Planning Commission Meeting
Monday, January 24, 2011
City Hall Council Chambers
900 Plum Street SE, Olympia
AGENDA

1. Call to Order 6:30 p.m.
   A. Roll Call
   B. Acceptance of Agenda
   C. Announcements
   D. Approval of Minutes (01/10/2011)

2. Public Communications (for items not on the agenda) 6:40 p.m.

3. Student Presentation on Accessory Dwelling Units 6:50 p.m.
   Travis Skinner, Evergreen State College Student

4. SMP Deliberations 7:00 p.m.
   Amy Tousley, Shoreline Committee Chair

5. Committee Reports 9:00 p.m.
   - Comprehensive Plan Update
   - SMP Update

6. Evaluation of Meeting/Other Thoughts 9:10 p.m.

7. Planning Commission Meeting Schedule 9:20 p.m.
   Cari Hornbein, Senior Planner

8. Adjournment 9:30 p.m.

Enclosures:
Staff Reports:
   SMP Deliberations – Summary of 01/12/2011 Special Meeting
   2011 Work Schedule
   Proposed Planning Commission 2011 Meeting Schedule
   OPC Draft Minutes, Regular Meeting – 01/10/2011
   OPC Minutes, SMP Update Special Meeting – 01/12/2011 – See Attachment 1 to SMP Deliberations staff report.
   City Council Minutes – 01/11/2011

Upcoming Meetings:
Planning Commission:
   February 7, 2011 – Shoreline Master Program Deliberations
   February 28, 2011 – Shoreline Master Program Deliberations

Shoreline Committee
   February 2, 2011 – Shoreline Master Program Deliberations
   February 16, 2011 – Shoreline Master Program Deliberations

Comprehensive Plan Committee:
   March 2, 2011 – Environmental Stewardship
   March 16, 2011 – Environmental Stewardship and Focus Meeting Review Process
Planning Commission Deliberation Process

Purpose: This process is intended to provide a general framework to guide the Planning Commission in its decision-making but is not intended to be overly rigid. Deviations to this process may occur from time to time.

Step 1  Information phase - Gather information regarding the proposal:

- Staff presentation and Q&A on the proposal,
- Gather information from the public through public testimony (if appropriate),
- Close public testimony,
- Staff follow-up on questions generated from public testimony or staff report.

Step 2  Discussion phase - Potential effects of proposal – both positive and negative:

- Start with a free form discussion and evaluation of proposal- both pros and cons,
- Weigh policy/code change against Comprehensive Plan policies and goals,
- Following free form discussion, formally go around the table and have each commission member state their position on the proposal (~2 minutes each),
- Follow-up among commission members – Q&A on viewpoints,
- Request staff to provide their perspective on any issues raised (as appropriate),
- Close discussion phase.

Step 3  Decision phase - Formulate a recommendation:

- Chair will begin with a restatement of the staff recommendation.
- Is there a motion to approve policy as presented by staff? If yes, motion is made and vote is taken. If motion succeeds, recommendation is made.
- If no motion to recommend as presented by staff or if motion fails, is there an alternate recommendation? If yes, open floor to discussion of motion. Discussion should generally follow format in Step 2. Commission should consider if motion is significantly different from the original proposal, and if so, whether additional public testimony should be taken. Repeat this process as necessary to develop a recommendation.
- Successful motion will generally be captured in the minutes and transmitted to the Council in this manner. Where desired by the majority, a recommendation may be forwarded in letter format.
- Provide opportunity for dissenting opinions to be stated – minority report.
- If no motion is successful, deliberation ends and no recommendation is made.
Shoreline Master Program Update Deliberations

DIRECTOR’S RECOMMENDATION: Conduct deliberations on the Draft Shoreline Master Program with focus on Chapter 4, Shoreline Jurisdiction and Designations.

STAFF CONTACT: Cari Hornbein, Senior Planner
Community Planning and Development, 360.753.8048

ORIGINATED BY: Community Planning and Development

PRESENTERS AND OTHERS NOTIFIED: Cari Hornbein, Senior Planner
Amy Tousley, Chair, Shoreline Committee


BUDGET IMPACT/SOURCE OF FUNDS: NA

PRIOR PLANNING COMMISSION/PUBLIC REVIEW:
- Planning Commission Briefing - overview and schedule of Shoreline Master Program Update on January 4, 2010
- Series of public meetings on January 14, January 21, February 10, and February 24, 2010
- Series of Planning Commission Shoreline Committee meetings between March and September 2010
- Planning Commission Briefings on April 19, May 3, May 17, June 21, October 18, and November 1, 2010
- Public hearings on November 15, 2010 and January 10, 2011
- Deliberations on January 10 and 12, 2011

BACKGROUND: The Planning Commission started deliberations on the Draft Shoreline Master Program at a special meeting on January 12, 2011. Discussion focused on the proposed designations and management policies. Commissioners reviewed the proposed designations and came to agreement on all but six of the reaches. (See attached minutes for the list of reaches and the Commission’s actions.) The Commission decided that the unresolved reaches should be discussed at the upcoming Planning Commission meeting.

ANALYSIS AND OPTIONS: Amy Tousley, Shoreline Committee Chair, will lead a discussion on the proposed designations and related management policies.
MINUTES OF MEETING

Olympia Planning Commission
Monday, January 24, 2011
City Hall Council Chambers
900 Plum Street SE
Olympia, WA

Call to Order
Chair Roger Horn called the meeting to order at 6:34 p.m.

Attendance

Members Present: Mark Derricott, Roger Horn, Paul Ingman, Carol Law, Larry Leveen, Thomas Muller, James Reddick, Jeanne Marie Thomas, Amy Tousley, and Richard Wolf

Members Excused: Rob Richards

City of Olympia Staff: Senior Planner Cari Hornbein and Deputy City Attorney Darren Nienaber

Others: Chrissy Bailey, Department of Ecology, Travis Skinner, The Evergreen State College, and Recording Secretaries Cheri Lindgren and Tom Gow

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<th>SUMMARY OF ACTION ITEMS:</th>
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<td>Minutes: January 10, 2011</td>
<td>Approved minutes as amended.</td>
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<tr>
<td>Presentation on Accessory Dwelling Units</td>
<td>Commissioners invited Travis Skinner to present a follow up presentation on his research and recommendations for improving the City’s permitting process for Accessory Dwelling Units.</td>
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Olympia Planning Commission  
Minutes of Meeting  
January 24, 2011 Page 2 of 19

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<th>SMP:</th>
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<td>The Commission agreed with the SMP Committee’s designation for the following reaches</td>
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<td>Commissioners requested staff schedule a presentation on the past planning efforts pertaining to West Bay.</td>
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<td>Meeting Agenda</td>
<td>Include agenda topic: “Follow Up” on each Commission meeting agenda.</td>
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<th>SUMMARY OF FOLLOW UP ITEMS:</th>
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<td>SMP:</td>
<td>Commissioners to provide input to staff on preferred format for receiving materials – hard copy or e-mail?</td>
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<td>Staff to provide copy of Ecology’s SMP Update Checklist to Commissioners.</td>
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<td>Planner Hornbein will follow up on several requests to clarify the intent of some of the language within several sections pertaining to designations.</td>
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<td>Staff was asked to provide clearly delineated maps of the reaches.</td>
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<td>Commissioners agreed to provide Commissioner</td>
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Tousley with information on their preference for designations of the following reaches as well as any requests for additional information from staff to aid in their selection:

- BUDD 3A
- BUDD 3C
- BUDD 4
- BUDD 5
- BUDD 6A
- BUDD 6B
- BUDD 7
- BUDD 8A
- CAP 6

Commissioner Wolf asked that staff follow up on the committee’s definition of “maintain” and what that means. That should be reviewed and clarified as “maintain” is too subjective.

Planner Hornbein to follow up to review the management policies for each designation to ensure restoration is addressed.

Acceptance of Agenda
A discussion was added on scheduling the annual retreat and a report from the Finance Committee. The agenda was accepted as amended.

Announcements
Senior Planner Cari Hornbein introduced Boy Scout Troop 226. In December, she spoke to the troop about government processes and parliamentary procedures. The troop is attending to observe the Commission. Chair Horn welcomed the troop to the meeting.

Approval of January 10, 2011 Minutes
The following changes were requested to the January 10, 2011 minutes:

- Within the second paragraph on page 5 in the fourth line, change “to” to “two.”
- On page 10, correct “Judy Garland” to reflect Judy Bardner.”
- On page 10 under Deliberations – SMP Update, within the second paragraph revise the last sentence to reflect, “She indicated she can be fair and impartial and no conditions related to the Planning Commission have been placed on her by her employer.”
- On page 14, change the second to the last sentence of the second full paragraph to state, “It would be reasonable for the Commission to agree not to talk to the public as this point…”
- On page 14, change the third sentence from the bottom of the third paragraph to read, “Commissioner Reddick expressed interest in learning more about the Shoreline Hearings Board opinion on views.”
Commissioner Wolf requested that the summary of action items at the beginning of the minutes also include follow-up item as well as action items. The Commission agreed to list action and follow-up items separately.

Commissioner Leveen arrived at the meeting.

Commissioner Wolf moved, seconded by Commissioner Muller, to approve the January 10, 2011 minutes as amended. Motion carried. Commissioners Law and Leveen abstained.

Public Communications

There were no public comments.

Student Presentation on Accessory Dwelling Units

Travis Skinner reported he is a student in the Master Environmental Studies Program at The Evergreen State College and is working on his thesis research, which will be completed in June.

The City’s ordinance on Accessory Dwelling Units (ADU) was adopted in 1995. The code is very well written, but has been under utilized with only 25 detached accessory dwelling units and 30 attached accessory dwelling units permitted and built since 1995 equating to approximately two units a year. Using a Portland-based study and Real Estate Multiple Listing Service data Mr. Skinner said he was able to identify properties that have separate entrances, kitchens, and separate bathrooms. He cross referenced the properties against the list of permitted properties. The objective is creating a ratio of legal to illegal accessory dwelling units in the City.

The zoning code identifies an accessory dwelling unit as an additional dwelling unit on a property that would normally accommodate one dwelling unit. Often, it is loft space over the garage or a small mother-in-law cottage.

It appears the permitting of accessory dwelling units is relatively low and there are things the City could do to make permitting more effective. The ratio reflects the importance of improving the program. Mr. Skinner said he is completing case study research based on progressive cities involving Santa Cruz, Seattle, and Portland. His recommendation pertains to increasing the efficiency of the permitting process.

Mr. Skinner invited questions and asked whether the research would be of interest to the Commission. He is available to share research findings in June. He referred to a document provided to the Commission explaining the recommendations and why it’s important for the City of Olympia. Additional information included a suggested reading list and a 2010 University of Washington School of Urban Planning Executive Summary from a master’s thesis that details the research.

Commissioner Leveen commented that there likely are a greater number of non-permitted units based on the rate of permitted structures. Mr. Skinner said that based on San Francisco’s program, the city
estimates there are 12,000 illegal structures. He hopes to create a conservative estimate to show a ratio of illegal to legal structures.

Commissioner Thomas asked whether the follow-up presentation will also include any recommendations for changing the current code. Mr. Skinner said he prefers not to change the code as the City has undertaken much work to establish the code. The preliminary recommendations include whether the City needs a technical assistance program to help homeowners to process a permit for an accessory dwelling unit. The City could create a guide book and approved sample plans similar to what the City of Santa Cruz provides to its citizens.

Commissioner Tousley said some negative feedback received by citizens is that the footprint requirement can make it difficult to permit for a legal accessory dwelling unit. The incentives to help streamline the permitting process along with providing floor plan examples as well as considering some of the impact fees and other costs that could be prohibitive are some ways to help overcome some of the current problems.

Commissioner Wolf asked whether conversion of a basement to an apartment requires a permit. Mr. Skinner said in order to rent the unit, a permit is necessary. Generally, if someone is going to live in the unit, it must be permitted. Commissioner Wolf commented that he wasn’t aware of the requirement and can understand why there could be many illegal units.

Commissioner Leven commented that of the non-permitted units, many of the homeowners would likely receive assistance through the technical assistance program. Some homeowners understand the requirements and choose not to obtain a permit. Mr. Skinner said there are significant barriers as it can increase the value of the property thereby increasing property tax. There are some financial obstacles. Commissioner Leven said it would be interesting to see the numbers of homeowners who weren’t aware of the requirement from those that were aware of the code and the reason for not seeking a permit. The result is ensuring a code that serves growth management goals and helps to ensure neighborhood livability and good built form. He suggested it’s important to develop good codes to motivate compliance. He encouraged Mr. Skinner to return and share his recommendations.

SMP Deliberations

Planner Hornbein updated members on the status of the compiling the summary of written public testimony and indicated that the next Committee meeting is on February 2. Commissioners were asked to notify her of their preference in receiving the material via email or hard copy. The last Committee meeting was held on January 12 on Chapter 4 - Shoreline Jurisdictions and Designations. At the end of the evening, the Committee voted informally on each of the reaches and agreed on proposed designations. In those cases where agreement wasn’t attained, the reach was tabled for discussion during the Commission’s regular meeting. A summary of the meeting minutes is included in the staff report.

Commissioner Tousley commented on the extent of the public comment received up to January 10.
Commissioner Thomas referred to the description of the definitions and the possibility of potentially establishing an additional designation. Commissioner Tousley replied that shoreline designations are defined by statute but that new definitions or new designations may not be clearly defined, such as a Maritime District. Planner Hornbein said the descriptions are from the Department of Ecology’s (DOE) guidelines. There is discretion to add or modify.

Commissioner Wolf requested clarification from legal counsel on the process of reviewing some of the legal issues raised during the public hearings. He asked about staff’s intent to provide further guidance. Deputy City Attorney Darren Nienaber replied that it’s not possible to address every legal question and that most are simple and straightforward and need no response. Other questions can be addressed at this point. However, there may be other questions requiring additional research. He prefers responding to specific questions on an individual basis. Commissioner Wolf asked whether legal counsel intends to review the Commission’s decision as they occur and provide legal counsel if there are legal issues on an ongoing basis or whether that will occur at the end of the process. Deputy Attorney Nienaber said he intends to provide ongoing legal counsel depending on the issue.

Commissioner Tousley encouraged the Commission to maintain notes on issues as the Commission undertakes its deliberation process.

Commissioner Leveen asked for clarification regarding the West Bay Trail as listed in adopted City plans and how to harmonize it within the SMP. He asked about identifying which documents have precedence and whether an implicit statement within the SMP is necessary outlining where applicable, those plans that have control. Commissioner Tousley recommended reviewing the reaches first as there is integration in the City’s Parks, Arts & Recreation Plan and the impact of the consistency requirement as to which plan has precedence. Deputy Attorney Nienaber advised that the question is helpful to guide him on additional research. Generally, comprehensive plans provide conceptual framework for the tools that will implement the visions and goals, which is the development regulations. There are specific development regulations that implement the Comprehensive Plan. There are also specific regulations relating to West Bay. He wants to explore the specifics of the development regulations as similar questions were raised by other planning commissions.

Commissioner Leveen noted West Bay Trail is included in the adopted Trails Plan as well as in the parks section of the Comprehensive Plan. He asked if those plans take priority over the SMP. Deputy Attorney Nienaber advised that the depiction of the trail on one of the City’s plan maps alone would not necessarily require its construction. It’s necessary to refer to the specific codes that are applicable. For example, in the zoning code for West Bay, there are height provisions where additional heights may be allowed if a developer contributes to the development of the West Bay Trail. Commissioner Leveen commented that the Parks, Arts & Recreation Plan clarifies that the next phase of West Bay Park development initiates the planning activities for the trail. He said he’s unsure whether specific language was included in the draft Capital Facilities Plan (CFP). It appears additional research may be necessary along with consulting with other department staff. Deputy Attorney Nienaber replied that the Parks, Arts & Recreation Plan is adopted pursuant to specific statute required by the State Parks Department to qualify for specific grant programs. It’s a legal tool designed for a different statute. Then there is the parks chapter in the Comprehensive Plan adopted pursuant to a different rule for a
different purpose. There is guidance from state agencies that suggest that perhaps the two should be combined into one document, but a number of jurisdictions have separate plans.

Commissioner Wolf said it appears the purpose of the SMP is to determine designations for the various reaches and then designating permitted uses within those areas. Within that process, the SMP will allow or not allow certain uses. It appears it is incumbent upon the Commission to be aware of the wishes and requirements of the community regarding the West Bay trail. It pertains to whether it will be allowed under the SMP. The other plans and zoning dictate how the trail will be constructed.

Commissioner Tousley emphasized that the discussion pertains to the designations along the shoreline and outlined the review process. Commissioner Wolf asked whether some of the questions addressed to staff at the Committee will be reviewed prior to discussing the designations. Commissioner Tousley acknowledged that there were some questions addressed during the Committee meeting. She asked staff about the status of those comments. Planner Hornbein indicated that she planned to delay making any changes until after the meeting and then present an updated chapter with the revisions.

Commissioner Tousley referred to page 31 of the Draft SMP, which is the map of the proposed shoreline designations. The Commission is working from a 2009 document developed by Thurston Regional Planning Council (TRPC), which was preceded by three years of technical advisory work by several experts in the community.

Commissioner Wolf asked for clarification regarding issues addressed during the committee meeting and whether they need to be readdressed during this meeting. Commissioner Tousley said there was some agreement that the Committee would complete much of the detail work on behalf of the Commission. However, some Commissioners were unable to attend. It would be beneficial to include those discussions during the Commission’s review.

The Commission began its review on page 25. Some of the Committee questions pertained to defining the reaches, designations, and some of the constraints. The narrative language on page 25 outlines the provisions of the SMP under the Revised Code of Washington (RCW) and the Washington Administrative Code (WAC). Commissioner Tousley noted that the Committee discussed having a definition for ordinary high water mark. She referred to her note on Schnider Creek and previous discussions and public comments concerning areas along the shoreline that may be impacted. Schnider Creek doesn’t qualify under the SMP but does under the Critical Areas Ordinance (CAO). Another question pertained to the definition of a shoreline of statewide significance. The shorelines of the state are defined in statute.

Commissioner Reddick said the Committee discussed adding some streams. Commissioner Tousley commented that there are several streams impacted by the SMP because they qualify under the CAO. She asked staff whether it would be appropriate to list those streams. Planner Hornbein said the draft includes those streams that meet the thresholds. Adding the other streams covered in the CAO might create some confusion. Commissioner Tousley added that under the definition section pertaining to CAO, it also cites the Olympia Municipal Code that identifies slopes and streams that qualify.
Commissioner Tousley moved on to page 26. The Committee discussed at length the importance of identifying where certain reaches began for clarification in mapping. The Designation Report includes specific coordinates for each reach break. There was also some discussion of management policies and including references to various City plans and policies as previously referenced by Commissioner Leveen.

Commissioner Thomas referred to Section 4.3.2, C. Management Policies and the use of “should” as previously addressed by Commissioner Wolf. She recommended that the language should be unambiguous and that it would be proper to replace “should” with “shall.” The language as currently stated reflects that the natural character of the shoreline should be preserved; however, the intent is that it “shall” be preserved. Deputy Attorney Nienaber said it’s always important to consider which portions of the document will be ultimately comprehensive plan sections and which portions will be development regulation sections. Because the Comprehensive Plan sets the visions for the regulations for on-the-ground development, it’s more typical to find words, such as “should” in comprehensive plan provisions because the development regulations control development activities. The use of “should” is sometimes more problematic in development regulations and zoning codes. His concern is in those instances where “should” is used in some provisions of the SMP that will also be included within the development regulations.

Planner Hornbein suggested that the policies can be rewritten to avoid the use of “shall” but still maintain the intent.

Planner Hornbein distributed a map of Thurston County’s proposed shoreline environment designations and outlined the different designations.

Commissioner Leveen asked for clarification from legal counsel on whether the provisions within the SMP for future incorporation within development regulations should be more precise or specific than provisions pertaining to the Comprehensive Plan. Deputy Attorney Nienaber said he and staff discussed the issue. Planner Hornbein said the Committee discussed the need to identify the language that will be included within Title 18 (Development Code) versus language in the Comprehensive Plan. As changes are made to the document, staff will track whether the provision pertains to regulations or to the Comprehensive Plan for each section.

The review continued to page 28, Urban Conservancy Environment.

Commissioner Thomas referred to Section 4.3.3.C.4 and asked why commercial uses are allowed under Urban Conservancy. Planner Hornbein referred to the Purpose and Designation Criteria that speaks to allowing a variety of compatible uses as well as development that is compatible with maintaining or restoring ecological functions of the area. Additionally, the City’s zoning allows both commercial and residential uses. Commissioner Thomas said her concern involves an insufficient transition between the Natural and Urban Conservancy designations. As the City has limited natural environment and because the Commission may be considering recommending for some increased industrial uses elsewhere, she asked whether the City should preserve land for restoration and not for development resulting in an area that is clearly planned for restoration in the long term. Commissioner Tousley replied that the issue about appropriate designations pertains to what staff is proposing. If the
Commission believes that Urban Conservancy should be another designation, the Commission needs to consider the trade-offs and justifications. It may entail creating more non-conforming uses because of that designation. There was discussion on the uses and activities within those designations.

Commissioner Muller said he views the Natural designation for land owned by the City, such as a park. It’s likely not possible to designate private property as Natural. It’s also not possible to force a property owner to retain a natural setting as they have the right to develop their land under the zoning code. The purpose of Urban Conservancy designation is to accommodate residential or commercial uses. It helps to provide for conservation of the shoreline.

Commissioner Wolf added that it’s important to consider that other than the Shoreline Residential designation, the issue is with the transition between the Natural and Urban Intensity designations. A good example is the community discussion involving Capitol Lake and Heritage Park and whether that should be Urban Intensity or Urban Conservancy. If commercial is not allowed under Urban Conservancy, then it would need to be Urban Intensity, as there are plans to offer various food vendors in the park that are small commercial operations as well as the possibility of a vendor leasing kayaks. Those are all commercial establishments and it’s appropriate to designate those areas as Urban Conservancy while also ensuring that the development regulations and the permitting processes include some restrictions. Clearly, there are opportunities for commercial uses.

Planner Hornbein referred to Table 6.1 – Uses and Activities. Commercial uses under the Urban Conservancy designation require a conditional use permit, which involves a higher level of review.

Chair Horn added that the purpose of the Restoration Plan is to select areas that would be established for future restoration. The plan doesn’t restrict the designation but could be any designation.

Commissioner Leveen said the question speaks to what should or shouldn’t be allowed and adding that to the “parking lot” to ensure it’s addressed by staff during the drafting of the development regulations following the process. Commissioner Tousley agreed; as the Commission develops an implementation strategy for the Comprehensive Plan there may be bearing on the SMP.

Commissioner Tousley referred to page 29 pertaining to the Shoreline Residential designation. Initial Committee questions included adequate access issues along residential areas, public and private land development, disincentives for accessory dwelling units, barriers to infill, issues associated with shoreline vegetation and conservation, and fiscal impacts to shoreline residential areas.

Commissioner Wolf questioned the provision stating, “Vegetation conservation measures should be utilized for new development and expansions to existing structures to protect, enhance, or restore shoreline areas.” The provision is overly broad and he’s unsure whether vegetation conservation measures should be required for development within 200 feet or in the setback requirements. He suggested caution and that it should be more narrowly defined when vegetation conservation is required.

Planner Hornbein replied that for the Shoreline Residential designation, whenever there is an expansion of the development footprint (building footprint plus other areas such as patios and
driveways), there is a corresponding amount of vegetation that would be planted. Commissioner Wolf suggested the language should be tightened up.

Commissioner Leveen referred to the CFP letter and the suggestion by Commissioner Wolf to include language that the City change language in its final CFP for slowing the rate of degradation on shoreline habitat as well as improve shoreline habitat and be more consistent with the statewide Shoreline Management Act. In that spirit, there is a reason to require vegetation conservation measures even for vertical expansions. Commissioner Wolf responded that his suggestion for the CFP pertained to City-owned and public property. This provision pertains to private property. Requiring vegetation conservation measures on a vertical expansion is a taking. The requirement increases the cost of the building improvement.

Deputy Attorney Nienaber was asked for an opinion on the issue. He indicated that the provision pertains to policies, which are not binding on the land. There is no taking at that point. The Development Code is where the issue should be addressed.

Chair Horn asked if the provision pertaining to Section 4.3.4.C.2 stating, “Multi-family development and subdivisions of land into more than four parcels should provide public access” was referenced from another code. Planner Hornbein said the language is from the existing draft developed by TRPC and it may be referencing the old subdivision threshold of four lots for a short plat within a subdivision. At one point the rule was changed giving jurisdictions the option of designating nine lots as a short plat. The Commission may want to consider a different threshold than four lots. Chair Horn said the section implies that there would be a public easement through the private property to the shoreline as well as visual access.

Commissioner Leveen inquired about the possibility of providing incentives for restoration that property owners may complete in conjunction with any development improvement. Planner Hornbein explained that an incentive was included in the draft for residential homeowners to restore shoreline vegetation. Staff is willing to consider other incentives.

Deputy Attorney Nienaber noted that public access in the Shoreline Management Act also pertains to visual access and the ability to visually access the shoreline. Sometimes proposed development may diminish visual access. The provision also applies to visual access. Commissioner Leveen asked if there is a threshold to determine the impact of a view blockage. Planner Hornbein said there really isn’t other than a requirement for public access for commercial, industrial, or residential projects. There are also exceptions, such as issues surrounding security where it may be impractical to provide public access.

Commissioner Leveen referred to the previous discussion on technical assistance for homeowners who want to do the right thing and applying that concept to residential shoreline areas. More homeowners are gaining an appreciation for the importance of healthy shoreline habitat. He asked whether staff is planning to draft or is working on a draft later in the process regarding well-meaning but perhaps ill-advised improvements that homeowners want to make to the shoreline. Commissioner Tousley said the issue was addressed earlier by the Committee last spring and summer regarding the Restoration Plan and an option of providing a menu of mitigation measures.
Commissioner Tousley reviewed the Urban Intensity designation. Several questions for this designation involved existing public access and assurances to maintain the access, barriers to development, minimizing impacts to public views, and definition of view and recent court cases on the definition of view. The City has a 1993 Urban Waterfront Plan and the Committee discussed how it relates to the SMP. Other discussions included revising the language for improving readability and some design review issues.

Commissioner Wolf said he wants some assurance that the Commission will receive answers on some of the provisions and some of the definitions the Committee discussed. The Committee discussed “maintain” and what that means. That should be reviewed and clarified as “maintain” is too subjective. Planner Hornbein replied that she intends to follow up on the request.

The meeting was recessed from 8:06 p.m. to 8:15 p.m. for a break.

Chair Horn referred to sections C. 4 and 5 under the Urban Intensity designation on page 30. It appears the comments are general in nature as opposed to just affecting that particular designation. They appear to be a general guideline for everything in the plan. He asked staff to review the two provisions to ascertain whether they should be a more general guideline. Additionally, “objectives” in #5 should be corrected to read, “objectives.”

The Commission reordered the review to accommodate the early departure of Deputy Attorney Nienaber. During the discussion on the Port of Olympia, several legal issues were addressed. Some of the practical issues addressed by Port representatives included the unique nature of the Port and concerns about over water-structures such as conveyors and cranes. Port officials also suggested the Port should have its own zone. One of the questions posed to the Commission was whether it’s possible for the Port to have its own zone. Deputy Attorney Nienaber advised that it is possible; however, another potential solution is retaining the zone and implement specific regulations that are applicable to the Port peninsula or to Port owned properties on the peninsula. If done right, either option could be a legally justified method to address the Port’s issues. There was also some discussion as to whether the Port has its own independent land use and zoning authority. The Port does not have that authority as zoning power is solely vested to the City. The Port does have its own Special Harbor Improvements Act that requires a plan for improvements. It is not a Growth Management Act document, but falls under a special and unique statute. It is within the City’s authority to zone and regulate the Port. The issue is determining the appropriate regulations.

Chair Horn asked for clarification on implementing special specifications for the entire peninsula area. Deputy Attorney Nienaber replied that one example could include a zone that has special regulations for properties that are zoned industrial within the Urban Intensity designation. That could entail a subarea of the peninsula that includes a boundary for the Port properties. There are several potential avenues and if one concept is more preferable than another the Commission could ask staff to explore the concepts and develop some regulations. Commissioner Law asked whether one option is preferable and clearer. Deputy Attorney Nienaber said it pertains to the Commission’s exercise on judgment and different policy factors with staff assistance.
Commissioner Leveen asked about the status regarding the Port issue. Commissioner Tousley said Deputy Attorney Nienaber wanted to lay the groundwork on some of the testimony received from the Port on the Urban Intensity designation and the legal nature of a unique designation.

Commissioner Muller asked about grandfathering. Another issue addressed by the Port is if the City regulates the Port, the Port wouldn’t be able to maintain or rehab buildings. The question is whether the buildings are grandfathered. Deputy Attorney Nienaber said the buildings would be grandfathered and they could be maintained and repaired. However, the Port contended during the Weyerhaeuser log yard litigation that as a working port, it is subject to a variety of different uses and activities and therefore has a grandfathered right and no SEPA review is necessary. The Hearing Examiner said that the log yard is not at the same scale as in recent history and therefore it’s not an existing trend of use and not naturally grandfathered. The Port, having gone through that experience, is somewhat leery regarding the grandfather provision.

Commissioner Muller said another concern expressed by Port officials regarded dredging. He asked about the City’s control over dredging. Deputy Attorney Nienaber said dredging is highly regulated by the state and federal government and that the City’s oversight is likely minimal. Commissioner Muller said it appears that many of the concerns Port officials addressed are issues that the City cannot control. Planner Hornbein said that new dredging is addressed in the Draft SMP and that dredging must comply with all regulations.

Deputy Attorney Nienaber responded to questions about the argument pertaining to SEPA. In the Weyerhaeuser log yard case, the Port claimed it had a grandfathered port use that included a wide range of uses that historically occurred at the Port and therefore the SEPA analysis should be minimal or not required because the use was an historic use. The Hearing Examiner ruled that the Port hasn’t operated that particular log yard although the Port has shipped other products, but not logs. The Hearing Examiner ruled that environmental impacts for the specific impact should be considered.

Commissioner Reddick asked whether it’s possible to designate the working part of the Port and if that use is terminated whether it can be redesignated as Urban Intensity. Planner Hornbein said the designation couldn’t automatically revert but that the Port could apply for an amendment.

Commissioner Tousley said it appears the Port property can be bisected into different designations. Deputy Attorney Nienaber affirmed it is one way to address the concerns that were raised by the Port.

Commissioner Leveen asked whether the extent of the designations is based geographically or by parcel. Planner Hornbein said the designations do not necessarily align with parcel boundaries.

Commissioner Thomas asked if the Port is provided with a sub-designation, could there be a separate but equal designation that would provide a site for no-net loss mitigations. Planner Hornbein said the preference is for mitigation to occur on site, but if that’s not possible, then in close proximity to the site. If that’s not an option, the next preference is within the same drainage basin. Commissioner Thomas asked whether that could be facilitated through the designation process. Planner Hornbein said it would be difficult in that mitigation is tied to specific impacts of a proposed development.
Commissioner Tousley commented that within the Restoration Plan and information received from the Squaxin Island Tribe, there is data supporting potential sites for mitigation.

Commissioner Reddick asked if another one of the Port’s sites is changed to the Natural designation whether it’s possible for the Port to use the site later as a mitigation site. Planner Hornbein advised that mitigation and restoration can occur anywhere an opportunity is available. Commissioner Reddick commented that the Port has completed some mitigation in the lagoon area and it may be possible to designate it as Natural, which would be closer to the Port. Planner Hornbein clarified that the policy language for the Urban Conservancy designation encourages restoration. She said that changing the designation to Natural would not provide any greater benefit than Urban Conservancy.

Commissioner Levene said geographically, there could be a potential argument for considering a change in designation for the purpose of restoration. At NorthPoint, a lower intensity use could benefit fish or wildlife. There could be a reason to consider a change in designation.

Commissioner Thomas asked whether there are any places on the Port’s property that could be potential candidates for Urban Conservancy designation. It would provide a balance and provide a nearby area for mitigation. Planner Hornbein urged the Commission not to focus on achieving mitigation through the designations, but to review the mitigation and restoration policies and regulations in Chapter 5.

Commissioner Law asked whether it’s possible to improve and restore in any designation. Planner Hornbein affirmed that it is possible.

Commissioner Reddick asked whether the Squaxin Island Tribe has offered comments on the reaches. Commissioner Tousley indicated there has been no input received from the Tribe on the Draft SMP.

Discussion continued on the Committee’s review of the reaches on January 12, where the Committee attained consensus on designations. The first reach is Budd 2, which the Committee agreed to designate as Urban Conservancy. The County is also proposing the same designation. Budd 2 is the furthest northwestern point in the incorporated limits of the City along Budd Inlet. It is located north of West Bay Marina. Planner Hornbein noted the designation also extends into the County. The reason for Urban Conservancy is because of existing vegetation in the reach.

Commissioners discussed existing uses in the area. Chrissy Bailey shared that she participated in a Port tour of the area and logs are stored in the area and then chipped into cedar chips.

Commissioner Levene suggested providing the topographic map layer when presenting the information to the Council.

Chair Horn asked whether any residences could become non-conforming by the designation. Planner Hornbein said she didn’t believe so. Commissioner Tousley reminded the Commission that in assigning the designations, the Commission is not establishing setbacks, heights, uses, or activities.
Commissioner Thomas commented that according to staff, the reason the area was selected was because of the existing vegetation, which points out that the designations are selected based on current conditions rather than future conditions. She acknowledged the difficulty of selecting the designations and cautioned that although there will be situations that are easier because the areas are easier to conserve there will be some losses and it's important to find places that can be conserved.

Commissioner Tousley acknowledged that it's a good point especially before more work is completed on the cumulative impact analysis. The current state of the shoreline reach and requirements for considering mitigation to improve the current status are important, as there are areas where shorelines won't be degraded. Planner Hornbein stated that she would review the management policies for each designation to make sure restoration is addressed.

Commissioner Leveen asked whether the designations are delineating the activities or the development that may be permitted versus the level of habitat destruction that will be acceptable in those areas. It appears that restoration may occur in any designation. If an owner wants to make permitted improvements there is still a no-net loss of function policy in force. To some degree that provides some reassurance. All designations include no-net loss policies.

Commissioner Thomas said there is agreement that there will be places where losses would be allowed. That means mitigation must occur somewhere. She said she wants options for lots of places where mitigation will occur as well as ensuring that it meets a purposeful vision. The Commission needs to be visionary in ensuring that mitigation occurs in as many areas as possible and that the designations are assigned based on a preferred vision.

Planner Hornbein suggested adding the discussion to the "parking lot." There will be more opportunities to discuss mitigation and restoration. Further, the Restoration Plan includes a list of potential restoration projects.

Commissioner Wolf agreed and suggested the conversation should focus on what the Commission is attempting to accomplish during the meeting. There are only five designations, which could be expanded. The Commission needs to determine if the areas are Aquatic, Natural, Urban Conservancy, Shoreline Residential, or Urban Intensity designations. The law is also clear in that there will be no-net loss but ways to mitigate that loss, which is up to the developer, the homeowner, and the regulatory agency permitting the project. The City will work with the developer during the permitting process to determine mitigation. He suggested it isn't part of the SMP to designate those areas but rather it's guided by the permitting process. It's important to focus on designations at this point.

There was consensus by the Commission to designate Budd 2 as Urban Conservancy.

Commissioners reviewed the Urban Conservancy designation for Budd 3B. Commissioners agreed with the designation.

Commissioners reviewed Budd 4, which is proposed for Urban Intensity. Budd 4 is a small stretch of shoreline along the Deschutes Waterway.
Commissioner Thomas asked to receive a written description of the reaches. Commissioner Tousley referred Commissioners to the Inventory Characteristic Report where the reaches are defined through GPS. The City did not complete a professional survey of the areas.

Commissioner Thomas commented on the importance of knowing the boundaries of each reach. Commissioner Tousley described the location of Budd 4. Planner Hornbein distributed a map and pointed out the area on an overhead map.

Commissioner Ingman said he prefers designating Budd 4 as Urban Conservancy and would like to record the differences between the designations and why there are differences of opinions. Commissioner Ingman said it's a bigger issue for him and Commissioner Wolf that was addressed during the Committee meeting pertaining to Heritage Park and Percival Landing. The designation is consistent with Heritage Park. The definition of Urban Intensity includes high density housing and commerce, which isn’t compatible for that reach.

Commissioner Leveen asked about the status of the map that was previously distributed. Planner Hornbein indicated the map is from the Designation Report. Commissioner Leveen noted that there is a gap between Budd 3 and Budd 4. Planner Hornbein offered to provide more concise maps and review with staff the possibility of providing better delineated maps.

Commissioner Wolf clarified that he did not question the designation of Urban Intensity for Budd 4 and supports that designation. He said that Commissioner Ingman’s reference to his comments pertained to Cap 6.

Councilmember Derricott suggested proceeding to an agreement on the designations the Committee reached an agreement on unless there is a desire to pull any reaches. The Committee thoroughly discussed the reaches. Commissioner Tousley recommended rather than offering a motion to consider the proposal by Commissioner Derricott, to consider reaching a consensus on the Committee’s recommendations.

Commissioner Law said she carefully reviewed all the reaches and the designations and agrees with the Committee’s recommendations.

Commissioner Muller requested that Budd 6B and Budd 7 be pulled for additional discussion. Commissioner Ingman requested pulling Budd 4 for additional discussion. Commissioner Ingman said Budd 4 is the isthmus and includes part of the Capitol Lake east/west shoreline. It deserves additional consideration and it should match Budd 3C. The designation for that entire area should be consistent.

Chair Wolf asked whether Budd 4 includes the marina and the Yacht Club. Planner Hornbein said it includes the west shoreline of Bayview; the Yacht Club is in Budd 5. Commissioner Thomas asked whether Bayview Market is within 200 feet of the shoreline. Planner Hornbein replied that it is. Commissioner Thomas questioned the implications to the market if the designation is Urban Conservancy. Planner Hornbein indicated it would make the market non-conforming as to setbacks.
Commissioner Law said it doesn’t appear that the property would fall under any of the definitions for Urban Conservancy.

_The Commission concurred with the Committee’s recommendations on the designations for the following reaches:_

- BUDD 2
- BUDD 3B
- BUDD 8B
- CAP 7
- CAP 5
- CAP 1
- CAP 3A
- CAP 3B
- PERC 1B
- BLDD 1
- BLDD 2
- KEN 1
- WARD 1
- GRASS 1

Commissioner Tousley suggested moving forward on those reaches pulled for additional discussion beginning with Budd 3A.

Commissioner Thomas said that given the complexity of the testimony that the Commission received and the lateness of the hour, she requested that staff provide the Commission with a proposal that is responsive to the public testimony to help the Commission begin its discussion.

Commissioner Tousley asked for feedback from those Commissioners desiring additional information on Budd 3A.

Commissioner Wolf said he doesn’t recall any public testimony on designations. Rather, it pertained to heights and uses, which the Commission is scheduled to review during future meetings. Some of the public testimony regarded Smyth Landing and concerns about restrictions on heights and uses. Planner Hornbein replied that the Friends of the Waterfront proposed a number of designations. The Commission needs to review the public material prior to the next meeting.

Commissioner Thomas said she was present for the second hearing and listened to the tapes from the first hearing and reviewed the minutes and other testimony that wasn’t from the hearing. She said that when she spoke to Deputy Attorney Nienaber it was her distinct impression that he recommended that staff provide the Commission with some additional staff work on that area. He felt that would be advisable. Planner Hornbein said that direction wasn’t communicated to her and that she will follow up. Commissioner Thomas said the discussion was about that particular reach and that he recommended having staff provide additional information.
Commissioner Leveen commented that if the Commission has any requests of staff then it needs to be very specific so that the process is successful. In terms of oral testimony, the only testimony he recalls is that the designation map needed more detail, which is different from testimony on the selection of different designations for different reaches. Commissioner Thomas pointed out the Commission received much testimony on Budd 3A at the last hearing. Several Commissioners said the testimony did not concern designation. Commissioner Thomas asked staff to check the testimony.

Commissioner Ingman questioned whether the Commission should terminate the discussion. It appears there is agreement on a majority of the reaches. The Commission can submit recommendations for the reaches that were pulled so that Commissioner Tousley can review where there are differences of opinion. Commissioner Tousley said when the Committee met on January 12, there was discussion on why some of the reaches were tabled. The Committee reached a point where they were tired and the meeting ended with several of the reaches tabled for further discussion. The schedule will undoubtedly be extended. The issue is what the will of the Commission is. The goal is to move forward as quickly as possible while also recognizing that members need to be refreshed and engaged.

Planner Hornbein encouraged Commissioner Leveen to contact staff and follow up on additional information he would like. Commissioner Tousley asked Commissioners to communicate electronically to her on the reaches pulled for discussion:

- BUDD 3A
- BUDD 3C
- BUDD 4
- BUDD 5
- BUDD 6A
- BUDD 6B
- BUDD 7
- BUDD 8A
- CAP 6

The next meeting of the Committee is on February 2 with the focus on Chapters 6 and 7. She encouraged Commissioners to attend if possible.

*Commissioner Derricott left the meeting.*

Commissioner Wolf asked that staff provide a briefing on prior land use and planning for West Bay to aid the Commission in its discussion. Commissioner Leveen said much of the discussion concerned heights, zoning, and view blockage. Commissioner Tousley commented on the need to focus on the designation of the reaches and acknowledged that each Commissioner may feel they need additional information to aid in their respective decision. Chair Horn suggested a briefing on the prior planning for West Bay would be helpful.
Commissioner Thomas asked whether it’s possible to confirm with legal counsel that there are no legal issues in terms of the designation for Budd 3A. There should be a briefing on the past planning process as well to bring current Commissioners up to speed.

Commissioner Tousley said the briefing should be on the 1990 Shoreline Master Program designation and what it allowed and whether the proposed designation changes or alters those designations. Commissioner Thomas reiterated her request, as there were many legal questions that should be answered prior to selecting a new designation. Commissioner Tousley asked Commissioner Thomas to convey her request electronically so that she can forward it Deputy Attorney Nienaber.

Chair Horn closed the discussion.

**Committee Reports**

**Comprehensive Plan Committee:**
Commissioner Thomas reviewed upcoming meeting topics and dates:

- January 26 – Environmental Stewardship at the Urban Onion Ballroom
- February 23 – Focus Meeting: Neighborhood Planning Part 2 at the Urban Onion Ballroom

One element needing completion to close the first phase of the Comprehensive Plan update is creation of a summary report for the City Council. The proposal is to hold a working retreat on April 23 to develop a summary of what has been learned so far during this phase of public involvement. An agenda will be published. Chair Horn said the Commission will review the staff summary of all focus meetings. Commissioner Ingman indicated he is unavailable to attend the April 23 retreat.

**Finance Committee**
Commissioner Wolf invited Commissioners to participate on the Finance Committee. Commissioner Reddick volunteered to participate as representing parks. Commissioner Wolf confirmed the committee membership of himself, Chair Horn and Commissioners Tousley and Reddick.

**Annual Retreat**

Planner Hornbein requested input on a date to hold the annual retreat. Chair Horn suggested a June meeting date. The retreat can focus on what the Commission wants to accomplish, process, and logistical topics.

Planner Hornbein distributed some public comments on the SMP submitted prior to the deadline.

The Commission reviewed follow up items:

- Commissioners to advise staff of preference in receiving public testimony materials
- Review remaining designations
- Staff to research whether map can outline the extent of reaches.
- Schedule a briefing on the West Bay amendment.
On future meeting agendas, add Follow Up as an agenda topic

Chair Horn shared information on the earlier meeting of the Land Use and Environment Committee meeting that he and Commissioner Tousley attended. The committee is comprised of Steve Langer (Chair) and Jeannine Roe and Karen Rogers. The discussion focused on the SMP and the Comprehensive Plan. The committee wants to schedule a joint meeting with the Commission on May 16 for the SMP and June 20 for the Comprehensive Plan.

Adjournment

With there being no further business, Chair Horn adjourned the meeting at 9:58 p.m.

Roger Horn, Chair

Prepared by Valerie L. Gow, Recording Secretary/President, amended March 7, 2011
Puget Sound Meeting Services