

**ISLAND COUNTY COMMISSIONERS – MINUTES OF MEETING**

**REGULAR SESSION - JULY 12, 1999**

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on July 12, 1999, at 9:30 a.m., in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Mike Shelton, Chairman, Wm. L. McDowell, Member, and Wm. F. Thorn, Member, present. Minutes from the meetings of June 14 and 21, 1999 were signed, based on unanimous motion by the Board.

**VOUCHERS AND PAYMENT OF BILLS**

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) # 53657-53948.....\$ 523,284.76.**

**Veterans Assistance Claim:** V99-8 approved \$939.40, with balance of the claim denied.

**Employee Service Awards**

**Joan Davis** Health Department 5 Years

**EMPLOYEE OF THE MONTH – JUNE, 1999**

***Ben Larcena, Public Works***

**HEARING HELD: Ordinance #C-72-99 Authorizing PublicatIon AND DISTRIBUTION of Local Voters’ Pamphlet, add new chapter to ICC**

A Public Hearing was held at 9:55 a.m., as scheduled and advertised, for the purpose of considering Ordinance #C-72-99 authorizing the publication of a local voters’ pamphlet and adding new Chapter 1.38 to the Island County Code.

Suzanne Sinclair, Island County Auditor, as provided under provisions of RCW 29.81A, solicited the Board’s support to adopt Ordinance #C-72-99, permitting the publication of a local voter’s pamphlet, with her intention to publish the pamphlet for this November’s General Election. She reported that numerous voters requested such pamphlets, both poll voters and absentee voters. Voters view this type pamphlet as a neutral source of information and have indicated they would read and use a local pamphlet. The publication serves as a reminder to voters about an approaching election, and also serves the candidates since it provides an opportunity for a candidate to speak directly to the voter without editing or additional campaign cost. Those municipal entities she spoke to about the publication, without exception, were unanimously supportive of publication of a local voters’ pamphlet. Publication is considered an election cost and as such the costs would be portioned out to participating entities based on a State formula. As an example of cost, Ms. Sinclair noted for a water district the cost would only be in the \$5.00 to \$12.00 range. An entity can choose not to participate, and if so, the ballot issue would be noted in the publication but present no pro or con discussion arguments.

At the time of hearing, no members of the public spoke either for or against Ordinance #C-72-99 when the Chairman called for public comments.

By unanimous motion, the Board adopted Ordinance #C-72-99 authorizing publication and distribution of a local voters’ pamphlet and adding new Chapter 1.38 to Island County Code.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

<p>ORDINANCE AUTHORIZING PUBLICATION AND DISTRIBUTION OF A LOCAL VOTERS’</p>	<p>))))</p>	<p>RESOLUTION NO. C-72-99</p>
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PAMPHLET AND ADDING NEW CHAPTER

1.38 TO THE ISLAND COUNTY CODE

**WHEREAS**, state law contained in chapter 29.81A RCW allows a Board of County Commissioners to adopt an ordinance authorizing publication and distribution of a local voters' pamphlet; and

**WHEREAS**, the Island County Auditor has recommended that an ordinance be adopted authorizing the Auditor to publish and distribute a local voters' pamphlet; and

**WHEREAS**, it is in the public's benefit and welfare to publish and distribute a local voters' pamphlet to better inform the voters of the qualifications of candidates and the arguments for and against ballot measures; and

**WHEREAS**, each participating local taxing district with material in the local voters' pamphlet will pay the costs or pro-rate share of the costs of the pamphlet; and

**WHEREAS**, in consultation with local taxing districts, administrative rules will be adopted and published by the Island County Auditor pursuant to RCW 29.81A.030; **NOW THEREFORE**,

**BE IT HEREBY ORDAINED** that new chapter 1.38 – Local Voters' Pamphlet, as shown in attached Exhibit "A", is hereby adopted and added to the Island County Code.

Reviewed this 21<sup>st</sup> day of June, 1999 and set for public hearing on the 12<sup>th</sup> day of July, 1999 at 9:55 a.m. in the Commissioners' Hearing Room.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST**: Margaret Rosenkranz, Clerk of the Board

BICC 99-357

Ordinance C-72-99 is adopted this 12<sup>th</sup> day of July, 1999 following public hearing.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST**: Margaret Rosenkranz, Clerk of the Board

**APPROVED AS TO FORM:**

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

**COMMITTEE Appointments NAMED**

The Board, by unanimous motion, made the following reappointment and appointments to Northwest PIC, Sno-Isle Regional Library Board, and the Housing Authority of Island County:

◦ **Northwest Private Industry Council**

Ray Cresap, Camano Island, reappointed, representing "Private Sector" for a term to

7-7-2001

◦ **Sno-Isle Regional Library Board**

Concurrence with Snohomish County Council appointment Arthur Kirschenbaum filling vacancy created by resignation of Karla McConnell, term expires: 1-1-2006

◦ **Housing Authority of Island County**

Lisa M. Harrison, Oak Harbor, to position "Resident Commissioner" Term: 12-6-2000

**APPOINT COMMISSIONERS TO DRAINAGE DISTRICT NO. 6**

Suzanne Sinclair, Island County Auditor, in recent correspondence, called to the Board's attention that apparently the terms of the three Drainage District No. 6 Commissioners [Crockett Lake area, Central Whidbey] were either in question or had expired, resulting in there being a legally formed District, but without commissioners to conduct business. The Auditor recommends the Board appoint two commissioners, Mr. Huber and Mr. Moore, who would then need to stand for election at the next special district general election on the first Tuesday after the first Monday in February [February 8, 2000].

R.C.W. 85.38.070 (5) provides:

"Whenever a vacancy occurs in the governing body of a special district, the legislative authority of the County within which the special district, or the largest portion of the special district, is located, shall appoint a district voter to serve until a person is elected, at the next special district general election occurring sixty or more days after the vacancy has occurred, to serve the remainder of the unexpired term. The person so elected shall take office immediately when qualified as defined in RCW 29.01.135."

By unanimous motion, the Board appointed Robert C. Huber and Hibbard Moore as Commissioners of Drainage District #6, effective immediately and continue until the next special district general election on the first Tuesday after the first Monday in February.

**Change of Corporate Officers, Liquor License #078667-4A,**

**Camaloch ASSOCIATION, Camano Island**

Based on favorable recommendation from the Office of the Island County Sheriff, the Board by unanimous motion forwarded a recommendation of approval to change Corporate Officers/Stockholders, Liquor License #078667-4A, Camaloch Association, Camano Island.

**HEALTH CONTRACTS APPROVED**

By unanimous motion, the Board approved two health related contracts, both having been reviewed during recent staff

session:

- o Contract Amendment #HD-04-98(1) - Whidbey General Hospital for Case Mgt. Services \$15,000
- o Contract #HD-04-99, Work Order #20872, DSHS Passport Program, \$12,180

### **Public Input**

Rob Harbour, Coordinator, Ebey's Landing National Historical Reserve, introduced to the Board the new owner of the Whidbey Island Game Farm, Dr. Cal DeWitt, Director, Au Sable Institute.

Dr. Cal DeWitt, Director, Au Sable Institute, Professor of Environmental Studies at the University of Wisconsin, Madison, Wisconsin, explained that the Institute had an interest in establishing a new site for teaching of restoration ecology and environmental storage shed, and developed an objective to establish a site on the West Coast. On June 30 the property closed and the Institute purchased the 175 acre Whidbey Game Farm. The Institute plans to use the property as a teaching site for restoration ecology, field botany, and some ecological agriculture. Mr. DeWitt and his wife Ruth will be staying in the second residence on the property for the next two months in order to prepare the residence for a future manager or intern. The Institute rents the BOQ at Casey Conference Center, with 24 students this 5-week session beginning Tuesday. The Institute hopes to keep Au Sable-Pacific Rim readily accessible to the public. He welcomes suggestions and ideas as far as what the Institute can do to assist the County, having to do with the mission of land stewardship. Dr. DeWitt invited the Commissioners to attend the celebration at the Whidbey Game Farm planned for Saturday, July 31<sup>st</sup>. At 2:00 p.m. will be a time for informal inspection of the site and at 3:00 p.m. a ceremony where anticipate three legislators will be present and perhaps the Governor, following by another hour of informal site inspection.

### **1999 Office Equipment Purchase Requests by Departments**

Cathy Caryl, Director, Central Services, presented for Board approval, the 1999 Equipment Budget Requests by department, dated 7/9/99, fine-tuned after staff session discussions, now totaling \$80,093.40 instead of \$72,000.00. By unanimous motion, the Board approved the 1999 Equipment List dated 7/9/99 for Departments as presented by Cathy Caryl this date, totaling \$80,093.40.

### **ASSISTANT COUNTY ENGINEER APPOINTED**

Larry Kwarsick, Public Works Director, announced that Dick Snyder, currently the Construction Engineer, had been promoted to the position of Assistant County Engineer.

### **Contract Bond – Change of bonding companies by BBG Group, LLC for CRP 98-06/Woodland Beach Road**

Mr. Kwarsick presented for Board approval, a Contract Bond changing bonding companies by BBG Group, LLC for contract work under CRP 98-06/Woodland Beach Road, confirming no change in monetary amount. Mr. Snyder advised that the bond is effective for the whole contract amount and effective before any work on the ground started June 9, 1999.

The Board, on unanimous motion, approved change of bonding companies by BBG Group, LLC, Contractor, under CRP 98-06/Woodland Beach Road, changing bonding company to First National Insurance Company of America in the amount of \$568,480.00.

### **Resolution #C-84 -99 (R-20-99A) – Revision to CRP 99-05, Cultus Bay Road asphalt concrete pavement overlay**

Based on the report and recommendation of Mr. Snyder, the Board by unanimous motion approved Resolution #C-84-99 (R-20-99A), a revision to CRP 99-05, Work Order #276, Cultus Bay Road asphalt concrete pavement overlay, for an increase of \$13,000 (previously approved under C-52-99/R20-99). Increase primarily represents an increase in additional tonnage required for pre-level thickness, for the last stretch of this road by Bailey Store.

### **Res. #C-85-99(R-38-99) – Revision to CRP 98-03, Brighton Beach Rd. Repair**

With report and recommendation presented by the Assistant County Engineer, the Board by unanimous motion approved Resolution #C-85-99(R-38-99) revising CRP 98-03, Work Order #220, Brighton Beach Road Repair, an increase of \$40,000 (previously approved under C-53-98/R-20-98). Contract was awarded several weeks ago. Original project amount based on an estimate from a year ago and Mr. Snyder indicated it had been determined necessary to add to the scope of design by increasing the length of the wall and install jersey barriers. A date of August 1 is anticipated to start construction.

**Resolution #C-86-99(R-39-99) Initiating PWP-2-99, 5<sup>th</sup> Street Improvements Project, Phase 1**

Gary Hess, Public Works Engineer, presented for approval, Resolution #C-86-99(R-39-99), initiating Public Works Project PWP-2-99, under Work Order #305, 5<sup>th</sup> Street Improvements Project, Phase 1, a total budget appropriation of \$350,000, with bid awarded to Jenkins, Inc., in the amount of \$326,093.05. Company has until the 20<sup>th</sup> to begin construction

The Board, by unanimous motion, approved Resolution #C-86-99/R-39-99 to initiate Public Works Project PWP-2-99, 5<sup>th</sup> Street Improvements Project, Phase I.

**Contract/Performance Bond – G.G. Excavation, Inc.; Brighton Beach Road Slide Repair retaining structure; CRP 98-03**

The Board, by unanimous motion, approved Contract and Performance Bond from G.G. Excavation, Inc., successful bidder on the Brighton Beach Road Slide Repair retaining structure under CRP 98-03, Work Order #220, awarded June 28, 1999 in the amount of \$155,009.00.

**Performance Bond from Sound Electric**

On June 21<sup>st</sup> the Board approved a Contract and Purchase Order #02773 with Sound Electric for the exterior electric hookup of the temporary mobile unit at a cost of \$14,634 including freight and tax, and by unanimous motion this date, approved the Performance Bond.

**Supplemental Agreement - Brown and Caldwell, Inc. – Maintenance Manual and BMP Workshops for County Road Shops**

Mr. Kwarsick presented to the Board a recommendation for approval of Supplemental Agreement No. 1 to the existing contract #PW-992014 approved May 10, 1999, with Brown and Caldwell, Inc., hired to develop Maintenance Manual and Best Management Practices [BMPs] to use in conjunction with roadway construction and maintenance activities associated with critical areas. Under the current Critical Area Ordinance certain types of activities performed by the County within county rights-of-way are exempt from the ordinance provided those activities are done in conformance with BMPs. Since the time of the original agreement approval, the County received the Final Order from the Growth Management Hearings Board, and as a result, Mr. Kwarsick proposes additional work under the Agreement involving development of monitoring and enforcement provisions at a cost of \$4780.68. There has to be some means of verifying that the BMPs applied to a specific job site were effective and maintained. The Department currently is negotiating with Brown and Caldwell about a second supplement to address utility placements within county rights-of-way, an issue important to the community and not currently covered in BMPs.

By unanimous motion, the Board approved Supplemental Agreement No. 1 to Agreement #PW –992014 between Island County and Brown and Caldwell, Inc., Work Order #266, supplement in the amount of \$4,780.68 increasing the total contract amount from \$39,997 to \$44,778, authorizing the Chairman's signature on same once signed original received from Contractor.

**Hearing HELD: Ordinance #C-65-99 [PLG-012-99]**

**Technical Amendments to Island County's Zoning Atlas**

A Public Hearing was held as scheduled and advertised [*GMA doc. #4410 legal ad*] beginning at 10:45 a.m. to consider Ordinance #C-65-99 [*GMA doc. #4409*] introduced on June 7, 1999 and set for hearing this date and time, in the matter of Technical Amendments to Island County's Zoning Atlas to ensure that the zoning designations are consistent with the adopted Comprehensive Plan. Included are map numbers 43, 72, 171, 780, 808 and 821 for parcels in Central and South Whidbey Island. Approximately 10 people were in the audience at the time of hearing.

By way of a June 4<sup>th</sup> Memo, Phil Bakke, Comprehensive Plan Manager, provided a list of the maps to be corrected and a description of the correction, as follows:

1. **Map 43** R1-T31N Sec 9, SE1/4 and **Map 72** R1-T1N Sec 16 NE1/4 Parcel R13109-068-3460 was incorrectly identified as Rural. The parcel meets the designation criteria adopted in the Comprehensive Plan for Rural AG property.
2. **Map 808** R3-T29N Sec 14 SE1/4 Parcel S6380-00-09001-0 was incorrectly identified as Rural Center. The parcel is owned by Island County and is managed as a park. It is one of two contiguous parcels where the second parcel is currently zoned Rural Residential. The subject map and parcel should be zoned Rural Residential.
3. **Map 780** R3-T29N Sec 17, NW1/4 Parcels R32917-433-0450 were inadvertently split zoned Rural Center and Rural. The parcels meet the adopted criteria for Rural Center and should be classified as Rural Center.
4. **Map 821** R3-T29N Sec 27 SE1/4 All parcels identified on this map were incorrectly classified as Rural Residential. The land does not meet the adopted criteria for a RAID and should be corrected to reflect a Rural designation.
5. **Map 171** R1-T32N Sec 32 E1/2 Parcel R13233-043-018 should be zoned

Commercial AG. Currently it is split zoned Rural AG and Commercial AG.

The parcel meets the adopted designation criteria for the Commercial AG zone.

No members of the public spoke either for or against any of the proposed technical amendments.

By unanimous motion, the Board approved Ordinance #C-65-99, PLG-012-99, in the matter of an ordinance concerning technical amendments to the Island County Zoning Atlas, including Exhibit A consisting of the June 4<sup>th</sup> Memorandum and six color-highlighted maps defining the substance of the ordinance.

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

IN THE MATTER OF AN ORDINANCE  
CONCERNING TECHNICAL AMENDMENTS TO  
ISLAND COUNTY'S ZONING ATLAS

)  
) ORDINANCE C-65-99  
) PLG-012-99

**WHEREAS**, on September 28 and 29, 1998, the Board adopted the County's GMA Comprehensive Plan and Development Regulations; and

**WHEREAS**, by Ordinance C-123-98, the Board also adopted Chapter 17.03 ICC as Island County's official Zoning Code to implement its GMA Comprehensive Plan with the Zoning Atlas as the Official Zoning Map of Island County attached thereto as Exhibit C; and

**WHEREAS**, certain technical amendments to the Zoning Atlas have been identified to ensure that the zoning designations are consistent with the Comprehensive Plan.

**NOW, THEREFORE, IT IS HEREBY ORDAINED** that the Board of Island County Commissioners hereby adopts certain technical amendments attached hereto as Exhibit A to the Island County Zoning Atlas (Exhibit C to Ordinance C-123-98).

Reviewed this 7<sup>th</sup> day of June, 1999, and set for public hearing at 10:45 a.m. on the 12th day of July, 1999.

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

Mike Shelton, Chairman  
William F. Thorn, Member  
Wm. L. McDowell, Member

**ATTEST:** Margaret Rosenkranz, Clerk of the Board

BICC 99-340

**APPROVED AND ADOPTED** this 12<sup>th</sup> day of July, 1999.

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

Mike Shelton, Chairman  
William F. Thorn, Member  
Wm. L. McDowell, Member

**ATTEST:** Margaret Rosenkranz ,

Clerk of the Board

*[Ordinance #C-65-99 as adopted, with Exhibits, placed on file with the Clerk of the Board and entered as GMA doc. #4435]*

**Preliminary SPR 419/98, Michael & Susan Murphy - Construction and Operation of Wildlife Rehabilitation Center on a 10.98 acre Site Zoned Rural Residential, Camano Island**

The matter of Preliminary SPR 419/98, by Michael & Susan Murphy for construction and operation of Wildlife Rehabilitation Center on a 10.98 acre Site Zoned Rural Residential, Parcel #R23101-100-3150, Camano Island, was presented by Stacy Tucker, Planner, Island County Planning Department. The Hearing Examiner recommended approval with conditions, and waiver of final site plan approval, as stated in File No. SPR 419/98 Findings of Fact, Conclusions of Law and Recommendation, signed by the Hearing Examiner on June 14, 1999. Applicants were present at the time the matter was presented to the Board.

The Board, on unanimous motion, accepted the recommendation of the Island County Hearing Examiner and approved Preliminary SPR 419/98 by Michael & Susan Murphy for construction and operation of Wildlife Rehabilitation Center with conditions and waiver of final site plan approval.

*[Approval sheet signed by the Board for SPR 419/98 placed on file with the Clerk of the Board]*

**Resolution #C-87-99 Establishing Service Area for Harbor Hill Community Association in the Coordinated Water System Plan**

Resolution #C-87-99 [PLG-021-99] Establishing Service Area for Harbor Hill Community Association in the Coordinated Water System Plan; with staff recommending denial. Approximately 12 people were in the audience at the time the matter was considered.

Phil Bakke, Planning Manager, presented a Resolution for the Board's approval denying the request by Harbor Hills. He recalled that a request had been received from Harbor Hill Community Water Association to establish a water utility service area boundary to be included in the CWSP for Island County. Summarizing from his memo to the Board dated June 28, 1999, Mr. Bakke explained that the area proposed for the Harbor Hill Water System is within the future service area of the Sunny View Farms Water System. Sunny View Farms Water system service area and future service area was incorporated into the CWSP on September 19, 1994. The approved description of lots to be served included two lots located in the Plat of Harbor Hill and all the remaining lots of Harbor Hill that were not served with water as of the date of the approval of that WSR. The Coordinated Water System Plan prohibits the County from assigning a future water service area to a second entity because the first water company was given the authority to provide water. Therefore, under the CWSP the County cannot now assign an existing or future service area to a second water company unless the first water company decided not to go through with their plans. A letter dated August 5, 1998 from Sunny View Farms was received expressing great interest in completing the Sunny View Farm project and serving the future service area included in the Harbor Hills plat. R.C.W. 70.116.060(3)(b) states: "No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner...".

As far as timely and reasonable, based on the information available from the State, Mr. Bakke

stated that Sunny View Farm was about one year ahead of Harbor Hill in attaining a water right.

As far as cost associated with determining "in a reasonable manner", he was not aware that the issue of economics had ever been brought up.

Although this matter was being addressed during public meeting and not a public hearing, the Chairman allowed public comments on the proposed action.

Ray Styrk, President, Harbor Hill Community, spoke on behalf of the community, and asked for

an additional two weeks' or more before the Board took action, based on what he felt was short notice of today's meeting, and the fact their attorney was unable to attend due to conflicting schedules. He reported that Harbor Hills had been in existence since 1967 and the well put in and service initiated at that time. There has been multiple contact with the State and County Departments of Health and Natural Resources, both recognizing Harbor Hill Community, and

Harbor Hills complied with all requests from those departments. Rejecting the Harbor Hill application would be inconsistent with the historical relationship the community has had with both the State and with the County, would be damaging to the Harbor Hill Community itself, as well as individual owners within the subdivisions.

Steve Arnold, owner of Sunny View Farms Water System, South Whidbey, addressed his original platting done near Harbor Hill which at the time in 1992, no water service was available in Harbor Hills. He owns 3 lots there currently, and was looking for a way to service that area with water because it was in existence since the Sixties and nothing had been done to provide water. He applied for a water right in 1994, and he believed that Harbor Hills applied for a water right in 1998, so he is at least 4 years ahead of Harbor Hills on obtaining a water right from the State. He mentioned he had a document the County Commissioners signed granting him the service area for the remaining lots not built on in Harbor Hills.

Mr. Styrk noted for the record he thought there was a conflict in the signing of the Resolution of 1994 providing Sunny View Farms with their water boundary.

By unanimous motion, the Board concurred with staff recommendation and approved Resolution #C-87-99 PLG-021-99 in the matter of establishing a service area for the Harbor Hill Community Association in the Coordinated Water System Plan denying request.

**BEFORE THE BOARD OF ISLAND COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF ESTABLISHING A SERVICE AREA  
FOR THE HARBOR HILL COMMUNITY ASSOCIATION IN  
THE COORDINATED WATER SYSTEM PLAN )

)) RESOLUTION C-87-99

) PLG-021-99

)

WHEREAS, the Harbor Hill Water system has submitted a proposal to establish a water service area in the Island County Coordinated Water System Plan (CWSP) adopted pursuant to RCW 70.116, and WAC 248-56; and

WHEREAS, the proposed addition of a Harbor Hill Water System water service area has been reviewed for consistency with the Island County Comprehensive Plan, the Island County Coordinated Water System Plan, and other applicable State and local codes and regulations; and

WHEREAS, the proposal does not meet the goals of the Island County Coordinated Water System Plan; and

WHEREAS, the area proposed to be served by the Harbor Hill Water System is designated as the future service area for the Sunny View Farms Water Company adopted as part of the CWSP on September 19, 1994; and

WHEREAS, RCW 70.116.060(3)(b) and the Coordinated Water System Plan do not allow any other purveyor to provide water service to an area previously approved by the legislative authority and incorporated into the Coordinated Water System Plan unless it is determined that the existing purveyor is unable to provide service in a timely and reasonable manner; and

WHEREAS, Harbor Hill Water System has not claimed that Sunny View Farms Water Company cannot provide timely and reasonable service as opposed to the service proposed by the Harbor Hill Water system; and

WHEREAS, Sunny View Farm Water Company is not willing to agree to a service area reduction adjustment pursuant to Section VI(1)(A)(4) of the Coordinated Water System Plan; NOW, THEREFORE,

**BE IT HEREBY RESOLVED** by the Board of Island County Commissioners that the proposed new water service area for the Harbor Hill Water System to be designated in the Island County Coordinated Water System Plan is denied.

**ADOPTED** this 12<sup>th</sup> day of July, 1999.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY  
WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz, Clerk of the Board

BICC 99-404

**HEARING HELD; GMA ORDINANCES**

Chairman Shelton opened a public hearing beginning at 1:30 p.m., as scheduled and advertised [*legal notice GMA Doc.# 4307*], to consider revision of the Island County Comprehensive and Use Element and Capital Facilities Element; amendments to the Island County Adequacy Ordinance, Chapter 11.05 ICC, and amendments to the Island County Critical Area Ordinance, Chapter 17.02 ICC.

The amendments, as presented in the following ordinances presented on June 21, 1999, and scheduled for this date and time, are proposed to clarify County standards in a manner consistent with the Legislative Intent [copies of ordinances available at hearing] :

C-75-99 PLG-014-99 In the matter of Amending Chapter 17.03 ICC, to comply with the order of the Western Washington Growth Management Hearings Board Relating to the Rural Zone [*GMA Doc. #4308*]

C-76-99 PLG-015-99 In the Matter of Amending Chapter 17.03 ICC, to comply with the order of the Western Washington Growth Management Hearings Board relating to the Rural Agricultural Zone [*GMA Doc.#4309*]

C-77-99 PLG-016-99 In the Matter of Amending Chapter 17.02 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to the Critical Areas Exemption for Existing and ongoing agriculture [ *GMA Doc.# 4310*]

C-78-99 PW-37-99 In the Matter of Amending the Land Use and Capital Facilities Element of the Island County Comprehensive Plan and Chapters 11.05 and 17.02 ICC to incorporate certain stipulated amendments] [*GMA Doc. #4311*]

Approximately ten citizens attended the hearing; Attendance Sheet placed on file. [*GMA Document No. 4434*]

**Ordinance #C-75-99 [PLG-014-99] Amending Chapter 17.03 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to the Rural Zone**

Keith Dearborn, Special Legal Counsel, advised that the Growth Board in its July 2<sup>nd</sup> Final Decision required the County adopt an interim ordinance converting the R5 zone minimum lot size which is five acres, to ten acres by August 10<sup>th</sup> and if not, the Growth Board would invalidate the Rural zone minimum lot size. The proposed ordinance does what the Growth Board directed, and is proposed to be adopted as an measure to continue for six months, and at the end of six months, if the County has not adopted permanent regulations changing the minimum lot size in the Rural zone, the second "Be it Further Ordinance" paragraph declares intent the ordinance remain in effect until the permanent regulation is adopted. The County has until November 30<sup>th</sup> to comply with the Growth Board's Order on the question of rural density. The only other changes are consistency changes so language matches the change from five acres to ten acres.

The ordinance, as written now, would go into effect on adoption.

Chairman Shelton suggested that since the Growth Board ordered the County to adopt regulations to go into effect on August 10<sup>th</sup>, that the County's ordinance go into effect August 9.

Commissioner Thorn, however, believed the ordinance should be effective on adoption.

Marianne Edain, South Whidbey, spoke on behalf of Whidbey Environmental Action Network, agreed on the whole that the change from five to 10 acre minimum would temporarily meet requirements of the Hearings Board decision, although she had some concern this was not a permanent solution. She agreed with Commissioner Thorn the ordinance become effective on adoption. There are page after page of short plat applications in the rural zone in "a rush to the counter".

Shayne Thatcher, Thatcher & Morris, Inc., Freeland, was concerned about what seemed to be the County caving into no growth regulations. He felt no growth was unacceptable; the County would not be a no growth county because people will come and there needs to be planning for that growth. No growth he believed was asking for a lawsuit, and did not see how the County could continue to confiscate property rights in such a manner. The rush to the permit counter was evidence of the need to maintain 5 acre zoning, a need people with property have who want to develop, and he did not think no growth sentiments represented the majority of the County and was interested in seeing a vote taken to ascertain what the real feelings of folks in the County are.

Jim Davis, III, Freeland, addressed the issue, noting his parents had the Fir Crest Tree Farm on Houston Road, his Dad passed away last year. His Dad's dream was to run his farm, and the kids as they got older would come up there and live. Although his mother has some property left her hands are tied as far as what she can do with it, and it is real tough because of zoning to be forced to decide of six kids who the three would be that could live on the property. He was in favor of 5 acres, not 10, and if the County wanted larger sections the County should buy it from the property owner.

Linn Emrich, Camano Island, echoed the gist Mr. Thatcher's and Mr. Davis' comments. He

previously provided evidence for residential density on the 40 acres of high ground and felt either the Growth Board had not looked at that supporting evidence or disregarded it because the RAID designation had been taken away. If the proposed ordinance were adopted today he would lose even the 5 acre density. He encouraged that the Board consider more than just the size of the parcel under one ownership when making final determinations on area densities because shoreline topography bluff land overlooking the bay cries out for reasonable sized lots for homes. He mentioned that if he were hit with a 20 acre zoning on the land, only two homesites would be allowed, and one is already there. He put ten years of work on roads, drainage, and developing a well site for the property in order to have at least a half dozen homesites.

Tom Seim, South Whidbey, son-in-law of Mrs. Davis, moved here 5 years' ago and been working that long with the Davis' to figure out how he and his wife, and Jim III and his wife could move out to the farm. For long term families that get into financial difficulties, deaths, dividing among children, folks who have lived here 40 or 50 years there should be some kind of grandfather clause to provide for those situations. There is validity to family life and long term ownership and love of the island. Even AG 20 should be cut to 10 acres.

Bill Vaux, Anacortes, spoke on behalf of his wife and her sister who own property on Mt. View Beach, Camano Island. The property is 90 acres of woods; logged in 1988. The north 40 always zoned Residential, but as a result of GMA, zoned Forestry. In asking why, he was told that more than 20 acres was in open space forest and located south of Mt. View Road. He was also told if the property was taken out of open space it would become 5 acre density, therefore, he wanted to know what they had with the interim zoning now under consideration for the 40 acres. He said that the 40 acres was permitted and signed by Commissioners in 1930 as a golf course and wanted to know where that fit in the zoning plan. The main issue is whether or not the golf course is a permitted use in the Forestry zone, and what status did the 125 lots have that were approved in 1930.

As of this action, Commissioner McDowell advised that the 40 acres would be worth four 10 acre lots [if taken out of open space] temporarily. This is an interim ordinance and the County will try to come up with a plan that suits the

needs of the citizens of Island County.

Mr. Dearborn stated that in the Rural zone a golf course is a use that is allowed. In Mr. Vaux's case, he would have to look at the 1930 approval to see if it had any force and effect today. He did think the County would not recognize a 1930 approval if there had been no action taken by the owner to carry out that approval. If the 125 lots were an approved subdivision then it may very well be in effect. If a golf course in a subdivision were done together it could be a different situation, and advised Mr. Vaux to provide his documentation directly to the Commissioners and ask for advice on whether it was still in effect.

Roger Nelson, Camano Island, believed that the Rural zone 5 acres v. ten acres was extreme. He did not know the exact percent of land in Island County zoned Rural with a 5 acre minimum but believed it was large, and that much of that was previously Residential; to ask for 10 acres seems extreme and questioned how far the Commissioners would accept pressure from the different groups and still keep that balance.

Commissioner Thorn did not believe it was a question of pressure from groups, rather directives from the GMHB. A large number of acres have been uniformly set up for 5 acre zoning, and GMA and the GMHB's remand order requires there be a variety of zoning. Not only will the County have to have 10 acre lots, but other sizes as well and he thought there could be some 5 acre lots. What criteria could be set up to decide how to deal with that is yet to be resolved. He reminded that zoning does not vest with property, but changes with time. The 10 acre interim zone he believed was an appropriate step for the time being until factors can be sorted out.

It was Commissioner McDowell's belief that the only reason the issue was in front of the Board today with regard to the 5 v. 10 acres was in response to the Growth Hearings Board, not from any pressure group; the County reserved its right to go to court should it be necessary. He thought State law allowed the ability to subdivide property at the time of a death, and believed that at the very least there should be a way to at least divide it so children can have the property, and hoped over the next six months' work a Code could be adopted allowing for that type subdivision even though it may be below zoning requirements. He expressed a commitment to get something adopted that met legal needs of the lot sizes in the next six months and regretted the inconvenience caused some people in the interim. He felt this particular ordinance should be effective August 9<sup>th</sup> and believed that was within the spirit and intent of the Hearings Board. A few issues that were brought up still need to be addressed: (1) ability to subdivide property at the time of death for kids; (2) did not know how the County would ever manage to distinguish between one parcel being 10 acres and another 5.

Chairman Shelton realized that although it had been said laws do not vest zoning, it was important to recognize historically that people as a part of investment portfolios included real estate. One of the mandates of Growth Management was to provide predictability to property owners and he hoped when the Comp Plan was put in place it would provide some future predictability to property owners. He felt that growth management had somehow unnecessarily penalized people who have been good stewards of their property, as in the case of Jim Davis, one of the finest examples Island County has, along with a number of others he can think of, where someone loved his little corner of the world and took excellent care of it. Those resisting development temptations and stewards of the land seem to be penalized the most. He agreed with Commissioner McDowell that to provide a variety of densities would be very difficult, for example, what would be the criteria and how would the County ever tell part of the citizens zoning could be 10 acres and others 5 acres. He was supportive of the Board's adoption of the ordinance because it was mandated, but thought the more difficult decision would be to craft an ordinance to replace this one in a way that would be workable for the majority of people in Island County.

Commissioner Thorn quoted from the Order of the Growth Management Hearings Board *[June 2, 1999 Final Decision and Order, Case #98-2-0023c, Page 41]*:

"The County stated that historically there had been spurts of intense land subdivision when landowners knew a more stringent set of ordinances were coming. We are very concerned about

the potential 'rush to the counter' that might occur after this decision and before the County can take remedial action. Since the threat to the imperiled natural resource lands is potentially so egregious from these 5 and 2.5 acre densities in the Rural 1 zone, we feel invalidity is appropriate now. However, we will

give the County until August 10 1999, to adopt an interim ordinance that would limit subdivision to 10-acre lots with 1 du per 5-acre allowed density in PRDs until the needed compliant analysis is done on the Rural zone. If this action is not taken, we will make a finding of invalidity."

Commissioner Thorn thought it had been very clear the Growth Board intended to have this on the date of their remand a month ago and not a month from now. However, Commissioner McDowell believed the Growth Board took into consideration the rush to the counter issue and gave the County until August 10.

Commissioner McDowell moved that the Board amend Ordinance #C-75-99, in the Be it Further Ordained paragraph of the first page of the Ordinance, inserting after the words "rural zone" the phrase "shall go into effect on August 9, 1999 and". Motion, seconded by Commissioner Shelton, carried by majority vote; Commissioner Thorn voted in opposition to the amendment.

Commissioner Thorn moved adoption of Ordinance #C-75-99, PLG-014-99, in the matter of amending Chapter 17.03 of the Island County Code to comply with the Order of the Western

Washington Growth Hearings Board relating to the Rural zone, as amended. Motion, carried unanimously.

**Ordinance #C-76-99 [PLG-015-99] In the Matter of Amending Chapter 17.03 ICC, to comply with the order of the Western Washington Growth Management Hearings Board relating to the Rural Agricultural Zone**

Mr. Dearborn presented Ordinance #C-76-99 relating to the Rural AG zone, proposed to remove an invalidity determination by the Growth Board. The Growth Board invalidated all of the provisions of the Rural AG Zone more permissive than those permitted in Commercial AG Zone, effectively converting the Rural AG zone into the Commercial AG zone. The major change is to change the 20 acre minimum lot size to a 40 acre minimum lot size, and eliminating kennels, gun clubs and shooting ranges, previously allowed in the Rural AG zone but not allowed in the Commercial AG zone. The purpose of adopting the ordinance is to carry out the order of the Growth Board to make it clear what provisions of County Code are in effect and not in effect, and then request the Growth Board after adoption to rescind their order of invalidity. He clarified this was not a permanent ordinance, rather proposed as a temporary ordinance, to be replaced with an ordinance that carries out the remand order of the Growth Board to determine whether there are additional long term commercially significant AG lands.

Mr. Dearborn referred to amendments the Board of Commissioners adopted two weeks' ago to Rural, Rural AG and Commercial AG. Surface mining was struck from the Commercial AG zone but there had been no concerns expressed about allowing surface mining in the Rural AG zone and he understood that the matter had been discussed and agreed between Larry Kwarsick and the Coalition to continue to allow surface mining in the Rural AG zone. Item B-2 [2<sup>nd</sup> page Exhibit A] does not propose to strike surface mining as a conditional use in the Rural AG zone. Mr. Kwarsick feels this is consistent with the prior determinations the Board made two weeks' early on permitted and conditional uses in those three zones as a part of the stipulated order. This zone once adopted will be the same on an interim basis as the Commercial AG zone except that surface mining will be allowed as a conditional use in the Rural AG but not in Commercial AG.

Marianne Edain, WEAN, South Whidbey, expressed a number of concerns, one being this ordinance, another the ordinance amended as a result of discussions that still contain language invalidated by the Growth Board relating to EDUs.

Mr. Dearborn responded if that language was to be removed, it would be removed as part of the discussions on the permanent ordinance change for Agriculture. EDUs were not invalidated.

Another concern brought up by Ms. Edain was that the designation criteria for Rural AG lands still had language about tax status as a test, something she thought was overturned by the Redmond Decision. She had some problem with what she saw as a doubling of minimum lot size and removing the possibility of rezone except for hardship cases being only a stop gap measure. She thought it was critically necessary to re-evaluate the lands currently zoned Rural AG, along with re-evaluating those lands which never made it in to Rural AG, zoned Rural, but are in fact important useful AG lands. She also was concerned about what she saw as a discrepancy, Exhibit A, D2, "Reclassification from RR, R, RA

or RF to CA shall be granted if requested by the owner and the parcel is 10 acres or larger in size and the parcel is primarily devoted to active commercial production". She termed the ordinance as an unhappy compromise of a stop gap measure and would like it to be as short term as possible and that the County do what it can to re-evaluate Rural AG lands.

Fred Frei, Jr., South Whidbey, was opposed to anything that hammers a small minority. Even in the interim, his perception is that this would hammer a very small minority.

Roger Nelson, Camano Island, commented with regard to Rural AG and Commercial AG, and asked about the EDU Program that the County was asked to reconsider, inquiring how that was to be implemented. This proposal goes a step further to remove even that option for the farmer and the farmer has nothing at that point. Comments as far as taking under consideration subdivision for family is very important and should be considered. He has a fourth generation son on the same piece of ground and he sees where things are headed his son would have to move off the property, with no future for him with that heritage. He believed there had to be a way, if there is a move to reclassify Rural AG to Commercial AG, that if economic viability is not there to farm, that something be done to make it economically viable otherwise, the County is asking the taxpayer and property owner too much. His property has been in the family since the early 1900's. He suggested perhaps anything over 100 acres in size needs to be looked at special instead of in the cookie cutter zoning view.

Linn Emrich, Camano Island, supported Mr. Nelson's comments about the importance of letting the land owner retain some value of his land. He owned his property for ten years, is not a farmer, but worked to keep the lower AG land in AG. The tenant has indicated he cannot continue to bring heavy farm machinery up highway 532; traffic is a real problem. It is fortunate to have someone farming on the property, but it may not be farmed next year and Mr. Emrich is concerned that if it cannot be farmed or leased for farming, what can he do with it. He requests Rural AG be applied to that land, and thought the County should consider individual sites in deciding lands for Rural AG and Commercial AG and take into account accessibility, soil type, etc.

Marianne Edain quoted from the Growth Board's Final Decision and Order: "**As written the EDU provisions permit clusters of urban growth, fail to conserve designated agricultural lands and do not comply with the Act.**". While perhaps not directly invalidated, EDUs do not comply with the Act and need to be removed or rewritten.

Commissioner Thorn pointed out that the specific Growth Board Order stated that the County was to reconsider the provisions of the EDU section that allow designated AG lands to be used as receiving properties and fail to severely limit the amount of development that can occur on these lands; and to reconsider the provisions of the EDU in rural designations to ensure that development density is capped to preclude future need for urban services and conflicts with resource use and rural character. With regard to the broad designation of AG lands, the Growth Board said that the County was to reconsider the designation of AG lands of long term commercial significance avoiding the use of inappropriate and exclusionary criteria. Mr. Thorn asked that WEAN provide to the County a list of the undesignated lands WEAN perceives to be AG lands which are neither RA or CA right now.

Ms. Edain expected that the Planning Department would do that sort of evaluation; whatever data WEAN has they would be happy to share with them.

Commissioner McDowell referred to the importance of economic viability in the farming community. Now in his 7<sup>th</sup> year as Commissioner, has seen two well-known farmers either go bankrupt or are in the process of bankruptcy and could not think of anything worse. Even though it only effects a small number of the total population, the entire population appreciates and enjoys farming families and farming activities and contributions and the space preserved. He believed it absolutely incumbent on the County to come up with something to help extend the way of life of those people. He personally thought that the ability to segregate a piece of a farm was a viable way to stretch out that way of life, and different from the TDR situation.

Chairman Shelton observed that during the time the County worked to put together the AG and Forestry portions of the Comp Plan and Development regulations, probably the most intelligent thing he heard anyone say was the way to ensure saving the farms and forests was to first save the farmers and foresters; if not, farms and forest would probably not be saved. A Plan was written that attempted to figure out ways to make it economically viable for people to

continue to farm and have some economic check valves so they could sell off a small portion in order to preserve the larger portion. He hoped the County would be able to come up with a plan that ultimately would preserve the vast majority of Commercial AG lands and Rural AG lands. There should be recognition that the preservation of farm and forest land goes against economic law; people who are preserving their property to farm today are doing so not for economics but because of generations of farmers with ties to the land who want to keep the land .

Commissioner McDowell had some comments and suggested changes, and handed out same for consideration [GMA document #4440]. He commented with respect to Section 17.03.220 zoning amendments D.1 [page 7 Exhibit A, D-1] the rezone option from RF to R should stay; the RF zone was validated by the Growth Board and there is no reason to eliminate the rezone option to R for any more than the RA while deciding what is the RA zone. suggest to correct that oversight is under Standards D-1 reinsert the language as D-1 shown now crossed out, other than delete RA, to be inserted to read:

Reclassification from RF to R shall be granted upon presentation to the Department of evidence that the property has been removed from the open agriculture, classified forest or designated forest tax classifications an any taxes; interest and penalties have been paid in full upon removal or the land is no longer owned by the County, State or Federal Government and managed for Forestry Use.

Commissioner Thorn pointed out that in the Growth Board's Order, Item 4 indicated that the County review and rewrite the provision for rezone from RF or RA to R to deal with the inconsistency between the Comp Plan and the Development Regulations.

Mr. Dearborn pointed out a wording difference between the Comp Plan and Development Regulations. The Growth Board did not require that the County eliminate the RF rezone option but to clarify what the County intended given the Comp Plan has slightly different language than the zoning code. He indicated that Mr. McDowell was correct, the Growth Board directed the County only to the RA zone and not the RF zone and the amendment went further than the Growth Board's order.

Commissioner McDowell, with regard to 17.03.090 D.5, stated that the new 10 acre rule in the R zone should have an exemption to permit lots if created as a result of a boundary line adjustment, not just applicable if there is a transaction between an adjoining property owner as proposed but also allow that same exemption for any boundary line adjustment. The second half is extraneous in that a person can only do that which is either a permitted or conditional use, and proposed:

17.03.090 D.5 The Lot size limitations set forth above shall not apply when the new Lot is proposed to be modified ~~is to be sold, exchanged or transferred~~ through a boundary line adjustment pursuant to Chapter 16.06.ICC ~~to an adjacent RF, CA or RA property Owner who will continue to maintain Permitted and Conditional Uses.~~

The over all density is still the same for boundary line adjustments (no additional lots/density created) therefore should put in strike-out as shown and give little more flexibility to property owners.

Mr. Dearborn stated that the Growth Board invalidated effectively all the provisions of the RA zone that were less restrictive than the Commercial AG zone; this provision is identical in both zoning classifications and has a history back to 1984, but was not discussed at all during the 1998 adoption process. It is not inconsistent with the Board's order to modify it, but the Board probably should also modify the Commercial AG zone so both have the same provisions. The subject of what will be in the RA and CA zone are remand subjects. The Board could set a public hearing and change the same criteria in the CA zone and adopt it in the near future, but he advised that if the Board wanted to make the change it should also be made in CA and believed the same provision was also in the RF zone.

Consensus: Make the change now in D.5 for Rural AG with the understanding Commercial AG and Rural Forest will come forward in separate amendments to be considered in the next month

Hearing reopened for public comment to afford the public an opportunity to comment on Commissioner McDowell's two proposed amendments.

Marianne Edain, WEAN, agreed that the first proposed change seemed reasonable, but felt she needed more time to review the second proposed change. On face, she was concerned that it may provide the possibility of changing the zoning designation of some land by a boundary line adjustment [BLA] as written to an adjacent Rural Forest, Commercial AG or Rural AG property so it would remain through the BLA in some form of resource category; by striking that, it would seem someone could do a BLA and transfer that land through a BLA to a zone that was not a resource zone. By dropping that language from D5 to an adjacent RF, CA or RA property it may make it possible to change the zoning or to create split-zoned parcels.

Commissioner McDowell pointed out that a BLA does not change zoning, and the Comp Plan states there will be no split zoned properties. Number #5 applies only to lot size limitations.

And Mr. Dearborn agreed, under 17.03 it is not permitted. A survey of the County found only two split-zoned parcels, both resolved in the area zoning process. With this provision, someone could have argued before the proposed amendment it authorized split-zone parcel creation. Striking RF and CA makes it clear you cannot do BLAs between parcels that are in different zones.

Commissioner McDowell moved that the Board approve two amendments to Ordinance

#C-76-99 as follows:

1. 17.03.220 Reinsert D.1 paragraph but limit reclassification only from RF to R; strike

only "RA or", and renumber remainder of items accordingly:

Reclassification from RF to R shall be granted upon presentation to the Department of evidence that the property has been removed from the open agriculture, classified forest or designated forest tax classifications an any taxes; interest and penalties have been paid in full upon removal or the land is no longer owned by the County, State or Federal Government and managed for Forestry Use.

2. 17.03.090 D.5 First line after the word "Lot" add the word "is"; strike the words "is to be sold, exchanged or transferred"; and strike the words "to an adjacent RF, CA or RA property Owner who will continue to maintain Permitted and Conditional Uses."

Motion, as seconded by Commissioner Thorn, carried unanimously.

Commissioner Thorn moved adoption of amended Ordinance #C-76-99 [PLG-015-99] in the matter of amending chapter 17.03 ICC, to comply with the invalidity order of the Western Washington Growth Management Hearings Board Regarding the Rural Agriculture Zone. Motion, as made and seconded, carried by majority vote.

**Follow-up:** The Board directed that Mr. Dearborn bring forward changes to the other codes as discussed to be consistent with 17.03.090 D.5., available August 2<sup>nd</sup> in order to be set for hearing on August 23<sup>rd</sup> at 3:30 p.m.

**Ordinance #C-77-99 [PLG-016-99] In the Matter of Amending Chapter 17.02 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to the Critical Areas Exemption for Existing and ongoing agriculture**

Ordinance #C-77-99 came before the Board, with proposed modification to Ordinance #C-77-99 presented by Mr. Dearborn as outlined in his memorandum to the Board dated July 7, 1999 [GMA doc. #]. The Ordinance is a provision of the Critical Area regulation not invalidated but the County directed to make the change by August 10<sup>th</sup>, and if not, there would be an invalidity order. On review, Commissioner McDowell pointed out an incorrect draft of the change to comply with the Growth Board's determination Section E on page 5. Ordinance language proposes to strike the exemption completely for Agriculture which is in error. The Growth Board's order was that the County limit the agricultural exemption only to lands that have been designated as AG lands of long term commercial significance, therefore Mr. Dearborn's proposal was prepared so that E.1 would read:

Existing and on-going agricultural activities on lands designated as agriculture lands of long term commercial significance pursuant to RCW 36.70A.170 when undertaken

pursuant to best management practices to minimize impacts to critical areas. For

example, by minimizing the use of motorized vehicles and machinery in such areas.

Marianne Edain, WEAN, realized this was an interim ordinance, but reminded it related to critical areas. Best management practices have not yet been defined and WEAN very much wants to see a BMP manual written. She pointed out that renumbered item under E, Exemptions, sub 6, revised in Exhibit D but was not in Exhibit A [site investigate work]. Here, Mr. Dearborn explained the issue would be dealt with in the next ordinance, C-78-99.

Ms. Edain noted this still dealt with Category A wetlands minimum of ¼ acre in size and Category B wetlands minimum 1 acre in size and do not meet best available science. On the question of functionally isolated buffers, she did not see the Hearings Board ruling reflected in the ordinance.

Mr. Dearborn explained that was a remand issue, not an invalidity issue, and would be addressed much like other remand items discussed.

Ms. Edain was disappointed in the proposed changes being the absolute minimum necessary to slide by the Hearings Board and wanted to see genuine protection of critical areas.

Fred Frei, Jr., Langley, spoke in regard to the AG exemption for critical lands, that one of his concerns is that there are numerous pastures where someone has a few cows or sheep, not all zoned Commercial AG and these wet pastures might be wetland, type 5 or 4 water. Even if this is an interim ordinance, he was concerned about those people with that type pasture being in violation of the ordinance. Mr. Frei concluded that the way the Ordinance was proposed went beyond that necessary to protect critical lands. These activities are currently going on and if some poor farmer is told to take his few sheep or cows off the wet pasture, it is completely wrong, this is an issue of food on the table for family and children.

The Chairman stated that historically there are at least 100 places on South Whidbey that that exact thing has happened where people have farmed right up to the edge of a class 5 stream; probably a class 5 stream is dry many times some months out of the year. If zoned now Rural AG that exemption is gone in the interim.

Mr. Dearborn acknowledged that the exemption that used to be for that use expressly is now by the order of the Growth Board being limited to, on an interim basis, the long term lands. He did point out this as being one of the issues the County provisionally appealed. Island County would be the only County he is aware of in the State that would not be able to permit existing and on going AG as an exemption.

Roger Nelson, Camano Island, seconded Mr. Frei's comments, agreeing this did in fact penalize farming in a rural area. If a farmer or part time farmer cannot be grandfathered for running a few cows or sheep and is subjected to almost police-like state, in the interim or not, believed attitudes would change on the part of good law abiding folks to a more hostile environment.

For the record, Mr. Dearborn commented to clarify he did not believe this was a result of anything WEAN sought as a part of their appeal, rather a result the Growth Board reached because there are exemptions. Pages 5 and 6 contain the list of exemptions; 5 of those exemptions specifically state that the activity has to be subject to best management practices. At the time the County committed to prepare BMPs manual and have that manual go into effect on December 1, 1999 but that has yet to be completed and the County must prepare that by November 30<sup>th</sup>. The Growth Board believed the record was sufficiently strong that this provision needed to be restricted to just the long term lands until the BMP manual is prepared. As he read the Growth Board decision, once the BMP manual is in place then the exemption can be restored.

Ms. Edain confirmed WEAN's offer to help and WEAN's openness to work on a BMP Manual.

Commissioner McDowell observed that the comments from Mr. Frei were very appropriate and he felt the exact same way -- why do this to the farmer who is barely eking out a living.

Chairman Shelton thought it interesting that in all of the testimony during the development of the Comp Plan small scale agriculture was expressed as the future of agriculture in the County; if so, why would the County treat it differently than Commercial AG. However, he realizes it is better to deal with it under the interim ordinance than in a position of invalidity. He thought that what has historically happened in Island County is that people have chosen to supplement their income in a multitude of ways off a small parcel of property, for example, a few sheep or cows to help supplement income and is a source of food on the table. He did not think that on 5 or 10 acres for the most part people could make a living but they could use that to supplement their living.

Commissioner McDowell did not think there was a living to be made on 5 or 10 acres in today's world, but that was not to imply the only person who does that is someone with large holdings. He thought there were many people who supplemented their incomes with the smaller plots with some type farming, cows or sheep.

Commissioner Thorn moved that the Board adopt Mr. Dearborn's proposed amendment suggested in memo dated July 7, 1999, to E. 1 Exemptions, to read:

Existing and on-going agricultural activities on lands designated as agriculture lands of long term commercial significance pursuant to RCW 36.70A.170 when undertaken

pursuant to best management practices to minimize impacts to critical areas. For

example, by minimizing the use of motorized vehicles and machinery in such areas.

Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner McDowell moved that the Board amend Ordinance #C-77-99 cover sheet page 1 in the paragraph "Be it Further Ordinance" to read "that this amendment to Chapter 17.02 ICC shall go into effect August 9, 1999, and". Motion, seconded by Commissioner Shelton, carried by majority vote; Commissioner Thorn voted in opposition to this particular amendment.

Commissioner Thorn moved that the Board adopt amended Ordinance #C-77-99 in the matter of amending Chapter 17.02 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to the critical areas exemption for existing and ongoing agriculture. Motion, seconded by Commissioner McDowell, carried unanimously.

**Ordinance #C-78-99 [PW-37-99] In the Matter of Amending the Land Use and Capital Facilities Element of the Island County Comprehensive Plan and Chapters 11.05 and 17.02 ICC to incorporate certain stipulated amendments**

With regard to Ordinance #C-78-99, Mr. Dearborn noted that during the course of Growth Board hearing there were several matters that were argued and recognized there was an inadvertent error in drafting that needed to be corrected. This is one of the subjects for which the County is not being billed by Mr. Dearborn because it is considered an error in drafting and not substance. In each case, these were issues that were agreed in the Hearing after consulting with the Board to stipulate that the County would correct.

Marianne Edain , WEAN, reminded about matters of consistency; noted on Exhibit D #7 strikes the word "stream" and adds "or fish and wildlife habitat conservation area" which also should be consistent in both ordinances. Going back to Ordinance #C-77-99, page 8 on functionally isolated buffer areas, she pointed out that the Hearings Board decision and order requires that in order to comply with this section must either be deleted or reopened for full public process and a reasoned analysis of the agencies and WEAN's concerns.

Commissioner Thorn indicated to Ms. Edain that had not been overlooked but was not part of this particular ordinance. And, depending on the schedule, Mr. Dearborn noted it was now tentatively scheduled for August 23<sup>rd</sup>

Commissioner Thorn moved that the Board approve Ordinance #C-78-99, PW-37-99, in the matter of Amending the Land Use and Capital Facilities Element of the Island County Comprehensive Plan and Chapters 11.05 and 17.02 ICC to Incorporate Certain Stipulated Amendments. Motion, seconded by Commissioner McDowell, carried unanimously.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF AMENDING CHAPTER 17.03 ICC,  
TO COMPLY WITH THE ORDER OF THE WESTERN  
WASHINGTON GROWTH MANAGEMENT HEARINGS  
BOARD RELATING TO THE RURAL ZONE )

) ORDINANCE C-75-99

) PLG-014-99

)

)

**WHEREAS**, various parties filed petitions with the Western Washington Growth Management Hearings Board ("Board") to review Island County's adopted GMA Comprehensive Plan ("Comp Plan") and Development Regulations; and

**WHEREAS**, the Board entered its Final Decision and Order on June 2, 1999; and

**WHEREAS**, the Board found prospectively certain provisions of the Rural Zone invalid if interim regulations were not adopted by August 10, 1999, and therefore replacement regulations are needed to govern land use in the Rural Zone; and

**WHEREAS**, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comp Plan and Development Regulations including the Rural zone; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to Chapter 17.03 ICC relating to the Rural Zone, needed on an interim basis to comply with the Order of the Growth Board, are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations; and

**WHEREAS**, RCW 36.70A.390 authorized the County to adopt interim zoning regulations; **NOW, THEREFORE,**

**IT IS HEREBY ORDAINED** in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commission-ers hereby adopts the amendments to Chapter 17.03, attached hereto as Exhibit A, relating to lands classified in the Rural Zone. Material stricken through is deleted and material underlined is added.

**BE IT FURTHER ORDAINED** that the amendments to the Rural Zone shall go into effect on August 9, 1999 and shall remain in effect until the County adopts permanent amendments to Chapter 17.03 ICC to replace these regulations. Should the County not adopt replacement regulations within six (6) months from the date of enactment of this interim amendment, then the Board hereby declares its intent to reenact this interim amendment so that it remains in full force and effect until the Board enacts permanent replacement regulations.

**Reviewed** this 21<sup>st</sup> day of June, 1999, and set for public hearing at 1:30 PM on the 12<sup>th</sup> day of July, 1999.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz,

Clerk of the Board

BICC 99-364

**APPROVED AND ADOPTED** this 12<sup>th</sup> day of July, 1999 following public hearing.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William. F. Thorn, Member

**ATTEST:** Margaret Rosenkranz,

Clerk of the Board

**APPROVED AS TO FORM:**

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

*[Adopted Ordinance #C-75-99 [PLG-014-99]with Exhibits, Amending Chapter 17.03 ICC to comply with order of WWGMHB relating to Rural Zone, GMA Document #4436] Exhibits on file with Clerk of the Board*

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

<p>IN THE MATTER OF AMENDING CHAPTER 17.03 ICC, TO COMPLY WITH THE INVALIDITY ORDER OF THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD REGARDING THE RURAL AGRICULTURE ZONE</p>	<p>))))))</p>	<p>ORDINANCE C-76-99  PLG-015-99</p>
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**WHEREAS**, various parties filed petitions with the Western Washington Growth Management Hearings Board

("Board") to review Island County's adopted GMA Comprehensive Plan ("Comp Plan") and Development Regulations; and

**WHEREAS**, the Board entered its Final Decision and Order on June 2, 1999; and

**WHEREAS**, the Board found certain provisions of the Rural Agriculture Zone invalid and therefore replacement regulations are needed to govern land use in the Rural Agriculture Zone; and

**WHEREAS**, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comp Plan and Development Regulations including the Rural Agriculture Zone; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to Chapter 17.03 ICC relating to Rural Agriculture, needed on an interim basis to comply with the Order of the Growth Board, are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations; and

**WHEREAS**, RCW 36.70A.390 authorizes the County to adopt interim zoning regulations; **NOW, THEREFORE**,

**BE IT HEREBY ORDAINED** in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commissioners hereby adopts the amendments to Chapter 17.03, attached hereto as Exhibit A, relating to lands classified in the Rural Agriculture Zone. Material stricken through is deleted and material underlined is added.

**BE IT FURTHER ORDAINED** that these amendments to the Rural Agriculture Zone shall remain in effect until the County adopts permanent amendments to Chapter 17.03 ICC to replace these regulations. This amendment shall not take effect until the Western Washington Growth Management Hearings Board determines that these interim regulations do not substantially interfere with the goals of the GMA.

Reviewed this 21<sup>st</sup> day of June, 1999 and set for public hearing at 1:30 PM on the 12th day of July, 1999.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz,

Clerk of the Board

BICC 99-365

**APPROVED AND ADOPTED** this 12<sup>th</sup> day of July, 1999 following public hearing.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz

Clerk of the Board

**APPROVED AS TO FORM:**

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

*[Adopted Ordinance #C-76-99 [PLG-015-99] with Exhibits, Amending Chapter 17.03 ICC to comply with invalidity order of WWGMHB regarding Rural Ag Zone, GMA Document*

*#4437] Exhibits placed on file with the Clerk of the Board*

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

IN THE MATTER OF AMENDING CHAPTER 17.02 ICC, TO COMPLY WITH THE ORDER OF THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD RELATING TO THE CRITICAL AREAS EXEMPTION FOR EXISTING AND ONGOING AGRICULTURE	))))))) )	ORDINANCE C-77-99 PLG-016-99
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**WHEREAS**, various parties filed petitions with the Western Washington Growth Management Hearings Board ("Board") to review Island County's adopted GMA Comprehensive Plan ("Comp Plan") and Development Regulations; and

**WHEREAS**, the Board entered its Final Decision and Order on June 2, 1999; and

**WHEREAS**, the Board found prospectively the Critical Areas Exemption for Existing and Ongoing Agriculture invalid if interim regulations were not adopted by August 10, 1999, and therefore replacement regulations are needed to govern land use in the County; and

**WHEREAS**, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comp Plan and Development Regulations including Critical Area Exemptions; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to Chapter 17.02 ICC relating to the exemption for existing and on-going agriculture, needed on an interim basis to comply with the Order of the Board, are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations; and

**WHEREAS**, RCW 36.70A.390 authorizes the County to adopt interim regulations; **NOW, THEREFORE,**

**BE IT HEREBY ORDAINED** in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commissioners hereby adopts the amendments to Chapter 17.02, attached hereto as Exhibit A, relating to the exemption of existing and ongoing

agriculture activities from critical area regulations. Material stricken through is deleted and material underlined is added.

**BE IT FURTHER ORDAINED** that this amendment to Chapter 17.02 ICC shall go into effect August 9, 1999 and shall remain in effect until the County adopts permanent amendments to Chapter 17.02 ICC to replace these regulations. Should the County not adopt replacement regulations within six (6) months from the date of enactment, then the Board hereby declares its intent to reenact this interim amendment so that it remains in full force and effect until the Board enacts permanent replacement regulations.

**Reviewed** this 21<sup>st</sup> day of June, 1999 and set for public hearing at 1:30 PM on the 12th day of July, 1999.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz,

Clerk of the Board BICC 99-366

**APPROVED AND ADOPTED** this 12<sup>th</sup> day of July, 1999 following public hearing.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz

Clerk of the Board

**APPROVED AS TO FORM:**

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

*Adopted Ordinance #C-77-99 [PLG-016-99] with Exhibits, Amending Chapter 17.02 ICC to comply with order of WWGMHB relating to critical areas exemption for existing and ongoing agriculture, GMA Document #4438. Exhibits on file with Clerk of the Board*

**BEFORE THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF AMENDING THE LAND USE ) ORDINANCE C-78-99  
AND CAPITAL FACILITIES ELEMENT OF THE ) PW-37-99  
ISLAND COUNTY COMPREHENSIVE PLAN AND )  
CHAPTERS 11.05 AND 17.02 ICC TO INCORPORATE)  
CERTAIN STIPULATED AMENDMENTS )

**WHEREAS**, Island County adopted a GMA Comprehensive Plan and implementing development regulations on September 28, 1998 and September 29, 1998; and

**WHEREAS**, on December 7, various parties filed an appeal of the County's Comprehensive Plan and Development Regulations; and

**WHEREAS**, the Growth Board appeals identified two issues relating to the Comprehensive Plan and three issues relating to development regulations that could be addressed by clarifying amendments that clarified County standards in a manner that is consistent with the Legislative Intent; and

**WHEREAS**, Island County voluntarily stipulated to amendments on these matters; and

**WHEREAS**, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comprehensive Plan and Development Regulations; and

**WHEREAS**, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to Chapters 17.02 and 11.05 ICC and the Comprehensive Plan are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations; **NOW, THEREFORE**,

**BE IT HEREBY ORDAINED**, that the Board of Island County Commissioners hereby adopts the amendments to the County's Comprehensive Plan Capital Facilities Element, attached hereto as Exhibit A, to ICC 11.05.040.F.1, attached hereto as Exhibit B, to the County's Comprehensive Plan Land Use Element, attached hereto as Exhibit C, and to ICC 17.02.107.E.7 and ICC 17.02.150.M.2.g), attached hereto as Exhibit D. Material underlined is added and material stricken is deleted. These amendments shall be effective upon adoption.

**Reviewed** this 21st day of June, 1999 and set for public hearing at 1:30 PM. on the 12<sup>th</sup> day of July, 1999.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST**: Margaret Rosenkranz, Clerk of the Board

BICC 99-367

**APPROVED AND ADOPTED** this 12<sup>th</sup> day of July, 1999 following public hearing.

**BOARD OF COUNTY  
COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

**ATTEST:** Margaret Rosenkranz,

Clerk of the Board

**Code Provision**

**APPROVED AS TO FORM:**

DAVID L. JAMIESON, JR.

Deputy Prosecuting Attorney

& Island County Code Reviser

*Adopted Ordinance #C-78-99 [PW-37-99] with Exhibits, Amending Land Use and Capital Facilities Element of Island County Comprehensive Plan and Chapter 11.05 and 17.02 ICC to incorporate certain stipulated amendments, GMA Document #4439 Exhibits on file with Clerk of the Board.*

**EXECUTIVE SESSION**

4:20 p.m. in Executive Session for the purpose of discussing with special legal counsel pending litigation, as allowed under R.C.W. 42.30.110 (1) (i) – anticipated length of session was estimated at 2 hours and the Chairman did not expect any announcement or action to be taken in open public session after the Executive Session.

There being no further business to come before the Board at this time, the Chairman

adjourned the meeting at 6:30 p.m. The next Regular Meeting is scheduled on 19

July 1999, beginning at 9:30 a.m.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

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Mike Shelton, Chairman

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Wm. L. McDowell, Member

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William F. Thorn, Member

**ATTEST:**

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Margaret Rosenkranz, Clerk of the Board