

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING**SPECIAL SESSION - AUGUST 24, 1998****9:30 A.M. SPECIAL SESSION**

The Board of Island County Commissioners met in Special Session on August 24, 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. Others present included: Public: Susan Meyer, DOE; Steve Erickson, WEAN; Richard Collins, Langley Staff/Consultants: Vince Moore, Matt Nash, Keith Dearborn, Alison Moss.

The purpose of the special session was to conduct a Public Hearing, continued from June 8, 1998, and July 27, 1998, on 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. Public testimony taken previously and that portion of the hearing closed. The purpose of the continuation to this date and time was for the Board's deliberation.

Keith Dearborn advised that after the July 27th hearing on Fish & Wildlife a letter was received dated August 4, 1998 from DOE providing comments on the changes and requested a delay on final action until DOE personnel could meet with the County to discuss their final issues. Mr. Dearborn talked with Ray Hellwig, Regional Manager, DOE, and found that because of DOE's vacation schedule, a meeting could not be arranged until September 3rd. By letter this morning DOE confirmed that meeting on September 3rd and restated their request that final action not be taken until after that meeting takes place.

There are many comments and amendments that have been proposed, and it was Mr. Dearborn's recommendation that if the Board felt comfortable after reviewing all amendments that those be consolidated into one final document, with what then would be the Board's proposal for Fish & Wildlife, as the basis for whatever continued final hearing there may be and the document that DOE reviews.

Another issue was to resolve the classifications in the permit classification process [Type I, II, III and IV] that Fish & Wildlife actions are placed in. In final action on Chapter 16.19 ICC, the Board reserved the ability to come back and insert the classifications in the right type categories, with issues deferred to this date to resolve. Those materials were available on July 27th as well as today.

Alison Moss provided the following hand-outs for today's hearing:

1. Proposed Changes to ICC 17.02, The Island County Zoning Ordinance Fish & Wildlife Habitat Conservation Areas Re-adoption of Emergency Wetlands Amendments, identified as Proposed Critical Area Regulations, Amendments Introduced on June 8 and July 27 to Planning Commission, Recommendation shown in Bold, August 24, 1998, 41 pages
2. FWHCA Amendments – a series of Amendments responding to comments submitted at the 7/27/98 Hearing and to comments from Planning Department Staff on house-keeping and consistency with other chapters, etc., identified as last saved 08/21/1998 4:51 PM
3. [from 16.19 – chart] B. Permit Classifications: Land use decisions shall be categorized by Application type as set forth in Table B, identified as last saved 08/21/1998 9:04 PM
4. Critical Areas, Reports and Studies, identified as Island County/F&W/Permit Chart.doc last saved 08/23/1998 2:26 PM
5. Chart: Critical Areas Processes, identified as TEMP/critic-II.doc last saved 08/23/1998 5:28 PM [in response to questions from staff and comments from DOE]
6. Provisions from Snohomish County Code Critical Area Regulations: Standard Buffer Width Requirements; Protection for Streams, Wetlands and Buffers; Single Family Residence on Existing Legal Lots; Critical Area Study content Requirements: Streams and Wetlands
7. Critical Areas Regulations – Review of Department of Ecology Comments 1/6/98, 1/26/98 and 4/10/98, 6/8/98, 6/9/98, 7/24/98 and 7/27/98

8. Letter dated August 21, 1998 from Ray Hellwig, Section Supervisor, Shorelands and Environmental assistance Program, DOE, to Patrick Babineau, Department of Community, Trade and Economic Development, Growth Management Division regarding: Comments on Island County Critical Areas Ordinance for Consideration at the September 28, 1998 adoption hearing
9. Letter dated August 24, 1998 from Alice Schisel, DOE, to Chairman McDowell, requesting delay of final action on Critical Areas Ordinance until after a September 3, 1998 meeting of Commissioner Shelton, Ray Hellwig and Keith Dearborn
10. Stock Bald Eagle Management Plan form provided by Matt Nash, Island County Planning Department

AM the letter 8/21 from DOE is in large part a reiteration of their July comment letter but does offer an explanation of why DOE is requesting that the buffers for the near shore marine habitats be increased from 75' to 200'.

Mr. Dearborn added that he thought what had occurred was that as time had gone on there were issues added to the list. DOE originally narrowed their issues to three they thought most critical, because they understood the County was under a compliance order and needed to proceed quickly. DOE since determined there were other issues of concern and asked those issues also be addressed.

Ms. Moss [#2 hand-out] reviewed the Planning Staff house-keeping amendments to make the document internally consistent and consistent with other documents, put together in one amendment all those suggestions by Matt Nash

Page 1 - clarify in the definition of Protected Species that the species in this document are actually designated as habitats and species of local importance

Page 1 - change term Use Approval to Alteration Approval because in the Zoning Code use approval process is eliminated

Page 2, paragraph d) adds reference to the Coastal/Shoreline Biological Resource Inventory prepared by Adolfsen Associates, Inc.

Page 2 - Paragraph 17.02.107 indicates that the designated critical areas are those which are listed

Page 3 under critical areas exemption, change "County" to "Public" rights-of-way.

Page 3, paragraph 8, emergency action, it is pointed out that some emergencies may not allow the person responding to the emergency to obtain Planning Department approval and this requires an after the fact review to determine if in fact it was an emergency.

Page 3, paragraph F – to be consistent with the change to the definition of use approval to alteration approval and makes it clear that when alteration approvals are required for modifications of certain kinds of critical areas. This does not list steep slopes and aquifer recharge areas because they are regulated in other sections of the Code.

Page 3 – Change Date

August 1, 1998 should be corrected to read October 1, 1998

Page 4 – Reasonable Use provision has been moved into the umbrella section for all critical areas and the term wetland is changed to critical area so there is consistency.

Page 4 – Functionally isolated buffer amendment introduced on 7/27/98. Staff suggested there may need to be a biological site assessment to determine whether the buffer is functionally isolated and that language has been added.

Page 4- Correction to show it is the Assessor's Office and not the Treasurer's Office that considers the protection and buffering requirements in determining fair market value of land.

Page 5 – strike reasonable use provisions from overlay zones because it is being moved.

Page 6- The Planning Commission recommendation contains a provision that states that a single wetland can be

classified into two different categories if distinct discrete areas of the wetland. This is included for buffering purposes.

Page 6 – Setback Section. d) (ii) Current section states that a new lot cannot be created that cannot be developed without violation or alteration of the required buffer of a regulated wetland. Suggested in this change is the intent here is to make sure that when a new lot is created it is buildable and not creating a lot that would force someone to come in and get an alteration. d) (iv) refers to Chapter 16.19 instead of "hearing examiner".

Page 6 – C.2 Change made to allow continuation of the process that the Planning Department uses now to take a Bald Eagle Management Plan that the County has developed in consultation with DF&W and have a single family homeowner sign it.

Page 7 - c) the contents of the biological site assessment indicated showing streams, but streams are a Fish & Wildlife Habitat Conservation area – redundant and deleted, with language added to show "areas which may act as corridors, ravines or steep slopes". h) language added to make clear that the Planning Department has the authority to make recommendations that the BSA once approved be included as conditions of the underlying permit.

Page 8 – b)increasing buffer widths suggesting to take into account the intensity of the proposed use, and adds language to indicate that a BSA is needed to require an increase of the buffer. d) averaging buffer widths – determination would be made through an approved BSA

Page 9 – b) (2) There has been a lot of discussion of the provision of the 75' setback from the kelp and eelgrass and shellfish beds and the Board asked whether there were circumstances other than having a home on both immediate sides in which the buffer could be reduced. Matt Nash directed attention to the provisions of the shoreline element of the Comp Plan and the suggestion here is to put into this section the same provisions in the shoreline element for reducing that buffer, which would provide a little more flexibility because of locating 200' either direction and talks about when development is on both sides and when there is development only on one side. She reviewed the proposal with Andy Castelle and he is comfortable it would not lead to domino affect and will be sufficiently protected. b) (3) makes it clear that when the Director requires increased buffer width it must be based upon a BSA. Paragraph 5 – strike reference to "after reviewing the BSA" allowing continuance of existing process for single family homes simply signing the existing Eagle Management Plan.

Matt Nash provided some clarification by noting the language under 3 allows the Planning Director to increase the buffer, but if the applicant comes back and requests an enhancement of the buffer, the BSA would establish whether or not that enhancement would actually improve the functions of the buffer such that an increase in buffer is not necessary.

Page 10 - #6, inserted reference to the kinds of professionals who can prepare a habitat management plan and also indicates that if the applicant offers to they can combine both BSA and HMP.

Page 11 and 12 provide two alternative amendments to the utilities exemption. There has been some questions raised as to the two sub-sections that would allow relocation within an approved right of way when the relocation is required by a local government agency. [initiating agency – county, city or state]. Two questions raised: first, relocation may have the same kind of impacts as the original construction and why should it be exempt; and what is meant by the term local government agency.

Ms. Moss verified that the term "local government agency" refers to the county, a city within the county, or a state agency. Some had read that to apply to any quasi-governmental agencies such as water or sewer districts. The first amendment strikes both of the exemptions for relocation; if a utility finds it necessary to relocate their facilities they would go through the normal permitting process. The alternative exemption amendment on page 12 would retain the exemption for relocation and make clear it has to be required by the county, city or state agency. The concern raised was that a utility provider could classify itself as a local governmental agency and relocate. These two amendments are mutually exclusive and the Board will need to make a determination.

The Commissioners during this discussion expressed some concern in that water districts are something the County encourages in other sections of the Plan under water resources, and therefore did not necessarily think it appropriate to

eliminate them from having the ability to do something that will enhance their water system.

Ms. Moss pointed out that included is a specific permitted use on page 8 of the base ordinance document for utilities, permitted if conditions are met. The second amendment does not say a water district could not relocate its facilities within a right of way, rather if it is going to do it and remain exempt it has to have been required to do that.

Mr. Dearborn suggested a side by side comparison of Page 12 of these amendments with Page 8 of the ordinance itself on permitted uses, and ask the question whether or not items b) through e) are even necessary.

Ms. Moss explained the two different permitted uses. Paragraph C-1 on page 8 of the ordinance allows a road or utility crossing [or through] if mitigation is satisfied. A water district raised a concern about whether the multi-year monitoring made sense for low impact underground utility crossings and buffers because they assert they will not be building these through wetlands and deep water habitats. Section 2 was added in response to that concern and it does not require a multi-year monitoring; it does require restoration and use of best management practices. B through E are exemptions similar to permitted use and may not be needed, and would respond to comments to date. Paragraphs C and E as originally written both listed a whole host of different kinds of utilities and that has been dropped out; B and D could be eliminated, or B through E .

And as pointed out by Mr. Dearborn, B - E are exemptions that other counties have incorporated in critical areas ordinances and are not unique to Island County. However, the other counties do not have the permitted use provisions. Island County's permitted use provisions are clearer and #2 provides more flexibility than possibly the exemptions would provide. The concern raised, while not an original concern of DOE's, became a subsequent concern of DOE's which was trying to distinguish in their mind the differences between the permitted use provisions and the exemption provisions. The question now is whether they are necessary given the way the permitted use provisions are written.

On review and discussion by the Commissioners, there was some thought to leave the language in to provide more clarification/intent. Concerns expressed that a public water district should in fact have the same ability as the County would to relocate a water line.

Mr. Nash suggested retaining a); strike b), c) and d); retain e) modified to include the word "relocation i.e. "Installation, construction or relocation in improved public road rights-of-way ..." and at the end of the section add "except substations".

Ms. Moss explained that b and c were intended for utility rights-of-way. The issue was raised that a relocation could have the same impacts as new installations and if so, should be treated the same way as new installations. The distinction of b and c is that it has been ordered by local government for some reason – something has happened to force the relocation. She did think the matter had become too complicated and believed Mr. Nash's suggestion was a good one.

Page 13 – responds to comments from DOE regarding provisions for modifying the critical areas regulations for construction of a single family home on an existing lot. Previous amendments were made trying to make it clear the reasonable use process is an administrative process as opposed to a public hearing process. To make it very very clear, the suggested change here is to the title of the section to "Reasonable Use – Single Family" and some minor word-smithing to make it clear subsections 1 through 8 apply. Snohomish County's original critical areas ordinance was appealed to the Central Puget Sound Board by DOE, F&W, Pilchuck Audubon and Tulalip Tribe. All of the exemptions were struck down by the Central Puget Sound Board because the Board believed GMA did not permit exemptions. On appeal, Superior Court overturned that ruling and stated there could be exemptions so long as regulations as a whole would still protect critical areas. Snohomish County amended the ordinance, took some of the exemptions and put them in the permitted use section, one of which was the provision for single family residences. That was not then challenged again. Island County's ordinance was modeled on King County's ordinance which was never appealed. The 5,000 sq. ft. limit comes from King County; Snohomish County does not have a sq. ft. limit. As written, the 5,000 sq. ft. applies only to impervious surfaces [to be defined through stormwater regulations]. This would allow a reasonable footprint plus any other impervious surfaces to 5,000 sq. ft. During discussion with the Board members, Ms. Moss noted this could be written so as to provide a limit on the footprint of the home. If someone just needs to cross a wetland or a stream to get into the property they can use the permitted use section.

The general consensus was to strike the reference to impervious surface and reduce the 5,000 sq. ft. to a smaller size so that it refers to building footprint that will not exceed a certain number of sq. ft. There was still some concern though that each case would be unique and different and each should be judged on its own and to put a restriction on the footprint might not be correct – and there should be the ability to address reasonable use on whatever size that piece of property is. The reasonable use of a parcel of property impacted by critical areas is something the Board wants to see allowed for a single family home.

Ms. Moss explained that was what this was for: only for a piece of property that cannot meet the protection and buffering standards of the Code. There has been substantial comment this provision should not allow very large houses, that one should not be able to purchase a highly constrained piece of property and build a house that requires building in a wetland and its buffer. This concern began about the small lots in RAIDs and making sure those people who own highly constrained lots with critical areas still have an opportunity to build a home without going through a very complicated process.

Further suggestions to change the language were discussed: cross out "and other impervious surface" and put in square footage for a building foot print [or use the word foundation, or dwelling unit] . Generally everyone agreed that a concrete parking pad is not considered part of the building footprint, and the foundation or footprint should include any accessory structures

Page 14 –17. The umbrella chapter talks about alteration of critical areas and refers to the Land Use Standards; however, the Land Use Standards only refers to wetlands and deep water habitats so added here are the words "fish and wildlife habitat conservation areas" and the reference back to the umbrella chapter. On page 15 (b)(i)parallel language added to take away the potential implication that if you had a road going through a fish and wildlife habitat conservation area it could no longer be driven upon which existed on or before December 31, 1994.

Page 18. Word-smithing suggestion by the Department of Ecology that makes the exemption for maintenance clear and consistent with the intent.

Page 19. Tom Roehl pointed out on 7/27/98 that the wetlands overlay zone did not cross-reference any of the provisions in the umbrella chapter, and that cross reference has been added in 2b and 2c, and changed the term use approval to approval of an alteration.

Page 21. Reference struck about the County will be undertaking an inventory of biologically critical areas because that inventory has been completed.

Page 22. Comments from Tom Roehl noted in .110 C.2.e) that requirements for BSAs include a discussion of all federal, state, tribal and/or local requirements, and questioned why an applicant should need to do so, that simply identifying those agencies would be sufficient. Language here has been changed to read: e) Regulatory summary, identifying other agencies with jurisdiction".

Page 24. Mr. Roehl rightly pointed out that under protection standards for streams that someone would not satisfy all of the criteria, but either D1 or D2, and then 3, 4 and 5. [numbering correction noted here as well, so the section is d) (i), (ii), (iii), (iv), (v)].

Page 25. Also pointed out by Tom Roehl was that there may be some water dependent uses that require crossing the buffer adjacent to kelp and eelgrass beds and shellfish beds, etc. and should not prohibit water dependent uses allowed under the shoreline program so reference has been added to make that clear.

Page 26. In response to comments from staff and also comments WEAN had raised, monitoring the use of exemptions is recommended. Exemptions are dependent on actual implementation of best management practices and undertaking restoration where it is required and the County should monitor whether that actually has happened. Recommendation is to retain the monitoring section.

Although the Commissioners had gone through the amendments which were incorporated into the basic document

several times, Mr. Dearborn wanted to verify whether the Board reached consensus on what should be included in the ordinance. The Board having not taken action on any items shown in bold, those amendments introduced on June 8 and July 27, and discussed. The amendments consolidated now re-instate the specific species as species of local importance: great blue heron, common loon, osprey, pileated woodpecker and trumpeter swan. There has been a lot of concern raised about retaining the protections that exist today for those species.

Ms. Moss noted that most of the species nest within areas already being protected under the regulations. Mr. Dearborn noted the other major change in response to comments received, found on page 24 of the ordinance, which is that for Type III streams with anadromous fish the buffer is proposed to increase from 75' to 100'. It is not the whole stream that gets the 100' buffer, only the portion of the stream that has fish in it until it reaches the blockage. This was reviewed and discussed previously, and is an issue that DOE, Fish & Wildlife and others raised. Previously, a list of Type III streams with anadromous fish was presented, including: Maxwelton Creek; unnamed tributary of Cults Bay [Cults Creek]; Glendale Creek; Camano Creek; an unnamed creek near North Bluff; and an unnamed creek entering Dugualla Bay. Matt Nash advised at this time that another creek was found last week, a creek entering Columbia Beach with anadromous

It was explained by Ms. Moss that DOE and F&W asked that streams with anadromous fish have buffers of at least 100'. F&W is on record asking for even larger buffers than that but in a meeting with them agreed that a 100' buffer was essential. As mentioned last hearing by Andy Castelle in his presentation, as you get over 75' and then over 100' you need much more land in the buffer for marginal increases in the functions of the buffer. Below 50' there is a significant difference than when over 75'. Mr. Castelle testified that while 75' is half-way between 50' and 100' it is not just half again, it's much more than half again in terms of protection – it is much closer to the protection afforded by 100'. Mr. Castelle recommended a 75' buffer with provisions for increasing the buffer if necessary to protect one of the protected species or where there are steep unstable slopes coming in to the stream.

Commissioner Shaughnessy was interested in the reason for the buffers and balancing that with what it might be adding to private property owners and the use of private property. This is a

buffer for which the expert, Andy Castelle, indicated that 75' was adequate, and the Board's feeling at this point was that the buffer should be 75'.

Ms. Moss's recommendation was to split the Type III streams with anadromous fish and without, and go with the 100' buffer, which to the best knowledge is 7 streams.

HEARING CONTINUED: By unanimous motion, the Board continued the special session and public hearing until Noon, after the Board's meeting with Elected Officials – Roundtable. The Special Session was re-convened at 12:15 p.m.

The Board focused on questions that had been raised in general in the ordinance, as well as specific areas brought up today.

Retention of the list of Species of Local Importance [page 41]

Commissioner Shelton had no problem leaving those as listed, but did question what would be required as far as a management plan for a the blue heron rookery or osprey. He thought those two species really were the only ones that came into play in Island County.

Ms. Moss believed the management plan could be as simple as talking about not doing certain things at certain times of the year and setting back from the nest tree. Swans do not nest or breed here, mostly over-winter in agricultural fields. Loons nest within a few feet to a few meters of water bodies.

Matt Nash described what is required today for those things and whether this as re-written would require more or less. pileated woodpeckers' nests that are not typically found in critical areas – tend to be more in upland forest type areas with lots of snags. He had not thus far ever been involved in a situation where one of their nests had been found and a habitat management plan developed for that nest site. He recommended following the example of bald eagles – where

F&W developed a stock management plan for nesting territory – the plan is fairly easy to comply with and the same thing could be done here – develop stock management plans for these various species and if the applicant is okay with those stock plans, they would merely sign them without having to prepare a BSA or HMP. If that is not workable with the applicant, then perhaps they would have to develop a habitat management plan. Standard habitat management plans have not been developed for heron or osprey at this time, but would be developed if it came up frequently. The State actually prompted the development of the stock management plan for the bald eagle. He did not see it as a difficult thing to develop a stock management plan for heron or osprey. There are about 20 rookeries in Island County, and he knows of about 4 osprey nests.

Commissioner McDowell noted that on Page 26, #5 and 6, protection standards, addressed " eagle nest territory" which would seem to be a very large area; shouldn't some specific distance be stated or just state "eagle nest". The last line on page 26 and continued to page 27, where it says "near" – to be clear here some distance should be stated, for example, 300'.

Ms. Moss commented this referred to the Washington State Bald Eagle Protection rules in WAC. She believed the phrase was used because the actual nest locations are not disclosed; there are maps that have to be kept confidential so that the trees are not cut down.

Mr. Dearborn suggested deleting the phrase "or adversely affect the eagle nest territory" at the bottom of page 26, to read: "If after reviewing the BSA the Director determines the scope or timing of the proposal may create an adverse impact, and strike the rest up to "he" .

Mr. Nash explained that footages are clarified in the WAC and also in the stock management plan. And Mr. Dearborn suggested this section simply confirm the stock management plan. Mr. Nash agreed that was the intent of his recommendation. At the Board's request, he provided a copy of a stock management plan.

Number 6, as Ms. Moss explained – the last sentence in this section to be important; it indicates that one of the things to consider is the Department of Fish & Wildlife's recommendations but also must take into account the affected property, size and configuration and the practicability of those measures. That was intended to provide the proportionality. The minimum guidelines that CTED put out recommend protecting endangered, threatened and sensitive species, and go on to recommend to consider having species of local importance. The Growth Board's have overturned ordinances where they did not include those species of local importance where science had been submitted supporting their designation. While the Island County Commissioners have not had science supporting that, they did hear a lot of questions about why species were selected to be taken off the list since the code was adopted.

Mr. Dearborn suggested that prior to the species of local importance staying on the list, staff [with the assistance of Andy Castelle if need be] come back to the Board with a stock management plan for osprey and great blue heron.

Mr. Nash thought that would be a good thing: a lot less paperwork, hassle and expense for the applicant, as well as less paperwork for staff to deal with. He believed that the plans could be developed by October 1st.

Ms. Moss recalled that Mr. Castelle advised that pileated woodpeckers most likely will be on the lands that remained forested and need 5 to 10 acres of forest land that has dead trees in it and are not likely to remain on properties that are converted.

Mr. Dearborn went on to explain the list would not become effective until the Board had approved a standard habitat management plan for osprey and great blue heron. The point on the loons, pileated woodpecker and trumpeter swan is that including them on the list has no real consequence in terms of property restrictions and has not for the last 14 years, and suggested all of them be included, but only stock management plans developed for osprey and great blue heron.

BOARD AGREEMENT: accept the recommendations and direct staff to prepare stock management plans for osprey and great blue heron, and the list of local important species be included once the ordinance is adopted and those stock management plans developed; the designation for osprey and great blue heron as species of local importance does not

go into effect until the Board approves a stock management plan to be done by September 28 .

Buffer for 7 Identified Streams with Anadromous fish – buffer 75’ versus 100’

MAJORITY BOARD AGREEMENT: Buffer to be 100’ for streams with Anadromous fish

Amendment Pages 11 and 12 [Page 8 of the Ordinance itself]

After the discussion this morning, Ms. Moss’ recommended striking b, c and d; and e to read:

"Installation, construction, relocation, replacement, operation, repair, or alteration of all utility lines, equipment, or appurtenances in improve public road rights-of-way, not including substations." Page 12 amendments excluded.

Board Agreed.

Mr. Dearborn pointed out that in C-1, where it says crossings, does not read right and suggested "Roads or utilities where they are the least..." and in the next line cross out the words "for the actual crossing".

Board Agreed

Commissioner McDowell suggested, on Page 8 of the Ordinance, Paragraph C-2 to take out the 33% and 50% requirement in C-2 and say instead: "permitted within the buffers".

Page 9 – Ordinance and Page 18 Amendment

Ms. Moss explained that expressed the concern that there could be a road essentially abandoned and reverted to a wetland, or a wetland buffer, and would have the same impacts as constructing a new road. The word "serviceable" has been used to capture the idea that the road was currently useable and had not been abandoned. A concern was then expressed that if it were an old logging road and trees had grown up three or four feet in height all down the road, someone could obtain a vehicle high enough off ground to drive on the road and argue it was serviceable. The ending phrase had been added to say if it were an old logging road, not being used, and proposing to use it to concert property to some other use it is not exempt. She believed the word serviceable already captured that idea. The other concern expressed was that the fact that a road could be maintained as an exempt activity does not necessarily mean that an old logging road meets current road standards and could be used under other regulations I order to concert property to a subdivision or some other use. She did not think the language in bold is necessary so long as the record is clear that the word serviceable means this is not a road that’s reverted to a wetland or wetland or wetland buffer and that it does not mean that the road, even if maintained, is sufficient to meet road standards.

Mr. Nash agreed the record was sufficiently clear to be able to tell someone if they have 4’ tall trees all the way down the road it’s not serviceable. He still had a question – using an example last year in a non-conversion forest practice permit – if they want to come in today and ask to convert the property, the use or maintenance of that road, to serve a conversion [residence or subdivision, etc.] it is not exempt.

Ms. Moss confirmed that the maintenance of the road, if serviceable, would be exempt; if it had to be expanded and brought up to current standards it would not be exempt and subject to the permitted use with the alteration on standards.

Mr. Dearborn pointed out that "existing serviceable" – existing is defined as October 1, 1998

BOARD AGREEMENT: delete the language in bold: "or roads built pursuant to Chapter 76.09 RCW on properties which are proposed to be converted to a non-forestry use." and also remove from today’s amendment package the amendment on page 18 responding to DOE clarifying that exemption inasmuch as it is no longer necessary.

Page 13 of Amendment.

BOARD AGREED: 17.02.107 D.1. "The proposal is the minimum necessary to accommodate the principal residence,

access and all necessary appurtenances including, if necessary, well site, septic system and drainfield utilities, provide that the foundation of the principal residence and any accessory structures shall not exceed 2,800 sq. ft. "

Page 3 of Amendments

BOARD AGREED: delete the word "County" and replace with "Public" in E.5.e, and make that amendment consistent accumulative.

Page 14 of Amendments

BOARD AGREEMENT : M.1 delete "The standards shall also apply to applications for Use Approval to alter a regulated wetland, a deep water habitat, a tributary stream fish and wildlife habitat conservation areas or their buffers."

BOARD APPROVAL:

Commissioner Shelton moved approval of the amendments responding to public comment at 7/27/98 hearing, excluding the amendment on pages 12 and 18, and note that the amendments changed throughout are approved previously made, with Ms. Moss given direction to fix format and spelling. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

Commissioner Shelton then moved that the Board approve Ordinance #C-62-98 as amended by June 8, 1998, July 27, 1998 and August 24, 1998 amendments, with final approval to be accomplished September 14, 1998 at 4:00 p.m. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

In further discussion with Mr. Dearborn and Ms. Moss, it was noted that the Chart the Board [list of today's documents] has will be brought back on September 28th as an amendment to 16.19. A separate chart recommends if a wetland delineation and geo-tech would be required with the application if the code requires them at all. A BSA would be required if seeking to alter the standard buffers. Counsel will be suggesting that all the critical areas regulations stay in chapter 17.02 rather than being re-codified in a new chapter.

The Commissioners agreed that everyone up front should understand what reports are needed with the application but brought up the concern what if what if through the course of a site investigation something comes up that was not known i.e. heron rookery or osprey nest, wetland, etc.

Mr. Nash indicated that for building permit applications typically that is not included as part of the application. An applicant might on their plot plan show swampy area or drainage way or ditch. And/or the front office building staff always review the wetland map and critical area maps. If either one of those situations arise staff site review is requested which is after the application has been accepted and considered complete. Short plats and subdivisions are done basically the same way event although most forested wetlands don't appear on the wetland map and not all are easily recognizable as wetlands to the lay person and the County has been a little forgiving in that area about requiring that as part of the application at the outset.

Mr. Dearborn mentioned the need to double check the ordinance if those activities in A are to be in the B category instead – need to confirm in the ordinance that that is in fact clear and then check in 16.15, 16.17 and 16.06. All of the three subjects in A would be shifted to B after the complete application determination. For areas that aren't mapped it is clearly not fair to make people guess at them.

BOARD Agreement: put in application section that if these are subsequently applicant must do the studies but does not affect vesting.

Special Session adjourned 1:25 p.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