

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

SPECIAL SESSION - SEPTEMBER 29 , 1998

The Board of Island County Commissioners met in Special Session on September 29, 1998, beginning at 9:30 a.m., to conduct a GMA Public Hearing as scheduled and advertised, per notice of continuance from Regular Session of September 28, 1998, in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa. Wm. L. McDowell, Chairman, Tom Shaughnessy, Member, and Mike Shelton, Member, were present.

CONTINUED GMA HEARINGS

Attendance at the GMA Hearing, beginning at 9:30 a.m., included the following individuals:

Audience: John Graham, Charlie Stromberg, Bill Thorn, Jeanne Hunsinger, Fred Frei,

Sr.; Chris Douthitt, Mary K. Doody, Tom Olsen, Bill Sievers, Bob Olsen,

Earle Darst, Tom Campbell, Diane Kendy

Staff/Consultants: Keith Dearborn; Emil King; Phil Bakke

Hand-Outs: Zoning Code Amendments – 19 Amendments [identified as Z-1 through Z-19]

ZONING CODE, ICC 17.03

Mr. Dearborn handed out the Zoning Code Amendment packet with 19 proposed amendments, and identified the amendments that were new and not reviewed at Friday's workshop; all of the amendments referred to as Property Rights Alliance amendments were not reviewed at Friday's workshop: No. Z1, 8, 10, 14, 15, 17. Language in bold is the language being proposed by the Property Rights Alliance as an amendment, and are suggesting a number of changes to definitions, and staff is recommending approval of those as appropriate clarifications.

Z-6 and Z-7 carry out amendments the Board discussed as a part of the Comprehensive Plan.

Z-9 is an interim amendment, given the fact that the original communication tower amendment is proposed for referral back to the Planning Commission for further work.

Z-2 - an amendment the Board reviewed, a new section in 17.03 to cover transition of pending applications and approved projects from the old code to the new code, and sets out the rules. This also provides rules for the winding down of the TDR program.

As far as giving an option [Chapter 17 or 11] Mr. Dearborn spoke directly with Tom Roehl and his concern was that in many ways particularly Title 17 add 16 are more lenient. For example, there are applications pending right now that would not require site plan approval in the new system and staff recommendation is that to opt for the new system includes opting for all the protections that go with it. See #5 "Withdrawal of Applications" – correction needed, change to: "Pending Applications".

Already in the Code as an amendment in Phase A is a provision that if someone has a certificate of zoning compliance issued it is valid.

The Board agreed that Mr. Dearborn prepare language for legislative intent: if someone has a valid renewal of a permit under vesting rules set up that person would be vested against the new code for as long as that extension remains in effect; at the end of the extension of that permit and could not get another renewal by the terms of existing ordinance, then the person would have to comply with the new code.

Z-3 Although Fire District #3 only raised the question of fire stations in rural residential, when looking at the code Mr. Dearborn realized that fire stations had not been provided for in rural villages, airports, or light manufacturing, and saw no reason not to call them out in all of those zones. The only zone where a fire station would not be a permitted or conditional use would be the rural service zone.

Z-4 - This topic was considered at a workshop and deals with cumulative impact of guest cottages and density bonuses and sets up a categorization simpler to follow and eliminates the ability to have guest cottages in new PRDs. Allowed in a PRD are attached or detached units so if someone wanted to combine two homes on one site they could do so, but not the density bonus plus the guest cottage. It did not seem that anyone would want to restrict two of the residences in a PRD to less than 1,000 sq. ft. If there is ultimately affordable housing in PRDs, that would also apply but it would still be "or" not "and".

Z-5 Staff request--guest cottages on small lots. There are a lot of very small lots that exist, all eligible for guest cottages under the code. The amendment would set up a sight coverage restriction that would mean if someone had a small lot and already used up 35% of it in building area there could be no guest cottage; if less than 35% used up in building area, a guest cottage would be allowed. If 65% of the lot has already been used up with impervious surface, a guest cottage could not be added to create more impervious surface, but it could be located on an area where impervious surface had already been created [would allow on a 14,500 sq. ft. lot about 5,000 sq. ft. for building area]. This provides more protection for neighbors in the denser RAIDs.

Z-6 Mixed-Use. Carries out changes the Board agreed to in terms of the Plan and makes it clear that mixed use is identified in Rural Centers, Rural Village, Rural Service as a use, and expressly dealt with in the text of the code as well as in the table.

Mr. Dearborn called attention to the fact that inadvertently as drafted, the language in the Rural Village and Rural Service zones could permit stand alone multi-family projects and that was not the intent.

The Board agreed to the following correction: Under A strike the phrase at the bottom of the page on section 130 "or 8 dwelling units per lot or parcel" . On the next page, #9 strike "multi-family; for #8 include the phrase "(with mixed use) with residential not to exceed 8 dwelling units per lot or parcel in a mixed use building". [*intent is 8 dwelling units plus a non-residential use of some type*].

The Board also agreed to a similar change to the Rural Service zone on Section 140: strike the phrase "or 6 dwelling units per lot or parcel"; strike "multi-family housing" and say: "(with mixed use) with residential not to exceed 6 dwelling units per lot or parcel in a mixed use building".

Z-7 Single Family in the RV zone. Mr. Dearborn did not recommend the amendment and still would not recommend it personally, but both the Coalition and Alliance have recommended it. This would allow in Rural Villages single family housing.

Z-8 Property Rights Alliance request allowing single family residential in the airport zone. Mr. Dearborn understands what is envisioned would be single family where there are connections to the runway - an aviation residential park. It was not allowed in the proposal because the Planning Commission shrunk all of the airport zones to essentially the airfield and facilities and there is no adjacent property that can be developed residentially. There may be some modification in the future that may allow that to occur and this would provide for that opportunity and is consistent with airport use. Concern of Mr. Dearborn and staff is to not have encroaching activity that effectively later becomes an argument for not allowing the expansion of the airport, but he thought that was protected adequately by the kind of notice and covenant requirements being required for residential uses adjacent to airports.

Z-9 Communication Towers – from Friday night's workshop the Board, based on request of a variety of parties, will forward the communication tower proposal to the Planning Commission for further work. One of industry's concerns was that towers less than 60' were proposed to be permitted uses which would proliferate but at co-located larger towers would not happen because they would be conditional uses. This change would level the playing field until the new amendment comes forward and essentially makes communication towers conditional uses rather than permitted uses and eliminates the 60' division between permitted and conditional. In the light manufacturing zone and in the

rural center zone had not provided for communication towers and there was no logic for them not to be sited there.

Z-10 Property Rights Alliance – Farm/Forest Stands. Making more flexible the farm produce stands and forest products stands. The Alliance also pointed out that for AG zones that seasonal sale of farm produce had not been a use allowed – Mr. Dearborn had thought it was but it was not clear that seasonal sales could occur so as a technical amendment seasonal sales have been included in the list of permitted uses. These amendments increase the flexibility of the use in a minor way.

Z-11 Use of EDU's is an amendment proposed by the Coalition and makes it clear that EDUs are not combined with density bonuses, it is another "or" not "and". The Coalition has also requested that under E.5, eliminate the minimum parcel size of one acre. In the Phase A document the maximum parcel size had to be one acre with the use of EDUs in order to make sure they are not spreading out and consuming the farm. It was pointed out to Mr. Dearborn that GMA expressly says they can't be smaller than one acre [1997 amendment]. Therefore, the Coalition is asking that the County strike language that reflects State law, and Mr. Dearborn assumed in so doing, the Coalition and none of its members it speaks for will challenge this provision of the EDU process. Mr. Dearborn was assured by John Graham that the Coalition was not doing this to create an appealable issue, that they really feel the County should not artificially force a farmer to have a one acre lot.

As the Chairman pointed out, the cover sheet Z-11 under Proposal indicates "Require that EDU's must be clustered and cannot be combined with Density bonuses", and under Rationale "Clustering is needed to ensure that use of EDU's will not result in low density sprawl". Under Proposal the words "must be clustered and cannot" need to be deleted as under Rationale the first sentence needs to be deleted.

Mr. Dearborn agreed and explained the intent: 2-1/2 acre maximum size and through approval of farm or forest management plan the area or areas will be established where the EDUs can occur and the area that will be permanently protected in trade for the allocation of the EDUs. If on Commercial AG will obtain more EDUs than if in the rural zone developing a PRD. The Coalition has found it is not an acceptable proposal to create an incentive to go into the Commercial AG zone. The concern the Coalition had was not allowing a spreading of 2-1/2 acre lots all over a farm or forest unit and in the Board's discussion the point made was the County may not want to see them clustered in one spot, that there may be several spots on a farm or forest area – clustering them in small lots in one corner of the farm may be a goal but not the rule.

There is no acreage requirement for an EDU; the amount of EDUs depend on the number of acres committed to a conservation easement and the duration of the conservation easement; 75% of the property has to be committed. [see Page 53 of the Zoning Code] With a 20 year commitment the property owner would get ¼ of a development unit for each acre of land committed, and it runs up to ½ a unit per acre if it is a perpetuity commitment. The goal when the approach was worked out between John Graham and the Shermans/Bishops was to create enough density incentive to be in the commercial AG zone that it became almost a better opportunity than PRD.

Additional amendment is necessary to paragraph E that states "Beginning October 1, 1998"; Mr. Dearborn suggested it should read "Beginning on the effective date of this Chapter...".

Z-12 Amendment requested by Richard Wright – Allow smaller parcel owners opt into Commercial Ag. As modified, the amendment would allow Mr. Wright to request a rezone, a Type I decision to shift into the Commercial AG zone. Mr. Dearborn noted this had fairly significant implications for the County because it would now say small farms could have the advantage of Commercial AG where before it had to be 40 acres or larger in size. This would now allow smaller farmers down to 10 acres to come into the Commercial AG zone; it is optional. The second issue is that the Coalition and others wanted the County to expand the opportunities for small commercial farm operations, and this says the parcel has to be primarily devoted to active commercial production, but it will create a real opportunity for small property owners who want to carry on a commercial AG activity because they become potentially eligible for EDU's.

The issue here as the Chair observed was the Coalition and the County said all along farming should be encouraged so why back off from that. Testimony the Board heard was that there truly is small farming in Island County.

Mr. Dearborn would have preferred the size of 20 over 10 acres in terms of that issue, but there seems to be protections to ensure it is not abused and if being consistent with the goal of creating more incentives to be in the Commercial AG zone, there is the need to be consistent throughout. It could be 15 acres which would accommodate Mr. Wright, where 20 would not; 10 was selected because it seemed more consistent with the goal others have argued for.

Z-13 Staff request – CA Rezone Standards. When reviewing the zoning code with Mr. Wright's issue in mind, staff realized that a specific rezone process had not been provided to get out of the Commercial AG zone. This was reviewed with Tom Roehl at the workshop through some questions and answers and incorporated in this recommendation is a portion of the 1984 code. The 1984 Code was more stringent than what is being proposed; this sets the reasonable use standard, and reasonable use is a defined term in the zoning code. The proposal includes a 90 day time frame from the effective date for commercially AG zoned property owners to file a petition if they disagree with the classification. There are only four such property owners: Nelsons, Fakkemas, Bishop/Sherman and the Engles. The Planning Commission asked that they be contacted directly a second time. In effect the only property owner not heard from directly in the process was Engles. Fakkemas never came back in the second round with any further response and the Planning Commission concluded it was because they were too busy farming in the summer. The Planning Commission calculated where the 90 day period would end and because it would be Fall and Winter concluded it would give Fakkema's ample time to come in and request a modification to their designation.

Z-14 Request of the Property Rights Alliance regarding parking and site coverage standards. Mr. Dearborn thought some reasonable modifications were being suggested and from a practical standpoint stated the obvious. The last page, site coverage restrictions, also asks that the minimum open space ratio for churches be reduced and minimum open space ratio for home industry be reduced, both Mr. Dearborn thought were reasonable.

Z-15 Property Rights Alliance request concerning B&B Inn standards so that a smaller B&B would have to have a minimum parcel size of 2-1/2 acres; a full 12-room B&B would require minimum parcel size of 5 acres.

Z-16 EDC proposed amendment there be no front yard setbacks in the Rural Center zone, and when there is no standard for setback, provisions of #4 apply so there always is a way to establish a setback when there no setback required on a case by case basis. The parking restriction has not been modified and says "parking when feasible" would have to be in the rear of the building in the Rural Centers. Staff and Board concern was to try to encourage parking in the rear; EDC was supportive of that goal. This amendment means the building would not have to be built real close to the street is there is some reason not to. The note "to be determined" [TBD] Mr. Dearborn assumes until it is determined by the Board the provisions of #4 would apply.

Board consensus: airport zone -- TBD means as Mr. Dearborn described above.

It was explained by Mr. Dearborn the reason requirements were not established in the airport zone was the same reason height requirements were not in the airport zone – someone needs to look at FAA requirements and decide what is appropriate, if anything.

The Coalition requested conversion of two zones to two different zones and staff is not suggesting that be done at this point in time. He thought those zones adequately cover the activity – the Board can always come back and refine them over time. Clearly for Freeland and Clinton there will be sub-area plans that will replace the rural center zone eventually with land use designations and zoning. For the sub-area itself he expected essentially a separate code for Freeland and Clinton with zoning designations unique to those two areas and the rural center zone eventually disappear in the code. Also talked about, as design guidelines provide, the ability of each area to develop its own unique and more detailed design guidelines.

Z-17 Penalties and Enforcement – incorporated verbatim all of the Property Rights Alliance requests on penalties and enforcement.

At this time Phil Bakke proposed some modifications and provided a handout [6-page, 17.03.260, Penalties and Enforcement, with hand-written notation at the top ""staff comments & suggestions on Property Rights, Chambers, 9/28/98"; this is a copy of the proposal from the Property Rights Alliance with hand-written notes by staff]. Mr. Bakke recalled that one of the things worked on with the Planning Commission during workshops was the problems

associated with inspections – obtaining search warrants in those cases where permission cannot be obtained to enter on private property. He met with the deputy prosecuting attorney to work out the language as presented in the handout. there has been a great deal of concern about whether or not this is something that can be achieved or something that needs to be presented to the legislature to request modification to state rules.

Page 1-A. Penalties and Enforcement –Inspections

In relation to the search warrant, as a member of legislative steering committee for the Association of Counties, Commissioner recalled two years' ago Kitsap County proposed legislation for administrative search warrants focused on public health and safety; that issue failed in the Legislature but passed last year, but is a very narrowly defined statute that says it has to be clearly a public health and safety issue. Commissioner Shelton was very concerned that this County did not have the ability in state law to seek an administrative search warrant for a planning violation.

Mr. Dearborn pointed out that current code provides for the ability to obtain a search warrant, not an inspection warrant – staff can always go and try to obtain a search warrant from a judge based on probable cause.

Page 2 "Last sentence in C-1 Mr. Bakke recommended a re-write as follows instead of using what PRA suggested: Where a violation can be remedied or abated through a permit process specified for the use in question such process shall be provided as a part of the enforcement process" which would allow greater flexibility for staff to work through issues at two separate levels: letter writing process, and as part of an enforcement order process.

The Chairman thought there was always some way to try to remedy a problem before pursuing formal enforcement proceedings; if that fails, then enforcement. Nothing in this section would prohibit the enforcement to include applying for whatever permits are necessary.

Board Consensus: "Where a violation can be remedied or abated through a permit process specified for the use in question. Thirty days shall be allowed to make application for any required permit before an enforcement order may be issued."

Page 3. d) PRA recommends maximum civil penalty be reduced from current from \$5000 to \$1000. However Mr. Bakke feels there needs to be some understanding that historically the Department only assesses the maximum civil penalty in those cases that are severe violations and on multiple counts [i.e. last year the Department collected about \$2000 in civil penalties; this year nothing]. It is a tool that is not being abused by the Department; less than half of the enforcement orders written have used the maximum fine .It has to do with the level of the violation and the number of violations.

Commissioner Shaughnessy observed past practice as Mr. Bakke pointed out and is more of a tool that gives staff leverage needed to achieve compliance and he had no problem leaving the figure at \$5,000.

Commissioner Shelton firmly believed the penalty needs to fit the crime. Sometimes it can be underestimated how people value different dollar amounts; \$1,000 is a lot of money to anyone living in this county .

Commissioners Shelton and McDowell agreed the penalty be set at \$1,000. Commissioner Shaughnessy felt it be \$5,000.

#2 -- Although PRA recommends "shall" instead of may withdraw an order if compliance is achieved, and additional language "or if the applicable permit processes are commenced within 30 days of the posting or service", Mr. Bakke advised that staff recommends retaining "may" . If someone does not respond to initial letter and an enforcement order is issued it has been evident in the past that that it is critical to keep the enforcement order open while that process is going through. He had no objection to retaining "shall' if that sentence ended after the words "10 days of posting" – the problem comes with the shall applying to the remainder of the sentence.

Board Consensus: language to read: "The Planning Director shall withdraw an order if compliance is not achieved within 10 days of posting. The Planning Director may withdraw an order if the applicable permit processes are commenced within 30 days of the posting or service."

Page 5 - F.1 Revocation of Approvals or Permits. PRA recommends deletion of the words "until compliance achieved". Mr. Bakke suggested instead of deleting that, make a change in 2.b) by adding the following sentence: "During the hearing, the Hearing Examiner may continue the hearing to allow additional time for compliance to be achieved before final revocation."

Board Consensus:

F.1 to read: "The Planning Director may revoke or suspend any approval or permit issued under this Chapter, Chapter 16.04A.06, Chapter 16.15 or Chapter 16.17 ICC until compliance is achieved for:"

2.b) Add sentence: "During the hearing, the Hearing Examiner may continue the hearing to allow additional time for compliance to be achieved before final revocation."

Z-18 Effective Date. Agreed – change effective date from October 1, 1998 to December 1, 1998. This allows for the workshops [per schedule handed out 9/28/98] and special pre-application conferences before the effective date; staff feel 12/1/98 is a realistic date and by November 1st, prior to the first workshop on November 4, application forms will be available.

Z-19 Coalition and staff request regarding size Limitations of mobile home parks and group homes in the R zone. There were two areas the Planning Commission recommended modifications those two types of uses, in both cases asked staff to put upper limits; the Coalition has also made that request. Until the new code in the rural zone, if over 10 acres in size could have a density of 1-12 units an acre, with a stringent set of standards that must be complied with. The Coalition asked for an upper size limit of 20 acres. The amendment proposes that request.

The second issue was more of a concern of the Planning Commission. Mr. Dearborn noted there are now provisions through the conditional use process to allow group homes of a variety of sizes as a permitted use and if six or under a group home is treated the same as single family residence- it is a family and meets the same size definition. There is an administrative conditional use for group homes above 6 but under 12 people; and a public hearing or quasi-judicial conditional use for group homes over 12, but no upper limit. Therefore, an upper size limit for group homes is suggested in Category 3 situation of 40 people, generally trying to be consistent with the country inn size requirements; it would not apply in a Rural Center, only in the rural area.

In terms of group homes, Commissioner Shelton commented that the County has to depend on state law as far as requirements are for group homes. Island County has had some experiences with siting of group homes and people react not so much out of the number of people but out of fear in terms of who will be there and the supervision of same. A group home of 40 people is not a small facility.

It was Mr. Dearborn's opinion that the County made adequate provisions under state law for group homes when permitting same at 6 or less as a permitted use--the same size a family would be; also group homes allowed as an administrative conditional use when up to 12 people. The larger group homes are permitted in rural centers of any size.

The Commissioners discussed the possibility of striking provisions altogether for larger group homes up to 40 people. They agreed there is good rationale for not allowing a group home of that size in the rural area and does not need to locate in the rural area and probably has service needs that are greater than normally would be expected in the rural area. However, the same limitations are not needed for day care centers as with group homes.

Board consensus:

On page 57-58 Zoning Code

- Not over 12 persons in the rural area
- #6 delete "and ", replace with "or" to read: "Day Care Center (greater than 12 persons) or Group Homes (7 to 12 persons) in the R Zone". [Day Care Center is a defined term- a center of more than 12 people]; standards are set

in #5 for a small Day Care Center 7-12 people]

- #7 Delete

On page 59 Zoning Code – M. Mobile/Manufactured Home Parks, the 3rd line - on parcels 10 acres or larger, the suggestion is " but no greater than 20 acres in size". Mr. Dearborn stated that in looking at this provision and affordability this provision achieves a density level much greater through a mobile home park than would be allowed in a PRD; it is an attempt to deal with the affordability issue with a lot of side bars created for standards. He recalled that the owner of Misty Meadows in Freeland wanted 1-1/2 units to the acre [at 1 unit to the acre now] and felt she could successfully expand in a limited way. Another modification proposed is the language "processed as a Type III decision pursuant to Ch. 16.19 ICC [minor change in placement of the words to be consistent with the way the phrase is used in other sections].

The Chairman observed, however, that was existing with all the up front costs paid for – he is concerned about the economical viability on 20 acres and 30 units for the person who has to buy the property and put in pavement, stormwater requirements water system and fire flow.

Mr. Dearborn did not whether it is feasible. No testimony was received that it wasn't, and the County offering a density that is substantially greater than normal. To be able to defend this provision a limit to size is necessary.

Board consensus: Agreed with the language change described by Mr. Dearborn, and as part of the affordability issue, to remand back to the Planning Commission to look at size limitation of mobile homes as it might relate to affordable housing.

**ORDINANCE #C-123-98 [PLG-037-98] IN THE MATTER OF ADOPTING ISLAND COUNTY'S
GMA COMPREHENSIVE PLAN AND NEW ZONING CODE**

Mr. Dearborn handed out copies of the proposed Ordinance. The Plan with all its elements is being adopted; the Zoning Code and Zoning Atlas is being adopted; the Urban Growth Areas shown in 17.03 are being adopted and the resolution on interim UGA's adopted in 1993 is being repealed; the designation of commercial AG lands as lands of long term commercial significance under the GMA is being adopted; and the resolution adopted in 1992 relating to resource land designation as it affects forest lands of long term commercial significance and agricultural lands is being repealed [need to inset in the 3^d Whereas paragraph of the Ordinance agricultural lands"]; and last, effective date would be December 1, 1998. Staff will return with Findings and legislative intent consistent with this action on October 19. On December 1, the Interim Ordinance will go out of existence by its terms on the effective date of the new Plan and Zoning Code. If someone has a pending application under the Interim Ordinance and chooses to remain under the Interim Ordinance, the Interim Ordinance would continue in effect, unless applicant opted in to new code.

Commissioner Shelton moved approval of Ordinance #C-123-98, PLG-037-98, in the matter of adopting Island County's GMA Comprehensive Plan and Zoning Code, with the correction to the second page of the ordinance, along with zoning amendments agreed today; cell communication tower amendment to be referred back to the Planning Commission; along with the Comprehensive Plan amendments and RAID amendments made 9/28/98, R-1 through R-15, and C-1 through C-14 as modified and agreed to. Motion, seconded by Commissioner Shaughnessy carried unanimously.

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

IN THE MATTER OF ADOPTING)

ISLAND COUNTY'S GMA) ORDINANCE C-123-98

COMPREHENSIVE PLAN AND) PLG-037-98

NEW ZONING CODE)

)

WHEREAS, Island County has completed public review of its new GMA Comprehensive Plan and Zoning Code in two phases; and

WHEREAS, public review began on March 9, 1998 and ended on September 24, 1998; and

WHEREAS, a Draft EIS, two Supplemental Draft EISs and a Final EIS have been prepared; and

WHEREAS, the Planning Commission recommended on September 8, 1998 adoption of both the GMA Comprehensive Plan and Zoning Code; and

WHEREAS, the Board of Island County Commissioners conducted two public hearings on September 22 and 24, 1998 and public workshops on September 8, 22, 23, 24 and 25 and considered changes in the Planning Commission recommendation on September 28 and 29, 1998; and

WHEREAS, the Board has adopted contemporaneously with this action a new Land Use Review Process (Chapter 16.19 ICC); new Land Division Ordinance (Chapter 16.06 ICC); a new Storm and Surface Water Ordinance (Chapter 11.03 ICC); new Concurrency and Adequacy Ordinances (Chapters 11.04 and 11.05 ICC); a Public Benefit Rating System (Chapter 3.40 ICC); and a Farm and Forest Protection Ordinance (Chapter 16.25 ICC); and

WHEREAS, the Board has adopted contemporaneously with this action amendments to the County's SEPA implementation ordinance (Chapter 16.14.C ICC), and amendments to the County's Site Plan Review (Chapter 16.15 ICC) and PRD (Chapter 16.17 ICC) Ordinances; and

WHEREAS, by separate action the Board has adopted amendments to its Critical Area Regulations for wetlands and a new Fish and Wildlife Habitat Conservation Areas Regulation (Chapter 17.02 ICC); and by contemporaneous action adopted amendments to its geologically hazardous areas regulations (Chapter 11.02 ICC); and

WHEREAS, all of these actions are intended to implement the County's new Comprehensive Plan; serve as development regulations under the Growth Management Act; and in particular, serve as measures to protect rural character; and

WHEREAS, by separate action the Board has accepted for review and approval by the Department of Ecology amendments to the County's Shoreline Master Program;

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the GMA comprehensive Plan attached hereto as Exhibit A to comply with Chapter 36.70A RCW; and

BE IT FURTHER ORDAINED that the Board hereby adopts Chapter 17.03 ICC (Exhibit B) as Island County's official Zoning Code to implement its GMA Comprehensive Plan and the Zoning Atlas (Exhibit C) as the Official Zoning Map of Island County; and

BE IT FURTHER ORDAINED that the Board hereby adopts as final urban growth areas pursuant to RCW 36.70A.110 the areas depicted in Appendix B to Chapter 17.03 ICC and hereby repeals Resolution C-85-93; and

BE IT FURTHER ORDAINED that the Board hereby designates lands classified Commercial Agriculture by Chapter 17.03 ICC as resource lands of long-term commercial significance and hereby repeals Resolution PLG-012-92 as it affects agricultural and forest land of long term commercial significance; and

BE IT FURTHER ORDAINED that the Board intends to adopt Findings and Legislative intent in support of the above actions on October 19, 1998, and that the new Comprehensive Plan and Zoning Code shall take effect on December 1, 1998.

APPROVED AND ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS**

**OF ISLAND COUNTY,
WASHINGTON**

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: *Ellen K. Meyer*, Deputy

Margaret Rosenkranz

Clerk of the Board

***APPROVED AS TO FORM:**

David L. Jamieson, Jr.

Deputy Prosecuting Attorney

& Island County code Reviser

*Per ICC 1.04.050 the Prosecuting Attorney reviews and approves as to form regulations to be codified not comprehensive plans.

[Note: Exhibits have been placed on file with the Clerk of the Board]

**ORDINANCE #C-82-98 [PLG-017-98] IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER
16.13 ICC, HEARING EXAMINER**

The Public Hearing having been held on this matter 28 September 1998, the Board by unanimous motion approved and signed Ordinance #C-82-98, PLG-017-98, adopting amendments to Chapter 16.13 ICC, Hearing Examiner, as amended.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER 16.13 ICC, HEARING EXAMINER)) ORDINANCE C-82-98) PLG-017-98)
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WHEREAS, the 1995 Regulation Reform Act (HB 1724) requires local government to simplify land use permit review processes consistent with state standards governing matters including public notice, public hearings; permit

review time deadlines; and administrative appeals; and

WHEREAS, Island County adopted a Hearing Examiner system in 1985, Chapter 16.13 ICC, that utilizes many of the reforms now required by State law; and

WHEREAS, changes are needed to Chapter 16.13 ICC to implement HB 1724 and carry out the recommendations of the Planning Commission regarding the land use review process, Chapter 16.19 ICC; and

WHEREAS, a SEPA determination on the proposal was published in the Whidbey News Times on June 10, 1998 providing for a fifteen (15) day comment period ending June 25, 1998, and fifteen (15) day appeal period ending July 10, 1998.

NOW, THEREFORE, IT IS HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the proposed amendments to the Hearing Examiner Ordinance, Chapter 16.13 ICC attached hereto as Exhibit A.

BE IT FURTHER ORDAINED that these amendments shall take effect on October 1, 1998 or the effective date of Chapter 17.03 ICC whichever is later.

APPROVED AND ADOPTED this 20th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer, Deputy

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

EXHIBIT A

Chapter 16.13

Hearing Examiner

...

16.13.100 Powers. The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof, and enter decisions as provided for herein.

A. Final decisions (Type II). The decision of the hearing examiner on the following Type II decision appeals shall be final unless such decision is appealed to Superior Court as provided in ICC 16.19.180, or RCW 90.58.180 (Shorelines Hearings Board appeals);

1. Appeals from decisions of the short plat administrator; appeals of Planned Residential Development Decisions for projects of four (4) units or less;

2. Appeals of shoreline substantial development permits, conditional use and variance decisions; appeals of rescissions of such permits;

3. Appeals of administrative decisions based upon recommendations of the Historic Preservation District Advisory Committee;

4. Flood elevation variances and appeals of administrative decisions/interpretations of the Flood Damage Prevention Ordinance;

5. Administrative appeals regarding Zoning Code enforcement; Zoning variances; interpretations of the zoning code; certificates of Zoning Compliance; and Zoning Setback Reduction;

6. All State Environmental Policy Act (SEPA) Threshold Determination appeals;

7. Appeals of enforcement orders issued by the planning director including those orders where the civil penalties for violation are set forth in RCW 90.50.210.0.

8. Revocation of Approvals or Permits issued under Title 16 or 17 ICC;

9. Appeal of Site Plan Review for Conditional Uses classified as a Type II decision under Chapter 17.03 and 16.19 ICC;

10. Appeals of charges pursuant to ICC 15.02.130 and 15.02.075.(B)(4) regarding the Storm and Surface Water Utility, Marshall Drainage Basin.

11. Appeals of decisions of the Public Works Director under Chapters 11.02, 11.03 and 11.04 ICC.

B. Appealable decisions (Type III). The decision of the Examiner on the following matters shall be final unless such decision is appealed as provided in ICC 16.19.170, WAC 173-17-060 (Shoreline Civil Penalties), or Chapter 16.21 ICC (Shoreline Administration); or is appealed in accordance with RCW 90.58.180 (Shorelines Hearings Board appeals).

1. Shoreline substantial development permit, conditional use, and variance permits when the underlying permit requires a hearing; rescission of such permits;

2. Preliminary plat applications;

3. Critical Area alterations as provided in Chapter 17.02 ICC;

4. Site Plan Review for Conditional Uses classified as Type III decisions in Chapter 17.03 and 16.19 ICC;

5. Planned Residential Development applications for five (5) or more units;

1. Civil penalties associated with shoreline cease and desist orders;

2. Commercial Agriculture Zoning verifications;

3. Rezones classified Type III decisions by Chapter 17.03 and 16.19 ICC.

16.13.110 Limited Jurisdiction. The examiner shall have no jurisdiction over:

- A. Any proposal that requires a legislative action, (Type IV decision) such as, but not limited to, an area-wide rezone, a Comprehensive Plan map change, or a Shoreline Management Master Program amendment;
- B. The placement of property in deferred tax classification programs such as open agriculture, classified forest, or designated forest;
- C. Final plat approval;
- D. The placement of liens; or
- E. Type I decisions.

Such proposals shall be solely within the jurisdiction of the board, upon recommendation from the Planning Commission; **except** that **Type I Decisions** or the placement of liens shall not require action by the Planning Commission.

16.13.120 Administrative Review. The examiner shall administratively review claim for liens.

- A. The Examiner shall receive and examine available information regarding the imposition of a lien pursuant to Chapter 17.03 ICC and make a determination as to whether or not the Department followed all procedures required to request a lien. The Examiner shall provide the Department and the Board of Island County Commissioners with a written determination.

125. Examiner's Quarterly Report

130. Repealer

140. Effective Date

16.13.150 Transition

Note: Exhibits placed on file with the Clerk of the Board)

TITLE 16 ORDINANCES APPROVED SEPTEMBER 28, 1998 - SIGNED

With approval and signature of Ordinance #C123-98, the Board by unanimous motion, moved the signing of the following Ordinances which were approved by motion on September 28, 1998:

Ordinance #C-81-98 [PLG-016-98] Amendments to Chapter 16.14C ICC, SEPA

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER 16.14C ICC, SEPA)) ORDINANCE C-81-98) PLG-016-98)
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WHEREAS, the 1995 Regulation Reform Act (HB 1724) requires local government to simplify land use permit review processes consistent with state standards governing matters including public notice, public hearings; permit review time deadlines; and administrative appeals; and

WHEREAS, Island County adopted a permit review process in 1985 that utilizes many of the reforms now required by State law; and

WHEREAS, changes are needed to the County's procedures adopted to implement the State Environmental Policy Act (SEPA) to implement Chapter 16.14C to carry out the requirements of HB 1724; and

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 the Planning Commission recommended adoption of amendments to Chapter 16.14C on April 17, 1998; and

WHEREAS, a SEPA determination on the Planning Commission recommendation was published in the Whidbey News Times on June 10, 1998 providing for a fifteen (15) day comment period ending June 25, 1998, and fifteen (15) day appeal period ending July 10, 1998.

NOW, THEREFORE, IT IS HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the proposed SEPA amendments to Chapter 16.14C ICC attached hereto as Exhibit A.

Reviewed this 22nd day of June, 1998 and set for public hearing at 1:30 p.m. on the 13th day of July, 1998. Continued to July 20, 1998 and to September 28, 1998 for final adoption.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

[absent - Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: By Ellen K. Meyer, Acting Clerk

Margaret Rosenkranz

Clerk of the Board BICC 98-339

APPROVED AND ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

(Note: Exhibits placed on file with the Clerk of the Board)

Ordinance #C-85-98 [PLG-020-98] Adopting New Ordinance, Chapter 16.06 ICC, Governing Land Division In Island County

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

IN THE MATTER OF ADOPTING A NEW ORDINANCE, CHAPTER 16.06 ICC, GOVERNING LAND DIVISION IN ISLAND COUNTY))) ORDINANCE C-85-98)) PLG-020-98)
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WHEREAS, over the last thirteen years Island County approved each year, on average, 10 short subdivisions (creating 80 lots) and 4 subdivisions (creating 73 lots); and

WHEREAS, though lots platted during this time period represent less than 5% of all the lots in the county, it is important that new lots created through the land division process meet effective standards to protect the public health, safety and welfare of Island County residents; and

WHEREAS, Island County commenced public review on March 9, 1998, of a new ordinance to govern land division, which would consolidate Chapter 16.04A and the land division provisions of Chapter 16.15 and 16.17; and

WHEREAS, Island County intends to adopt the new land division ordinance as a development regulation under Chapter 36.70A RCW, the Growth Management Act and Chapter 58.17 RCW, the Subdivision Act, as a measure to protect rural character and implement the Rural Element of Island County's GMA Comprehensive Plan.

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 and a hearing on July 7, 1998, the Planning Commission has recommended new Chapter 16.06 ICC; and

WHEREAS, a SEPA determination on the preferred action was published in the Whidbey News Times on June 17, 1998 providing for a fifteen (15) day comment period ending July 2, 1998, and fifteen (15) day appeal period ending July 17, 1998.

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the proposed Land Division Ordinance (new Chapter 16.06) attached hereto as Exhibit A to govern the division of land in Island County.

BE IT FURTHER ORDAINED that the Board of Island County Commissioners hereby repeals Chapter 16.04A ICC

as of the effective date of new Chapter 16.06 ICC.

Reviewed this 22nd day of June, 1998 and set for public hearing at 3:00 p.m. on the 27th day of July, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

[absent-Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: by Ellen Meyer, Acting Clerk

Margaret Rosenkranz

Clerk of the Board

BICC 98-343

Continued from July 27 to August 10 and September 14, 1998.

APPROVED AND ADOPTED this 29th day of Sept., 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer, Deputy

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

(Note: Exhibit placed on file with the Clerk of the Board)

Ordinance #C-86-98 [PLG-021-98] Amendments to Chapter 16.15 ICC, Site Plan Review

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

IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER 16.15 ICC, SITE PLAN REVIEW)) ORDINANCE C-86-98) PLG-021-98)
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WHEREAS, Island County has used a site plan review process, codified as Chapter 16.15 ICC, since 1985 to govern nonresidential development in Island County; and

WHEREAS, over the last thirteen years Island county approved each year on average 51 site plans through the site plan review process; and

WHEREAS, Island County has completed a study of projects approved over this time period and determined that revisions are needed to ensure that effective standards are used to control rural development and assure visual compatibility of rural development; and

WHEREAS, Island County intends to adopt amendments to the site plan review process (Chapter 16.15 ICC) as a development regulation under Chapter 36.70A RCW, the Growth Management Act, as a measure to protect rural character and implement the Rural Element of Island County's GMA Comprehensive Plan; and

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 and a hearing on July 7, 1998, the Planning Commission has recommended specific amendments to Chapter 16.15 ICC; and

WHEREAS, a SEPA determination on the preferred action was published in the Whidbey News Times on June 17, 1998 providing for a fifteen (15) day comment period ending July 2, 1998, and fifteen (15) day appeal period ending July 17, 1998.

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the proposed Site Plan Review amendments (Chapter 16.15) attached hereto as Exhibit A to govern nonresidential development in Island County.

Reviewed this 22nd day of June 1998 and set for public hearing at 3:00 p.m. on the 27th day of July, 1998. (continued to September 28, 1998 for final adoption.).

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

[absent-Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

By Ellen Meyer, Acting Clerk

Margaret Rosenkranz

Clerk of the Board

APPROVED AND ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer, Deputy

For: Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

(Note: Exhibits placed on file with the Clerk of the Board)

Ordinance #C-83-98 [PLG-018-98] ADOPTING New Chapter 16.19 ICC, Land Use Review

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

<p>IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER 16.19 ICC, LAND USE REVIEW</p>	<p>)) ORDINANCE C-83-98) PLG-018-98)</p>
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WHEREAS, the 1995 Regulation Reform Act (HB 1724) requires local government to simplify land use permit review processes consistent with state standards governing matters including public notice, public hearings; permit review time deadlines; and administrative appeals; and

WHEREAS, Island County adopted a permit review process in 1985, Chapter 16.19 ICC, that utilizes many of the reforms now required by State law; and

WHEREAS, changes are needed to Chapter 16.19 ICC to implement HB 1724; and

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 the Planning Commission recommended adoption of amendments to Chapter 16.19 ICC on April 17, 1998; and

WHEREAS, a SEPA determination on the preferred action was published in the Whidbey News Times on June 10, 1998 providing for a fifteen (15) day comment period ending June 25, 1998, and fifteen (15) day appeal period ending July 10, 1998.

NOW, THEREFORE, IT IS HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the proposed land use review process amendments to Chapter 16.19 ICC attached hereto as Exhibit A.

Reviewed this 22nd day of June, 1998 and set for public hearing at 1:30 p.m. on the 13th day of July 1998. Continued to July 20, 1998, and to September 28, 1998 for final adoption.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

[absent-Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: By Ellen Meyer, Acting Clerk

Margaret Rosenkranz

Clerk of the Board BICC 98-341

APPROVED AND ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer, Deputy

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

(Note: Exhibit placed on file with the Clerk of the Board)

Ordinance #C-87-98 [PLG-022-98] Amendments to Chapter 16.17 ICC, Planned Residential Development

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

IN THE MATTER OF ADOPTING AMENDMENTS TO CHAPTER 16.17 ICC, PLANNED RESIDENTIAL DEVELOPMENT)) ORDINANCE C-87-98) PLG-022-98)
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WHEREAS, Island County has used a planned residential development process, codified as Chapter 16.17 ICC, since 1985 for clustered residential development in rural Island County; and

WHEREAS, over the last thirteen years Island County approved each year on average 3 PRDs through the planned residential development process; and

WHEREAS, Island County has completed a study of projects approved over this time period and determined that revisions are needed to ensure that effective standards are used to control rural development and assure visual compatibility of rural development; and

WHEREAS, Island County intends to adopt amendments to the planned residential development process (Chapter 16.17 ICC) as a development regulation under Chapter 36.70A RCW, the Growth Management Act, as a measure to protect rural character and implement the Rural Element of Island County's GMA Comprehensive Plan; and

WHEREAS, after completing four public hearings on March 16, 18, 24 and 26 and a hearing on July 7, 1998, the Planning Commission has recommended specific amendments to Chapter 16.17 ICC; and

WHEREAS, a SEPA determination on the preferred action was published in the Whidbey News Times on June 17, 1998 providing for a fifteen (15) day comment period ending July 2, 1998, and fifteen (15) day appeal period ending July 17, 1998.

NOW, THEREFORE, BE IT HEREBY ORDAINED, that the Board of Island County Commissioners hereby adopts the proposed Planned Residential Development amendments (Chapter 16.17) attached hereto as Exhibit A to govern clustered residential development in rural Island County.

Reviewed this 22nd day of June, 1998 and set for public hearing at 3:00 p.m. on the 27th day of July 1998, continued to 8-17-98, 8-24-98 and final action continued to 9-28-98 @ 2:45 p.m.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

[absent-Wm. L. McDowell, Chairman]

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: By Ellen Meyer, Acting Clerk

Margaret Rosenkranz

Clerk of the Board BICC 98-345

APPROVED AND ADOPTED this 29th day of September, 1998.

**BOARD OF COUNTY
COMMISSIONERS OF**

ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST: Ellen K. Meyer, Deputy

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

(Note: Exhibits placed on file with the Clerk of the Board)

SHORELINE MASTER PROGRAM: Policy Element; Shoreline Administration, ICC 16.21; and Shoreline Use Regulation, ICC 17.05

Hand-outs: Letter 9/23/98 from Swinomish Tribal Community

Packet of Proposed Shoreline Amendments [S-1 through S-19]

Proposed action: adoption of Resolution #C-124-98 [PLG-038-98] in the matter of adopting amendments to Island County's Shoreline Master Program. Provisions would not go into effect until after the Department of Ecology's approval. Under statute, DOE has authority to conduct their own hearing if desired, and then make final recommendations to the County for modifications. DOE's jurisdiction extends only to the amendments proposed; it is the amendments that DOE and Island County can agree to that become modifications to the Master Program.

Nineteen amendments were presented, prepared as a result of workshops, Planning Commission hearings and Board workshops. Also, Mr. Dearborn advised that one set of amendments was prepared by Jeff Tate after Friday's workshop in response to a letter from the Swinomish Tribal Community [letter dated September 23, 1998 placed in the record].

San Juan County chose to not have any of its comprehensive plan or development regulations under GMA go into effect until their Master Program was approved. Mr. Dearborn had not recommended that for Island County since the

Master Program in terms of use activity covers a much smaller geographic area than it does in San Juan. Once the Board has finally approved the Mater Program and been through the DOE process, it is under GMA an element of the Comprehensive Plan and Development Regulations implementing the Comprehensive Plan and is thus appealable to the growth hearings board.

Jeff Tate presented proposed amendments.

S-1 Addition to Page 31, Line 4, Aquaculture, #20, add sentence: "Visual impacts will be considered in the review process".

Board Consensus: agreed with proposed changes

S-2 Modify description of proposal and rationale of the amendment sheet change improvement to "structure"

Page 38-line #1 change developments to "structures"

Page 38 #7 – add "or is necessary for the protection of existing structures"

Page 54 – add definition for structure (same as provided in 17.03)

Board Consensus: agreed with proposed changes.

S-3 Page 38, Q. Piers. Line #22 add to the phrase "except for those residential communities designed for private docks (i.e. Mariner's Cove, Lagoon Point, Sandy Hook)".

Board Consensus: agreed with the proposed addition, and to provide further clarification, add o the language in parenthesis to insert the word including to read "(i.e. including Mariner's Cove, Lagoon Point, Sandy Hook)".

S-4 Makes the definition of Accessory Structure consistent with 17.03.040

Board Consensus: approved

S-5 Definition of Clearing, for consistency with 11.02: Clearing means the cutting and removal of vegetation by mechanical or chemical methods.

Board Consensus: Add to the amendment page under Issue "(from 11.02)", and that definition is to read: "Clearing means the cutting and removal of vegetation by mechanical or chemical methods".

S-6 Shoreline Use Classification Table. When looking at the chart (first page) under boating and related facilities there are a number of uses that were permitted and had been proposed as conditional. The same is true in the shoreline modification activity action on the following page. Request for amendment is to have those remain as permitted [no change from current SMP]. There are, however, some minor changes under accessory dwelling where it used to be omitted altogether it is now a permitted use, conditional use.

Board consensus: concurred

S-7 Page 69, item #15. Modification to the general use requirements, change to read: All use requirements, regulations and standards prescribed in this SMP shall apply to all structures and uses which exist as of the effective date of the SMP. At this time, however, Mr. Tate recommended the following modification:

"All use requirements, regulations and standards prescribed in the SMP shall apply to all structures and uses which exist as of the effective date of the Master Program".

Mr. Dearborn explained that this covers those created or constructed after the effective date. The concern had been that

the way the language had been drafted looked like illegally established lots would not have to comply with the SMP which is not the intent.

Board Consensus: agreed with Mr. Tate's proposed language.

S-8 Standards for locating docks and piers. Page 77, section 4 at the top of the page, has the following recommended changes:

Title: add the phrase "With the exception of those residential areas designed for private dock facilities" (then continue with existing language).

- a. change proven to shown
- b. delete
- c. strike "and documented"
- d. strike "in a manner prescribed by" and change it to read" "to the Administrator"

Mr. Tate thought the language could be improved upon in section a by replacing adequate or feasible with "available". Mr. Dearborn suggested all three words be used [i.e. it could be adequate and feasible but may not be available].

Mr. Tate suggested "c" as it reads now [which will be the new b]: "the possibility of a multiple-owner or multiple-user facility has been thoroughly investigated and documented, read instead: "adjacent lot owners have indicated in writing that they do not wish to share their dock ".

With regard to Item #7, Mr. Dearborn pointed out it is an existing policy that would seem now to defeat at least in part the idea of multiple owners going in on one dock.

Board consensus: agreed with the proposed amendment, modified as follows

- a. using adequate or feasible or available
- b. "adjacent lot owners either do not wish to share the dock or have not responded to the request".

#7 – delete in that the whole issue is the fact that the County tries to encourage multiple users for docks.

S-9 Page 83, Item #6 – provide for motorized access for those who are physically challenged. This addresses vehicular use on shorelines, specifically tidelands and beaches. The proposed amendment was to add language "for those individuals who are physically challenged", and to that, Mr. Tate suggested at the end of #6 to add the following: "for any approved exempt or non-exempt construction activities".

Board consensus: #6 to read: "All terrain vehicles for off road use should be prohibited on tidelands and beaches EXCEPT when necessary to launch or retrieve boats or for those individuals who are physically challenged."

S-10 Page 84 - Setback Requirements. Mr. Tate explained the amendment here is to move Sections 8 and 9 into the zoning ordinance where the setback requirements are located in 17.03.

Board Consensus: Agreed with the amendment, and provided assurance to staff with regard to moving Sections 8 and 9 to the Zoning Ordinance 17.03 Setback Requirements, that this language can be edited to be relevant and that all the words here to not have to be verbatim. Staff will come back October 19th with the language for this.

S-11 Page 86, item #16 at the top, remove.

Mr. Dearborn clarified that while this is removed here, the Board effectively is agreeing with the Coalition's request on vegetation retention within 10' of the bluff.

Board Consensus: concurred with the amendment as proposed.

S-12 Page 91 - Shore defense work section.

Proposed amendment:

- a. change to read: "Erosion from waves or currents is imminently threatening a legally established residence or existing accessory structures located less than 100' from the OHWM, and " [the change is 100' from 50']. Further change was suggested by Mr. Tate to strike "or existing accessory" and replace with "or legally established".

(d) change "abutting" to "adjacent"

As far as the change in (a), Mr. Dearborn pointed out, the problem with the word existing is that it has different meanings in different places. Often times it refers to legally established existing structures; other times it is not. The WAC uses the term "existing structure" and Mr. Dearborn's concern with using that is if read literally it might suggest given the way "existing" has been treated elsewhere in the code that it was only those structures existing when the regulation was adopted.

Board consensus: Concurrence with proposed amendment, with (a) to read: "Erosion from waves or currents is imminently threatening a legally established residence or existing or legally established structures located less than 100' from the OHWM, and ". Noted with changes, #9 (d) first portion, "On lots where the adjacent lot on either side has a legally established bulkhead, a bulkhead may be permitted;".

S-13 Change to 9 (b) "less" should be corrected to read "more"

Board consensus: agreed to the change.

S-14 Correct the amendment sheet under Proposal Description to reflect "Refer to Page 78 for design standards per San Juan County as agreed in workshop" [#14, items a through e].

Board consensus: agreed

S-15 Public Access Element. Amendment requested by the Coalition, and their language has been included on the first sheet – modify language to remove inference that Residential development should be a form of public access. Delete "as a source of" to "and " so it reads: "Residential Development and Access to the Shores and Tidelands" and deleting the first sentence [workshop Friday]

John Graham recalled exactly the opposite – that the Commissioners in fact did not accept the language beginning line 16, but did accept the remainder of the suggestions:

" for the people living there. With residential construction consuming more and more shoreline, however, few options are left open to the general public for access to shorelines. Many of these access roads are One option is to more widely disseminate maps showing road endings dedicated to the County citizens for the public's use and maintenance. It would also be advantageous if Island County and the".

But Mr. Tate only recalled that had been only the first two sentences under the heading page 6 beginning line 16 that the change to the title and the deletion of the first sentence were agreed to.

Mr. Dearborn thought the sentence below also was agreed to, but did agree there had been debate on the map dissemination and recalled that Mr. Shaughnessy had not agreed.

Commissioner Shaughnessy confirmed as far as the maps he never did agree to that; what he said was go ahead with Whidbey Island if that was what the Board wanted. His concern and the reason of disagreement relating to Camano Island was because all that is being accessed to the shorelines is a road end, a 30' strip and on each side is private

property in many cases. And what is assumed with this language is everything is open to the public when it is not.

The point brought out by Commissioner Shelton was that the maps do not need to be developed since they are already developed and have already gone through one dissemination, and he noted the suggestion is " maps of road ends with limitations noted is an option".

Mike Morton provided a copy of the 1993 brochure prepared by WSU. There e were private property owners represented on the committee and liked the concept of having those limitations listed.

Commissioner Shaughnessy agreed, but with the caveat it not expand past the publication of May of 1993.

Mr. Graham commented from his seat in the audience that 95% of the people do not own shoreline; it is at most 1/10th of 1% of the people that own property abutting a 30' roadway.

Board Consensus: One option is to more widely disseminate maps approved by the Board of County Commissioners showing county road ends along with any restrictions that need to be recognized in order to respect private property rights.

S-16 Pages 83 – 85. Residential Development and establishing the setback at the top of bluffs greater than 10' in height, a Coalition recommended amendment. Language is recommended at line #20: Natural vegetation between the OHWM and the top of banks or bluffs ten feet or higher shall be retained, except for limited removal necessary for view enhancement, removal of hazardous, diseased or damaged trees and to allow for pedestrian waterfront access.

Board Consensus: " Natural vegetation between the OHWM and the top of banks and bluffs ten feet or higher shall be retained, except for removal necessary for view enhancement, removal of hazardous, diseased or damaged trees and to allow for pedestrian waterfront access. Removal of invasive non-native species is authorized."

S-17 Page 22 Aquatic Conservation. Recommendation is not to delete Item #3, which reads:

Should the protected species flourish so that it no longer meets the criteria for a highly sensitive species and is removed from the protected species list, the Aquatic Conservation designation should be reconsidered.

Board Consensus: agree

S-18 Definition of an affected Tribe. As a result of Friday's Workshop, Mr. Tate was asked to speak with Mr. Jamieson to see what could be done with some of the proposed amendments. All the proposed amendments discussed that had been requested by Commissioner McDowell were determined not to violate the MOU with the State or any Agreements with the Tribes. The change proposed is for purposes of clarification that the Tribe has to be recognized by the Federal Government and subject to established treaty rights.

Board Consensus: agreed with amendment.

S-19 Proposed amendment deals with the County's understanding with the State – County's obligations in terms of permitting and land use activities related to Section 7 of the Historical/Cultural Element, archaeological requirements.

On page 11, Section 5, line #15, the recommendation is to delete the Trust Board of Ebey's Landing National Historical Reserve and the Island county Historical Society – as these issues were talked about with Dave Jamieson and would not violate the MOU or any agreements.

Item #6 at line 18 – represents some modifications as to what the process is when the Tribe is consulted and how the Tribe's recommendation plays into the permitting process.

Commissioner Shaughnessy suggested that language perhaps mention it is an identified archaeological site.

Mr. Tate explained the way staff handled permitting in the past: maps show sites, staff use the map when an

application comes in to see if the site is listed – that would be when the requirement would come in. During the permitting process for any shoreline permit that included disturbance to earth, if someone comes across one of those sites, applicant would be required to cease activity and notify the County. "Identified" might clarify things.

Commissioner Shaughnessy was interested on line 19 "...and report to the County" if that should also include the Tribe.

Mr. Tate noted that once staff is notified, staff has tried to at least help the applicant give the notification to the Tribe.

Emil King commented to provide clarification for the Board that the original Land Use Element of the Comprehensive Plan has policies for significant areas. The Tribes and the State Office commented on those policies and what is proposed here [in bold] was requested on behalf of the Tribe and the State Office to be included in the County's Plan and policies of the SMP – this is Dave Jamieson's revision of the Tribe and State Office of Archeological sites – his review of this to make it consistent with the MOU.

Mr. Tate read from the Swinomish Tribal Community letter dated September 23, 1998, suggesting amendment to the language – the last use requirement, page 3:

"No permit for an application requiring an archaeologist's report will be issued prior to the receipt by the County of the required archaeological report and any comments submitted to the County by Indian Tribes....." and "Based on the information contained in the written report of the qualified professional archaeologist, including the recommendations of any affected Indian Tribe...".

Commissioner Shelton observed that the problem came when a person hires an archaeologist who comes in and does the site assessment and indicates the applicant can go forward with project assuming certain things are done [spelled out]; if the applicant cannot start until the Tribe has an opportunity to look at that and the Tribe wants to add to that, why would the applicant hire the architect in the first place. The architect is the expert and it would seem that once the architect has gone through the process, it should be sent to the Tribe but the applicant at that point should be able to move forward.

As the Chairman pointed out, it is the County that issues the permit and conditions the permit, based on information the County has. He did not know how long would be an appropriate amount of time to wait to hear from the Tribes after notification.

Mr. Dearborn verified that #7 covered Commissioner Shelton's concerns. In practice, an applicant would not hire an architect that did not have a good relationship with the Tribe whose jurisdiction the project is in, and the architect would do consultation back and forth during the whole development of the report and often times the Tribes do know more than the architect does about potential artifacts. There are archeologists who specialize in areas with certain Tribes.

The part the Chairman had concern about was the circumstance where a report was sent to a Tribe and the Tribe never responded. On lines 22 and 23 on page 11 the last sentence beginning "The affected Tribe's comments, he suggested be stated such as: "Comments received from the affected Tribe on any findings and recommendations. Concern is that sometimes you will not receive the formal Tribe's comments until after they receive the report – what you want is to get a report, send it to the Tribe, give the Tribe a reasonable amount of time to give their comments to you and consider those comments and the recommendations of the arch. when issuing the permit.

Commissioner Shaughnessy believed the County should be able to issue the permit based on the recommendation of the architect.

Mr. Dearborn pointed out the way #6 was originally worded required consultation; the language suggested to be stuck on lines 19 and 20 indicates "such report shall include consultation with the affected Indian Tribe on proposed measures to avoid.....and the report shall describe what they did in consultation and include any recommendations the Tribe may have in the report".

The Board generally agreed:

On 6 and 7, with the exception of Trust Board for Ebey's Landing and the Island County Historical Society, retain crossed out language. For #5, also take out Trust Board for Ebey's Landing and the Island County Historical Society; the same for #7, but in #7 leave in the language "and any comments submitted to the County by the Tribes". Line 21 need to insert "be" so it reads: "The report shall be forwarded..."

The Swinomish Tribal Community letter does raise a pertinent concern which is, while this language is included in the general development policies, the County needs to structure parallel language in the shoreline use regulations, 17.05 to match what is in policy. As it stands now, the County has effectively put into policy, the regulatory language and it could be taken out of the policies and put in 17.05, and include a statement in policies that Island County will have regulations for consultation and review of applications with affected Tribes. Acknowledge that the Tribe's point is appropriate – to have a policy there needs to be a regulation that carries out that policy.

Board Consensus: Leave as is right now, with Board direction to Jeff to develop a modification to consider later, taking the portions out of policy portion of the SMP and putting them into regulation 17.05.

BOARD ACTION:

Commissioner Shelton moved adoption of Resolution #C-124-98, PLG-038-98, in the matter of adopting amendments to the Island County Shoreline Master Program as discussed and modified this date by Amendments S-1 through S-19, with direction to Jeff Tate to come back at a later time with 17.05 proposed changes. Motion, seconded by Commissioner Shaughnessy, carried unanimously.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF ADOPTING) RESOLUTION C-124-98

AMENDMENTS TO ISLAND COUNTY'S) PLG-038-98

SHORELINE MASTER PROGRAM)

_____)

WHEREAS, Island County has completed public review of amendments to its Shoreline Master Program, specifically, Shoreline Policies, Shoreline Use Regulations and Shoreline Administration; and

WHEREAS, Island County has completed environmental review under SEPA on these amend-ments; and

WHEREAS, Island County intends to enact these amendments after review and approval by the Department of Ecology.

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Board of Island County Commis-sioners hereby adopts the Shoreline Master Program amendments attached hereto as Exhibit A and will enact by ordnance these amendments after they have been approved by the Department of Ecology; and

BE IT FURTHER RESOLVED, that the County's existing Shoreline Master Program shall remain in full force and effect until amended by ordinance.

APPROVED AND ADOPTED this 29th day of Sept., 1998.

BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

Wm. L. McDowell, Chairman

Tom Shaughnessy, Member

Mike Shelton, Member

ATTEST:

Ellen K. Meyer, Deputy

Margaret Rosenkranz

Clerk of the Board (*Note: Exhibits to #C-124-98 are on file with the Clerk of the Board*)

GMA FOLLOW-ON STEPS OUTLINED:

- 1) Mr. Dearborn will draft a letter for the Chairman's signature to the Governor advising that Island County adopted the Comprehensive Plan and Development Regulations September 28 and 29, 1998 in response to the Governor's letter 8/24/98
- 2) Send CWPPs to the three mayors. Prudent for Commissioner Shelton to meet with the Mayor of Langley in work session soon.
- 3) Will file motion with the Growth Board asking them to remove the order of non-compliance
- 4) Letter to the Planning Commission asking them to look at communication towers and affordable housing, including the size mobile home parks as another means of affordable housing.
- 5) On sub-area planning, the Board needs to establish the charge for sub-area planning committee and create the committee. The committee will report their recommendations to the Planning Commission for adoption.

Note: September 30, 1998 - Budget Workshop [canceled – to be rescheduled]

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 3:30 p.m., to meet next in Regular Session on October 5, 1998 beginning 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