loss of quality of fresh water habitat. He stated for the record he had heard Lisa Phipps refer to the DEQ Recommendation for additional protection on the other five major rivers that are not required under safe harbor. He would like to see a 75 foot set back on these rivers and streams as well. He addressed the need to bring the water temperatures down to spawn these wild fish. He supports the recommendation of DEQ.

Commissioner Marti asked how many degrees a 75-foot set back lower the water temperature. Mr. Rees stated he was not qualified to answer this question. He stated the goals that were set by the State were brought to the public for a reason. He did not think these were arbitrary numbers. He believed the professionals in the science of fisheries did this for a reason. He stated water temperature requirements for spring Chinook is 58 degrees, however when these fish are spawning in September the water temperature is 68 degrees.

Commissioner Jones asked if the water temperature would decline sufficiently if the streams were deeper. Again, Mr. Rees stated he was not qualified to answer. He explained the biologists that advised the Riparian Committee stated the most effective way to reduce water temperatures in the expanded riparian areas is to have larger buffer zones creating a higher volume of subsurface water. Mr. Rees explained the species of fish that are in the worst shape are those that have the longest period of residence time in the fresh water ecosystems. This is a common denominator of the 5 or 6 salmon species. Mr. Rees stated that Tillamook County gets the least amount of funds allocated by the Oregon Wildlife Enhancement Board because our watersheds councils and other boards have trouble coming to a consensus on projects that meet the needs of the stakeholders. Commissioner Hoffman asked Mr. Rees if he supports this amendment. Mr. Rees does support the draft plan with the

recommendation to include the buffers to the other five streams. The Wilson, the Trask, the Kilchis, the Miami and Tillamook.

7. Leo Kuntz, 24755 Miami River Rd., Nehalem, OR 97131
Mr. Kuntz is opposed to the amendment. He is representing Nehalem Marine. They are a riparian contractor and consultant that manufactures fish passage tidegates. They implement riparian projects from the State of Washington to the State of California. Mr. Kuntz stated he did not see the last draft of the proposed amendment until two days after the closing of written comments. He was an adviser to the first riparian committee. Mr. Kuntz had his legal staff take a look at the proposed draft. One opinion of the legal staff was that the original Administrative Rules that triggered this entire process could have been possibly been challenged more by Tillamook County to assure that what DCLD was asking the county to do was indeed appropriate. An additional opinion was this process could be addressed and accomplished as the permit application process required. The legal opinion further stated that Tillamook County had not distinguished the relevance of dikes and levees. One size does not fit all. Mr. Kuntz stated NRCS and SWDC have done great work not only in Tillamook County but on a national scale. Both agencies felt their input was not considered as much as it could have been. Mr. Kuntz spoke about some of the different projects he has done. He stated he felt the definitions were excessive in the language, especially the definition for Floodplain. He was concerned there was no clear exception for levee and drainage system maintenance. He would like to see a good riparian area on the sun side with the other kept for maintenance. He felt some of the language discourages restoration. He submitted a picture of a house on the Miami River Road in floodwaters. He explained this flooding was a result of drainage ditch work that was stopped by the Department of Community Development.
8. Dale Buck, 25590 Chinook St., Cloverdale, OR 97112
Mr. Buck supports the Ordinance Amendment. Mr. Buck was a member of the Director's Focus Group. Mr. Buck was a dairy farmer in Tillamook County for 30 years. He did not believe the amendment would cause any harm or additional hardship to the dairy farmers. Mr. Buck went over the written comments submitted to the Planning Commission giving his suggestions for modification of wording in the amendment. He spoke about water temperatures. He stressed the need to get this done and that it is not possible to meet the wants or needs of everyone.
9. Clem Hurliman, Little Nestucca River (No address given)
Mr. Hurliman is opposed to Ordinance Amendment. Mr. Hurliman was concerned regarding who would pay for the land lost, who would pay for the fencing and stated that this ordinance is unconstitutional.
10. Lenora Lawrence, P.O. Box 233. Oceanside, OR 97134
Ms. Lawrence is in favor of this Ordinance Amendment. She was on the original Riparian Advisory Committee. She stated we needed the ordinance for clean water, habitat protection, and for economic development. She stated building houses is not the only form of economic development our county has. She spoke about the need for living wages in Tillamook County. She stated

the staff in the Department of Community Development were qualified to make the decisions they do. Ms. Lawrence stated she has a different understanding of a healthy riparian area than some that spoke this evening. She believes it requires vegetation.

11. Scott Hill, P.O. Box 357, Beaver, OR 97108

Mr. Hill thanked Mr. Buck for having a different perspective. He spoke about the fencing projects throughout the county and how funding has been provided. He spoke about how a person can use their riparian areas and how people can build working with these areas. He stated the opposition to this ordinance seems to come from the same group of people over the last five or six years. He agrees this has gone on too long. He does not see that it is a problem with the Tillamook County Planning Commission or the Tillamook County Planning Department. He sees from public input they don't want the riparian ordinance at all. He would like to see the Planning Department write a letter to LCDC and tell them Tillamook County does not want the ordinance and is not going to prepare one. Let LCDC come in and do their flat out 50 and 75 feet setbacks. Mr. Hill stated he thought this would be a refreshing end to this whole thing.

12. A.D. Gus Meyer, 1715 Skyline Dr., Tillamook, OR 97141

Mr. Meyer submitted written testimony to the Commission and will not repeat it. He spoke about the value of the Director's Focus Group. He stated this group was very inter-relational from different viewpoints, was not a yes group, was very active and that this group had very healthy discussions. He stated there was a time when the county could have gone back to LCDC and told them we were happy with existing ordinance, that it was generating citations, and talk about all the excellent stewardship that is going on in our county. He stated there are many people in our community that do this work voluntarily. He spoke about economic values. He stated this is now mandated.

Commissioner Lovelin asked Mr. Meyer what his recommendation was. Mr. Meyer stated he thought the county should take a stand with LCDC and let them know we have an ordinance that is working. If this should fail he then would support this ordinance amendment with the recommended changes stated in his written testimony. Commissioner Jones asked Mr. Meyer how we could encourage people to increase habitat voluntarily. Mr. Meyer spoke about the different programs available to help with funding and labor for some of these improvements.

13. Robert Munsell Jr., 21450 New Miami River Rd., Bay City, OR 97107. He stated he will lose 10 acres of pasture land if the set back is change to 75 feet. He will still have to pay taxes on it but he won't be able to use it. He stated water temperatures are due to low water levels. There was discussion regarding the high water line setbacks.

14. Bob Reid, 6450 Curl Road, Tillamook, OR 97141

Mr. Reid is opposed to the Ordinance Amendment. He stated as more regulations are put on citizen's property it drives a larger wedge between the citizens and the government.

There was no additional public comment.

The following written testimony was submitted to the Planning Commission:

- A letter dated May 20, 2004 from Tillamook County Soil & Water Conservation District, Rudy Fink, Board Chair
- A letter dated May 20, 2004 from Dick Blum
- Comments dated May 20, 2004 from Dale Buck, Member of the Directors Focus Group.
- A letter dated May 17, 2004 from DEQ, Andrew Schaedel, Manage Technical Services Section, Northwest Region
- A letter dated May 18, 2004 from Stewart Martin
- A letter written to the Board of Commissioners dated May 18, 2004 from Richard Stanfill
- An e-mail dated May 13, 2004 from the Department of Fish & Wildlife, Chris Knutsen
- A letter dated May 10, 2004 from the Oregon Department of Forestry, Mark Labhart
- A letter dated May 17, 2004 written to the Board of Commissioner by Tillamook Bay Habitat & Estuary Improvement District
- Comments dated May 20, 2004 by A.D. "Gus" Meyer
- A letter dated May 19, 2004 from Leslie Pitman, member of the Director's Focus Group
- A Letter dated May 20th, 2004 from Don Hurd

Chair Heckerath closed the meeting to public comment.

Chair Heckerath asked for questions of staff.

There was much discussion among the Planning Commission.

MOTION:

Commissioner Swan moved to close the meeting to public testimony, to continue this meeting to June 10, 2004 at 7 p.m., to have staff post another response to questions asked on the county website by Friday, May 28th, 2004, and that additional written comments will be received until June 3, 2004 at 5 p.m. No additional written comment would be accepted after that time.

Commission Lovelin seconded the motion.

The motion passed 6 to 1 with Commissioner Hoffman opposed.

The Commission returned to Old Business. Commissioner Swan moved the meeting be continued to hear the Findings and all members voting yes. Commissioner Lovelin stated the Findings for the RV Park are not consistent with the motion previously made. There was discussion regarding the differences. There was discussion regarding the motion made regarding this order. Commissioner Lovelin moved that staff be asked to revise the Findings from the Netarts RV Decision and report back on the June 10th meeting at which time the Commission will discuss and approve the Order. Commissioner Ousele seconded. Motion passed unanimously. It was moved and seconded authorizing the Chair to sign appropriate orders if necessary. There was no report from the Department of Community Development
The Meeting was adjourned at 11:45 p.m.

Kurt Heckerth, Chair

Date

Pat Affolter, Recording Secretary