

**CLARK COUNTY
PLANNING COMMISSION MINUTES
Thursday, August 7, 2014**

**Public Services Center
1300 Franklin Street
BOCC Hearing Room, 6th Floor
Vancouver, WA**

6:30 p.m.

I. CALL TO ORDER 6:30 P.M.

MCCALL: Okay. Tonight is August 7th, a Planning Commission meeting for Shoreline Master Program Limited Amendments. We do not yet have a chair. So as the clerk, I am calling the meeting to order and requesting a motion from the Commission for a chair for the evening.

JOHNSON: I move that Ron Barca is the chair for the evening.

QUIRING: I second.

MCCALL: It's been moved and seconded. All in favor.

EVERYBODY: AYE

MCCALL: Opposed? (No Responses)

MCCALL: Okay. Ron, I'm handing it over to you.

II. ROLL CALL & INTRODUCTION OF GUESTS

BARCA: All right. Well, good evening. Welcome to the Clark County Planning Commission for Thursday, August 7th. We'll do roll call first, please.

MORASCH: ABSENT

USKOSKI: ABSENT

BARCA: HERE

QUIRING: HERE

JOHNSON: HERE

BLOM: HERE

BENDER: HERE

BARCA: And at this point in time we would like to welcome the new planning commissioner member Richard Bender appointed July 29th, 2000- -- 2014. That's what I meant to say, 2014, yeah.

BENDER: Thank you. Glad to be on board.

III. GENERAL & NEW BUSINESS

A. APPROVAL OF AGENDA FOR AUGUST 7, 2014

BARCA: Okay. And at this point in time we will go ahead and do approval of the agenda.

QUIRING: Move we approve the agenda for this evening.

BLOM: Second.

BARCA: Okay. Motion and seconded. All those in favor of approval of the agenda for August 7th say aye.

EVERYBODY: AYE

B. RE-APPROVAL OF MINUTES FOR JUNE 19, 2014

BARCA: Okay. And next order of business is to re-approve the minutes for June 19, 2014.

BLOM: I move we re-approve the minutes for June 19th, 2014.

QUIRING: Second.

BARCA: Okay. It's been moved and seconded. I was not at the meeting so I will abstain. So all those in favor of approval.

BLOM: AYE

QUIRING: AYE

JOHNSON: I think I was not there either.

BENDER: Abstain.

C. APPROVAL OF MINUTES FOR JULY 17, 2014

BARCA: Okay. So we will now move to approval of the minutes for July 17th, 2014.

QUIRING: So moved.

JOHNSON: Second.

BARCA: Thank you. And all those in favor of approval of July 17th say aye.

EVERYBODY: AYE

D. COMMUNICATIONS FROM THE PUBLIC

BARCA: Okay. This is the point in time of the meeting where we ask for communication from the public. Other than what is on the agenda this evening, if there's anybody from the public that wishes to come forward and speak on other matters, this is your opportunity. And seeing none, we will go immediately into the public hearing for the Shoreline Master Program Limited Amendment.

IV. PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION

A. SHORELINE MASTER PROGRAM LIMITED AMENDMENT

BARCA: Staff report, please.

ALBRECHT: Thank you, Chair. Good evening Planning Commission members. Gary Albrecht, Clark County Community Planning. I'm here to talk about CPZ2014-00008, Shoreline Master Program Limited Amendment. I just want to go over a quick background. I know you have the staff report in front of you, so...

Clark County adopted an updated shoreline master program in July of 2012 and it was approved by Washington State Department of Ecology in August 2012. The shoreline master program policies are included in Chapter 13 of the comprehensive plan. The shoreline master program regulations are included in Clark County Code Chapter 40.460.

This proposal requests limited amendments to the Clark County SMP to add Carty Lake to the list of

lakes subject to the SMP required by law. Allow dredging and disposal as part of ecological restoration and enhancement projects. Allow non-water oriented commercial uses that are physically separated from the shoreline by another property or public right-of-way.

July 10th we had a Planning Commission work session and there was some questions about property ownership. So I included a map and it's on the screen right now for property ownership. And I've also included a letter in your packet from Ecology which is to the City of Ridgefield planning consultant about the reasons for adding Carty Lake to the SMPs.

I'm going to move on to public outreach. We mailed out about 6,000 postcards to affected shoreline property owners. E-mail notifications were sent to shoreline stakeholder advisory committee members from the 2012 shoreline master program update. Washington State Department of Commerce 60-day notice was submitted on June 20th, 2014. The SEPA DNS comment period ended July 15th, 2014, and the staff report shows an error that the comment period ends July 15th, 2015. I've received one comment from the Washington Department of Fish and Wildlife during that SEPA period just requesting clarifying questions, and their e-mailed comment and my responses are included in your packet tonight if you wanted to go through that.

County staff collaborated with the City of Ridgefield, Port of Ridgefield and Ridgefield National Wildlife Refuge to add a shoreline designation to Carty Lake and include it in the SMP. On July 2nd, 2014, the City of Ridgefield Planning Commission had a hearing and voted 7/0 in favor of endorsing the County's proposed shoreline designations. So that's urban conservancy in the unincorporated area of the lake, and high intensity inside the city limits which the city would add, and the city council will have a hearing after the Board of Clark County Commissioners' hearing on August 19th.

So in conclusion, the staff recommends the Planning Commission recommend approval of this proposal to the Board of Clark County Commissioners adding Carty Lake to the list of SMP lakes, removing the inconsistency between prohibited uses and the use table allowing dredging for restoration and adding the Washington Administrative Code language relating to non-water oriented commercial uses that are physically separated from the shoreline by another property or public right-of-way. And that's it.

BARCA: Are there any questions for staff at this time? I have a question for you, Gary. If you would be so kind as to go into a little bit of detail about the correspondence that you had with the Department of Ecology please so everybody here hears it the same way.

ALBRECHT: Do you want to flip through your packet and go that way?

BARCA: Yeah, I have it in front of me.

ALBRECHT: Okay. Should I just start off with reading George's comments, his question?

BARCA: Please. Yeah. So the reason of the give and take between you I think is the most relevant part for me, and I would like everybody on the Planning Commission to hear it.

ALBRECHT: Okay. So I'm just going to read George Fornes' comment from Department of Fish and Wildlife.

So he says: "Gary, Thank you for providing the Washington Department of Fish and Wildlife the opportunity to review the proposal for a Limited Amendment of the Clark County Shorelines Master Plan.

The stated purpose for the second portion of this proposal is to correct an inconsistency relating to dredging for restoration, thereby 'Allowing dredging as a use for restoration.' We are not clear on how the proposed change to the text of 40.460.240 and 40.460.800 will accomplish this purpose.

The proposed change to the text of 40.460.240 eliminates some dredging activities from the list of prohibited uses. 'Dredging as a use for restoration' is not among those activities. The proposed

change to the text implies that some dredging activities (for example, constructing a water ski landing) would be allowed (or at least not explicitly prohibited). We understand that Table 40.460.620-1 shows non-maintenance dredging is a Conditional Use, and dredge material disposal is either a Conditional Use or Prohibited Use. Therefore review would be required for any such activity.

40.460.640(B)(1)(e) also lists locations where new dredging activity is prohibited. However these standards are based on underlying shoreline designation and location rather than intent, and we are still not clear on the connection between these proposed amendments and restoration activity.

The proposed text change to the text of 40.460.800 changes the definition of 'dredging' but does not appear to modify text related to restoration.

Under Table 40.460.620-1, 'Dredging & dredge disposal as part of Ecological Restoration/Enhancement' is already Permitted under most shoreline designations, and as a Conditional Use under the Natural designation. Also, under 40.460.240, 'dredging as a use for restoration' is not listed as a prohibited use. Therefore current code appears to allow dredging as a use for restoration.

Since the stated purpose is to allow dredging as a use for restoration, we recommend adding language under 40.460.640(B), which lists scenarios where dredging and dredge material disposal is permitted. Dredging for restoration could be explicitly stated within this section.

Thanks very much, and please let me know if you would like to discuss this topic in further detail." Okay.

So and then my response. I say: "Hi George, You're welcome for the opportunity to comment on this SEPA.

The staff report indicates an inconsistency exists relating to dredging for restoration between prohibited uses (40. -- well, that's a typo -- 460.240.G) and Table 40.460.620-1. When looking at Table 40.460.620-1 and the specific uses for Dredging and Dredge Material Disposal and 40.406.240.G, the inconsistency is able to be seen. Below is a snap shot of the code and text language.

The main use is Dredging and Dredge Material Disposal, which is not able to occur because it is listed as a prohibited use in 40.406.240.G. By removing this inconsistency, dredging for restoration can occur since it falls under the specific use of dredging or dredge material disposal."

And then I say: "I hope this helps clarify the proposed text change for 40.460.240 and 40.460.800."

And then he goes on. He says: "Hi Gary, I see what you're saying. But doesn't 40.460.240(G) only prohibit certain instances of dredging or dredge material disposal? If so, would you want to keep the prohibition on some of those instances?"

And I say: "Hi George, We chose not to keep the prohibitions in 40.460.240(G), since instances where those activities could occur are prohibited in 40.460.640(B)(1)(e)."

BARCA: So the table that is part of the discussion about permitted versus not allowed --

ALBRECHT: Yes.

BARCA: -- the table is unchanged?

ALBRECHT: Correct.

BARCA: So this is an interpretation in the discussion between the two organizations?

ALBRECHT: Yes. And so the way that Clark County looks at the SMP, it goes over the whole topic and then he's going down into the details, so... Because we look at dredging and dredge material

disposal and compare that with the prohibited uses in the list of prohibited uses, and so that's the inconsistency because it shows up as a prohibited use, so by removing that it takes the inconsistency away.

BARCA: So I guess where I'm trying to get at, through all of this correspondence it was basically just to convince them of the interpretation of how County staff reviews the permit requests. Is that a fair assumption?

ALBRECHT: I think that's fair, yeah.

BARCA: And so you were able to come to terms, because I didn't find any modifications based on the correspondence.

ALBRECHT: Correct, because there were none made. So it was just more of a clarification on what we meant.

BARCA: It was lengthy enough in the record that I just wanted to be sure that I hadn't missed something and that we're clear on Department of Ecology's final interpretation. Thank you for indulging me.

ALBRECHT: You're welcome.

BARCA: Okay. If there are no other questions for staff at this time, I am going to open it up for public comment. Seeing no questions. We have one on the sign-up sheet which is Brent Grening.

GRENING: Good evening. My name is Brent Grening. I'm the CEO for the Port of Ridgefield, 111 West Division in Ridgefield, Washington. The Port of Ridgefield is here. We oppose the listing, the inclusion of Carty Lake on the list of regulated bodies on the County's shoreline master program, and there are several reasons for that which I would like to cover with you this evening.

Our comments here are we felt were necessary. Some of this is to give you context on our project and our position on this. And if you have any questions, please ask. Okay.

So, first of all, the Port sees Carty Lake as fully and permanently protected. The lake is federally owned and is publicly managed for wildlife habitat. The Port owns the neighboring property as you can see on the map. By listing this property, or listing the lake, the shoreline buffer would extend onto Port property and potentially limit the redevelopment of the Port property. And if you see in the back, we have a map, you can see the red line is the proposed shoreline buffer at approximately 200 feet.

The Port of Ridgefield and Ecology have a 20-year working history to protect Carty Lake and repair past environmental damage. For those of you who don't know, this was traditionally a mill site. Pacific Wood Treating operated there for 30 years. A great deal of wood treating chemical and contamination was on-site. The great -- the majority of that material has now been removed and remediated, so including 25,000 gallons of an underground plume of wood treating contaminant that was threatening Carty Lake.

So under emergency order of the Department of Ecology we undertook to clean this, remove the plume and clean the property. So to date, the Port and Ecology have spent \$90 million of public money to remove these toxins and ensure that no further impact to Carty Lake, the wildlife refuge or Lake River.

Physical and institutional controls are in place to protect human health and the environment. These controls are permanently attached to the deed for the property. So even if the Port were to sell this property - which we do not intend to do - the environmental controls and protection will remain in place.

The Port and Ecology have a signed consent decree which sets forth performance and monitoring

controls and protections that have been put in place, including a requirement for Ecology notification and review of any proposed land use actions on the site by either the Port or the City.

I should mention and go back one step. The consent decree is three parties, it's the Port of Ridgefield, the City of Ridgefield and Department of Ecology. Failure to meet the terms set forth in the consent decree would be considered a breach of the agreement and the breaching party could be held liable.

The consent decree includes the following: It includes a restrictive covenant which places carefully considered restrictions on the use of Port property once redeveloped. The site is now clean of all structures, the Port offices. And so anything that we build there is going to be reviewed, and the construction practices are laid out and defined and Ecology will be noticed and have review of our actions.

In addition, a soil management plan is in place. This sets forth notification of Ecology and soil handling protocols for future work on-site, and that is set forth in perpetuity. That means that if we dig on the site, if we put down a footing, if we go in and put a utility trench, if we do any earth work, we will contact the Department of Ecology. Upon their review, they will determine whether we are following our soil management protocols; if we are, we go forth and they are already defined as protective of our property, human health and the wildlife refuge.

Storm and groundwater monitoring plan is also included. This is to ensure proper system performance and that there will be a protection against any impact. This is a legally binding determination by Ecology, and in it it lists the items above to constitute what is necessary to protect human health and the environment for this site. And what's important about the word "site" in this case, it is the extent of contamination from the PWT operations. So it is not property lines, it is to wherever that contamination is found. So that piece has been decided and done.

In addition, there's a newly revised City of Ridgefield development code. It has been adopted. The code designates the Port's waterfront property as a mixed use waterfront zone. The code was designed and publicly vetted to specifically address land use, environmental protection and sustainability of the Ridgefield waterfront. All public plans and development of the Port, of the City, are subject to SEPA review and Ecology notification requirements.

A clean soil cap is in place on our site. The entire 40 acres was capped with clean soil. The cap thickness was designated by Ecology and is designed to specifically address the needs and risk related to Carty Lake. The work began in 2009 when the shorelines and water stormwater groups within Ecology were consulted for their input.

All stormwater from the property is shunted away from Carty Lake. We have a new stormwater system that collects the water. Again, I refer you to the diagram. You'll see a blue line, that's the northern north yard line and it conveys stormwater at the property edge away from Carty Lake and to Lake River as designated or required by the Department of Ecology. All necessary shorelines, stormwater and construction permits were in place at the time of construction. Water quality and stormwater system performance is monitored as a part of the consent decree above. That's going forward to ensure that there are no additional impacts.

A 15-foot-wide paved walking path has been constructed in part as a line of demarcation between the upland development and the shoreline area. This path was constructed at Ecology's request in 2013. The path allows wildlife viewing without disturbance of wildlife. The property line between the Port and the Ridgefield National Wildlife Refuge has been fenced in order to eliminate direct public access to the lake from Port property. Site topography further restricts the direct access to the lake. So even if you got over the fence, you're going to have a hard time getting down to the lake.

The Port's property is above the 100-year floodplain. This elevation was achieved during capping and by design to eliminate potential connection between the lake and the Port property during flood events.

Currently the wetland area and lake bottom of the southern tip of Carty Lake - if you look on the map on the southern end, the lower edge, there's kind of a light gray shade, and that's the area that we're talking about - this area we are beginning the work this week. Contaminated sediments and invasive plants will be removed from that area. Clean soil and native plants will be placed to enhance ecological recovery, habitat value and function. In addition, a new earth and rock retaining wall will be constructed along that southern boundary of the wildlife refuge there just below Carty Lake and extending north along Port property, so that will be put in place.

As we've already talked about, and I think we have a solution, but the original -- originally these types of enhancements and protections would not have been allowed, at least that was the original interpretation. This work will be completed by mid-October of this year.

The restoration of the lake and wetlands and the construction of the public walkway allow people of all ages and abilities to experience Carty Lake and the Ridgefield National Wildlife Refuge with minimal impact to ecological function.

The County SMP will not govern the use and redevelopment of Port owned property. All of our property is within the city limits of Ridgefield. So the Ridgefield SMP will be the or is the controlling document. The shoreline -- should be -- master program, and more importantly the public partnerships between the Port, the City, Ecology and the Refuge have been critical to remediating Carty Lake, the protection of Carty Lake, the cleanup of the PWT mill. It's working. We're getting there. We're getting done. The lake is being recovered.

Any amendments to the County SMP should be carefully reviewed and considered prior to adoption of this amendment. Amending the SMP to include Carty Lake will add regulation and oversight where it isn't necessary. The added costs, time and complexity will not result in greater environmental protection or enhancement, nor will the proposed amendment improve the manageability of the County SMP.

Additional regulatory oversight is redundant and therefore unnecessary. As such, it will add expense to all levels of public government, including the Port, the City, the County, the State and the Federal government. It will slow the ability of federal managers to rehabilitate the lake and the associated wetland complex. It will add complexity and regulatory conflicts in management and decision-making processes for all public agencies involved.

It will erode the understanding and agreements that Ecology and Ridgefield, and the Ridgefield community, and by that I mean the Port, the City and the citizens have already reached related to the use and function of the waterfront.

Potentially it will further limit the use of Port property and therefore negatively impact the Port's ability to repay its contracted portion of remediation expense. This is an income producing property. We owe Ecology \$4 million for our share of -- a remaining \$4 million of our share of the cleanup. If we can't use the property in a productive way, paying that debt will become more difficult. It will set a precedence for continued modification and amendment to the County SMP. We will alienate citizen and taxpayer support of important environmental projects. And it will waste public resources on process rather than putting it to work on environmental protection, remediation and enhancement.

BARCA: Mr. Grening, can you just hold on for just a moment.

(Projection screen rising, creating background noise.)

MCCALL: I apologize.

BARCA: I apologize.

MCCALL: Done. Sorry.

BARCA: Okay. Thank you.

GRENING: So therefore the Port respectfully requests that the County SMP not be amended to list Carty Lake at this time. Thank you very much. If you have any questions, I'd be happy to try and answer them.

BARCA: Questions for Mr. Grening and the Port?

JOHNSON: So your biggest concern, and again correct me if I'm wrong, is the buffer? You were talking about the buffer, and I see by your picture here, I'm looking at this right here --

GRENING: Yes.

JOHNSON: -- that you are concerned with that buffer; is that correct? Is that the primary concern of the Port? I'm trying to nail down this, you know. I understand the greater picture here and saying more regulation is not what you're looking for. But if you were to just kind of sum it up and say, look, what we are concerned about the most is.

GRENING: Commissioner, our concern is with the buffer. It does, it creates another house within the Department of Ecology that must be coordinated and come in and can potentially delay improvements or work proposed by the Port. This is a complex project. We're dealing with a host of different specialty groups, and to come in and add this without justification. Like I said, our belief is Ecology's decision-making process, their notifications, their management control of the site is guaranteed. We have an agreement ratified by the court that defines what we must do to protect surrounding properties and human health, that's already been decided. It has already been, you know, it's publicly vetted. So to simply add a lake which has historically not been on the list, there's no justification, there's no -- we do not understand why. I guess I'll leave it at that.

QUIRING: Mr. Chair.

BARCA: Please.

QUIRING: My question would be regarding this Memorandum of Understanding. Are you saying in your testimony that if this lake is added, that the amendment will supersede that Memorandum of Understanding?

GRENING: I don't believe that it will supersede. What I do believe is it adds another layer which must be addressed that is at this point ignorant I think is the word for all the work and the relationship and the inter-jurisdictional partnerships that have been put together to do this work, and there is no reason to make this project more difficult, more complex and more expensive. We want to get it done. We want to do it right. We think Ecology agrees with us that we are on that track, and we would like to develop our property without undue interference and we have negotiated that with the Department of Ecology. But we're being asked to accommodate the shorelines group and --

QUIRING: And they're a different group.

GRENING: Yeah. It's a subset of an organization that we already have an agreement with.

QUIRING: And that's why I don't understand. If it is a subset of an organization with which you already have an agreement, it would seem that they could simply read the Memorandum of Understanding; however, I do know bureaucracy does not always make sense like that. But would there not be a way to essentially make sure that that Memorandum of Understanding is understood by that group thereby not delaying any of the actions?

GRENING: We would have liked to have had that conversation with the shorelines group. We feel that this is a special enough and large enough project that these things should have been discussed originally. And when the lake was not included, it basically simplified our thinking and we were satisfied with that. We are less satisfied when the lake is added because it opens that door for additional time delay and expense.

QUIRING: And, I'm sorry, I'm going here by my notes. Now the 200-foot buffer there that we see, according to your testimony, also you've had this soil capping placed creating a place in which there's no 100-year floodplain, it would seem to me that if it's that high, wouldn't that eliminate that 200 feet, or is it just shoreline that is part of the rural that's 200 feet?

GRENING: We would like to have that conversation as well, but it is not written that way to my understanding.

ALBRECHT: So I have an e-mail from Kim Van Zwalenburg from the Department of Ecology, she's the senior regional shoreline planner. So this is in your packet.

QUIRING: Yes, I've read it.

ALBRECHT: All right. You've read it. So just for the record I want to say that what she says here is that "This proposal does not affect, nor hinder, the continued work to clean up both Carty Lake and Lake River. Joyce Mercuri and I have taken a look at the Carty Lake proposal and the work will be done in 'compliance with the substantive requirements' of the Shoreline Management Act (and the Ridgefield SMP) per RCW 90.58.355. A shoreline permit is not required now, nor will it be required in the future for the remedial work done under a consent decree, order or agreed under RCW 70.105D Model Toxics Control Act."

And then also for the record, adding Carty Lake is a requirement based on the law, the WAC 173-20 and RCW 90.58, that's the law.

QUIRING: Right. I understand that that is the law --

ALBRECHT: Okay. Well, it meets the criteria.

QUIRING: -- because of the size.

ALBRECHT: Yes, because of the size. It's 20 acres or greater in size.

QUIRING: And why wasn't it included? Do you want to for the record tell us why it wasn't included sooner?

ALBRECHT: It just wasn't included.

QUIRING: It was missed?

ALBRECHT: It was missed. So the National Wildlife Refuge has lakes on it right now that are in our SMP. The Post Office Lake, Green Lake and Campbell Lake are included in the shoreline master program. Because of their size they're included as the Carty Lake needs to be included.

QUIRING: And so now I'm looking at our attorney and asking, do you think they're going to be safe with this Memorandum of Understanding to be able to proceed without hindrance?

COOK: I cannot say that I've reviewed the Memorandum of Understanding, but I think the e-mail from Kim Van Zwalenburg notes that the work under the consent decree would not be affected by the SMP designation and that a shoreline permit would not be required to conduct that work. So I would say that there isn't a significant amount of extra regulation at this point.

QUIRING: So when Ms. Van Zwalenburg leaves her position, what do you suppose will happen?

COOK: Well, there are a fair number of other communications with various Ecology folks here and

there in the record. She's not the only person in the agency that's aware of this issue, and she's simply the local field rep or senior local field rep. So I wouldn't imagine it would change with a change in staff.

QUIRING: I actually think that's probably the fear, not just her, just as staff changes over time.

COOK: Well, I would think this is more a fear response than a rational response would be my thought.

QUIRING: Thank you.

BARCA: Well, before we pass judgment on the reasoning behind the testimony, I think let's just try and put what is in the record and make it clear about what side it's falling on as far as the Department of Ecology seems to be at both ends of this discussion, both the one that have put the order in place for the cleanup activity, which the Port is in compliance with, and following the court order to follow. And Department of Ecology has identified Carty Lake as mistakenly left out of the inventory and has requested us specifically to put it in. Are those facts?

ALBRECHT: Yes. Yes, they are.

BARCA: Okay. And so we're being asked by the Port to consider the potential bureaucratic overlay of another set of Department of Ecology rules on top of the Department of Ecology court order that they're in compliance with at this time. Is that a fair statement?

GRENING: I think that's a fair statement. If I could clarify. The remediation work that we are doing is permitted and underway. We are actually waiting for a Corps permit, but Ecology has reviewed, and as soon as we have that we are ready to go. So that work is happening and that work will be done and will be on.

Our concern is the bureaucratic burden going forward. Clarity is everything to keeping the cost of property development in control, it's certainty. And as we're talking and we're moving forward, another layer of bureaucracy can cost us time and money at the most inopportune times, and that's what we fear. And we believe we have justification to fear that because it takes the lead time on these things is very long and the interpretation of regulations and these programs varies over time.

And we're asking you to understand that we have a very clear set of agreements and protocols in place agreed to by Ecology that protect Carty Lake into perpetuity. So we don't understand why the lake, which has not been listed from the 1970s that we talked about with the Department of Ecology, this problem was recognized in 2009, we talked about it before shorelines, the shorelines update, during the shorelines update, throughout. So this was on the table, it was talked about and now they'd like to change it. We do not see justification for that change.

BARCA: Okay. So as you clarified my statement for me, now I'm hearing that this concern you have goes beyond the cleanup activity and moves into the potential utilization of the property post cleanup?

GRENING: That is correct.

BARCA: Okay. And so you don't recognize the exemption of Carty Lake as an oversight?

GRENING: No, I do not.

BARCA: You do not. You think it specifically was left off of the inventory?

GRENING: It was left off the inventory after discussion with Ecology.

BARCA: Okay. So...

BLOM: Can I ask a question here?

BARCA: Certainly.

BLOM: Before I jump into the question, I think it's important to point out, worth pointing out the good work that the Port has done cleaning up Carty Lake. And it's a good example that business development and that kind of job creating potential doesn't have to always come at the expense of the environment. So accommodation to the Port for what they're doing there.

GRENING: Thank you.

BLOM: My question regarding your letter and your testimony, you say in your letter towards the end, "The County SMP will not govern the use and redevelopment of Port owned property," and then two paragraphs down you list all of these things that the inclusion of Carty Lake on the SMP could do. So I kind of feel like your testimony is trying to have it both ways. You're saying it's not going to be the governing body but it's going to add all these regulations.

GRENING: We've included that because we're not the only actor on Carty Lake, and we have had discussions, you know, with our partners. So, again, I bring that to your attention. I think it does add expense to the public process, and whether that's, like I said, Port, City, State or Federal. The city limits, the southern portion of Carty Lake is within the city limits. The City and -- well, actually Clark Regional Wastewater owns property now within the buffer. So there are -- there are other parties that could conceivably be impacted as well. But the Port property, Department of Ecology has asked that Ridgefield amend its SMP as well. We will offer similar testimony in opposition to the City of Ridgefield as they consider this. But wanted to go on the record today that we do not agree with the listing of Carty Lake.

BENDER: I have a question for legal. It seems to me we have an omissions and errors within the original proposed plan and now we're going back to amend that to basically adhere to the Shoreline Management Act that is law by the State of Washington; is that correct?

COOK: That's correct.

BENDER: So what is the downside if we choose not to include Carty Lake in the Shoreline Management Act?

COOK: Well, what can Ecology do to us if we don't abide by the Shoreline Management Act. I would guess that they would or could initiate an enforcement proceeding to require us to do that.

BENDER: So Ecology has kind of put us in a no win situation.

COOK: There was a mistake made at the shoreline update. I can't tell you who made the mistake and who put whom where.

BENDER: I'm not looking to place blame.

COOK: I don't think there's a loser by putting it, with all due respect to Mr. Grening, I don't think there's a loser if the lake is added to the SMP inventory.

QUIRING: Mr. Chair.

BARCA: Yes.

QUIRING: Is the County a loser if we don't?

COOK: I think so.

QUIRING: And can they proceed with a lawsuit or something against us and fine us or --

COOK: Typically what would --

QUIRING: -- like they have in the past?

COOK: Typically what would happen -- actually I don't -- yeah. The last lawsuit was not initiated

by Ecology but it was against the County and Ecology.

QUIRING: Oh, okay. Yes.

COOK: Not that they helped much.

QUIRING: No.

COOK: So an enforcement proceeding which was initiated by Ecology and ended up with a settlement for which we got sued. An enforcement proceeding could be initiated by them if the County does not follow State law when it is aware that it has not done so and needs to.

BLOM: Which would then take up more staff time and more basically taxpayer expense in dealing with that suit?

COOK: Most assuredly.

QUIRING: I want to go back to the listing, the omission, or whether it was accidental or purposeful. These other lakes that are in the area, in the vicinity, Post Office, et cetera, et cetera, were they listed before? Are all of the lakes in this area, not just in Clark County, I mean are there more lakes actually here in this refuge in Ridgefield area?

BARCA: Yeah.

ALBRECHT: There are lakes in the refuge area and Carty Lake is not listed right now.

QUIRING: Okay. But the other lakes were listed before?

ALBRECHT: Yes, they were.

QUIRING: So doesn't it seem a little suspicious to you - unless this lake has gained all kinds of water in the last few years - that they left it out? So it could actually -- the thought that it could have been purposely omitted is I think something that we ought to consider. Although, are they specifically asking us to list this?

ALBRECHT: Ecology has specifically asked us to list it.

COOK: There's an e-mail in the packet, in the binder, at the beginning of the materials at packet 4 that's from 2009, and that's an e-mail from Laura Klasner of Ecology who was working on the cleanup issues. And she says that "Carty Lake shorelines may be designated as shorelines of the state, resulting in Shoreline Management Act applicability," and they are now shorelines of the state. I don't know whether they were in 2009 or not. It seems to be that it was not, but it is now. And it may be that it's been cleaned up enough that it was considered to be the appropriate time to deal with it. I don't know that and that's not in the record. But this e-mail from 2009 does suggest that Carty Lake should be listed when Clark County undertakes it's updating. If there was an intention to keep Carty Lake off that list when the County did it's update two years ago, that would be news to the County.

QUIRING: What does it mean when she says it's currently exempt?

COOK: Well, that was 2009. I think it was the shorelines that are subject to the SMA are listed in the regulations. So if it wasn't listed in the regulations --

QUIRING: It's not.

COOK: -- then it wouldn't have been subject to them.

QUIRING: So when it is it would be.

COOK: Yeah.

QUIRING: There's the rub.

BLOM: So when she says we are in agreement on the current exempt status, she's saying we agree that it is not in there, not that it shouldn't be in there?

COOK: Correct.

BARCA: Yeah.

COOK: Though that again that was 2009 and I don't know why at this point it was not in there.

BARCA: Do we have other questions for Mr. Grening?

QUIRING: I don't think so.

BARCA: Thank you for your testimony.

GRENING: Thank you.

BARCA: Anybody else wishing to testify on this issue? Seeing nobody else come forward, I'm going to bring deliberation back to the Planning Commission. Do we have additional questions for staff?

BENDER: Gary.

ALBRECHT: Yes.

BENDER: Did the Department of Ecology have a chance to review our proposed County Shorelines Management Act boundaries on all bodies of water?

ALBRECHT: Our current 2012 SMP? Yes, it's been approved. They have reviewed it, they've approved it. It was approved in August of 2012.

BENDER: And that includes the exclusion of Carty Lake?

ALBRECHT: Correct.

BENDER: So now they're asking us to come back and put it back into the program?

ALBRECHT: Correct. So it was omitted in 2012. It was approved, omitted and now they're asking us to include it.

BENDER: Not to be negative, but legal, whose backside are they trying to protect? I mean I'm asking a blunt question, I'm sorry. In other words --

COOK: I'm afraid I can't answer that question. If the County wants to comply with State law, it would seem to me that it would be best to include Carty Lake because that's what State law requires. The Ecology person who worked with the County in 2012 has said more than once it was an oversight. And we've cleaned up enough issues with properties that have strange lines down the middle of them and mistakes that were made here and there to know I think that oversights can be made in large legislative adoptions, it happens.

BENDER: Mr. Grening, may I ask you a question?

GRENING: Yes, sir.

BENDER: You talked about in your --

BARCA: Wait, wait, Richard. If you're going to ask him a question, please come back up to the microphone.

BENDER: Thank you. Sorry. Can you clarify a little more for me in dollar values the added cost, time and complexity that it sounds like to me by us following the State regulations on the Shoreline Management Act which Ecology is now pushing for is forcing us to take a vote on.

GRENING: I can't give you a specific. I haven't estimated it. What I can tell you is that these

things there have been examples where conflicts delay projects and add costs, it happens pretty regularly on these projects and they can be significant to your budget. If I gave you an example, right now there is a -- we have stormwater regulations which we typically comply with and contractors typically comply with, and just recently new rules have come in for construction of stormwater on contaminated sites. Our stormwater bill estimate was -- our construction estimate was \$40,000, it is now we are up around \$100,000 to comply. So that's the magnitude when we're talking about these projects.

BENDER: This is a general question. The EPA, are they requiring stormwater to follow the cluster rules of color, clarity, et cetera?

GRENING: I'm not equipped to answer that question, sir.

BENDER: Okay. The last question. Can you give me just a general off your head, you know, ballpark, your critical paths of management to completing a project, how much it's going to stretch it out if this is included in the Shoreline Act?

GRENING: Again, it's hard to say. If we get into conflicts at the wrong time, we lose work windows, and when we do that, we can easily lose a year. We're facing that right now. We're right up against a deadline, you know, for our permit. So anything that adds complexity, anything that adds uncertainty, anything that where we have to go and get clarity, anything that adds, you know, legal to this stuff is something that we wish to avoid because our experience has been it can significantly delay, and we can't afford to and don't want to lose potential business, the jobs, the investment because we can't meet a deadline that we might -- that we think we've covered.

That was the purpose of my letter is to show you the amount of work and thought and discussion that we have had with Department of Ecology over the last 20 years to get this site ready for redevelopment, and along comes this uncertainty and it hits out of the blue. You know, it's fine to say, you know, we forgot, but here we are and here we are.

Now, if this, you know, if this had happened before we had permits to go forward with our remediation, it could have very easily pushed us out of this work window which pushes us out of this grant cycle which puts us, you know, into this area of, you know, we're looking now at can we get an extension and grant money to do work in 2015 or later. That is very expensive things for the Port or any public entity to try and cover.

So, you know, my belief is if Ecology wants to do this, they can. They have the ability to go through and quality check these things and to come and have a discussion with the impacted parties, sit down, find out what's going on in the field and try and understand it so that we can implement these protections in partnership because that's what it takes to get this work done and that is not what is happening in this case.

QUIRING: Mr. Chair, I do have another question for Mr. Grening. When do you expect this project to be finished? When were you planning for it to be finished prior to the listing?

GRENING: The cleanup?

QUIRING: Yes.

GRENING: The cleanup in total will be done by January of 2015 for the work that we've described. We have one other off property area that we are going to have to deal with. We are in discussions with Ecology right now on that and that will not happen by that date, but...

QUIRING: And is it the cleanup that you're worried about most or is it the entire --

GRENING: It's the redevelopment --

QUIRING: It sounds like after --

GRENING: It's the redevelopment afterwards.

QUIRING: -- the redevelopment.

GRENING: Yes.

(TALKING AT THE SAME TIME.)

HOLLEY: I didn't hear what you said. Sorry. I can't take two people at the same time.

QUIRING: So it's the cleanup that you're worried about or the redevelopment?

GRENING: The redevelopment is our biggest worry at this point, that's where we really need to have clarity.

QUIRING: And that goes a number of years.

GRENING: And the redevelopment of this site is probably a, it could be a 20-year process. So it's a long-term public work.

QUIRING: Okay.

BARCA: Anything else for Mr. Grening? Thank you again.

GRENING: Again, thank you.

BARCA: Okay. Let's bring it back to the Commission for deliberation.

JOHNSON: Well, you know, I just it seems that there is a track of Ecology through the years at least understanding that something wasn't right, or it's not as clear to me that this was just discovered and, aha, in 2012 or post-2012 that was there. It seems there's been people looking at this, well, at least by the record to 2009 and probably before that, so...

That said, it seems like we are - like my new distinguished colleague said - that we're kind of being forced to do something here that Ecology is talking out of both sides of this. So to me I don't -- it doesn't seem like we have much of a choice.

BLOM: Yeah. I'm very sympathetic to the Port's position on this, but unfortunately we don't get to ignore the WAC or regulation because it's burdensome. I mean as much as it would be nice. If we could change that WAC and say you know what, if there's already an existing management plan in place, then it doesn't need to be included in the SMP. Unfortunately that's not in the authority of this body to change that code. So I don't know how we cannot comply with what the WAC standards are. I mean the County has tried that in circumstances before without great success I would say.

QUIRING: But with all -- oh, go ahead.

BLOM: No, I'm done.

QUIRING: Okay. With all due respect, that WAC was in place with Carty Lake out of it. So it's not like all of a sudden Carty Lake appeared.

BLOM: I think that --

QUIRING: And so the WAC has been in existence and Carty Lake has not been listed perhaps because of where it sat.

BLOM: I think every year though we go through a list of code amendments of things that were oversights. So I mean we can speculate back and forth on whether it was an oversight or whether it was not. I don't think that's a question that we can really ever come to a certain answer on.

QUIRING: Okay.

BARCA: Richard.

BENDER: Is there a deadline for the passage of this particular item?

ALBRECHT: No.

BENDER: No. Are we going to be held to a due diligence schedule though if we tend to ignore it for a while?

COOK: I'm sorry. Would you repeat that, please.

BENDER: Let's say, for example, we go ahead and include Carty Lake into the plan but give it a activation date that isn't immediate, is that going to be impacting us legally?

COOK: No, I don't think that would be compliant.

BENDER: Okay.

BARCA: So it has the appearance though that the genuine issue is the overlay of additional regulation on the property at the point in time of redevelopment, not the project. The e-mail from Kim Van Zwalenburg, which is February 19th, 2014, specifically says the proposal does not affect, nor hinder, the continued work to clean up both Carty Lake and Lake River. That they have taken a look at the proposal, and the work will be in compliance with substantive requirements of the Shoreline Management Act. Shoreline permit is not required, nor will it be required in the future for remedial work done under a consent decree. So I think Ecology's already covered that ground and they have talked to each other at this point in time to make sure that the cleanup continues without Ecology mucking it up.

Now in the context of redevelopment, the County only has jurisdiction over the area that is outside of the city limits. So the big player in this change is going to be the City of Ridgefield. And should we choose to go ahead and follow Ecology's request and include what is now being deemed an omission, the substantive portion of the property that's available for redevelopment falls in line with the City of Ridgefield. And this discussion perhaps will be as lively or even livelier at the city council meeting, and that's where I think the threat of additional regulation will be taken into consideration with the most meaning for people with the most in the game.

I don't see how we at this Commission have the ability not to become compliant when the State agency overseeing this is asking us to become compliant. And genuinely I think the record shows that Ecology looked the other way while the lake was left off the inventory and they didn't do anything to correct the mistake when it was carried on in 2012, but they're here now and they're asking for compliance. So I don't know how to do this job without trying to stay compliant with the laws that are put in front of us, and so that is going to be how I feel I have to vote on this. Is there any other discussion? Seeing none, can we entertain a motion.

MOTION

JOHNSON: I move that we accept the amended shoreline master program to include Carty Lake, and to remove the inconsistency between the use table and the prohibited uses related to dredge and restoration.

BLOM: Second.

BARCA: Yes, Gary.

ALBRECHT: There was the third one for non-water oriented commercial uses that are physically separated from the shoreline by another property, that's the third amendment, so there's three.

JOHNSON: And include the WAC language regarding non-water --

ALBRECHT: Yes.

JOHNSON: Excuse me.

ALBRECHT: Yes, sir.

JOHNSON: Yeah. Added to my motion to include the WAC code language on regarding non-water oriented commercial uses. Thank you for the correction.

BLOM: And I'll still second.

ROLL CALL VOTE

BARCA: Okay. So it's been moved and seconded. Can we have roll call, please.

BARCA: AYE

BENDER: AYE

BLOM: AYE

QUIRING: NO

JOHNSON: AYE

MCCALL: 4 in favor, 1 against.

BARCA: Okay. And the motion will move forward to the County Commissioners.

MCCALL: Hearing for County Commissioners has been calendared I believe for August 21st.

ALBRECHT: August 19th.

MCCALL: Or 19th?

ALBRECHT: Yes.

MCCALL: 19th, yes. It's a Tuesday. It is a Tuesday.

V. OLD BUSINESS

VI. NEW BUSINESS

VII. COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

BARCA: So coming back to the agenda, we have old business. Is there any old business to attend? And do we have new business to attend? Nothing, Oliver?

ORJIAKO: No, nothing.

BARCA: Okay. Then welcome, Richard. You got one under your belt.

BENDER: Yeah, a tough one.

VII. ADJOURNMENT

BARCA: And we are adjourned.

The record of tonight's hearing, as well as the supporting documents and presentations can be viewed on the Clark County Web Page at: <http://www.clark.wa.gov/planning/PCmeetings.html>.

Proceedings can be viewed on CTV on the following web page link:

<http://old.cityofvancouver.us/cvtv/cvtvindex.ask?section=25437&catID=13>.

*Minutes Transcribed by: Cindy Holley, Court Reporter/Rider & Associates, Inc.
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