

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

SPECIAL SESSION - AUGUST 27, 1999

The Board of Island County Commissioners met in Special Session on August 27, 1999, beginning at 9:30 a.m. for the purpose of (1) to consider a proposed assumption of liquor license for Teddy's on Whidbey; and (2) to conduct a joint workshop with the Planning Commission on AG lands of long term commercial, and set a public hearing date on proposed ordinance amending chapter 17.03 to comply with the order of the Western Washington Growth Management Hearing Board relating to the Rural Agriculture and Commercial Agriculture zones.

LIQUOR LICENSE ASSUMPTION APPROVED

By unanimous motion, the Board recommended approval to the Washington State Liquor Control Board for Assumption of Liquor License #078128-4I, from Roger L. Simmons d/b/a Teddy's on Whidbey, to James Porter, Roger L. Simmons, Debra L. Simmons, Michelle M. Edwards, d/b/a Teddy's on Whidbey, Inc.

JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING**COMMISSION WORKSHOP**

- WORKSHOP ON AG LANDS OF LONG TERM COMMERCIAL SIGNIFICANCE
- SCHEDULE HEARING DATE FOR AG LANDS

Attendance:

Board Members: Mike Shelton; Wm. L. McDowell; William F. Thorn

Planning Commission Members: Tom Olsen, George Crampton, Mike Joselyn

Ag Advisory Committee Members: Ron Muzzall, Don Meehan, Roger Nelson

Staff: Vince Moore; Jeff Tate

Consultant: Keith Dearborn

Public: Approximately 8 attended; Attendance Sheet circulated; copy on file [GMA Record #4532]

Correspondence/Documents on Record:

Maps prepared by County Staff used by the Committee [GMA doc.#4690, 4700, 4701, 4702]

Copy 1-page WAC 365-190-050 AG Lands [GMA doc.#4543]

Agricultural Remand Mission Statement 7/16/99 approved by the Board 7/26/99 [GMA doc.#4519]

7/19/99 Use of the EDU Program letter from Chairman to Jack Lynch [GMA doc.#4547]

Press Release 8/2/99 -- formation of Agricultural Advisory Committee [GMA doc.#4544]

8/2/99 Agricultural Advisory Committee list & appointment letter [GMA doc.#4546]

8/5/99 Tom Roehl - Summary Growth Board AG Remand Findings & Conclusions [GMA doc.#4924]

8/6/99 Tom Roehl -- preliminary ideas on remand issues [GMA doc.#4703]

- 8/17/99 Dearborn to AG Remand Committee -- Existing Protection Measures for AG [GMA Doc.#4545]
- 7/31/99 John Graham to Bill Thorn re Ag Remand Committee [GMA doc.#4548]
- 8/9/99 John Graham to Committee – suggested background reading [GMA doc.#4549]
- 8/10/99 John Graham to Committee – More Comments on Ag [GMA doc.#4550]
- 8/11/99 John Graham to Committee: Zeroing In [GMA doc.#4567]
- 8/11/99 John Graham to Rob Harbour & Bill Thorn--Conservation Easements & AG [GMA doc.#4552]
- 8/11/99 John Graham to Committee: WSJ Article on Conservation Easements [GMA doc.#4553]
- 8/11/99 Tom Roehl to Committee: Suggested for expanded perspective of "farming" [GMA doc.#4554]
- 8/12/99 John Graham to Committee: my motives [GMA doc.#4555]
- 8/13/99 John Graham to Committee: additional thoughts [GMA doc.#4556]
- 8/14/99 Tom Roehl to Committee: Ag Proposal #2 [GMA doc.#4557]
- 8/15/99 Molly Peterson re response to T Roehl answering questions [GMA doc.#4558]
- 8/15/99 Tom Roehl to Peterson & Committee--response to T Roehl answering questions [GMA doc.#4559]
- 8/15/99 John Graham to Committee: Tom's Got it all Wrong [GMA doc.#4560]
- 8/16/99 Tom Roehl to John Graham/Committee:Tom's always wrong-John's always right-how convenient [GMA doc.#4561]
- 8/16/99 John Graham to Tom Roehl & Committee: Tom's always wrong-John's always right-if the shoe fits [GMA doc.#4562]
- 8/16/99 Tom Roehl to John Graham & Committee: decision making [GMA doc.#4563]
- 8/18/99 Petersons Family providing web site: WWW.farmlandinfo.org [GMA doc.#4566]
- 8/19/99 John Graham to Tom Roehl & Committee: Non Residential uses on CA land [GMA doc.#4564]
- 8/20/99 Bill Thorn to Committee: AG Remand Update & Tentative AG Remand Committee Recommendations [GMA doc.#4568]
- 8/20/99 Bill Thorn to Committee: Chair's Proposed EDU Program/EDU Proposal [GMA doc.#4569]
- 8/22/99 Tom Roehl to Committee: AG proposal #5 [GMA doc.#4565]

Mr. Dearborn began by noting that the 3-page handout consisted of the Agriculture Remand Committee Recommendation 8-24-99 and the Proposed EDU Program, which is the summary of the AG Committee recommendation [GMA doc. #'s 4537 and 4538]. He later will review the concept and a proposed ordinance draft the Board received by e-mail last night, today's hand-out identical to the draft other than a few minor revisions all grammatical. He explained what happens next:

9/13/99 @ 1:30, a Public Hearing on the Ordinance if the Board today schedules the hearing

9/14/99 Planning Commission deliberation and recommendation on AG lands

Two more hearing dates before the Board the following two Mondays.

The action that would be taken would be to amend the Comp Plan; the Rural AG Zone with permanent amendments which would replace the temporary amendments adopted about a month about but not go into effect until the Growth Board determined they did not interfere with goals of GMA. The Board would also be making amendments to the Commercial AG Zone which would go into effect immediately; changes to the EDU Program, Farm Management Plan, and modifying the Zoning Atlas.

Agriculture Remand Committee Recommendation [first 2 pages]

Commercial Ag Designation Criteria

1. Start with Prime Soils and exclude soils in UGA's, Navy Property, State Parks, RAID's and Drainage and Diking Districts; then, map lands that meet the following criteria:
2. The designation basis shall be based on parcels not the farm unit
3. Parcels 20 acres or larger including smaller contiguous parcels in the same ownership if they are part of the farm unit; and
4. In the Ag tax program; and
5. At least 25% of the Parcel contains Prime Soils.

Exemption

Keep the agricultural exemption for CA and RA

Opt - Out Process

The procedure is to be a technical amendment process with no fees charged the farmer.

Parcels may be converted to RA or R if either of the following criteria are met:

1. No water rights are available to the Parcel(s) and less than 50% of the Parcel contains

Prime Soils; or

2. The Parcel(s) contain less than 25% Prime Soils. For 180 days after the effective date

of these changes in the CA zone, the County will be required to demonstrate that the Parcel(s) contain Prime Soils if the farmer requests opt-out under this criterion. This

provision also applies to criterion 1 as well.

3. Opt-out shall proceed under ICC 17.03.220

4. Non-farmable lands not exempt under ICC 17.02.107E may be opted-out

Opt - In Process

1. Parcels 10 acres or larger may opt -in to the CA zone through a Type I approval process if they are in the Ag tax program or the farmer demonstrates that they are eligible to be in the tax program.

2. Parcels over 5 acres and under 10 acres may opt-in through a Type II approval process if they meet the 10 acre standard.

Rural Agriculture Designation Criteria

1. The Parcel(s) is 10 acres or larger in size including contiguous smaller parcels in the same

ownership if they are part of the farm unit; and

2. In the Ag tax program; and
3. The Parcel(s) is not designated CA or in a UGA or in a RAID.

Protection Measures

Existing protection measures would be maintained. The PRD ordinance would be reviewed so that PRD open space would include prime soils and be located to separate PRD housing from adjacent CA or RA lands.

Mr. Dearborn explained that the proposal for the Commercial AG zone is to change from the 40 acre minimum parcel size to 20 acre minimum parcel size. Another change is that where the Commercial Ag zone was based on farming units, the proposal now is to establish them based on parcels. Farmers were insistent on that as the approach and the Committee agreed, and it actually increases the number of acres in the Commercial AG and Rural AG zone. The Rural AG zone 20 acre minimum lot size would change to 10 acres with automatic opt out if withdrawn from the AG tax program. Some pieces as small as 5 acres could opt in. Currently the Code allows parcels 10 acres or larger to opt in but this would allow 5.

The Commercial AG zone would start with lands that are 20+ acres in size and have at least 25% prime soils and be in the AG tax program. To comply with prior Growth Board orders, the proposal is to make the effective date 6/2/99, the date of the Growth Board Order. That does not have an impact on Rural AG lands. If you do not have a specific date included that relates to the AG Tax program, the Growth Board has said that becomes effectively voluntarily classification; thus he recommends 6/2/99 as the effective date for lands to be in the AG Tax program classified in Rural AG or Commercial AG.

The opt out program would be at no cost to the farmers and would be treated as a technical amendment to the Zoning Code, a Type 4 process. This would be a verification type process to determine that the property is actually eligible for the classification criteria. This would be an option as long as the zoning code stayed with this provision. The burden to make the determination is on the County for the first 180- days; after 180 days, the burden would shift to the property owner; whereas existing ordinance is 90 days.

Jeff Tate confirmed that under the existing code with the 90 day provision, no one had requested to withdraw.

Mr. Dearborn explained that the method used for mapping the soils was based on the 1958 soil survey. It is known that that is not completely accurate, but it is the best there is at the time. The 180 days applies for any prime soil determination. In the case of water rights determination, the farmer would have the burden to prove that he did not have a water right.

Commissioner McDowell was concerned how the farmer would prove "in the negative" as far as not having a water right.

Mr. Dearborn indicated the farmer would have to show that he did not have an issued certificate of water rights from the Department of Ecology [DOE]. Don Meehan pointed out that water right permit applications and issued certificates of water rights were a matter of record with DOE. And Mr. Dearborn noted that Number 4, the last opt out provision, is if the lands are not farmable.

Mr. Dearborn commented that staff looked at a map of wetlands and compared that to the designations and found that there are a lot of wetlands that are also prime AG soils. If farmed they are exempt; if not farmed, they are not exempt. Under the amendment adopted about a month ago they would be exempt under the Critical Area regulation; if Commercial AG, they would not be exempt.

Commissioner Shelton stated that even though no designation is going to change from Rural to Commercial AG, would that still give them the exemption.

Mr. Dearborn's answer was "yes". Farmers on the Committee asked that the County Commissioners reinstate the exemption for Rural AG, and present today is Mr. Muzzall who will explain why they feel that is reasonable to occur.

As far as the opt in, Mr. Dearborn recalled that the Committee determined that the protection measures were sufficient and no further protection needed for Commercial AG lands than those already in place. He referred to his memo that outlined most of the protection measures the County has [8/17/99 memo on record]. Opting in to the zone will give small farmers the nuisance protection that large farmers have. For 10 acres and larger, it will remain a Type 1 decision, but for 5 and 10 acre parcels it would be a Type 2 decision, appealable to the Hearing Examiner.

Commissioner McDowell asked that with the 5 acre opt in whether the farmers have to state what the purpose is.

Mr. Dearborn stated that the proposal from the Committee did not state that, but that issue was discussed and there was some concern about that. The property would have to be in the AG tax program or be able to demonstrate the eligibility to be in the AG tax program, but no restriction on the type of use. These are subject to SEPA and the responsible official could impose conditions on the use of the property to deal with questions like that. There are requirements of animal management plans as well for small parcels but he was not sure it applied to 5 acre parcels; but there is nothing recommended by the Committee other than to acknowledge the concern.

Jeff Tate knew that anything less than 2-1/2 acres requires an Agriculture Management Plan if in a RAID.

Commissioner Thorn thought perhaps this was an appropriate topic for the Planning Commission to deliberate on.

Another thing Mr. Dearborn pointed out was that you cannot be in the Rural AG zone and be in a RAID. The designation criteria proposal came from the Committee's "Farmer's Caucus" which consisted of both small and large farmers who all participated and came out with a proposal they felt could be supported collectively. Everyone felt the opt out process important, that it should be a simple process and that there should be an opt in process for small farmers.

Ray Gabelein, Jr., Langley, had a question about how many members of the Committee were from South Whidbey. He was given the names of those members and referred to the list of members on record. He was especially concerned that if the County took away the exemption for Rural AG, that it would mean almost the death of Rural AG on South Whidbey.

Commissioner Shelton made the point that it was not the Committee, Planning Commission or the Board that took away the exemption; it was the Growth Hearings Board. He could only assume that some of the property Mr. Gabelein was concerned about was his own property and that of his family. He suggested that one of the things that might be appropriate would be to opt in.

But Mr. Gabelein didn't think he could because it was diking and drainage property.

Mr. Dearborn clarified that that would not prevent him from opting in. Jeff Tate noted there was a total of 570 acres of Commercial AG on South Whidbey.

Roger Nelson confirmed that consensus of the Committee was that the exemption needed to be included for Rural AG.

Commissioner McDowell thought Mr. Gabelein's statement really profound and convincing, that by not having that exemption for those lands farmed in Rural AG, that that would be the death of that way of life.

Mr. Gabelein went on to say that he was raised on a farm but now actually has probably what is considered a hobby farm, obvious he can't make a living and send kids to college solely on farming there. He explained he was speaking mostly about the situation he sees on South Whidbey. The biggest problem would be if the exemption is taken away for Rural AG. Examples where he thought this would be a problem on South Whidbey were: Cultus Bay area - the low lands that have been farmed and working adjacent to the buffer of wetlands; same is true for Maxwelton Valley. For Long's Farm he thought there would be a huge loss if they were not able to farm in those areas of wetlands or buffers, and the same for the whole Bayview march. Mutiny Bay has some farming in the low lands too adjacent to wetlands or

buffers. He hoped the County would fight to keep that exemption for Rural AG. When a farmer loses the use of a couple acres here and another there, it can make a big difference. Most farmers just want to continue doing what they are doing. Taking a little here and a little there is a problem and also the younger generation does not seem to want to pick up from there so it's harder and harder to keep going and it will impact everything farmers have been doing. Instead of growing crops, hay, running cattle, etc., those fields will grow houses and pavement. He asked the Board do something to keep the exemption for Rural AG.

Commissioner Thorn remembered that the Committee debated a classification such as CA-1 and CA-2, but could not come up with how to distinguish between them, and he suggested perhaps that was worth further consideration.

Mr. Dearborn mentioned that lots of counties exempt AG from Critical Areas ordinances whether they are designated long term commercial significance or not. Island County would be one of only a few counties that do not, and this County is not doing so because of the Growth Board decision.

Commissioner McDowell recalled Mr. Gabelein's testimony saying that Rural AG on South Whidbey is almost not commercially viable for those who want to send the kids to college; by losing small or large amounts of land it makes it less and less viable to stay in farming.

Mr. Dearborn stated that in order to do what is now being discussed would require preparing and introducing an ordinance reinstating the exemption for Rural AG and hold hearings on that ordinance, and the Committee is recommending that occur.

Chairman Shelton acknowledged that Ray Gabelein was not the first person from South Whidbey to testify about the same issue; Fred Frei, Jr., has testified on the same issue.

Mr. Gabelein expressed a desire to see the County go to court on that particular issue. And the Chairman stated that the County had reserved that right to do so.

Ron Muzzall stated that the Committee work had been a good experience. Both ends of the spectrum were represented on the Committee and the Committee dealt with some dicey issues. They did caucus and came up with proposal which really was more towards the preservation side, and the Committee as a whole agreed and were able to come up with proposal that represents that give and take. Addressing the issue of wetlands brought up by Mr. Gabelein, he recalled that back in 1987 when dealing with wetland issue in the County there were varying degrees as far as what constituted wetlands and there was a lot of fear on the part of farmers that it would include such things as ditches, irrigation ponds, etc. He saw the same situation today as far as Rural AG is concerned. He likewise gave some examples, specifically: Waterloo drainage – and down across Whidbey Golf and Country Club, then on to Fakkema's. At one time there was a drainage district. Large areas in there pool up in the winter and then drain out; all of it farmed. Waterloo marsh itself he found interesting Isaac Ebey took cattle up there and pastured them in the 1840's. A good portion of that falls in the Rural AG zone. He noted an entirely different topography in that area from that in Ebey's Prairie. Some falls in prime soils designation on the side of the hill, but not percentage wise for Commercial AG; however, without the ability to farm near wetlands you can lose that good soil. There are areas where sandy ridges develop and the only reason the farmer holds on to that is the soils down near peat—if they lose the ability to farm within the wetland buffer the only thing remaining might only be to cut hay. Hastie Lake wetland area out to the Beach View Farms has historically been AG and also impacts that drainage area; he assumed it would be true all over the place on the Island.

Answering Mr. Dearborn, Mr. Tate confirmed it would be fairly easy to develop a map that identifies those proposed Rural AG zone lands that are also on the wetland map to have for the Board to look at and understand impacts.

Mr. Muzzall commented that he thought probably a fear on some people was that they would see huge areas being able to be farmed and changed near wetlands, but in truth, if those wetlands fall within the farmed area, those wetlands were already changed and actually would not have any negative impact as far as the amount of wetlands. He pointed out that Steve Lambert's property as you head up Boon Road – now there may be 6' of water but 6 years' ago they could cut hay. Things change as rainfall patterns change.

Mr. Muzzall stated that the plan put together as a Committee was fair; complicated but on the whole really inherently

fair, evens out the blow and a good effort.

Commissioner Thorn's thought that if an area was currently farmed it should not be on the wetland map, and suggested perhaps there may just be a definition problem., but certainly it is artificial to have those lands included in the first place when historically they have been farmed.

Vince Moore noted that the wetland map came from Federal Wetland maps. And Mr. Tate observed that if you look at the wetland map, the whole Ebey's Prairie is included – that is just hydric soils, but under the Federal classification and the County's Critical Areas Regulation, it is designated as wetlands.

Mr. Dearborn pointed out that GMA has a definition of wetland and that includes those lands; that is why exemptions were created as a way to reclassify the inconsistency between the two.

Commissioner Thorn liked the idea of mapping that Mr. Tate said he could do – to have individuals identified and help build a record for that because where historically farmed it makes no sense to define them as wetlands.

Mr. Dearborn said that the exemption is for existing and on-going uses that have occurred historically, he thought five years under Federal rules. He clarified for everyone present that this was not a Coalition issue, rather a WEAN issue, and he did make all of those arguments in writing and orally to the Growth Board, although not with the same detail that has been provided today. He agreed that a map be prepared, and an ordinance amendment to reinstate the exemption to be ready for the Board to set for hearing on September 13th for a hearing date in early October.

Commissioner Thorn thought there should be an effective date to grandfather these areas.

While Mr. Dearborn agreed to give that some thought, he noted to keep in mind that because the exemption was eliminated technically those properties that are being farmed in the existing RA zone in wetlands are doing so illegally and could be subject to enforcement action, so this needs to be thought out.

Linn Emrich, Camano Island, owns property in Section 22, Township 32, between SR 532 and the northwesterly section corner, with a mile dike frontage on that land, looked at the information today as quite new and did not know what his land was proposed to be designated as.

Mr. Tate stated that Mr. Emrich's land was proposed as Commercial AG, both upland and dike land.

Mr. Emrich did not know whether he liked that or not and advised that he was not in a formed drainage district, but classified himself like a sole drainage district – he drains the land outside his fields.

Mr. Muzzall commented that there were a lot of diking and drainage districts that surround the Islands, and being inundated by upland water and becoming increasingly difficult to drain for farming. Because of that upland water it may not be economical to keep those drained for AG lands. If there is some point in time the water cannot be kept off, it should not be designated Commercial AG. The other side of the coin is that it never will become a shopping mall, etc. either. Until hearing from Mr. Emrich he had not considered there were folks who would be more or less their own diking or drainage district. The mood of the Committee was that protecting the lands like that should not be just for Commercial AG.

Mr. Dearborn thought it would be easy for the County to treat that situation the same way as proposed for the water rights issue, and should be an easy opt-out if the land is in a district, which would be the rationale.

Chairman Shelton thought that it would be fairly easy to identify – easy to visually do that probably with one site visit.

Mr. Dearborn commented for the record and those present he had an e-mail message from John Graham, Citizens Growth Management Coalition, [GMA doc. #4703] reminding this is a Committee proposal and if there were any substantial changes to those they signed off on would lose that consensus.

Commissioner Thorn's observation was that the discussion here had been on proposed additions, not changes, and did

not think it changed intent.

Commissioner McDowell commented that the only thing potentially being added would be that for the diking and drainage district option – to have that opt out for those individuals who are acting in the same manner as a district and have the same opt out provisions as a district would.

Mr. Emrich mentioned another like situation – two property owners Chuck Anderson and the Overalls, who sold to Marty Baker, and he thought there was about a mile of dike.

Don Meehan explained that when the Committee talked about soils they discussed marsh tidelands that had been claimed by diking, and addressed at the very beginning where water came in to areas and created problems, and he thought everyone agreed if part of diking or drainage, should be excluded.

Mr. Emrich was surprised to find his land was considered prime soils because he felt the soil fell far short of being prime soils because it was reclaimed tidelands, some land ranked #19 to #24 on the salinity scale, and he said if there was any prime soil on the uplands he would like to know about as he has not seen any prime ag soil.

Jeff Tate reviewed the maps posted on the wall during the Workshop:

- 1) Map on right hand side represents unit basis GMA doc. #_____
- 2) Map on the left hand side represents parcel basis GMA doc. #_____

The unit method is looking at someone's entire ownership and at 25% for the entire property. The Committee chose to go with the parcel approach and there is an 180 acre difference between Commercial AG under each scenario.

Next, Mr. Tate reviewed four additional hand-outs:

Statistics/Graphics

- Methodology – CA = 25% Soils by Unit GMA doc. #4533
- Methodology – CA = 25% by Parcel GMA doc. #4534
- Parcels between 10 & 20 acres that now qualify for Rural AG which did GMA doc. #4535

not previously have an AG designation and Parcels that now qualify for

Commercial AG which did not previously have an Agricultural designation

- Proposed Changes in Acreage 9/28/98 to 8/27/99 GMA doc. #4536

The parcel approach: overall the Commercial AG zone using this criteria would have an increase in total acreage; more than 100% increase as reflected by the parcel approach. Overall there is an increase in the total number acres for Commercial AG and Rural AG. One of the handouts highlights all the parcels within the packet for the gray highlighting, indicating those properties throughout the County that would be bumped into to AG density from outside the zone. An 8.9 acre parcel, as shown on one hand-out would be included because it is contiguous to the rest of the Muzzall farm property. Likewise on the other sheet, parcels under 20 would be included because contiguous; i.e. the 2.22 parcel is next to a 32.3 acre piece and has 25% soils according to soil maps.

Commissioner Thorn noted that it affected so little when looking at the County as a whole.

Mr. Dearborn noted that there were a whole series of maps that Mr. Tate prepared for the Committee to look at during their work, including a 10% soils map. And it demonstrates the County's criteria is not arbitrary.

And that, Ron Muzzall believed, showed how little good quality soils there are in Island County.

As far as the people on the list, Commissioner McDowell was interested in knowing whether they had been notified.

Mr. Dearborn stated that those people had not been notified, but that could be done by letter or post card, and identify the September 13th public hearing.

Commissioner Thorn agreed that should occur, and that those folks also be sent a copy of the proposed ordinance as well.

Mr. Moore agreed to have that done on Monday.

Mr. Dearborn reiterated that the Committee determined in general, there were no more protective measures other than what are being proposed through the designation criteria process. There are some inconsistencies between the Site Plan Review and Planned Residential Development ordinances regarding preservation of open space that came about because of the adopted rural use amendments in May. The Committee recommends to look at the PRD ordinance to make it consistent with SPR ordinance. To do that, Mr. Dearborn suggested that Commissioner McDowell's committee on rural densities look at that issue.

PROPOSED EDU PROGRAM [Earned Development Unit]

Mr. Dearborn walked everyone through how the EDU Program worked. He said you can only

receive EDUs if you have an approved farm management plan. As proposed there are no changes to the EDU program for Rural forestry; it was not a remand it was not part of the Committee's work.

1. EDU's may be acquired only through an approved Farm Plan
2. EDU's only derive from CA and RF land
3. EDU's are granted in addition to the EDU's derived from the base density
4. EDU's derive from the conserved land only
5. The conservation easement is in perpetuity
6. EDU's may only be used on land owned by the owner of the CA land from which they derive
7. A maximum of 15% of the farm unit may be set aside for development using the EDU's and will not be deemed CA when separated, PROVIDED that the land set aside contains no prime soils. The 15% set-aside may be defined through a rezone process in accordance with the approved Farm Plan, with no fee to the owner and with the same proviso concerning soils character or cultivation.
8. EDU's may be used on the 15% set-aside or on other non-CA land in the same ownership
9. The open-space requirement required by the PRD ordinance and ICC 17.03 will be waived on the 15% set-aside land
10. EDU's will be granted at a rate of 0.2 EDU per acre conserved
11. Developments using EDU's must be clustered and buffered
12. Lots created for EDU's may not exceed one acre in size
13. EDU's may be used as a density bonus on lands other than the set-aside at a rate of 100% of the base density of the zone in which they are used
14. EDU's may not be used in combination with Density Bonuses.
15. EDU's may be sold/purchased.

The Committee wanted the farmers to have a choice of how to use EDUs on the non residential uses. There is a provision in the code that allows sale or use. And there has been talk about charitable donation to gain some tax benefit. There is no requirement built in but through a farm management plan a farmer could get approval to use EDUs, for example, for a country inn – the farmer could sell a parcel to someone who builds a country inn.

Exhibit B to the Ordinance identifies NR uses the Committee felt were appropriate to allow the farmer : See B-1 "*" ; this is a limited set of uses. The Committee went through all the rural non residential uses that are allowed. B-2 notes indicate, note #2 indicates:

"Uses denoted with an asterisk may be allowed in the RA or CA zones upon approval of a Commercial Agriculture Farm Management Plan. See ICC 17.03.180."

See Pages B-16 and B-17 Exhibit B to the Ordinance:

1. EDUs may be used for residential or non-residential uses as follows:
 - a. Single Family Residential-1EDU per Lot;
 - b. Non-residential
 1. Campground-1EDU per acre;
 2. Boat Launches-1EDU per Lot;
 3. Country Inn-1 EDU per 2,500 SF of Gross Floor Area
 4. Churches-1 EDU per 2,500 SF of Gross Floor Area
 5. Gun Clubs and Shooting Ranges-1EDU per acre
 6. Fire Stations-1EDU per Lot
 7. Storage, personal – 1EDU per 2,500 SF of Gross Floor Area
 8. Restaurants-1EDU per 2,500 SF of Gross Floor Area;
 9. Model Hobby Parks – 1 EDU per Lot

9. The use of residential EDUs must be in Clusters and the location of both residential and non-residential EDUs must be Buffered to protect CA Lands and to ensure compatibility with the rural Character of surrounding Permitted Uses.

Commissioner Thorn noted there had been casual discussion among the Committee and the general thought was that 2,500 sq. ft. represented an average single family dwelling; therefore a value based on an EDU.

Mr. Dearborn noted that this was in trying to create some equality on intensity, but this is an area that is only partially complete and needs further review.

Three overheads/illustrations used by Keith Dearborn [GMA doc.#4540]

Base Density

EDU Program

EDU Options

Mr. Dearborn expected that Commissioner McDowell's committee would come back the end of September with recommendations on the rural zone.

With an EDU program if a farmer came in with a farm management plan for a 100 acre tract, if he committed 85 of 100 acres to a permanent conservation easement, 15 acres could be rezoned to Rural AG and the farmer would gain 17 EDU's to use in addition to five 20 acre lots and the 17 EDUs could be used on the 15. Nothing in the farm plan requires use of the 17 EDUs right away, and if farmer bought another parcel zoned rural, he could ask for an amendment to the plan and include that parcel; and that parcel could be used for EDU's as well as long as he maintains the 85 acres. Everyone wanted to keep as much flexibility available for the farmer.

There is no size restriction on the amount of acres in the remaining portion of the property in the conservation easement. As an illustration, Mr. Dearborn took a moment to go through one of the graphics using as an example, Mr. Emrich's property.

Mr. Dearborn pointed out an issue that came up under the old opt out program was a ruling by the County's Prosecuting Attorney that required that go through a SEPA determination, which sub-

stantially changed the time frame for that process. It was his presumption in this case, the opt out would be handled as having been included in the previous SEPA determination and that this would simply be a technical amendment.

Commissioner Thorn agreed that should be true, because the opt out is for cause.

Mr. Dearborn said that someone could opt in and that too should not have to go through the whole SEPA process.

Don Meehan took that stand that it is important to look at the profitability for the farm; anything government does that impinges on that is something that needs to be looked at. It is disconcerting to have to go through a Type 4 process because it is highly involved and costly to the farmer. Most farmers do not have that much time on their hands and he would like to see the process simplified for the farmer.

Commissioner Thorn did not see the Type 4 process as having that much of an impact.

Mr. Dearborn mentioned that the difference in terms of the Type 4 process is it would be a Planning Commission/Board action, considered outside of the annual review process, and there is no administrative appeal of that.

Mr. Muzzall felt there was some concern when looking at the farm management plan in that it might be too cumbersome. One of the important things to remember with farmers is the need to turn around for fast cash in time of crisis and be able to harvest the value of the farmer's EDUs to pay off a note. Looking back on some situations that existed: 15 years' ago there were 10 farmers milking cows; now there are 4. There are other instances where farmers got in to trouble financially, and had they been able to generate 1 cash from their property they would probably be in existence today.

Commissioner Thorn suggested the possibility of coming up with a stock farm management plan where the farmer would just have to fill in the blanks.

And Mr. Dearborn agreed that was something to think about. Another thing that could be done would be rather than to require that a farmer identify a specific property to have the conservation easement on, it could be made a condition.

Commissioner Thorn thought having that provision in the code might be worth something to a banker and may be basis enough on which to borrow money.

Commissioner McDowell wondered if that could be a ministerial type decision.

Mr. Dearborn stated that with the old development rights transfer program, that is how it worked. So, maybe from the farm plan allocating EDUs, but to get a use certificate, the farmer would have to bring in a conservation easement and record it with the County. So if the farmer as part of the farm management plan commits 85 acres, but does not know which portion of the 100 acres right now, but got 17 EDUs approved subject to a conservation easement that would be recorded for the 85 acres of that parcel. It is important to make the process work so the farmer wants to use it.

Roger Nelson pointed out that any farm management plan would be subject to approval of the Board of County Commissioners, and his concern would be with some future Board and wanted some language in the code to talk about the Board not unreasonably withholding consent. Ray Gabelein suggested adding to #9 language about economic viability.

Mr. Dearborn thought the language might need some fine-tuning but noted there really was only one discretionary

criteria there. It may be an issue the Committee needs to give more guidance on, but it can also be addressed in terms of legislative intent.

Diane Kendy was given the opportunity to make comments, and advised that she had some questions but only out of ignorance and could ask them off record.

Jay Leque, Camano Island, submitted a notebook on behalf of Farm at Livingston Bay (1999) and DD #5 with cover letter dated 8/27/99 [GMA doc. #4542]. He read from the first page

of his cover letter:

"We wish to compliment the County for instilling logic and common sense in determining what properties should be classified commercial agriculture or rural agriculture. Last year we went to great expense and detail to prove that our land does not conform to the criteria of the GMA intent of what constitutes commercial agriculture. We are resubmitting for the record the correspondence and exhibits that were presented last year, and additionally, we are including more detail to the problem that has historically plagued our farm and the two adjacent farms which comprise Drainage District #5—upland water and diking."

Charles Cole, Camano Island, stated that after reading the one chart with his name on it for classifying his 35 acres as Commercial AG, he had some concern. Originally the property was proposed to be in a RAID because it bordered Land's Hill Estates. On presentation, however, the Growth Management Hearings Board turned that down. He was shocked to find out now his property was designated as Commercial AG . He is not a farmer, rather is an attorney. he owns a large piece of ground that has not been farmed for the last 37 years and not farmed years' before that; it just happens to be a large tract of land. Every large tract is not necessarily AG . The soils are not good and he could not imagine where the idea came from there were 25% prime AG soils. Nothing is growing other than wild blackberries. He resents being put in Commercial AG, and felt it totally inappropriate.

Commissioner Thorn moved that the Board set Ordinance PLG-034-99 [a "C" number to be assigned by the Clerk of the Board] for public hearing on September 13, 1999 at 1:30 p.m. Motion, seconded by Commissioner McDowell, carried unanimously.

[Ord. #C-105-99 ([PLG-034-99) GMA doc. 4541]

Meeting adjourned 12:25 p.m.

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