

## ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

SPECIAL SESSION - JULY 27, 1998

### Special Session

The Board of Island County Commissioners met in Special Session on July 27, 1998, 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. The purpose of the Special Session was to conduct a public hearing on Ordinance #C-62-98, continued from June 8, 1998.

### Others Attending:

**Consultant/Staff:** Alison Moss, Keith Dearborn, Matt Nash, Andy Castelle.

**Public:** Tom Roehl, Jennifer Lail, Susan Meyer, Mark Goldsmith, Alice Schisel, John Graham, Tom Campbell, Joan Drinkwin, Steve Erickson, Marianne Edain.

### HEARING HELD: ORDINANCE #C-62-98 FISH AND WILDLIFE HABITAT CONSERVATION AREA CRITICAL AREA REGULATIONS

Chairman McDowell opened the public hearing at 9:30 a.m., continued from June 8, 1998, on Ordinance#C-62-98, with Exhibit A, Proposed Changes to ICC 17.02, the Island County Zoning Ordinance, Fish & Wildlife Habitat Conservation Areas, Wetlands, dated May 2, 1998.

New Submittal for Record: Steve Erickson called attention to new materials he just now submitted, a large notebook/binder and a couple of rolled up maps. With that submittal, the Board recessed for a 5 minute period in order to give the consultant, Alison Moss, Bogle & Gates, time to review items submitted.

Andrew J. Castelle, Director of Natural Sciences Division, Adolfsen Associates, Inc., Seattle, gave a presentation to explain the scope of the regulations proposed, and by use of overheads, provided about a ten minute presentation. His background is as a certified wetlands scientist, certified soil scientist, sits on the National Artpac Soil Certified Board, teaches a class in wetland ecology at the University of Washington, and is the co-author of a number of publications on aquatic site protection, both wetlands and streams. Several of the papers he has co-authored have been published by the Department of Ecology, one was published in the 1994 *Journal of Environmental Quality*, the most recent due out any week, put together under a grant from the National Council for Air and Stream Improvement [NCASI] in riparian protection with vegetative buffers.

The overheads he used in today's presentation came predominately from his most recent paper and the various sentences or fragments thereof he would provide came from a variety of peer review journals over time.

NCASI asked him to take all the information in early 1990's they had revisited and added to in 1994, update that to 1997 and portray the relationship between buffer widths and effectiveness of those buffers on doing certain beneficial things with respect to streams. The first overhead was a graph [in meters] summarizing sediment removal. All of the graphs came out to be some sort of curve that looked like this particular graph. A lot of sediment is taken out by a buffer zone rather quickly before it can reach a stream [ also applies to #11]. Most of the benefits that buffers can impart with respect to sediment removal occurs in the first 50 to 100', a trend he saw developing again and again.

Curves generated by formula, based on real data. What has been heard from members of the public and other agencies is that some amount of buffer measured on a horizontal is enough to sufficiently protect streams [everyone has their own number]. His opinion is that no such number exists in nature. Focus on a buffer width ignores lots of other things. Another graph showed a curve generated for chemical removal, again showing most of the benefit derived from the first 50 to 100' . For clarification, he showed where 130' was and 150', and noted that the curve tended to flatten off somewhere in the 90% effectiveness range [starts to flatten off at about 25 meters or about 80-85'].

In addition to sediment and chemical removal, the other functions he looked at for NCASI were stream bank stabilization, large organic debris, particulant organic matter, recruitment of little bugs and bits of vegetation, and shading for moderating stream water temperatures. All those functions can generally be summed up with some curve like he is showing on the graphs today, and he clarified he was not representing one specific function with the curve nor representing a mathematical average, simply a schematic.

The existing wetlands overlay has some streams with 100' buffer, some 50' and some none at all. The system being proposed has stream buffer ranges from 25' to 150', realistically 25' to 100' [150' proposed for type 1 streams and there are none in Island County]. Most of the fish bearing streams in the County are Type III for which a 75' buffer is proposed. With 75' being halfway between 50 and 100', he cautioned to remember the shape of the curve: just because it is halfway between 50 and 100' as far as the width is concerned it is not nearly halfway between the resulting effectiveness of those buffers. A 50' buffer provides 70-75% effectiveness; a 100' buffer provides about 90-95% effectiveness. When looking at the curve for a 75' buffer it is not halfway in-between, rather much further towards the effectiveness of a 100' buffer than it is towards the effectiveness of a 50' buffer. As far as stream protection standards, Island County is very much right in the midst of what some of the other marine counties have in place, such as Pacific, Lewis and Skagit counties. Island County seems to be very consistent with other rural counties with significant shoreline areas, particularly in counties like Pacific and Skagit counties.

Mr. Castelle provided sentences or portions thereof, from various literature to give a sense of what some of the scientific community is saying and finding about these issues:

From Wetland and Stream Buffers Size Requirements and Review – 1994

paper co-authored with Alan Johnson and Cathy Connolly, concluding: **A**

**buffer of at least 15 meters [about 50'] was found to be necessary to protect**

**wetlands and streams under most conditions.**

Therefore, Mr. Castelle explained that about a 50' buffer would be the minimum necessary thinking in terms of fish protection, 75' for type III. A 25' buffer is recommended for type 5 streams because most consideration as far as what is effective for a stream comes from the perspective of fish populations and type V streams are small, typically less than 2' wide and typically dry for some portion of the year and seldom important fish bearing waters themselves, and in fact some never have fish populations in them. They are important, however, during times they are flowing and feed water into streams that could potentially have fish populations at least at some times of the year and important to maintain good water quality in those systems. another reason is because they are so small and only flow for a portion of the year the riparian zone next to them is smaller for small streams. He believes that 25' buffer protects water quality for type V streams.

**Soil Conservation Service recommends a buffers of 3 to 8 meters [10' to 25'] next**

**to streams that are flowing adjacent to pastures on 0 to 30% slopes [Federal guideline].**

Journal of Environmental Quality – nitrate study, nitrate retention and riparian zones

**"in a poplar riparian zone all hill slope derived nitrates was absorbed within the first 5 meters within that riparian strip".**

Paper presented at North American Riparian conference 10 to 12 years ago:

**"A stream side vegetation leave strip i.e. a buffer appears to retain riparian**

**communities of small mammals at levels comparable to nearby undisturbed**

**areas" but notes that "optimum or minimum size of these stream side**

**leave strips, buffers, that are self-maintained and can provide habitat for both resident and transient wildlife remains to be determined"** so there is some measure of uncertainty.

Conference in Europe with emphasis on water pollution, attendees at that conference represented close to half the literature that all these other studies referred to and others have covered. The organizers of the Conference concluded:

**"In our summing up of the conference we have deliberately not attempted to define the width, size or area required for a buffer zone despite a general fixation with how wide the zone should be. The challenge for the scientific community is to engage policy and**

**operational staff into the debate of how, why, where and what type of buffers could be created rather than taking the short-cut route of asking how wide. Finally, we must remember that the buffer zone concept is only one of a range of tools that can be used to mitigate pollution. The best solution is likely to include a range of approaches. Planning the implementation of buffer zones does not mean solely focusing on a small area of land next to a stream."**

Ms. Moss indicated that a number of amendments had been prepared for the Board based on public comment received to date, "Recommended FWHCA Amendments Responding to Public comment: June 8, 1998 Amendments shown in italics; July 27, 1998 Amendments shown in bold" [18 pages].

## **PUBLIC INPUT**

Tom Roehl, who spoke for himself, as well as the Island County Property Rights Alliance, e-mailed to the Board a draft annotated and foot-noted version of *Proposed Changes to ICC 17.02, The Island County Zoning Ordinance Fish & Wildlife Habitat Conservation Areas, Wetlands*, and submitted at this time an update to that under today's date, and made his presentation based on that new submittal. He incorporated the proposed amendments from the previous comments. Much of the controversy he thought centered around exemptions. The exemptions would not be needed if the section describing processes were not so fixed. He proposed the following changes:

### **Page 1. 17.02.020.M.**

Rather than saying "Protect the habitat of flora and fauna recognized by Island County as deserving of protection" say instead "Designate and protect critical areas pursuant to the Growth Management Act".

**17.02.010.N.** Delete "Preserve critical fish and wildlife habitat and encourage protection of wetlands which provide such habitat".

**Page 3 – Memo Addition 1:** The Department shall maintain a selection of best management practices which have been approved by the Board for those uses which are subject to best management practices.

**Memo Additions 2 and 3:** Existing: Unless otherwise expressly stated, Existing **legally established and** on the effective date of this Chapter, August 1, 1998 ~~December 31, 1984~~.

**Page 4.** Should read "Areas designated by this chapter for the protection of certain species of fauna and flora specified herein" period. As it was written the definition of an area is described by a practice and it makes no grammatical sense and the practice described too obtuse.

Page 5. Top of the page. Shallow Groundwater should either be stricken or defined as "surface waters that move laterally through the ground within 6" of the surface". This definition needs to be clear that wetlands connected solely

through county road drainage ditches and culverts are not associated if their location is separated by more than 100'.

**Page 7. Top of page.** What is "priority habitats and species database maintained by the Department of Fish and Wildlife"? It is unclear that a database is a map – same way with stream catalog.

**17.02.107.C. Permitted Uses.** Should say "all critical areas" otherwise it seems to apply only to wetlands, streams or their buffers.

**C.1** - should state "...culverts are installed when necessary to maintain hydrology and adequate mitigation is provided."

**C.2** Underground utilities or stormwater facilities suggest percentages and he thought not necessary given the work that is involved. Digging a ditch and putting in a pipe, utility, telephone wire, etc. is a temporary action and generally unlikely to have any long-term negative effects.

**D.** This new clause sounds innocuous, but is the same language used to deny owners access to the current reasonable use process and impose totally disproportionate processes on simple proposals. Protections for reasonable economic uses should include protection from unreasonable processes. The logic that has been employed is that you don't need relief from the costs of the processes if they lead to the outcome you desire; that defeats the purpose of this section. He proposes changing this section so as to maintain the proportionality.

**Re-write the following items in Section D to read:**

1. "The proposal is the minimum necessary to accommodate the proposed improvements provided that the building footprint of the primary residence shall not exceed 5,000 sq. ft. "
2. "The building footprint, access and utilities are located so as to minimize impact on the critical area and its buffer."
3. "The proposal does not permanently degrade the general functions of wetlands and streams beyond that needed to achieve a reasonable use."
4. okay as is
5. "The proposal includes proportional mitigation to the extent feasible and proportionate in cost and scope to the proposed specific alteration of the critical area while allowing a reasonable use."
6. delete the word "immediately"
7. okay as is
8. This language should not be adopted; buffers of F&W conservation areas are the shorelines; there is no scientific evidence that lawns along the shorelines have had or will have any degrading effect on the intertidal habitat; same is true for buffers, meadow or pasture wetlands.

**E.1** With regard to the language ...the use of motorized vehicles and machinery in suburbs"

Ms. Moss verified that "suburbs" was a typographical error. Mr. Roehl's point was that the section says these activities are subject best management practices and then all of a sudden creates a best management practice which in the previous section states will be created by the Director through a more deliberative process.

**E.3** To say that roads built pursuant to chapter 76.09 RCW should not be included. The protective word in the clause is "serviceable". Almost all driveways in the county and most county roads originally built by logging practices.

**E.5.e** Eliminate the word "county road" so that this sentence reads: "Installation or construction in improved rights-of-way and replacement operation, repair, or alteration of all utility lines, equipment, or appurtenances." Key word is

improved rights-of-ways.

**E.7** Site investigative work – reference to use of heavy equipment should be stricken because in addition perk tests that requires use of a back hoe, also test borings are done for soil stability studies and bluff stability studies that are required.

**E.10** Leave as it was; the protection clause is the date December 31, 1984.

He supports the memos on page 13 about functionally isolated buffers.

**Page 15** - describe in the critical lands, which wetlands are, different processes other than use approval yet using the term "only upon use approval..." and as a procedural consistency should say "or other procedures identified in 17.02.107.I"

**Page 19.**

**d)** General Provisions **(ii)** recommend inserting the word "unmitigatable" in front of violation or alteration.

**(iv)** should say "shall be shown on all final plats,....."

**Page 21. 2. Biological Site Assessment [BSA].** Leaving the detailed information in as minimum requirements of a BSA essentially precludes the proportionality mentioned previously. Either modify as he proposed and allow more flexibility to the professional biologist as far as content of BSA.

**Page 26. b) (i) (1)** Should be changed to read: "Applications for residential subdivisions, or for construction of any new non-residential facility, shall meet the applicable requirements of Chapter 11, ICC for the preparation, submittal, and approval of a stormwater collection, treatment, and disposal system designed by a Professional Engineer."

**Page 27.** Similarly on page 27 - taken on its face language in this section would prohibit all development at or seaward of the ordinary high water mark. There has been no demonstration that existing controls are not adequate to provide proportional protection.

**Page 28. 5.** The section on Eagles nests references the WAC, and Mr. Roehl believes should follow the WAC process more. In his submittal, he has quoted some portions of how it works and re-wrote the section to make it more like the WAC description. The addition of "300 feet " is his addition, however, based on Federal guideline.

**Page 37. 17.02.250. Penalties and Enforcement H. Restoration.** When a restoration process implemented the statement in this section is that "no permit or approval or development of the property shall be authorized or granted for a period of up to three (3) years..." and Mr. Roehl

suggested that the Planning Director should have the option of requiring such a moratorium. It is a matter of scale; in many cases the restoration can be a very simple thing and imposition of this type penalty unnecessary; in other cases it is important. Also, any moratorium should be confined to that portion of the site that actually contains the critical area the location of disturbance.

**Page 38. Monitoring.** There should be some flexibility instead of mandatory requirements for monitoring for three years by a professional biologist. Some restoration projects will be fast and not require three years of monitoring. Many times restoration can occur naturally [small impact projects].

With regard to adding species of local importance, he reminded there is a process for how that is to be done described in the ordinance and he did not see that process being employed. He would like to be a part of that process.

Tom Campbell, Representing Whidbey Audubon Society [does not include Camano Island] stated that over the past few months Whidbey Audubon participated in a lot of meetings and discussions on this subject. He brought up today the issue of economic impact of what is being decided with Fish and Wildlife regulations and referred to a DOF&W

report issued that stated in 1996, 1.7 billion dollars was spent watching wildlife in the State of Washington. Whidbey Audubon is aware of many people watching wildlife in Island County, not only as Audubon members but people from all over the country. What should be important is the livelihood of the people in this county who rely upon these folks who come here to watch wildlife. Creating a situation looking only at the legal requirements is something the Board should step back from and consider what's being done for the business people on the Island in the County who are dependent upon people who come here. Whidbey Audubon Society by way of letter dated April 7, 1998 [entered in the GMA record #03268] submitted about nine sites that should be designated immediately as locally significant, backed up with a lot of scientific data, and Whidbey Audubon is more than happy to enter into dialogue on why or why not these should not be included.

John Graham, Citizens Growth Management Coalition, observed two issues today: (1) the issue

of fish & wildlife and habitat; and (2) legal and emotional issue i.e. one group of citizens who want to minimize impacts on the unfettered use of property rights and the other group who wants to preserve the environment. The three most important things he sees are:

1. Buffers. Andy Castelle is scientifically right that no such number exists for stream buffers

but politically irrelevant.

2. Exemptions. Made some very good progress; Attorney Moss did as she promised to do.

3. List of Species. Appears that woodpeckers, loons, herons are back on the list, which is good, but now left with the request of 25 plants as locally endangered species to be added. What Mr. Erickson submitted today groups those 25, and believed that the maps Mr. Erickson provided will show the impact on development and property rights might be minimal.

The issue of buffers he sees can be solved; the issue of species can also be solved and believed there must be a way to rewrite the provision for adding species of local importance that meets the needs of both sides. He urged that everyone come back to issue #1 and look at it as a scientific, environmental and political issues, and as a legal issue only as a last resort.

As to Chairman McDowell's question whether or not Mr. Graham agreed with Mr. Roehl's comment on the last issue - that it should be a deliberative process, Mr. Graham saw as a rock and a hard place. The way adding new species is written now leaves opponents with no choice but to press fore having them all included. If there was a way of designating new species that made it easier and fairer in WEAN's point of view, he thought Mr. Roehl's point had more merit. Right now he tends to agree with WEAN to try to put as many species on the list as are scientifically valid. The fauna were on the last list so it would make no sense to leave those five species off the new list. In terms of the fauna he urged to at least take a very hard, close look at what WEAN submitted this morning.

Steve Erickson, WEAN, discussed the major inadequacies he observed in what was proposed. His submittal today is on record now, and he has submitted previous comments analyzing this ordinance, submission of May 15, 1998, cover letter, also on SEPA comments. Important to recognize what the purpose of the ordinance is, and not just to maintain water quality or protect riparian functions, but to act as protecting fish and wildlife habitat. Buffers proposed by Mr. Castelle are not adequate to protect or maintain water quality or the ecological function of those stream systems over time. At best the buffers proposed are managing to minimums and what typically happens in that case is ending up with a sub-minimal threshold. Actual reduction in the buffers will result in a major loss of protected habitat in the County. In some ways, he agreed the proposal was a slight improvement in that it regulates all streams and not just streams that enter and exit a wetland. Because talking about the streams as not just for water quality but for habitat function, they provide function which is grater than just the absolute quantity that's there i.e. act as connective travel corridors for wildlife.

He then went to the maps posted to show a research project he did. He went to DNR for a copy

of a GIS stream type map for Maxwellton Watershed [as a sample]; then took the County's wetland overlay maps and

traced existing wetlands and overlaid that on the streams, and found there is no stream in the Maxwelton drainage that appears to not be associated with a wetland. While it is good that the new ordinance protects all streams, in at least the Maxwelton drainage, it makes no difference and it is a pretty substantial reduction in amount of protected habitat because of reduction in buffers and found, just looking at type 3, 4 and 5 streams, in Maxwelton drainage would lose 168 acres of protected habitat, about 46% of the area currently protected. Extending that to the whole county ends up to be a loss of about 1,440 acres or about 57.7% of all protected stream buffers in the county. Take type 9 streams [Type 9 – unverified streams in DNR system] and include them as type 5 streams, end up with a loss for Maxwelton of about 200 acres not quite 50%, and the county as a whole 2,843 acres, well over 60% loss of protected habitat county wide of between 3 and 4 square miles, and that provides access to a lot of upland areas too.

Another major problem he saw was that the ordinance relied solely on listing by the state and federal governments as a basis for determining what species will be protected. The ordinance removes protective status from some fauna species clearly sensitive to disturbance from development. As far as flora species by WEAN's count [refer to #16 in the binder submitted today] there are 26 species of native flora they regard as locally endangered, threatened or sensitive. He used the same criteria that the State Natural Heritage Division of DNR uses to determine whether a plant species is endangered, threatened or sensitive, the difference was that criteria was applied on a local basis [some regional basis] on Whidbey Island. Note the only existing population of blue flag iris west of the Cascade Mountains is on Whidbey Island and probably 50% of that population has been lost in the last decade. His report talks about those species. While he had to rely mostly on his own field work he did have various other folks who specialize in this sort of thing review it. At Alison Moss's request he grouped species by location [see attachment – maps #16] and ended up with 31 locations [somewhat aggregated]. In deciding how to rank species, he looked at how many populations there were, occurrences there were, how those populations were distributed, their size, what historically was known about their occurrences, and what he termed a "sniff test" for what was happening on the site. This was based on biological criteria with certain overlays about what he knew about location, land use and what happens in that area and what had historically happened.

To answer a question from the Chairman about the criteria used, Mr. Erickson referred to submittal #17, a printout from a booklet put out by the State Natural Heritage Division Program, a standard reference people in this line of work use as to what is endangered, rare or threatened or sensitive being evaluated state wide, and read from the status categories and criteria for: Endangered; Threatened; Sensitive; Possibly Extinct or Extirpated; Review [essentially every place the booklet said Washington State he substituted Whidbey Island]. There are five criteria the Natural Heritage uses in evaluating each species and assignment of a status, and basically what Mr. Erickson used was the occurrence pattern. An example: blue-eyed grass widow - the entire population on the Island is very small and in an area that has a for sale sign on it, prime view property, highly vulnerable at this point. One of the species on the sensitive list or monitoring list was a small annual lupine, thrives on disturbance to a certain extent but not too much. He noted that in looking at the first report he submitted back in April that some things had changed because of more field work and review. He agreed with Commissioner McDowell that a species is a lot more likely to come up on this list than it would on the State list due to the County's 213 square miles versus the State. He made it clear that he had not listed those flora species which otherwise are protected as being listed by the federal or state government. For the most part the plant communities of concern are last remnants of native prairie on the Island, some very small patches that only have a particular species, others that have more of a functional community. One site in particular found last year on DF&W land in Central Whidbey is regionally significant in terms of it being one of two remaining Idaho Fescue.

Mr. Erickson said he had appeared before deliberative bodies in Island County since 1991 reporting the status of these plants and since that time at least two species have probably been extirpated from the Island as a whole, and two more species apparently extirpated from Central Whidbey, along with populations from his local endangered list and threatened list in the five or six years. In response to a question from Alison Moss, he verified that his submittal did not include proposed management strategies. As far as process for designating species and habitat his letter in front of the binder submitted today called it a sham but he did not mean that in a personal manner rather in the true meaning of the word sham. The ordinance contains no criteria for approval or designation of species of habitat of local importance, and it is totally arbitrary. Management plans are an incredible burden: there are those he is working with who have some species on their property and cooperative, but others who probably will not be real happy [catch 22 – for him to develop a detailed management plan for a species on a landowner's land who is not cooperative]. He could do a

generalized management plan – put together a sheet on generally what is involved in managing, for example, native prairie and restoring it. For species of local importance to work at all there has to be some real criteria for approval and disapproval de-coupled from a detailed management plan. There are generally some basic criteria for fauna i.e. no alteration of critical areas or protected species criteria are generally in most such legislation and should be included. He believed there was enough information now to designate those species which he considers endangered, threatened and sensitive and the various sites Whidbey Audubon submitted as species and habitats of local importance. Detailed management recovery planning is another issue. He sees as the major biological conceptual failing of the ordinance to be failure to consider these are Islands being talked about, not the mainland, and there are ecological effects because of that; islands are isolated from mainland source populations; recolonization lower; higher vulnerability to fragmentation; smaller population sizes because constrained landscape; and as a result, greater functional importance of environmental features such as wetlands, streams and habitat patches.

He believed that three years monitoring was minimal . The general industry standard is at least five years. The idea of a properly defined monitoring program is to pick key indicators to see if what has been done is succeeding. It is unclear to him why proposing to allow as a permitted use underground utilities or moderate impact stormwater facilities such as grass-line swales in the outer part of buffers. He thought that should happen only when there is no alternative [page 5]. The few changes he sees in the section for modification of critical area requirements are an improvement but other provisions he still is reviewing. The prohibition on converting fish and wildlife conservation areas or wetlands or buffers to lawn or residential landscaping - reality is if you land is so constrained by critical areas that it requires building in those critical areas at all under the reasonable use criteria, the person will not be able to do everything that someone else in an unconstrained parcel will be able to do.

He brought the word "suburbs" up, and for the record, Alison Moss again stated same was a typo-graphical error and was to say "such areas". Number 3 in that section on page 9 he believed that the reference to Forest Practices Act took care of the problem, but wanted to review that further. The proposed change on page 14 functionally isolated buffer areas, the problem he saw was determining what is functionally isolated. An area may be functionally isolated in terms of water flow but does not mean it is functionally isolated in terms of wildlife use, shading from trees, buffering from other impacts. simply because there is a road there or a structure or vertical separation he did not necessarily believe it should be excluded from the buffers. There is a process for reducing buffers. To say "shall be excluded" would seem to result in an interpretation problem for staff and the Hearing Examiner.

Problems with species and habitats of local importance provisions, the main problem at this point is that there is no firm criteria by which the Board either has to approve or disapprove nominations – it is vague and arbitrary. The change to (i)(2) making local populations in danger of extirpation instead of declining is a good idea. He submitted more detailed comments previously May 15, 1998 submission.

Marianne Edain, WEAN, we see lots and lots of exemptions and exceptions for single family residences and she emphasized that most of the damage we see being done is done incrementally in small bits and pieces for single family residences; it is the incremental creep of those single family residences. She thought a review of the development records in Island County would show the great majority of housing is single family residences individually developed. The accumulative impact is huge. As far as ditching, trenching, and pipe laying being exempted or allowed without a permit based on the presumption these activities are temporary, she thought that the specific activity may be temporary but the damage continues for many many years after the activity has been completed. An example she gave was when Langley built a sewer line that reasoning was used, but looking now where the sewer line runs through forested wetland there is a corridor about 6' wide that is solid scotch broom through the middle. That area has been severely disturbed; the changes made to the hydrology in that wetland made it possible for that corridor of scotcbroom the cut right through the middle of it and severely damaged the function of that wetland.

Talking about a moratoria and that development I not be allowed for a certain number of years is characterized as penalties, but Ms. Edain emphasized that was not correct, in most instances the land has been damaged and that damage takes time to heal; a moratorium is a setting aside to allow that to recover. She did not agree with Mr. Roehl's comment that such a moratorium should only be on the damaged portion of the property and not necessarily the entire acreage. A ruling the Hearing Examiner gave some time ago in the Harriette Hayes case was that by doing the damage first it deprives Island County of its opportunity to set conditions. In that particular case the conditions had to do with

buffers around wetlands and around the development in general. These proposals need to be reviewed beforehand. There is much information provided today by Steve Erickson, but it is the best available science, most particularly concerning stream buffers and locally rare plant species. She pointed out that while Tom Campbell mentioned those who come here to observe wildlife and noted financial benefits for people on the Island, WEAN includes native plants in wildlife because visiting to look at those native plants is in fact a part of the economics as well. For those reasons she wants to see those plant species protected, especially the Coupeville Prairie. Most of that land is no longer true prairie but is farm ground, but there are the corners, the remnants, along with a wonderful place on the Game Farm. Island bio-geography – islands are special, are constrained. In the Island environment type 5 streams are every bit as important as the Skagit Rivers is in Skagit County; therefore, deserve that kind of protection. On buffer size, one of the papers submitted by WEAN reports that eventually in any residential or developed area buffers disappear; people mow lawns further and further and build different things. The reason for a 100' buffer is so that disappearance would take longer. Even if it were not the best available science, it is a reduction from the protection now, not just for stream water quality but for wildlife habitat and a whole lot of other functions.

Susan Meyer, Washington State Department of Ecology, was pleased that adoption of the new ordinance would be delayed. DOE has submitted comments to Ms. Moss and the County for several months but very few DOE comments incorporated into the ordinance. DOE has a problem with the fragmented nature of the ordinance; how some of the sections of the wetlands overlay has been adopted by emergency rule, and then the new ordinance overlaps it in certain ways; some critical resources seem to have gotten lost in shuffle. Ms. Meyer read a personal e-mail received from Holly Gadbow, C-TED, to Alice Schisel, DOE, on Friday expressing concern:

*"We received a draft of Title 16 and 17 of Island County's development regulations which contain amendments to these provisions on March 11, 1998. We commented on these in April. On July 16, 1998, we received a second draft of Title 17 on which we are also preparing comments. We have received information that July 27<sup>th</sup> is when these amendments will be available to the public and that final adoption will take place towards the end of September".*

DOE would like to see their comments incorporated in the ordinance. DOE faxed a letter to Ms. Moss on Friday outlining DOE's concerns and DOE would like to see in the next several weeks those comments addressed. DOE wonders if the process followed has been appropriate from C-TED's perspective. DOE has seen different iterations of the ordinance and Mr. Roehl seemed to have had a different copy of the ordinance from the one DOE has been reviewing.

Alison Moss clarified that Mr. Roehl took the May 2<sup>nd</sup> draft and inserted all of the amendments, which DOE received a copy. Mr. Roehl generated his own document.

Chairman McDowell asked that Ms. Meyer provide a copy of the e-mail message she read for the record.

Mark Goldsmith, Habitat Biologist, State Department of Fish & Wildlife, thanked county staff for meeting with him on several occasions and for having incorporated some of those concerns, noting that the final version was submitted by Steve Erickson previously, of DOF&W Riparian buffer Recommendations – updated version without "draft" marked on it.

**(1) Riparian Buffer Recommendations.** DOF&W would like to see those buffers larger as submitted in their recommendations: for 1, 2, 3, 4, 5 stream types, 250' , 200', 200' or 150' for small type 3's; for type 4 and 5, 150'. These recommendations are considered available science, and DOF&W is the agency with the expertise on this subject. DOF&W recently published the Wild Salmonid Policy covering salmon [submitted a copy to Alison Moss at this time]. The buffer recommendations in that policy just for salmon are stream types 1, 2 and 3, 100 to 150'; for stream type 4, 100' and for type 5 it is 50'. The Department recently initiated an appeal in Chelan County based primarily on the riparian recommendations which did not measure up to either the standard riparian recommendations or the Wild Salmonid Policy. As far as hearing about ordinances from other counties, he thought some of the buffer numbers included were low and in the range of what Island County is proposing for buffers, some of those ordinances passed many years ago and at the time may have measured up to what was best available science then. Best available science is a much different thing now and the Department expects significantly more of ordinances now.

**(2) List of species of local importance.** DOF&W submitted a very pared down version of DOF&W's version of

priority habitats and species list at the request of the County submitted June 2, 1998 and they would like to see that list adopted [pared down from the submittal in presented in Workshop in January, 1998]. DOF&W list includes threatened and endangered and sensitive species which are covered, but the Department would also like to see covered candidate species, a category probably in trouble but for which there is not a lot of scientific information so as to be definitive about it. There are a number of others that are not threatened, endangered or sensitive or candidate species now, but are priority species and the County had several of them on the list which all dropped off in the last go around, and DOF&W would like to see those put back on the list. A few habitats that are very important and unusual on the Island – Prairie habitats, oak woodlands, are several of the priority habitats.

Alison Moss referred to the Wild Salmonid Policy Mr. Goldsmith mentioned and the recommendation of 50' buffer for a type 5 stream. It was her understanding of the stream typing system that type 5 streams do not bear fish at all much less anadromous fish. Mr. Goldsmith confirmed they did not, and explained the reason why the buffer recommended was smaller than the others was because of that. The reason a buffer is recommended is because all the water in type 5 streams run down into type 4, so the water quality and water quantity is the issue.

Ms. Moss then asked if this recommendation was applicable to streams which flow into streams that have wild salmonid in them, or a recommendation for all streams. In this case, Mr. Goldsmith stated that the recommendation would not apply to streams that do not run into a salmon stream, but for the wildlife end of it, buffers are considered to be very important. He confirmed for Ms. Moss that looking at the DOF&W June 8 memo which listed the streams in Island county that have anadromous fish in them, that it is those streams and those that flow into them to which the Wild Salmonid Policy would be applicable.

Tom Campbell thought Tom Roehl had ignored the fact that what is going on is that the County used to protect these species. This draft has removed those species. As far as he can tell, there is no process to remove species. Whidbey Audubon feels the process should include the species that have always been protected since there has been no de listing process. He has concern about what is happening with species of local importance, now being called a nesting habitat; all of these birds need more than a nest.

#### PUBLIC TESTIMONY CLOSED

Alison Moss asked Mr. Castelle to respond to comments and questions that had been raised.

Mr. Castelle provided a "short list" of some of the issues that were raised [not in any particular order].

With regard to some reference made that Skagit, Lewis and Pacific county ordinances as far as best available science those might no longer be valid, although he did not recall the date of Skagit county's ordinance he thought it was 1994, and Lewis and Pacific county ordinances were since 19965. Things change all of the time and this could be revisited every few months and everyone could come up with newer and supposedly better studies that would enlarge the basis of what is called best available science.

Regarding Island bio-geography much has been made about comparing a type 3 stream on Whidbey Island to a type 1 stream on the mainland. He agreed there is some merit in that the most important streams, the largest streams, would be the most important regardless of where they occur. However, he did not believe that a type 3 stream such as Maxwellton Creek with the Skagit River. For example, the large rivers, type 1 and some type 2, tend to dominate their environment and can only be controlled for some amount of time and only at great energy and expense. Type 3, 4 and 5 streams from an engineering perspective, better behaved and function differently. While the sense of importance is comparable, the actual natural functions are different and because zones of influence are so much smaller, taking buffers that might be applicable to a type 1 water on the mainland and applying that here certainly would tie up more land but would not necessarily provide a proportional amount of greater protection for those systems.

Related to size of buffers or wildlife corridors and riparian areas are going to be used as wildlife corridors, if there was full build out of Island County the smallest riparian corridor that would exist would be a little wider than 50' in width [25' on one side of type 5 stream and 25' on the other side plus the width of the type 5 stream itself]; therefore, the largest corridor on the type 3 streams would be more than 150' width, ample for many if not most wildlife species to utilize as a corridor; it is not in all cases going to be adequate.

As far as species that dropped off the list, the way the list was put together there were some "A team" species listed at the state or federal level that automatically is included. It is recognized there needs to be a "B team" of species and that is where the concept of a species and habitat of local importance came in. By putting the word "habitat" would include not only wildlife but also individual plant species and plant communities that Mr. Erickson and Ms. Edain addressed this morning.

There might not be enough detail to provide a process in that his thinking was in terms of the need to have criteria by which these species can be recognized and provide a mechanism to get protection for those species as well as others. The five examples that came up: Trumpeter Swan, Pileated Woodpecker; Osprey, Heron and Loon. The Osprey, Heron and Loon are largely going to be protected just through the stream and wetlands protection ordinances so between the protection afforded shorelines, streams, wetlands and buffers these species will get a lot of protection automatically and it does not make a great deal of whether they get listed or not because of all the protection that is built in. He would be supportive of putting those species back on the list. Intent was not to remove species from the list, rather to provide a mechanism for adding to the list but recognizing there are some that will be on there automatically.

There was a question raised in previous discussions and communications about the need to have the biological site assessment, and the way it has been placed in the ordinance was there needs to be such an assessment if there is a known or suspected protected feature within 100' of a property line. It is difficult from on-site studies to see in most cases much more than about 100' from a property boundary. The further and further off-site this feature might, the less and less chance this particular project if permitted and implemented would have to impact it.

Another issue brought up previously related to best management practices that make exemptions scientifically supportable. The exemptions that are being proposed so far are fairly

common place. The example by Ms. Edain of a sewer line through a forested wetland and mitigation not properly designed and implemented can result in a very long term degradation of that habitat. There are many examples of where that has been done and done appropriately and restoration over time will replicate the wetland or stream functions and values that existed.

Steve Erickson did a good job on the maps used to show where some of the potentially listable communities are located. Mr. Castle did an inventory of the shoreline environment for both Camano Island and Whidbey Island, conducted on foot, by car and boat [a report is on file in the County] taking every available resource found [i.e. topographic maps, soil maps, air photos, old wetlands inventory maps, PHS maps, coastal zone atlas] mapped every known location of every "A list" or species habitat type plus an enormous list of potential candidate sites. This was only for shoreline and near shore environments and did not go in more than about 200' or so off the coast of either island. About 50% of the coastline either has or contains a high probability of containing one of those species; adding PHS list about 80% of the coastline or near shore environment has high probability of having those. He thought the recommendations in this inventory were supported by findings.

Marine buffers is an issue of how far back from the waters edge; the recommendation in the ordinance is 75' for the structure. The big threats to marine environments are pathogens and nitrogen bearing compounds. If the site is not sewered and the septic system goes in, the Health Department will require a setback which is greater than what is being required and he defers entirely to what the Health Department requires.

Infilled lots. If someone has an in-filled lot the middle house only has to set back 25'. The reason for that is in trying to avoid a "bowling alley" feeling. In those cases, with septic systems behind the house on the landward side, there is little risk of any significant damage, and buffer situation recommended to be relaxed and brought down to 25' whatever the distance of those houses are. If there is a wetland or stream nearby the protection measures would kick in.

Answering a question from Commissioner Shelton in terms of the graphs shown on overhead for buffer

requirements – were those buffers intended to include wildlife habit as well, Mr. Castelle stated fish habitat yes, but wildlife habit only indirectly. For example, downed logs in a stream can be important fish habit features; a downed log in a riparian area can be a very important wildlife feature. Wildlife using those riparian areas would benefit from this, but he did not develop those based on a specific management recommendation for a specific wildlife feature.

Commissioner Shelton, in terms of best available science Mr. Castelle presented, asked if Mr. Castelle would argue with DOF&W with respect to the buffer they are proposing. Mr. Castelle indicated it would depend. He did not consider specific wildlife species other than fish because he did not think the riparian buffer section was the appropriate place to do so, rather where the individual species are listed or not is the appropriate place for those recommendations. Generically for what are relatively urban adapted, most of what is here or will be here are relatively urban adapted species and management will be similar to that for the more urban counties right now. The reason he showed Lewis, Skagit and Pacific was because he thought those counties were in similar stages of urbanization to Island County.

Mr. Castelle noted that in the submittal by Steve Erickson today, the Appendices, B and C are incomplete from DOF&W. Seeing what is there Mr. Castelle confirmed he was familiar with at least 80 to 90% of those and present a wide range of buffers that are effective for any number of riparian functions. Mr. Castelle's recommendations are within that range and tailored for Island County.

Commissioner McDowell referred back to the tunnel effect regarding marine buffers. He saw two different scenarios: one, a plat with 60' wide lots; two, portion of the shoreline with meets and bounds description where there is acreage or 150' to 200' wide lots. There is a big difference as far as impact to the home owner or future home owner. He asked if Mr. Castelle thought it would be appropriate to have two types of criteria: one where the lots on either side would be allowed the exemption for the larger lots and maybe a distance for the smaller lots [example – Mariner's Cove where there may be two lots not built on and suddenly those had to be built far back, would be an impact from an owners perspective ]. Mr. Castelle commented that by saying the two adjacent lots are what would now become non-conforming would permit the middle lot to become non-conforming was to avoid a domino effect; picking some reasonable distance is something that he can examine further – and may want to check to see how many such occurrences are out there.

Attorney Moss thought that the existing five species on the list today are different than those that have not been looked at before. Whidbey Audubon and WEAN need to be asked to give the Planning Commission their thoughts on the management strategies. These are not management plans or detailed property-specific management plans but the kinds of actions someone needs to take in general to protect these species - - what kinds of things to do, not a huge restoration plan or detailed management plan. The Board agreed.

Having reached the time of nearly 12:45 p.m., and with Board action not completed, and further review needed of the materials submitted today, the Board by unanimous motion:

1. continued the hearing to 17 August at 1:30 p.m. MOTION AMENDED to reschedule that date and time due to attorney emergency, to August 24, 1998 at 9:30 a.m. in Special Session.
2. referred to the Planning Commission the materials submitted by WEAN this morning, large notebook and maps from Steve Erickson, with nominations of species of habitat of local

importance, along with letter dated April, 1998, from Tom Campbell, Whidbey Audubon Society, with nominations of species of habitat of local importance, with the request that the Planning Commission deliberate and make a recommendation after they receive input from WEAN and Whidbey Audubon on generalized plans to protect these species.

3. requested the Planning Commission return to the Board with a recommendation on the above in early October for the Board's consideration after completion of adoption of the GMA Comp Plan and Development Regulations.

The Board agreed with the recommendation of Alison Moss that Island County contract with Adolfsen Associates, Inc., to evaluate these two nominations in order to have expertise to assist the Board with that.

As to the question from a member of the public whether or not the changes would come back contained in a single document, the Board agreed that the May 2, 1998 Planning Commission recommendation, July 27 amendments introduced today from Ms. Moss based on all prior input, into one document, and show in format change some way show changes from that based on today's input.

Ms. Moss agreed that could be done but was not sure it could be made available for review more than a few days prior to the hearing, but would have that ready at least the Friday before the hearing. She confirmed that any amendment would be based on information received to date; no new issues will be brought up.

Special Session adjourned at 12:45 p.m.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

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Wm. L. McDowell, Chairman

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Tom Shaughnessy, Member

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Mike Shelton, Member

Attest: \_\_\_\_\_

Margaret Rosenkranz, Clerk of the Board