

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR SESSION - JUNE 8, 1998

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on June 8, 1998, beginning at 9:30 a.m., in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Wm. L. McDowell, Chairman, Tom Shaughnessy, Member, and Mike Shelton, Member, were present. Also in attendance were Margaret Rosenkranz, Clerk of the Board, and Ellen Meyer, Administrative Assistant to the Board. Minutes from the meetings of May 11 and 18, 1998 were approved and signed.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) #27631-27878.....\$ 298,914.08.**

Employee Service Awards

Employee Ann. Date # Yrs Dept.

Anna Tamura 6/17/83 15 Public Works

Lew Legat 6/1/73 25 Public Works

Jeri Clements 6/1/88 10 Public Works

Mike Mellum 6/14/93 5 Public Works

Robert Witt 3/1/88 10 Assessor

EMPLOYEE OF THE MONTH FOR MAY, 1998

Larry Kwarsick, Public Works Director

Hiring Requests & Personnel Actions

Dick Toft, Human Resources Director, presented one personnel authorization action for the Board's review and approval. As presented, the Board by unanimous motion approved PAA #044/98, Associate Planner, Position #1708.02, replacement, effective July 2, 1998.

HEARING SCHEDULED: Ordinance #C-68-98 In The Matter of

Public Disturbance Noise Control

On June 1st, the Board received a proposed public disturbance noise control ordinance, a revision of formerly proposed Ordinance #C-36-98 which the Board considered at a public hearing on May 4, 1998, and took no action upon. At that time, the Board had received a memo from the Prosecuting Attorney providing policy input as the head of a department which would be impacted by adoption of the proposed ordinance and provided some suggestions. The Deputy Prosecuting Attorney, pursuant to the Board's request, made a change to subsection 9.60.030 (A) (4) to require that the sound which unreasonably disturbs or interferes with the peace, repose or comfort of neighbors be frequent, continuous or repetitive yelling, hooting, etc.

By unanimous motion, the Board scheduled Ordinance #C-68-98, In the Matter of Public Disturbance Noise Control, for public hearing on July 13, 1998 at 6:00 p.m., Island County Court-house Annex, Basement Hearing Room, Coupeville, Wa.

Resolution #C-69-98 In the Matter of Declaring County Property Surplus to Grant an Easement Across Portion of the Greenbank Farm Property

As requested by the Board last week, concurrence in writing has been received from the Port of Coupeville with the County resolution and easement to declare county property surplus to grant an easement across a portion of the Greenbank Farm property. Don Sherman, President, Board of Commissioners for the Port of Coupeville, signed for the Port on page two of the easement across a portion of the Greenbank Farm property.

By unanimous motion, the Board approved and signed Resolution #C-69-98 in the matter of declaring county property surplus to grant an easement across a portion of the Greenbank Farm Property to Puget Sound Energy.

***BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON***

IN THE MATTER OF DECLARING COUNTY)

PROPERTY SURPLUS TO GRANT AN EASEMENT)

ACROSS PORTION OF THE GREEN BANK) RESOLUTION NO. C-69-98

FARM PROPERTY IN T 08,SEC 30N, RNG 2N)

_____)

WHEREAS, Island County holds title to certain real property (being purchased by the Port of Coupeville) ;and

WHEREAS, Puget Sound Energy requires an easement in order to relocate the Transmission line along State Highway 525 to accommodate the State Highway widening project; and

WHEREAS, Pursuant to I.C.C. Chapter 2.31, whenever it appears to the Board of Island County Commissioners (Board) that it is in the best interest of the County and the people thereof that real property belonging to the County should be sold, the Board shall declare such property as surplus and sell and convey such property under the limitations and restrictions and in such manner as provided in the Island County Code; and

WHEREAS, The Board feels it is in the best interest of the County and the people thereof that a perpetual easement for guy wire anchors be sold by private negotiation pursuant to I.C.C. Chapter 2.31; and

WHEREAS, sale of said easement will not jeopardize or compromise the utility of the property or pose a security problem to the remainder of the property.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the property listed in Exhibit "B" of the attached easement is declared surplus and the Board of County Commissioners allows Island County Property Management to sell an easement by negotiated sale upon the property described in Exhibit "B" of subject easement for the minimum price as set by the Board on the attached Minimum Bid Sheet.

ADOPTED this 8th day of June , 1998

Board of County Commissioners

Island County, Washington

Wm. L. McDowell, Chairman

Attest: Mike Shelton, Member

Margaret Rosenkranz, Clerk of Tom Shaughnessy, Member

the Board

MINIMUM BID SHEET

PARCEL NUMBER LEGAL DESCRIPTION PRICE

Portion
R23008-355-
4570 see
attached One
dollar and
other valuable
considerations.

**Ownership Transfer of Surplus Property, Statutory Warranty Deed & Real Estate Excise Tax Affidavit,
property located**

in Rolling Hills

Lee McFarland, Assistant Director, GSA, provided for the Board a Deed and Real Estate Excise Tax Affidavit necessary for the sale of County-owned surplus property, Lot 13, Block 1, Plat of Rolling Hills. This was a topic of discussion with the Board during Staff Session on May 20th. This property was previously declared surplus and did not sell at the County Surplus Property Sale; subsequently, Mark W. and Dawn D. Barnes made an offer which was accepted, in the amount of \$5,500, which has been paid.

The Board, by unanimous motion, approved the sale of Parcel #S8050-00-01013-2, declared as surplus, and sign the Statutory Warranty Deed conveying the property to Mark W. and Dawn D. Barnes and excise tax affidavit.

Revision of Camano Boarding Services Agreement

By way of Memorandum dated June 2, 1998, the Board received from Betty Kemp, Director, GSA, a revision of the Camano Boarding Services Agreement. The revised contract does not change the maximum amount of \$4800.00, but defines Contractor's commitment to provide boarding for impounds through August 31, 1998, and County commitment to purchase extra dog kennels to house potential adoptions and pay cost of installing a telephone line.[approximately \$50.00].

By unanimous motion, the Board approved the revision to the Camano Boarding Services Agreement as presented by Mrs. Kemp, between Island County and Camano Veterinary Clinic, Inc.

Health Contract; HIV/AIDS, Title II, Evergreen AIDS

Foundation, Ryan White Funds, \$16,192

The Board, by unanimous motion, approved Contract #3040-05177(4) for \$16,192 Ryan White Funds for HIV/AIDS, Title II, care services. Agreement between Evergreen AIDS Foundation and Island County Health Department, representing \$16,192 in funding Contract

NAME CHANGE FROM HOLMES HARBOR WATER DISTRICT

TO HOLMES HARBOR SEWER DISTRICT

In accordance with request by the Commissioners of Holmes Harbor Water District, by letter dated May 21, 1998 and Resolution # 302, pursuant to RCW 57-04-065, the Board approved by unanimous motion, the District name change

request from Holmes Harbor Water District to Holmes Harbor Sewer District.

Public Input or Comments

Paul Moskvina, resident of Island County, currently employed as the Chief Medical Investigator, Snohomish County, submitted a draft Interlocal/ Service Agreement proposal to implement standards of death investigation for the five county region, [Region 1] Skagit, Whatcom, San Juan, Island and Snohomish counties. The draft proposal was provided today for the Board's review and follow-up at a subsequent Board meeting. Mr. Moskvina had not yet discussed the proposal with the Island County Coroner. He also provided an additional confidential letter written to Commissioner Shelton for his distribution at his discretion.

AGREEMENT FULFILLMENT STATEMENT- PURCHASE OF LOTS 1, 2 AND NORTH 20' OF LOT 3, BLOCK 31, PLAT OF COUPEVILLE

An Agreement Fulfillment Statement from Marilee A. Black, Seller; Phillip Black and Richard A. Melrose, Jr., co-lessees, regarding Island County's purchase of Lots 1, 2 & N 20' of Lot 3, Block 31, Plat of Coupeville, was presented to the Board for approval and signature, by Larry Kwarsick, Public Works Director. The Purchase and Sale Agreement provides that \$10,000 of the purchase price be retained by Island County as security to guarantee Seller's performance of the site cleanup work per terms of Site cleanup Agreement, to be released to the Seller less any expenditures by the County to perform the Seller's and/or co-lessee's site cleanup work.

Mr. Kwarsick verified that work has now been completed, and that the cost to Island County expended for site cleanup was \$2,931.74. He recommended the Board sign and the Agreement Fulfillment Statement paying the Seller \$7,068.26 of the \$10,000 and that Island County retain the amount expended for site cleanup work in the amount of \$2,931.74. Based on the terms and conditions of the Purchase and Sale Agreement, the prior owner still has a two-year indemnification relationship.

By unanimous motion the Board approved the Agreement Fulfillment Statement between Island county and Marilee Black, Phillip Black and Richard A. Melrose, Jr., for Lots 1, 2 and the North 20' of Lot 3, Block 31, Plat of Coupeville, with a change in the last line of the Agreement: the word "pay" being changed to "release".

NATURAL LANDS PLAN FUNDING

The County had anticipated a grant from the State Department of Ecology to cover some of the costs of developing the Natural Lands Plan. DOE put a hold on the grant application process and the County therefore will not receive contributions towards the cost of the plan from DOE. Mr. Kwarsick requested approval to add \$6,000 to the 1998 REET 1 Fund budget to cover the costs of the David Evans contract for developing the Natural Lands Plan. He explained this did not increase the budget for the Plan, rather, used \$6,000 REET 1 funds in lieu of grant funds.

The Board adopted a unanimous motion allocating \$6,000 of REET 1 Fund budget to pay for the David Evans contract for developing the Natural Lands Plan.

SUPPLEMENTAL AGREEMENT NO. 3 - Gleason & Associates

Supplemental Agreement #3 with Gleason & Associates for the South Whidbey Family Resource Center, was presented by Mr. Kwarsick for the Board's review and approval. Intention of the supplemental agreement is to provide for architectural and engineering services during the period of construction of the South Whidbey Family Resource Center.

Gary Hess, Construction Engineer, explained the agreement to be for construction services by the architect and subs, including some site inspection, attending project meetings, the supplement representing an increase of \$5,200. The remaining construction management will be done by Mr. Hess. Clearing and grubbing to start on Thursday, with site prep to follow.

By unanimous motion, the Board approved Supplemental Agreement #3 to the Professional Services Agreement between Island County and Gleason & Associates Architects PS, for the South Whidbey Family Resource Center, the amount of supplement being \$5,200, and the Chairman of the Board authorized to sign once the signed agreement has been received back from the contractor.

BOND RELEASE – Glen Cunningham – SHORT PLAT #45/94

The Obligor, Glen Cunningham by letter May 11, 1998, requested release of bond under Short Plat #45/94 inasmuch as alternative fire protection measures had been installed as required. On April 2, 1998, an inspection on the residential fire sprinkler system was performed and verification of installation provided. With the report of the fire Inspector, Mr. Kwarsick recommended release of bond.

The Board, by unanimous motion, the Board authorized bond release for Glen Cunningham, after having satisfactorily installed the alternative fire protection measure for Short Plat #45/94.

RESOLUTION #C-70-98 APPROVING COUNTY ROAD QUITCLAIM DEED TO WSDOT TO COMPLY WITH HIGHWAY PROJECT AND BENEFITS DERIVED BY

TRANSFER FOR WIDENING AND CONSTRUCTION OF ZYLSTRA ROAD

As presented and recommended by Mr. Kwarsick, the Board adopted by unanimous motion, Resolution #C-70-98 [R-30-98] approving Quitclaim Deed to the State of Washington Department of Transportation for a portion of Zylstra Road right-of-way located in Sections 19/30-32-1E, for widening and construction of SR20.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING COUNTY)

ROAD QUITCLAIM DEED TO WSDOT)

TO COMPLY WITH HIGHWAY PROJECT) RESOLUTION NO. C-70-98

AND BENEFITS DERIVED BY TRANSFER) R-30-98

FOR WIDENING AND CONSTRUCTION)

OF THE ZYLSTRA COUNTY ROAD)

_____)

WHEREAS, WSDOT has been coordinating with Island County for/in the widening of the Zylstra County Road *with* various improvements thereto, all for the benefit of the motoring public, and in particular for/to the residents of Island County; *AND*, a Quitclaim Deed to WSDOT is required to clear title to that portion of said County Road located within the highway project limits of both SR 20, Libbey Rd. to Zylstra Rd., *AND*, SR 20, Permanent Highway No. 1; with a portion of said County Road to be turned back by WSDOT to said County after completion of said project;

WHEREAS, the County had previously acquired title by Deed, from Penn Cove Associates, under Auditor's File No. 86012552, and plat dedication(s), and other acquisition procedures to that portion needed by *AND* to be transferred to WSDOT for the widening and construction of said highway project. And, after construction WSDOT will be responsible for any and all maintenance of said portion needed. **NOW THEREFORE,**

BE IT HEREBY RESOLVED that the Quitclaim Deed for transfer of a portion of the County road is approved and that the undersigned County Commissioners are authorized to sign, to have notarized and return said Deed to the WSDOT, together with a signed copy of this Resolution.

ADOPTED this 8th day of June, 1998.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

By: Wm. L. McDowell, Chairman

By: Tom Shaughnessy, Member

By: Mike Shelton, Member

Attest: Margaret Rosenkranz

Clerk of the Board

**RESOLUTION #C-71-98 APPROVING COUNTY QUITCLAIM DEED TO WSDOT TO COMPLY WITH
REQUIREMENTS OF SHORT PLAT NO. 85/21—3.23132.023.165-**

SR 525 project Lake Hancock vicinity to Houston Road

As presented and recommended by Mr. Kwarsick, the Board also adopted by unanimous motion , Resolution #C-71-98 [R-31-98] approving Quitclaim Deed to the State of Washington Department of Transportation for right-of-way granted to Island County during short platting (deed is to County/short plat states R/W deeded to WSDOT, Sec. 32-31-2E (SR 525 project Lake Hancock vicinity to Houston Road).

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING COUNTY)

QUITCLAIM DEED TO WSDOT TO COMPLY)

WITH REQUIREMENTS OF SHORT PLAT) RESOLUTION NO. C-71-98

NO. 85/21-3.23132.023.165) R-31-98

_____)

WHEREAS, WSDOT has been coordinating with Island County for/in the widening of SR 525 and various improvements thereto, all for the benefit of the motoring public, and in particular for the residents of Island County; AND, a Quitclaim Deed is required to clear title to that portion located within the highway project limits of SR 525, Lake Hancock Vicinity to Houston Road Vicinity.

WHEREAS, as a condition of the short plat, it was noted on the face of said short plat, "20' Addn. R/W to be deeded to W.S.D.O.T." Inadvertently, Island County acquired the rights by Quit-Claim Deed under Auditor's File No. 87007489. In the improvement of State Route 525, by the Washington State Department of Transportation, it is necessary and advisable that Island County transfer the property rights to the State of Washington for said highway project.

BE IT HEREBY RESOLVED that the Quitclaim Deed for transfer of land is approved and that the undersigned County Commissioners are authorized and directed to sign, have notarized, and return said Quitclaim Deed to WSDOT, together with a signed copy of this Resolution.

ADOPTED this 8th day of June, 1998.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

By: Wm. L. McDowell, Chairman

By: Tom Shaughnessy, Member

By: Mike Shelton, Member

Attest: Margaret Rosenkranz

Clerk of the Board

HEARING SCHEDULED: ORDINANCE #C-72-98 – RENAMING

MISCELLANEOUS COUNTY ROADS ON WHIDBEY ISLAND

By unanimous motion, the Board scheduled a Public Hearing for July 6, 1998 at 10:15 a.m., to consider Ordinance #C-72-98, proposed road name changes on Whidbey Island. The following will be considered:

Existing Description Proposed

Name of Road Section Name

Unnamed Rd [320N] Entire length Plat of Muellers Park Twin Lagoon Ln

Troxell Rd Ptn. W of SR20, Co. portion Soundview Lane

Wanamaker Rd. Ptn. W of Ft. Casey Rd. Bells Lane

Cimony Lane Ptn N of Nautilus Rd Nob Hill Lane

6830N Entire length Plat Possession Pearl Court

View Beach #2

Harding Avenue Ptn N of SR 525, Plat of Clinton Deer Lake Road

South Douglas Street Entire length-plats of Glencairn Glencairn road

#1 and #2

Seasme Street Entire length-plat of Honeymoon Garden Grove Ln

Lake #2

Seacrest Lane East-W ptn Plat of Seacrest #1 Jamaica Road

Mortland Drive Primitive portion Headlands Way

Unnamed Road entire lenth [in plat of Polnell Crescent Drive

Shores #1]

HEARING SCHEDULED: ORDINANCE #C-73-98 RENAMING

MISCELLANEOUS COUNTY ROADS ON CAMANO

A Public Hearing was scheduled by unanimous motion of the Board, for July 16, 1998 at 5:00 p.m., at the *Odd Fellows Hall located at 96 S. Camano Ridge Road* on Camano Island. The following road name changes will be considered:

Existing Rd Log No. Description Proposed

Name Mile Post of Road Section Name

Cedar Place RL #75310 Entire Length [plat of Lost Lake Alderwood Lane

Grove #1

Unnamed Road RL #86230 Entire Length [plat of Maple Boat Ramp Road

Grove Beach

90N RL #81230 Entire Length MP 0.07 – MP 0.13 Arrowhead Road

Dolphin Street RL #80970 From Double View Dr. northerly Hillside Drive

[portion] to 90 degree turn to the west

CONSULTANT AGREEMENT WITH SKILLINGS-CONNOLLY, INC.

WOODLAND BEACH ROAD REPAIR

Mr. Kwarsick requested Board approval of a consulting agreement between Island County and Skillings-Connolly, Inc., Lacey, Wa., for design and construction inspection services for Woodland Beach Road Repair, CRP 98-06, Work Order 127. Contract was negotiated with this firm and signed contract expected today and has not been reviewed by the Deputy Prosecuting Attorney or Risk Management at this time, but is the standard consultant agreement. This is part of the FEMA re-construction efforts. FEMA has approved this project in the amount of \$500,625.00, written confirmation to be received shortly. Maximum amount payable under the consultant contract is \$171,122.79.

By unanimous motion, the Board approved consultant agreement for engineering services for Woodland Beach Road repair with Skillings-Connolly, Inc., authorizing the Chairman's signature once signed contract has been received from Contractor and after contract has been approved by the Civil Deputy Prosecutor and the Risk Manager.

HEARING HELD: Ordinance #C-66-98 (PLG-006-98) In the Matter of Revision of the Definition of Substantial Improvement in the Flood Damage Prevention Ordinance, Chapter 14.02A ICC

A Public Hearing was held at 10:45 a.m., as scheduled and advertised, to consider Ordinance #C-66-98 [PLG-006-98].

Phil Bakke, Code Enforcement, Island County Planning Department, presented the proposed ordinance entailing the revision of the definition of "Substantial Improvement" for the Flood Development Ordinance, Chapter 14.02A, Island County Code, as follows:

Substantial Improvement: any repair, reconstruction, rehabilitation, addition, or other improvement of a structure where the cost of the reconstruction, rehabilitation, addition or other improvement to the structure exceeds 50% of the market value of the structure before the start of construction or the improvement.

The term substantial improvement does not, however, include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

The change makes the language comply with the Federal Emergency Management language adopted. Comments were received from Patrick Massey, FEMA, who recommends this alteration. Mr. Bakke confirmed that the language revision would provide a little more flexibility for the Department to be able to establish that threshold. No comments have been received from the public.

The Chairman opened the hearing to public comments at this time. No member of the public spoke either for or against the proposed Ordinance.

By unanimous motion, the Board adopted Ordinance #C-66-98 [PLG-006-98] in the matter of revision of the definition of substantial improvement in the Flood Damage Prevention Ordinance, Chapter 14.02A Island County Code.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR ISLAND COUNTY, WASHINGTON**

<p>IN THE MATTER OF REVISION OF THE DEFINITION OF SUBSTANTIAL IMPROVEMENT IN THE FLOOD DAMAGE PREVENTION ORDINANCE, CHAPTER 14.02A ICC</p>	<p>)</p> <p>) Ordinance C-66-98</p> <p>) PLG-006-98</p> <p>)</p> <p>)</p>
	<p>)</p>

WHEREAS, it is necessary for effective and efficient implementation of the Flood Damage Prevention Ordinance that the definition of substantial improvement be revised; and

WHEREAS, the amendment to ICC 14.02A.020 as shown in Exhibit "A" attached, is procedural in nature and categorically exempt from SEPA review pursuant to WAC 197-11-800(20); NOW, THEREFORE,

IT IS HEREBY ORDAINED by the Board of Island County Commissioners that the amendment to ICC 14.02A.020 attached hereto as Exhibit "A" is hereby adopted. Material underlined is added and material lined through is deleted.

DATED this 18th day of May, 1998, and set for public hearing on the 8th day of June, 1998 at 10:45 a.m. in the Commissioners Hearing Room.

**BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON**

Wm. L. McDowell, Chairman

Mike Shelton, Commissioner

Tom Shaughnessy, Commissioner

ATTEST:

Margaret Rosenkranz

Clerk of the Board

Ordinance C-66-98 (PLG 006-98) is adopted this 8th day of June, 1998 following public hearing.

**BOARD OF COUNTY
COMMISSIONERS**

OF ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Mike Shelton, Commissioner

Tom Shaughnessy, Commissioner

ATTEST:

Margaret Rosenkranz

Clerk of the Board

Approved as to form:

David L. Jamieson, Jr.

Deputy Prosecuting Attorney and

Island County Code Reviser

EXHIBIT "A"

14.02A.020... Definitions

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the assessed value of the structure either before the start of construction of the improvement. This term includes structures which have incurred substantial damage regardless of the actual repair work performed. The term does not, however, include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
2. any alteration of a historic structure, provided that the alteration will not preclude the structure's continued

designation as a historic structure.

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure where the cost of the reconstruction, rehabilitation, addition or other improvement to the structure exceeds 50% of the market value of the structure before the start of construction or the improvement.

The term substantial improvement does not, however, include either:

1. any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

PRELIMINARY AND WAIVER OF FINAL SITE PLAN APPROVAL - SPR #078/98 Island County Fire District #2, expansion of an existing emergency medical service and fire protection use located at 2720 N. Heller Road, North Whidbey Island

Stacy Tucker, Assistant Planner, presented Preliminary Site Plan Review #078/98 and waiver of final site plan review, for Island County Fire District #2, expansion of an existing emergency medical service and fire protection use located at 2720 N. Heller Road, North Whidbey Island, Parcel #R13334-420-1580. The Island County Hearing Examiner heard the matter on May 21, 1998, and on June 1, 1998, issued Findings of Fact, Conclusions of Law and Recommendation recommending approval, subject to nine conditions.

The Board, on unanimous motion, approved preliminary site plan #078/98 for Island County Fire District #2, for expansion of existing emergency medical services and fire protection use located at 28720 N. Heller Road, North Whidbey Island, Parcel #R13334-420-1580, in accordance with the recommendation of the Hearing Examiner.

Hearing HELD; HEARING CONTINUED - Ordinance #C-62-98 (PLG-014-98) In the Matter of an Ordinance Concerning Fish and Wildlife Habitat Conservation Area Critical Area Regulations and Amendments to Critical Area Regulations for Wetlands, All Adopted Under Chapter 36.70A RCW

A Public Hearing was held at 1:30 p.m., as advertised and scheduled, to consider proposed Ordinance #C-62-98 [PLG-014-98] concerning Fish and Wildlife Habitat Conservation Area Critical Area Regulations and readoption of emergency amendments for Wetlands. In addition to the Board, Planning Commission members, staff, consultant, and press, approximately ten others attended the hearing; an attendance list was circulated and copy is on record.

As today's legal ad noted, some of the wetlands amendments were adopted on April 27, 1998, as an emergency action and the proposed action today included re-adoption of those emergency amendments. Comment was received on the original proposal at four public hearings held on March 16, 18, 14 and 26, 1998, and a 30-day public comment period ended on April 9, 1998. After the close of the public comment period, the Planning Commission considered amendments that addressed issues raised at the hearings and in public comment letters and then recommended to the Board this amended proposal be enacted. The Planning Commission's recommended proposal was reviewed pursuant to Chapter 43.21C, State Environmental Policy Act, and a DNS was issued on May 2, 1998, with a 15-day comment period and a 15-day appeal period.

Keith Dearborn, Island County's legal consultant on GMA matters, announced that the County received today the final decision and order of the Western Washington Growth Management Hearings Board regarding Island County's critical areas ordinances [copy provided: **Final Decision and Order:** No. 97-2-0064, WEAN v. Island County]. The WWGM Hearings Board found that all of the County's adoptions of critical areas regulations complied with GMA procedurally,

with the exception of Fish and Wildlife and regulations protecting critical aquifer recharge areas. In the case of adoption of ICC Chapter 8.08, Water Regulation in 1992, the County did not place a notice of adoption in the newspaper; therefore, the WWGM Hearings Board did not rule on those regulations. The WWGM Hearings Board ruled that all of the procedures involving adoption of all other critical area ordinances, including wetlands, met the standards of GMA and no appeal could be filed on any of those amendments or ordinances. However, with regard to Aquifer Recharge, the Growth Board found that there was no notice of adoption so that someone could potentially appeal that ordinance. That issue has been called to the attention of the Health Services Director and a recommendation is forthcoming. Mr. Dearborn thought it likely that the recommendation will be to place a notice in the paper stating that in 1992 the County adopted the critical area regulations for aquifer recharge and if anyone wishes to challenge those they have 60 days to do so. The reason for putting the notice in the paper is that at the end of the 60 day period if there were no challenges, no one could bring a challenge later.

The WWGM Hearings Board determined adoption of three emergency wetland amendments were sufficient to overcome any challenge of invalidity and denied the request to declare the wetland ordinance invalid. In addition to having properly adopted the wetlands ordinance the Growth Board, with those three amendments, dismissed the challenge of the wetlands ordinance on the substance. At this point, the only critical area modifications Alison Moss, Bogle & Gates, Consultant, is recommending are the Fish and Wildlife changes that are before the Board today.

Regarding Fish and Wildlife changes, Steve Erickson, WEAN, filed an appeal with the Island County Hearing Examiner on the issue of the threshold determination there were no significant adverse environmental impacts. Mr. Erickson will argue before the Examiner at a hearing scheduled for July 2nd that the County should prepare an EIS on the Fish and Wildlife amendments, arguing that existing regulation is more stringent than the regulations. Both Ms. Moss and consultant believe new regulations are more stringent than existing regulations. After a decision from the Hearing Examiner, Mr. Dearborn can then advise the Board on the next steps to be taken based on the Hearing Examiner's decision, but he thought the earliest the Board could consider the Fish and Wildlife amendments would now probably be the end of July. Ms. Moss has written to the Growth Board advising that due to the appeal, Island County will not be able to meet the June 23 deadline. Ms. Moss, along with Andy Castelle, had a number of meetings with different interests since the Planning Commission's recommendations, and most recently, with DOE and DF&W.

Mr. Dearborn recommended the hearing be continued even though the Board was legally permitted to actually adopt the Fish and Wildlife recommendations with pending SEPA appeal. Those present today who wish to testify should be allowed to do so as a convenience, but those who can defer their testimony should do so until the matter has been rescheduled.

The following hand-outs were provided for today's hearing:

Ordinance #C-62-98 and Exhibit A: basic attachment to Ordinance #C-62-98, the

recommendation of the Planning Commission presented to the Board on April 20, 1998 [new copies provided because the Prosecuting Attorney reviewed same and found a number of minor grammatical and categorization errors considered all technical and not substantive and therefore Exhibit A modified to conform to code reviser review]

Exhibit B: Critical Areas - findings

June 8, 1998 Letter from Alison Moss, including attachment. Ms. Moss identified

two issues where more consideration should be given [not a recommendation, but

forwarded the recommendations by way of letter dated June 2, 1998 from the State of

Washington Department of Fish and Wildlife:

1. width of buffer on streams that are potentially or in fact salmon bearing streams

[list of streams of concern to the State provided]

2. issue of protected species, with DF&W letter dated 6/2/98 providing specific maps for each stream in which they believe are salmon

Table: Washington Department of Fish and Wildlife suggested list of Protected habitats and Species for Island County, June 1, 1998

Recommended FWHCA Amendments responding to public comment – based on testimony received so far [not contained in Exhibit A, provided so that the Board and public have ample opportunity to review suggested amendments.

Ms. Moss and Mr. Castelle are reviewing the County's Fish & Wildlife survey to see what impact these additional species identification might have.

The Board had the following technical questions to be reviewed and answered prior to the next hearing:

- Letter from Alison Moss 6/8/98, 6 creeks - 3 named; 3 unnamed: how were these unnamed creeks actually identified. Do these run 365 days a year?
- The streams that are by DF&W standards salmon fish spawning streams, but one of these lists "cut-throat".
- Creek identifying "cut-throat" is the one of the unnamed creeks, and it is the drainage ditch entering Dugualla Bay; the drainage ditch from NAS runways. Question: are we now using drainage ditches now as streams?

Ms. Moss will be look into those questions. She also was concerned that the length of the list of additional species Fish & Wildlife want to designate, which are not threatened or endangered but are in lessor categories and wants to be able to advise the Board on the frequency on which they are found in the County, vicinity, scope and area, and also what the management recommendations are from Fish & Wildlife for a particular type of species in order to understand what the additional impact on property owners is from those designations.

PUBLIC TESTIMONY

Tom Roehl, Project Planning Services, Freeland, representing himself, Property Rights Alliance and various clients, with the materials handed out today, requested to have clarified the proposal that would be the subject of the next hearing. He requested that the Board make it clear that the written record is open during the period on this issue between now until the date of the hearing.

Rufus Rose, South Whidbey, Island County Planning Commission member, distributed four photographs taken this year and last year of an osprey nest in a cell tower at Freeland. He pointed out the photo showing the alder tree beneath, where there is also a heron rookery that came about a year after the ospreys [already a matter of record under file #02975]. Photographs provided were to recognize and consider the fact that wild animals get along pretty well under certain circumstances with humans. In this case, the birds there for two years, hatched a set of chicks last year and in the process of communicating about another effort in that direction. Government can be excessive in its zeal to protect wildlife; there

has to be practicality and recognize in situations such as this where the antenna makes an idea nesting site.

Commissioner Shelton was aware of the situation Mr. Rose brought up having been the subject of much controversy in the county a few years ago. He had been told then by someone from Fish & Wildlife that the rookery would not stay established in that particular area because they did not co-habit well with osprey. Through a natural change of events, the osprey nest came down and the nest re-built in the top of the cell tower; the blue heron followed the osprey and are now nesting in the alders below. Steve Layman, a biologist had stated the reason the blue heron were there was specifically because the osprey protected it – just the opposite of what Fish and Wildlife was saying at that time. The heron is a listed species in Island County Code and therefore the basis on which the state required the management plan. He was very clear that while he was not in the business of enabling someone to go in a heron rookery and cut down all the trees along with the nest, he did think it important to recognize listing some of these triggers the possibility of other things that could cause extensive costs for a land owner.

Mr. Rose agreed that neither osprey nor the great blue heron were a high priority, but added to Island County's list, and because of that had empowered the system to require a management plan in the situation he is aware of on Emil road requiring a management plan where none would have been required if heron had not been listed as unique in Island County. He asked that the Board be very careful, not only with listing of types of animals and plants, but with words that go with it. Another example he provided was in the vicinity of Emil road – where someone erected black plastic barriers as a visual barrier between the birds and a two-story house, which he believed a complete waste of money and foolishness. There is a reference to the radius around a nest or site which is huge and could in some cases take in square miles, and he asked the Board to make it their business to understand the scope of what that could be.

Mr. Dearborn referred to the last page, last paragraph, of Ms. Moss's memo regarding the potential impacts of the additional designation, i.e. there would be a biological site assessment required and likely a habitat management plan. Until Ms. Moss has a better idea with a map of where these habitats might be and their extent, she is not making any recommendation on the additional species. To list species in the County's ordinance would require the Board a Board determination they are a species of local importance to be protected.

He went on to indicate, as Mr. Roehl requested, those items that would be considered on July 27th: the Ordinance labeled Exhibit A, Amendment to the Code; Exhibit B the findings that support that [both were documents recommended to the Board by the Planning Commission]; the amendments identified by Alison Moss for the Board to consider based upon testimony

received so far and some specific concerns that Fish & Wildlife have [two issues in the memo]. On the 27th he anticipated that testimony would be allowed on all of those and if there were more suggested amendments from written correspondence received between now and the 27th, Ms. Moss would potentially be recommending additional amendments.

Doug Wirth, Boon Road, Oak Harbor, was interested in knowing if an area had been farmed and then gone wet in a given year, could it continue to be farmed – i.e. if he farmed an area and it went wet in the subsequent year could he take it back to the state it was when he farmed it last?

Mr. Dearborn advised that the current ordinance exempts new agricultural activities as well as existing agricultural activities. The Board by emergency ordinance struck the exemption for new agriculture and modified and restricted the exemption for existing agriculture but continued it. There are also federal restrictions on that which the Corps of Engineers maintain. Essentially if Mr. Wirth had an existing farm operation and maybe a year or two expired in terms of active cultivation, he qualified for an exemption.

Mr. Wirth asked another question: if he constructed water retention on the farm, not to change the outflow drainage, but for livestock pond, etc., would that in the future under the new ordinance be subject to wetland rules?

Mr. Dearborn's reply was that he believed Mr. Wirth could do that, but was not the expert on that particular issue.

Don Jewett, South Whidbey, remembered that a Seattle paper last week said that the Federal government will be putting bull-trout in the northwest area and he did not know if that should be included in the County's regulations or not. He believed the coyote was a protected species and cannot be hunted, and was not sure about crows; noted occasionally there are tundra swans that come on the Island and wondered if they should be addressed or not. On page 3 of Exhibit A, under Definitions, Mr. Jewett noted the definition for alteration of a wetland, and are definitions on Page 36 under penalties and enforcement. case in question is can you make a pond out of what used to be a wetland – he likes the idea of some open water with ducks or herons, but raises the question of unintended consequences.

Dan Esterly, N. West Beach Road, Sunset Beach, North Whidbey, attended on behalf of a friend who owns Lot 37 and 38 on the seaward side of the West Beach Road, 60' lots, has a building permit in process, and there is a flood zone issue. The individual is concerned whether the new wetland provisions would have any impact on his house. Swan Lake is across the street.

Mr. Dearborn recalled a map prepared by Matt Nash, Senior Planner, identifying the areas that would change from Class B to Class A wetland. A Class "A" wetland might make a difference in terms of permits, but he could not say what the map showed for this lot and would need to know the status of the permit. The net effect on an existing lot with a Class A wetland is a greater setback from the wetland. There are several ways for the County to modify the standard to fit the specific circumstance where there are no other options for locating the house. The ordinance would first require the County to make a finding that there are no other options, that the location is the only choice. The flood zone FEMA issue is outside the scope of this hearing.

Ted Ostrom who used to own all that property in the vicinity, remembered that the road went in around 1918. Originally the lake used to be 20 or 30 acres in the middle; with Soil Conservation Service about 1940 a ditch was placed across the alfalfa field to keep water from Waterloo and the golf course, and retain the water between tides. He sold the farm, and the farm is not now in operation; this all used to be crop land, and he had 60 head of cattle, and the property did not always have that much water. His question was on behalf of Mr. Reece - how far he has to build back; he wants to know if he can start building and not be too far back from the wetland.

The Chairman was aware that the applicable rule required a 100' setback as a buffer from the wetland.

Tom Roehl, referred to Ms. Alison's letter and some of the recommended changes, and believed that

same should be give a great deal of consideration. The item about adding to the maps of zoning classification and overlays [page 4 of 14, item C(d)] list of recommended changes was said to have been inadvertently omitted, but he thought it deserved to be omitted, referring to priority habitats and species data base maintained by the Department of Fish and Wildlife identifying even certain ravines in the County as being salmonid streams. He pointed out as an example that referred to in the past in other documents Fish & Wildlife presented were maps that showed all Holmes Harbor as surf smelt, eel grass, etc. In the case of Nichols Brothers and the Port District when Freeland Park Project was done, they ended up going through 1-1/2 years of process; these maps are not accurate. In correspondence to the County, Fish and Wildlife referred to studies showing what should and should not be the buffer width, and he believed now was the time to ask that Department for those studies they refer to [i.e. changing buffers on type 3 streams by increasing those buffers]. Mr. Roehl believed sufficient language already existed to allow the ability to increase buffer width in cases where that should be done, and not increase buffers on the basis of theories and rules. A data base should not be adopted that can be changed at the administrative level by the state without some kind of due process ordinance procedure.

On behalf of the Freeland Water district, Mr. Roehl advised that the proposed change included for the Freeland Water District would not work [page 5 of 14] and he requested that the language be changed in the exemption section in the critical areas [page 7 of 14 of the amendments item e], and where it states that "improved County road rights-of-way" say instead "in rights-of-way". When listed as a permitted use, permitted uses become type 2 decisions and have to go through Chapter 16.19 process.

ACTION: By unanimous motion, the Board continued the Public Hearing until Monday, July 27, 1998, beginning at 9:30 a.m.

JOINT WORKSHOP

At 3:00 p.m. the Board met in Workshop Session to conduct a joint GMA workshop with the Island County Planning Commission, continued from June 1, 1998 GMA Comp Plan & Development Regulations. Joint Workshop Board of Island County Commissioners & Planning Commission. Topics: Benchmarks, Monitoring, Evaluation; Owner/Builder; Penalties & Enforcement; and RAID Review, along with Shorelines.

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 2:35 p.m.. The next Regular Session to be held on June 15, 1998, at 9:30 a.m.

**BOARD OF COUNTY
COMMISSIONERS**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

Attest:

Margaret Rosenkranz,

Clerk of the Board