

City of Medical Lake  
124 S. Lefevre Street – City Council Chambers  
**Planning Commission Special Meeting**  
**September 8, 2022, Minutes**

**NOTE: This is not a verbatim transcript. Minutes contain only a summary of the discussion. A recording of the meeting is on file and available from City Hall.**

**1) CALL TO ORDER, PLEDGE OF ALLEGIANCE, AND ROLL CALL**

- a) Commissioner Hudson called the meeting to order at 5:01 pm, led the Pledge of Allegiance, and roll call.
  - i) Commissioners Mayulianos and Mark were not present due to emergency reasons. Commissioner Hudson entertained a motion to excuse them. Motion made by Commissioner Munson, seconded by Commissioner Jorgenson, motion carried 3-0.

**2) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**

- a) Tammy Roberson 424 W. Brooks Road, Medical Lake – shared comments on CAO-Wetlands. See Attachment A.

**3) SCHEDULED ITEMS**

- a) Work Session – Critical Areas Ordinance
  - i) City Planner, Elisa Rodriguez reviewed edits, discussed a proposal for signage, and led the discussion regarding the Critical Areas Ordinance. Distributed examples of possible signage.
  - ii) Discussed Public Hearing on September 22, 2022, at 5 pm and the SEPA determination.

**4) INTERESTED CITIZENS: AUDIENCE REQUESTS AND COMMENTS**

- a) Dale Southwick 111 S. Silverlake Avenue, Medical Lake – asked for clarification on whether this discussion is regarding wetlands in general or a current project.

**5) CONCLUSION**

- a) Motion to conclude meeting made by Commissioner Jorgenson, seconded by Commissioner Munson, motion carried 3-0 and meeting concluded at 5:37 pm.

# Talking Paper for Planning Commission Meeting on 8 Sep 2022

Mayor, City Planner, Chair, Commissioners, Interim City Administrator, City Officials, and City Residents:

This draft is much improved. I am grateful for your work on this process. On the handout you will be receiving, I have annotated a lot of simply small errors but there are still several important issues that need to be addressed here.

One of the most important things a government can do for the citizens it governs is to leave a clear record of what it has done and why it has done it. Because environmental regulation is one of the most important things the City of Medical Lake does, a clear record is important for government accountability and meaningful citizen involvement. I propose adding the following new section **17.10.020**:

## *H. Written findings required*

Written findings Required: all permitting decisions (as defined in Section 17.10.120 -Definitions) made by the City Administrator or other City Official and regulated by this chapter shall be supported by written findings expressly stating:

- a. The decision;
- b. The information considered;
- c. The information relied upon; and
- d. The basis for decision;

To the maximum extent permitted by the terms of this Code, these written findings shall be a public record of the City of Medical Lake and shall be included in any public notice required under this Chapter as well as included as an addendum to the City Council agenda for the City Council meeting next following the decision. When the City Administrator or other City Official makes multiple permitting decisions pursuant to a single permit requested by a single applicant, those decisions may be consolidated into a single document for ratification as a whole.

## **17.10.100(B) Reasonable Use Exceptions**

This Chapter should require the person to prove by clear and convincing evidence that their loss of “all reasonable economic use” is the result of a *change in the law* from *this version of the code*. The previous version of the code was in effect for more than a decade. It’s too late for land use exceptions based on restrictions that have been in place for 10 years or more. Thus, the application of reasonable use exceptions should be explicitly limited to the very narrow case where new regulations are the root cause of the loss, or significant changes in the land resulting in *new* critical areas cause such a loss.

## **17.10.040(A) Approval Process**

**(8)** Append the following sentence: “Public comments submitted in connection with the proposal must be considered as part of the review process.”

Thank you for your patience, time, and assistance in helping to preserve our City wetlands.

Tammy M. Roberson  
Concerned ML City Resident

Dear Members of City Government and the Planning Commission,

Below are my comments to the most recent draft of the CAO. This draft is much improved. I am grateful for your work on this process. There are still several important issues that need to be addressed here.

I have tried to organize my comments in accord with the present format of the draft code. If you have questions or concerns, please reach out to me. Many of my comments draw from the guidance I cited to in my previous letter.

I am grateful for your time, attention, and service throughout this important process.

*Please have these comments (8 pages in total), Dated September 8, 2022 included with the Planning Commission Minutes for today's meeting. I can provide an electronic version of these comments, with clickable links, upon request.*

(Comments begin on the next page)

**17.10.020(E) Burden of Proof.**

Append the following sentence: “Where the applicant seeks exceptions to requirements imposed by this code, or seeks to show that these regulations deny them “all reasonable economic use of the subject property,” such proof must be clear and convincing evidence.

**17.10.020 –**

**Add new Section**

One of the most important things a government can do for the citizens it governs is to leave a clear record of what it has done and why it has done it. Because environmental regulation is one of the most important things the City of Medical Lake does, a clear record is important for government accountability and meaningful citizen involvement. I propose adding the following section:

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**17.10.030(A)**

The formatting of (A)(1)(h) is misaligned

**17.10.030(A)(3)**

I propose we alter the parenthetical of this paragraph in the following manner:

“(including removal of downed woody vegetation, ~~or~~ application of chemicals harmful to fish and wildlife, or soil excavation, grading, and removal of native vegetation)”

**17.10.030 (B)**

Append the following sentence: “Reasonable methods must be supported by the scientific literature and be carefully crafted to minimize the potential for adverse impact. The exemptions provided herein are to be construed narrowly. The provisions of Section 17.10.120, as well as

any other enforcement mechanism contained in this code, including the power to issue fines, shall apply to wrongfully claimed exemptions.”

**17.10.040(A)**

The following paragraphs need the following changes:

- (5) Add a comma in the following way “Within 28 days, the city shall ...”
- (7) Delete the repeated “of the”
- (8) Append the following sentence: “Public comments submitted in connection with the proposal must be considered as part of the review process.”
- (12) This paragraph should provide a deadline for the report so that the commission has time to review the report in advance. Thus, amend the sentence to read “... to the planning commission five days prior to the hearing.”
- (13) Interlineate the following sentence after the sentence ending “by the planning commission.” “Public comments submitted in connection with the proposal must be considered as part of the hearing.”
- (14) Replace “review body” with “planning commission.”
- (15) I propose the following changes:
  - Appeal deadlines should be altered such that the timeline to appeal is triggered by the City’s mailing of the notice *not* the signing of the order.
  - In addition, Amend the words “legal holiday” to read “legal holiday or weekend day.”
  - It appears this section erroneously refers to a “hearing examiner” rather than the “planning commission.” I propose that the word hearing examiner be replaced.
  - Amend this section to explicitly acknowledge further appeal pursuant to LUPA (RCW 36.70C). LUPA explicitly allows for appeal to the Superior Court, and the code should reflect that fact.

**17.10.040(C)(6)**

Append the words “less any fines assessed by the city” to the end of the sentence.

**17.10.050(B)(2)**

The following subparagraphs should receive the following changes:

- (a) Append the following sentence:  
“This map shall also show the location, width, depth and length of all existing and proposed structures, roads, and equipment within the critical area and its buffer and depict any site development alternatives.”

(b) replace the word “information” with “science and information”

**17.10.050(E)**

This section should be modified to exclude references to “less information.” The City should never sign off on being *less* informed about a project before approving it.

In the alternative, this section should expressly state that the decision to require less information must be supported by written findings and that the decision to require less information is subject to appellate review.

**17.10.050(F)(1)**

I propose we add the following information to the list:

- e. Assessment of existing conditions;
- f. Surface and subsurface hydrologic conditions;
- g. Overall goals of proposed mitigation; and
- h. Performance Standards

(This information is drawn from the Eastern Washington CAO Update Guidance)

**17.10.050(F)(1)**

Amend the last sentence of this section in the following manner: “... shall be accompanied by detailed site diagrams that depict the boundaries of the wetland and its buffer as well as the work to be done, scaled cross sectional ...”

**17.10.050(F)(2)**

Append the following sentence: “If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.” This text is drawn from the DOE’s CAO update manual.

**17.10.060(C)**

Append the following sentence, “Compensatory mitigation shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions.” This is pulled from page 37 of the Eastern WA CAO Update Guidance.

**17.10.070(A)(1)(d)**

P.2 instead of “sound science” should say best available science. That is the term of art for these issues.

**17.10.070(C)(1)(d)**

This line is missing a period at end of line.

**17.10.070(C)(1)(d)(i)**

Append “by the applicant” to the end of the final sentence.

**17.10.070(C)(2)**

Add a comma in the following manner, “... in Section 17.10.070.c.1\_the standards...”

### **17.10.080(A)**

There are missing periods from the end of both paragraphs.

### **17.010.090**

I propose we add a paragraph to this section “wetland goals” that states what our goals are in making these rules. The Spokane County Critical Areas Ordinance, 11.20.050 is a great example.

### **17.10.090(C)**

Amend this paragraph to read, “... after such a date the City shall require the applicant to do the following: 1) Have a qualified professional to update the delineation report or 2) Have a qualified professional submit a report that shows that an update is unnecessary.”

### **17.10.090(E)(1)**

Add the following subparagraph:

“i. For critical areas off site of the project site, estimate conditions within 250 feet of the project boundaries using the best available information.”

### **17.10.090(F)**

**Section .090(F)(1)(a) is grossly out of step with the recommended requirements for activities allowed in Wetlands.** In addition, it presents significant cross regulation problems for the City by purporting to allow activities that state law would likely forbid. For example, Category I wetlands are directly regulated by Ecology. Medical Lake does not have the power to allow roads to be built through wetlands because the work would result in.

The entire section should be deleted and replaced with the model section from “Wetland Guidance for CAO Updates Eastern Washington Version.” It is found on page 24 of the guide and is titled “XX.040 Exemptions and Allowed Uses in Wetlands.”

That section reads: “Activities allowed in Wetlands, ... feasible at the project site.” (found at: <https://apps.ecology.wa.gov/publications/documents/1606002.pdf>)

### **17.10.090(F)**

I propose to add the following new subparagraphs:

“j. *Buffer Setback.* A minimum building setback of fifteen feet is required from the edge of a wetland buffer. The City Planner may allow intrusions into this setback on a case-by-case basis if it can be demonstrated by clear and convincing evidence that impacts can be satisfactorily mitigated. This building setback from the buffer shall be identified on the site plan.”

“k. *Extra Buffer Width for Isolated Wetlands:* The City of Medical Lake recognizes that isolated depressional wetlands are more sensitive to degradation and/or accumulation of sediment and/or contaminants. Therefore, isolated wetlands benefit from larger buffers. If

a wetland is isolated, meaning it lacks an outlet, its buffer width shall be increased by twenty-five (25) feet.”

*(This suggestion comes from the The Planner’s Guide to Wetland Buffers for Local Government, page 13. The document is available online here: <https://www.eli.org/research-report/planners-guide-wetland-buffers-local-governments#:~:text=The%20upland%20area%20surrounding%20a,friendly%20land%20use%20and%20development.>)*

**17.10.090(F)(2)**

I propose we add the following statement after “*Wetland Buffers*”: “Scientific literature is unequivocal that buffers are necessary to protect wetland functions and values.”

**17.10.090(F)(2)(a)**

Append the following sentence: “In the absent of contrary evidence, adjacent land use is assumed to be high.”

**17.10.090(F)(2)(h)**

I proposed we add a paragraph that requires the applicant to prove that buffer averaging will “*improve wetland protection.*” (from pg 13, Wetland Guidance for CAO Updates (Eastern Washington Version))

**17.10.090(H)(2)**

Propose to add the following enhancement activity from the 2018 Wetland update appendix “Protection/Maintenance (Preservation): Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term preservation. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.”

**17.10.100(B)**

This Chapter should require the person to prove by clear and convincing evidence that their loss of “all reasonable economic use” is the result of a *change in the law* from *this version of the code*. The previous version of the code was in effect for more than a decade. It’s too late for land use exceptions based on restrictions that have been in place for 10 years or more. Thus, the application of reasonable use exceptions should be explicitly limited to the very narrow case where new regulations are the root cause of the loss, or significant changes in the land resulting in *new* critical areas cause such a loss.

**17.10.110**

The big problem with this section is that it presents an expertise problem for the City. Who is qualified to adjudicate these issues and let someone violate the ordinances. Minor use exceptions should require public notice and a chance for citizens to comment.



### 17.10.120(C)(2)

The word “areas” is missing from the middle of the first sentence.

### 13 Definitions

This should be renumbered to 17.10.130.

In addition, I propose adding the following definition:

Permitting Decision – discretionary decisions made by the City Administrator or other City officials pursuant to the terms of Chapter 17.10 in connection with a permit application. This definition includes but is not limited to:

- a. Decisions to grant or deny a permit;
- b. Decisions to waive or not require a critical areas report;
- c. Decisions to waive public hearing;
- d. Decisions to permit a reasonable use exception;
- e. Decisions to exempt an applicant from further review;
- f. Decisions to modify setback requirements;
- g. Decisions to allow and approve mitigation plans;
- h. Decisions to permit buffer averaging; and/or
- i. Any Decision resulting from the discretion of a city official where the applicant is required to show or prove some fact upon which the decision is contingent.

I propose the following changes to currently-existing definitions:

**Best Management Practices** should be amended to add the following:

“Such practices:

- (a) Control soil loss and reduce water quality degradation caused by high concentrations of nutrients, animal waste, toxics, or sediment;
- (b) Minimize adverse impacts to surface water and ground water flow and circulation patterns and to the chemical, physical, and biological characteristics of wetlands;
- (c) Protect trees, vegetation and soils designated to be retained during and following site construction and use native plant species appropriate to the site for re-vegetation of disturbed areas; and
- (d) Provide standards for proper use of chemical herbicides within critical areas.”

(From the Eastern Washington CAO Update Manual)

**Mitigation** should be amended to add the following:

“Mitigation, in the following sequential order of preference, is:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

- (c) Rectifying the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- (d) Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action;
- (e) Compensating for the impact to wetlands, critical aquifer recharge areas, and habitat conservation areas by replacing, enhancing, or providing substitute resources or environments; and
- (f) Monitoring the hazard or other required mitigation and taking remedial action when necessary.

Mitigation for individual actions may include a combination of the above measures.”  
(From the Eastern Washington CAO Update Manual)

**Qualified Professional**

Appears to be missing the word “a” in the following place: “...work experiences as a wetland professional...”

**Other General Comments:**

I propose we add a provision requiring the city to begin to seek funding for wetlands mapping no later than 2023.

Best,

Tammy M. Roberson  
Concerned ML City Resident  
SMSgt USAF Retired/Disabled Veteran

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