

## ISLAND COUNTY COMMISSIONERS – MINUTES OF MEETING

### REGULAR SESSION - SEPTEMBER 13, 1999

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on September 13, 1999, beginning at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Mike Shelton, Chairman, Wm. L. McDowell, Member, and William F. Thorn, Member, present. Minutes from the meeting of August 16, 1999, were approved and signed.

#### VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) # Warrants #57525 -- 57895..... \$767,877.77.**

#### Employee Service Awards

Jan Myers 10 Diana Vaughan 20

*Central Services Central Services*

Linda Bass 15 Marisela Bodley 10

*District Court . Juvenile Services*

Ben Larcena 5 Kathryn LeBaron 10

*Public Works Health*

Lanny Kee 15 Debra Little 5

*Assessor Public Works/Comm. Dev.*

#### EMPLOYEE OF THE MONTH - AUGUST

***KAREN BOWERS, ASSESSOR'S OFFICE***

#### HEARING HELD: Ordinance #C-102-99 Repeal of the Requirement of County License for Dancing and Entertainment in Taverns

#### RESOLUTION #C-106-99 – ANNEXATION OF CITY OF LANGLEY INTO ISLAND COUNTY FIRE PROTECTION DISTRICT #3

The City of Langley provided a copy of properly-adopted Ordinance #778 dated September 1, 1999 declaring the City's intent to join

Fire Protection District No. 3, and received from Fire Protection District No. 3 a copy of properly-adopted Resolution No. 99-07 concurring in the City of Langley's intent to join the Fire District by Annexation and Directing the Fire Chief to transmit concurrence to Island County Commissioners. As Chairman Shelton explained, these two documents were necessary in order for the Board to consider a proposed Resolution #C-106-99 authoring the Auditor conduct a special election on Tuesday, November 2, 1999 in both the City of Langley and Island County fire protection District No. 3 for consideration by the voters whether the City should be annexed into Fire Protection District No. 3.

With that, the Board, by unanimous motion, approved Resolution #C-106-99 in the matter of annexation of the City of Langley into Island County Fire Protection District Number 3.

**THE BOARD OF COUNTY COMMISSIONERS**

**OF ISLAND COUNTY, WASHINGTON**

IN THE MATTER OF ANNEXATION )

OF THE CITY OF LANGLEY INTO ) RESOLUTION NO. C-106-99

ISLAND COUNTY FIRE PROTECTION )

DISTRICT NUMBER 3)

WHEREAS, on September 1, 1999, the City of Langley enacted Ordinance No. 778 expressing a desire to join Island County Fire Protection District No. 3 by annexation; and

WHEREAS, on September 2, 1999, Island County Fire Protection District No. 3 enacted Resolution No. 99-07 concurring with the City of Langley ordinance and agreed that the City should join Island County Fire Protection District No. 3; and

WHEREAS, RCW 52.04.071 provides that the Board of County Commissioners shall, by resolution, following approval by the governing body of a city and fire protection district, call for a special election to be held in the city and fire protection district for voter approval of the annexation; NOW, THEREFORE,

BE IT HEREBY RESOLVED that the Island County Auditor is directed to conduct a special election on Tuesday, November 2, 1999, in the City of Langley and Island County Fire Protection District No. 3 to consider annexation of the City of Langley into Island County Fire Protection District No. 3. The election shall be in accordance with the general election laws of the state and the ballot proposition shall be in substantially the following form:

"Shall the City of Langley be annexed to and be a part of Island County Fire Protection District No. 3?"

Adopted this 13<sup>th</sup> day of September, 1999.

**BOARD OF COUNTY COMMISSIONERS**

**ISLAND COUNTY, WASHINGTON**

Mike Shelton, Chairman

Wm. L. McDowell, Member

**ATTEST:** William F. Thorn, Member

Margaret Rosenkranz

Clerk of the Board

BICC 99-494

**HEARING HELD: Ordinance #C-102-99 Repeal ICC 5.04 REQUIRING**

**County License for Dancing and Entertainment in Taverns**

A Public Hearing was held at 9:50 a.m. as scheduled and advertised, for the purpose of considering an ordinance which would repeal requirement for county license for dancing and entertainment in taverns adopted by Resolution A-1 in 1937, codified as Chapter 5.04 ICC.

David L. Jamieson, Jr., Deputy Prosecuting Attorney, explained that he had prepared the ordinance for the Board's consideration based on Case No. C98-16222C decided by the U. S. District Court in Seattle finding that RCW 66.28.080 adopted in 1937 was unconstitutional. That RCW required the operator of a licensed liquorserving establishment to first obtain a city or county permit before allowing entertainment, music or dancing on the premises. The Judge in that case determined that to be a prior restraint on First Amendment rights which gives public officials the power to deny the use of a form in advance of actual protected expression. Inasmuch as the State law was found unconstitutional, the County ordinance adopted also in 1937, should be repealed. Mr. Jamieson confirmed that in checking with the State there is no intent to appeal the decision; and the City of Seattle likewise has no intention to appeal.

At the time the Chairman called for comments on the proposed Ordinance from members of the public, no one stepped forward to speak either for or against the proposal.

By unanimous motion, the Board adopted Ordinance #C-102-99 in the matter of the repeal of the requirement of County license for dancing and entertainment in taverns.

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

IN THE MATTER OF THE REPEAL )

OF THE REQUIREMENT OF COUNTY ) ORDINANCE NO. C-102-99

LICENSE FOR DANCING AND )

ENTERTAINMENT IN TAVERNS ]

**WHEREAS**, in 1937 Island County adopted Resolution A-1, now codified as chapter 5.04 Island County Code (ICC), to implement a new state statutory requirement, now codified at RCW 66.28.080, that before music, entertainment or dancing is allowed in an establishment licensed under state law to serve alcoholic beverages that a permit must be obtained from the County; and

**WHEREAS**, on June 29, 1999, the United States District Court for the Western District of Washington in a case entitled Jersey's All-American Sports Bar, Inc. v. Washington State Liquor Control Board and the City of Seattle, Case No. C98-1622C, found that RCW 66.28.080 requiring permits is an unconstitu-tional prior restraint of expression barred by the First Amendment; and

**WHEREAS**, neither the State of Washington or the City of Seattle is appealing the United States District Court decision finding RCW 66.28.080 unconstitutional; and

**WHEREAS**, it is appropriate that Island County repeal its mandatory licensing requirement since it is based upon a state statute which has been found unconstitutional; and

**WHEREAS**, even with the County's permit requirement repealed, County law enforcement can still enforce the laws relating to sales of liquor, fire codes, noise ordinances, laws prohibiting violence against persons or property, and other health and safety regulations;  
**NOW, THEREFORE**,

**IT IS HEREBY ORDAINED** that Island County Board of County Commissioner Resolution A-1, adopted August 2, 1937, codified as chapter 5.04 ICC, is repealed.

Reviewed this 16<sup>th</sup> day of August, 1999, and set for public hearing on the 13<sup>th</sup> day of September, 1999 at 9:50 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 99-472

Ordinance C-102-99 is adopted this 13<sup>th</sup> day of September, 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 and**

**Island County Code Reviser**

**Hiring Requests & Personnel Actions**

The following Personnel Action Authorizations, presented in summary form by Terry Chevront, Human Resource Department, were by the Board on unanimous motion:

**PAA # Description/Position # Action Effective Date**

089/99 Dep. Prs. Atty. #1805.00 Replacement 9/21/99

093/99 Accountant #202.01 Replacement 9/13/99

087/00 P.H. Nurse #2406.04 Reduce Hours 9/13/99

088/00 P.H. Nurse #2406.14 Increase Hours 9/13/99

091/99 P.H. Coord. #2408.01 Increase Hours 9/13/99

090/99 P.H. Coord. #2406.09 Increase Hours 9/13/99

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## **COMMITTEE APPOINTMENTS**

The Board, by unanimous motion, made the following appointments to three Committees and/or Boards:

### **Island County Fair Board**

Raymond Gabelein, Clinton, reappointed for a term to October 8, 2002

### **Conservation Futures Citizens Advisory Board**

Karen Anderson, Clinton, representing School District #206

Term to: September 30, 2002

Jim Pugh, Langley, representing City of Langley

Term to: September 30, 2002

### **Regional Transportation Planning Organization [RTPO] Technical Advisory Committee**

William Applegate, Oak Harbor, representing Commissioner District #3.

### **Claim for Damages R99-018CD, Unigard Insurance for Janet Kennen**

Betty Kemp, Director, GSA/Risk Management, presented her recommendation in the matter of Claim for Damages #99-018 CD, Unigard Insurance for Janet Kennen filed as a result of County mower throwing rock and damaging vehicle. The claim was investigated by the County Engineer and the Coupeville Road Shop Supervisor, confirming incident and that the claim should be paid, in the amount of \$795.41. Mrs. Kemp concurred.

The Board, by unanimous motion, approved Claim for Damages #99-018 CD, Unigard Insurance for Janet Kennen in the amount of \$795.41.

Claim for Damages – Paul D. Harell R99-029CD

## **Camano Animal Control Contract**

**Interlocal Agreement between Island County and I-COM for State Enhanced 911 Salary Assistance**

**Intergovernmental Agreement with Washington State Military Department for E-911 Program EM19042**

**Membership Compact of the Washington Counties Risk Pool membership Contract**

**Resolution #C- -99 – Annexation of the City of Langley into Island County Fire Protection District #3**

**DEVELOPMENTAL DISABILITIES "BRIDGE" CONTRACTS APPROVED**

Contract: HS-05-99, Toddler Learning Center, \$17,856.00

Contract: HS-06-99, Island Employment Services, \$29,076.00

Contract: HS-07-99, Service Alternatives, \$20,544.00

**Amendment 4 - Consolidated Health Contract C-07711(4)**

Biennium Contract: Work Order No. 6882-0, Department of Alcohol & Substance Abuse, \$973,811.00

**HEARING SCHEDULED: ORDINANCE #C-107 -99 (R-32-99) – renaming portion of Wanamaker Road right of way from Bells Lane to Wanamaker Road, portion west of Ft. Casey Road (correcting error in prior**

**Ordinance C-72-98 (R-22-98)**

As presented by Larry Kwarsick, Public Works/Community Development Director, the Board by unanimous motion scheduled a public hearing for September 27, 1999 at 2:15 p.m. to consider proposed Ordinance #C-107-99 renaming a portion of Wanamaker Road right-of-way from Bells Lane to Wanamaker Road. Intention is to correct an error in a prior ordinance.

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**SSlope Easement – Patmore Road, Sec. 11, T31N, R1E; John J. and Earlene**

**Beckley & Beckley Family Trust**

The Board adopted motion unanimously to accept Slope Easement Patmore Road, in Section 11, Township 31N, Range 1E, from John J. and Earlene Beckley & Beckley Family Trust. This enables the County to maintain existing slope areas.

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**WSDOE Grant Application – Waste Management**

**Coordinated Prevention Grant; Total project cost \$524,297.00 (\$314,578.00 Grant/\$209,719.00 County)**

Mr. Kwarsick requested approval to submit

Grant Application under the Waste Management Coordinated Prevention Grant, for a total project cost of \$524,297.00 (\$314,578.00 Grant/\$209,719.00 County). This was a topic discussed during recent Staff Session with the Board, and the cover sheet amended to correct an error in terms of summation of the funding.

Commissioner Thorn noted that the numbers on the cover memo from Jerry Mingo would still indicate an error and believed that the form CPG-A has an error at the bottom of the page under local match money.

The Board, by unanimous motion, approved submittal of Grant Application under the Waste Management Coordinated Prevention Grant to the State Department of Ecology, with the Public Works Director to verify correct detail numbers.

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**Personal Property Sale & Removal Agreement – House at 501 Center Street; Steve & Cheryle Nordstrand**

**DISCUSSION: Ordinance Amending the Island County Growth Management Act Development Regulations Regarding Lighting**

Larry Kwarsick indicated that proposed for today's agenda was to schedule a date and time for public hearing to correct and oversight and error that occurred in the recent amendments to the County's Zoning Ordinance with respect to lighting. However, Vince Moore, Planning Director, advised that the Planning Commission was finalizing recommendations to the Board regarding lighting standards and was of the opinion that at the present time the ordinance should be allowed to stand and correct the error in a more comprehensive way with the Planning Commission recommendations. Item pulled from the agenda at this time.

**Personal Property Sale & Removal Agreement – House at 501 Center Street; Steve & Cheryle Nordstrand**

As presented and recommended for approval by Mr. Kwarsick, the Board by unanimous motion approved Personal Property Sale & Agreement with Steve and Cheryle Nordstrand for purchase of the house located at 501 Center Street, Coupeville.

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**APPEAL HEARING: APPEAL OF THE DENIAL OF BOUNDARY LINE ADJUSTMENT**

**BLA #264/99, GARY AND RUTH LEWIS, APPLICANTS/OWNERS**

A Public Hearing was held for the purpose of conducting an appeal hearing on the denial of Boundary Line Adjustment BLA#264/99 by Gary and Ruth Lewis, Applicants/Owners. Gary Lewis was present at the time of hearing. The Applicants/Owners were represented by Tom Roehl, T. J. Roehl & Associates, Project Planning & Management Freeland.

The Appeal Hearing was scheduled f

ollowing Mr. Roehl's e-mail message August 2, 1999, hard copy sent via regular mail letter requesting appeal of the denial of BLA #264/99. A second letter from Mr. Roehl was received dated August 3, 1999, which provided a correction/addendum to the request for reconsideration and notice of appeal [ICC 16.19.040]. This was a Type I decision appeal under the new land use review process, and an open record appeal process.

Chairman Shelton outlined the Hearing Procedure: Outlined:

**BOARD OF ISLAND COUNTY COMMISSIONERS**

**PROCEDURE TO HEAR APPEALS**

The following procedure procedire is established to provide a consistent and understandable process for hearing appeals of a quasi-judicial nature coming before the Board of Island County Cuonty Commissioners. Commissoiners.

1. 1. Staff to present will present a present concise statement describing the nature bing nature of appeal, history 5to date, relevant facts and statutory constraintsof the appeal, the hearing history hstory to date, the relevant facts and statutory constraints.
2. The appellant, or

The Appellant, or designated representative, will be provided an will be provided an opportunity to state the basis of the appeal, new information not appeal, new informatoin not already presented at a ast previous appeal hearingsw, and the action requested acton us apeal hearings, and the cton requwsted oof the Board of Commissioners. f the Board

32. 3. Other members of the public will be provided a reasonable opportunity opportuhnty ith nity to state any new information infoamtio not already presented at a previous appeal hearing, and the action requested of the Board of Commissioners p.

4. Staff will comment on new informatoininformation provided by the appellant and members of the public.

1. The appellant, or designated representative, will be provided an opportunity to comment on new information provided by the members of the public and comments of county staff.
2. A decision will be announced at public meeting within 14 days based on testimony during the hearing, transcripts of previous hearings and applicable laws. The Board's decision will include the vote of individual Commissioners , and a brief statement as to the basis for the decision.

7. After the Board's decision, the Public Works Director will prepare Findings of Fact and Conclusions of Law for signature by the Board of County Commissioners. A copy of this decision will be provided to the appellant by the Public Works Director.

**STAFF:**

In

Larry Kwarsick

In addition to the attached Staff Report dated July 30, 1999 prepared by Scott K. Johns, Associate Planner, staff report

Mr. Kwarsick followed the outline and summarized from his Memorandum on the subject appeal dated September 9, 1999: offered the following comments by Memorandum dated

Criteria "The criteria for approval of a BLA are specified in ICC 16.06.070. and are restated below.

Staff reviewed the proposal and determined the application did not meet specifications outlined in criteria for approval of BLA specified in ICC 16.06.070 in that a non-conforming lot would be created. Subsequently, the Board of County Commissioners in response to a Growth Management Hearings Board decision passed interim amendment to the County's Zoning Ordinance affecting the density within the Rural zone with minimum lot size now 10 acres. Under the interim ordinance one of the lots is non-conforming. As a result, another section of the criteria for BLA is of consideration 8 of paragraph A in 16.06.070 dealing with adjustments between two or more lots when one or more of the lots is smaller than the current zoning specification.

#### **16.06.070 A Sub-section (3) and (8) Boundary Line Adjustments**

A. Criteria for Approval of a Boundary Line Adjustment. The Planning Director shall approve all complete Boundary Line Adjustment Applications for adjustments which are consistent with the following criteria:

3. Except as provided in subsection 8 below, the proposed adjustment would not create a Lot of insufficient width or dimension to meet the minimum Lot size required in the Zone in which the Lot(s) is/are located;

8. Adjustment among existing Lots. For adjustments among two (2) or more Lots in which one (1) or more of the Lots involved in the adjustment is smaller than the current zoning classification, the adjustment would allow a Lot to more nearly conform to the Lot size or setback requirements of Chapter 17.03 ICC or create more buildable Lot configurations. For example, a smaller Lot may be made larger by reducing the size of a larger Lot so that, on balance, greater conformity is achieved.

Staff was of the opinion that in this case there Subject BLA was denied since the proposal violated subsection # 3 of ICC 16.06.070 and did not fulfill the alternative provisions of subsection #8. At the time of submittal both lots conformed to the minimum lot size requirements of the rural zone and there were no setback or buildable lot issues present. As a result of the adoption of an interim rural zone ordinance, the minimum lot size in the rural zone is now 10 acres and both lots are "nonconforming" or existing lots by definition. The provisions of subsection #8 could apply if the BLA improved, on balance, a setback problem or resulted in more buildable lot configurations. Neither of this 2 factors is present in the application. was no obvious remedy to a BLA problem or setback, constraints or creation of more buildable lot configurations and believe even under interim rural zoning ordinance provisions the application could not be favorably approved.

In the information submitted by appellants agent case law provided regarding the inability of the County to look at some subsequent action that could occur if the BLA were approved and in the case cited dealt with the potential for subdivision of the property. Staffs' action had nothing to do with the potential for future subdivision of the property. The applicant also discussed the

## 10% rule 16.06.070 Boundary Line Adjustments

A. Criteria for Approval of a Boundary Line Adjustment. The Planning Director shall approve all complete Boundary Line Adjustment Applications for adjustments which are consistent with the following criteria:

1. The Lots involved in the adjustment are Contiguous legally created Lots;
2. The proposed adjustment would not create any additional Lot, Tract or Parcel and will not create a split-Zoned Parcel;
3. Except as provided in subsection 8 below, the proposed adjustment would not create a Lot of insufficient width or dimension to meet the minimum Lot size required in the Zone in which the Lot(s) is/are located;
4. Except as provided in subsection 8, the proposed adjustment would not cause an existing Structure to fail to comply with required setbacks;
5. Except as provided in subsection 8, the adjustment would not violate the conditions of another permit or approval issued by County;
6. Legal means of access to a public or Private Road is clearly provided for or waived by the Applicant. Waiver shall be noted clearly on the face of the map approved by the Planning Director;
7. The Applicant acknowledges in writing that compliance with all applicable County Codes including those contained in Titles 8, 11, 13 and 17 ICC will be required before development of the modified Lots is permitted. This statement shall be noted by the County clearly on the face of the map approved by the Planning Director.
8. Adjustment among existing Lots. For adjustments among two (2) or more Lots in which one (1) or more of the Lots involved in the adjustment is smaller than the current zoning classification, the adjustment would allow a Lot to more nearly conform to the Lot size or setback requirements of Chapter 17.03 ICC or create more buildable Lot configurations. For example, a smaller Lot may be made larger by reducing the size of a larger Lot so that, on balance, greater conformity is achieved.

The "10% rule" specified in ICC 17.03.060.C.5. , but under BLAs lots are not technically created and staff found no special does not apply since there are no lots being created (BLAs don't create lots) and there were no "special site features or , unusual topography or similar factors" that would allow

for consideration to apply the 10% rule.

presented by the applicant. Generally this section applies to the creation of new lots via a subdivision process and with the ability to average lot sizes, this provision is probably no longer necessary.

### **17.03.060 Rural (R) Zone**

#### **17.03.060 Rural ( R ) Zone**

C. **Lot/Density.** Lot/density requirements shall be as follows:

1. 5. For Lots legally created prior to or after effective date of this Chapter, variations of ten (10) percent in the five (5) acre Lot size may be allowed to account for special site features, unusual topography or similar factors that make strict adherence to minimum lot size impractical.

APPELLANT

Tom Roehl asked that the record in this matter include the full content of original application file, notice of appeal and materials submitted today. He submitted at this time a five-page letter dated 9/13/99 consisting of proposed findings and conclusions; staff report with his comments; applicable codes; state law; case citations; side effect of interpretation that BLA's don't create lots; bottom line: staff asserts that a non conforming lot is being created while Appellant asserts that with the 10% variation clause in the zoning ordinance the lot size requirement is 5 acres give or take 10%; thus, a non-conforming lot is not being created.

Mr. Roehl also provided a copy of the map of the proposal and specifically pointed out the section in the North Half of the 20 acre piece that is cut out and granted to the property across the street done with a boundary line adjustment between the neighbors [Dobsons] some time ago because Dobsons residence was located on the Lewis property at that time and the Lewis' did not realize they would have less than 20 acres as a result. The most recent survey of the property associated with the short plat of the Dobson property shows that Lewis' have 19.13 acres instead of 20 acres. The primary special circumstance in this case which makes the property eligible for the 10% variation the property is in a short section. This is a short section [showing on the map] if squared off by standard section subdivision would come out to 19.78 acres instead of 20 acres. The map provided was survey-based, based on surveys of the section subdivision survey provided by Datum Pacific on computer CAD file, and the section subdivision and resultant property boundaries based on legal descriptions are shown on the map. The location of buildings are approximate and not survey based.

As to the purpose of the 10% rule, on page 4 of his letter dated today cites RCW 58.17.040, (2) which includes the phrase: "...is one-one hundred twenty-eighth of a section of land or larger...". He felt that was key because old County ordinances in referring to 5 acre minimum stated "or one-one hundred twenty-eighth of a section "; and if a 2-1/2 acre zone the code stated "2-1/2 acres or fractional part of a section". During 1984 adoptions Mr. Dearborn suggested the 10% clause included in one section of the zoning ordinance instead of repeating that phrase throughout the whole code insert fractional equivalents. This also had the benefit of providing additional means other than just aliquot sections which having to do with topography and other features. In State law the "or fractional part of a section" provision is not limited to just plats and subdivisions, but applicable to any kind of a land division.

Page 2 of Mr. Roehl's letter pointed out ICC 17.03.060 Rural Zone.C, item 2 dealing with lot size average specifically states it is for subdivisions or short subdivisions. Item 5 includes language "for lots legally created prior to or after effective date of this Chapter, variations of ten percent in the five acre lot size..." There is no distinction made regarding applicability to boundary line adjustments or other forms of segregation or division. The clause also provides for "may be allowed to account for special site features, unusual topography or similar factors that make strict adherence to minimum lot size impractical.". Mr. Roehl cited the case Cox v. Lynnwood and others as far as allowing the 10% variation to apply to boundary line adjustments, and reaffirm the same principle in zoning interpretations.

Staffs most recent memo asserts that BLAs should not be eligible for that clause because BLAs technically do not create lots. Mr. Roehl thought that an interesting interpretation, but if made, must be made uniformly as a policy of the County. The term "which does not create" is used throughout the code. The definition of Boundary Line Adjustment states it is a division made by adjusting boundary lines between platted or unplatted lots or both which does not create any additional lot, tract or parcel nor create any lot, tract or parcel which contains insufficient area. The clause on which this application was denied [16.06.070.A.3, contains the phrase: "Except as provided in subsection 8 below, the proposed adjustment would not create a Lot of insufficient width or dimension to meet the minimum lot size required in the Zone in which the Lot(s) is/are located". He contends if BLAs do not create lots then this clause is inapplicable, and taking that interpretation, makes the paragraph moot.

Using the interpretation that BLAs do not create lots is there are other places that refer to creation of lots, i.e. Wetland Regulations [see page 5 Mr. Roehl's 9/13/99 submittal, Side Effect of Interpretation].

The proposal of Appellant is to move a 10:20 a.m. Appeal Hearing: Appeal of the Denial of BLA#264/99, Gary & Ruth Lewis, Applicants/Owners

September 9, 199 memorandum to the Board from Larry Kwarsick

In addition to the attached staff report I offer the following comments:

The criteria for approval of a BLA are specified in ICC 16.06.070 and are restated below. Subject BLA was denied since the proposal violated subsection # 3 of ICC 16.06.070 and did not fulfill the alternative provisions of subsection #8. At the time of submittal both lots conformed to the minimum lot size requirements of the rural zone and there were no setback or buildable lot issues present. As a result of the adoption of an interim rural zone ordinance, the minimum lot size in the rural zone is now 10 acres and both lots are "nonconforming" or existing lots by definition. The provisions of subsection #8 could apply if the BLA improved, on balance, a setback problem or resulted in more buildable lot configurations. Neither of these 2 factors is present in the application.

#### 16.06.070 Boundary Line Adjustments

A. Criteria for Approval of a Boundary Line Adjustment. The Planning Director shall approve all complete Boundary Line Adjustment Applications for adjustments which are consistent with the following criteria:

1. The Lots involved in the adjustment are Contiguous legally created Lots;
2. The proposed adjustment would not create any additional Lot, Tract or Parcel and will not create a split-Zoned Parcel;
3. Except as provided in subsection 8 below, the proposed adjustment would not create a Lot of insufficient width or dimension to meet the minimum Lot size required in the Zone in which the Lot(s) is/are located;
4. Except as provided in subsection 8, the proposed adjustment would not cause an existing Structure to fail to comply with required setbacks;
5. Except as provided in subsection 8, the adjustment would not violate the conditions of another permit or approval issued by County;
6. Legal means of access to a public or Private Road is clearly provided for or waived by the Applicant. Waiver shall be noted clearly on the face of the map approved by the Planning Director;
7. The Applicant acknowledges in writing that compliance with all applicable County Codes including those contained in Titles 8, 11, 13 and 17 ICC will be required before development of the modified Lots is permitted. This statement shall be noted by the County clearly on the face of the map approved by the Planning Director.
8. Adjustment among existing Lots. For adjustments among two (2) or more Lots in which one (1) or more of the Lots involved in the adjustment is smaller than the current zoning classification, the adjustment would allow a Lot to more nearly conform to the Lot size or setback requirements of Chapter 17.03 ICC or create more buildable Lot configurations. For example, a smaller Lot may be made larger by reducing the size of a larger Lot so that, on balance, greater conformity is achieved.

The "10% rule" specified in ICC 17.03.060.C.5. does not apply since there are no lots being created (BLAs don't create lots) and there were no "special site features, unusual topography or similar factors" presented by the applicant. Generally this section applies to the creation of new lots via a subdivision process and with the ability to average lot sizes, this provision is probably no longer necessary.

#### 17.03.060 Rural (R) Zone

C. Lot/Density. Lot/density requirements shall be as follows:

For Lots legally created prior to or after effective date of this Chapter, variations of ten (10) percent in the five (5) acre Lot size may be allowed to account for special site features, unusual topography or similar factors that make strict

adherence to minimum lot size impractical. "

Mr. Kwarsick

Tom Roehl, Project Planning Services, Freeland,

boundary line

32' so the needs of the property owner can be met. and in this case because of location in a short section should be available the 10% variation so he can remedy what turned out to be an error in terms of the result of the previous BLA. It is also the way the property owner would prefer to have the property configured in terms of his home site and the utility of his property.

While argued that the 10% rule is not applicable to BLAs but not necessary at all; in fact it is necessary in order to implement 58.17.040 both in terms of how it applies to BLAs and in terms of how it applies to other exempt actions. Mr. Roehl thought a line had been crossed between administrative decision-making and legislation. As to process, Mr. Roehl thought the application had been summarily dismissed which put the applicant through a lot of anguish unnecessarily.

Relief requested by Appellant is stated on Page 1 of today's letter under Proposed Findings and Conclusions:

- A. For purposes of implementing provisions of chapters ICC 16.06.030, 16.06.070, 17.03.060, and RCW 58.17.040, Boundary Line Adjustments do "create lots" as implied in the language in the above statutes.
- B. All forms of land division including Boundary Line Adjustments and Large Tract Segregation's are and must be eligible for the referenced 10% variation/exception to minimum lot areas requirements for any zone in 17.03 ICC (zoning ordinance).
- C. Given the applicability of said 10% variation clause to Boundary Line Adjustments, the subject application does not create a non-conforming lot in the applicable zone and must therefore be approved.

OTHER MEMBERS OF THE PUBLIC. None

FURTHER COMMENTS - STAFF AND APPELLANT

Mr. Kwarsick stated that at the time of application the minimum lot size was one dwelling unit per five acres; therefore at that time both lots were legal conforming lots. Subsequently, the he Interim Ordinance was adopted affecting the density in the Rural zone setting the minimum lot size one dwelling unit per ten acres, thus one of the lots is now a

non-conforming lot and potentially puts the application into subsection 8 criteria. Whichever time frame under either ordinance staff would have made the same finding.

Mr. Roehl believed the record should be clear that current interim ordinance provisions in Section 8 are not applicable; this application is being reviewed under codes in effect at that time. If for some reason the Board chooses not to uphold the appeal in favor of the Appellant, that rather than summarily dismissing or denying it, to include instructions that allow the Applicant to modify the existing application.

Responding to questions from the Chairman, Mr. Kwarsick stated he would agree with Mr. Roehl in that staff has a duty to consider the impact sectional subdivision has on the aliquot division of land, and believed in fact that was routinely done. This property is not described as an aliquot division of land i.e. it goes beyond just being a fractional division of a quarter section of a quarter section. In part it is described as a fractional section but deviates from that. As to the question "is the reason one piece is less than 5 acres directly related to the short section" Mr. Kwarsick stated that was a hard question to answer because it is not a strict fractional division of land and contains exceptions that are dimensional and deviate from normal fractional subdivisions. If someone did a BLA relying on normal sectional subdivision and a Lot came out less than minimum lot size, there would have been no issue. He thought Appellant's representative was relying on the 10% rule. Mr. Kwarsick's intention in his report was to indicate there was an issue of the creation of lots under BLAs. Setting that aside and even if it did apply the 10% rule is to kick in based upon special site features, unusual topography or similar factors, so from staff standpoint there were none of those obviously present.

Mr. Roehl pointed out however, that the last part of the section states "or similar site features which make strict adherence to the minimum lot size impractical". The short section issue is applicable. The 20 acre tract is defined by section subdivision and says "except that part lying east of the center line of the road". It was when the centerline of the road was surveyed that it came up there was less than 20 acres. It is the owner's situation that makes strict adherence impractical and needs to have a 20 acre tract there. It is also the desire of the owner in terms of how the lot lays out. It is important in this instance this be a uniform 20 acre piece so the owner can preserve options available in planning the property.

Mr. Kwarsick stated that under the existing interim ordinance a lot less than minimum lot size would be created. If a case could be made to justify use of the 10% rule, not only is that available but also size averaging [through short platting].

Mr. Roehl made the point again that there would be more options available to the property owner if the property is 20 acres. It has been uniformly that if the circumstance, directly or indirectly, is caused because of a short section, that meets the rule.

RCW 58.17 is clear and Mr. Kwarsick thought in some ways a little more lenient than County law because the exemption under 58.17.040, altering and adjusting boundary lines, talks about not creating a lot of insufficient area and dimension to meet the minimum requirements for width and area for a building site. It does not address what building site means. Island County went beyond that and defined building site and added lot size requirements of the zone.

#### COMMISSIONER DISCUSSION - DATE SET FOR DECISION

Commissioner McDowell summarized the issues he saw in front of the Board, notwithstanding his review of the County Codes: (1) Does the 10% rule apply to boundary line adjustments; and (2) if it does, does it fit into one of the reasons why the 10% rule is applied. He agreed with Mr. Kwarsick the County Code is more restrictive than State law and will at the appropriate time request that Mr. Kwarsick re-look at BLAs to be more in line with State law.

Responding to a question from Commissioner McDowell, Mr. Roehl indicated that the survey of the road was to do with the centerline of Fiske Road, a County road. At the time the Lewis' did the BLA with the neighbors they thought they would still have 20 acres. The boundary was the centerline of the road and at that time people thought the centerline was a lot further westward than it turned out to be when surveyed.

A decision will be announced at public meeting September 27, 1999 during the Public Works/Community Development agenda, and include the vote of individual Commissioners, and a brief statement as to the basis for the decision.

### **PPRELIMINARY SITE PLAN - SPR 082/98**

Stacy Tucker, Associate Planner, presented Preliminary Site Plan SPR #082/98 by T R Camano, Inc. Water System (David Platter), Property Owner Lance H. and Ena T. Bond, for

TR Camano, Inc., Applicant, for construction of two water reservoir tanks and a pump house on a 6.05 acre Rural Residential zoned site at 977 Sunrise Lane, Camano Island. The recommendation of the Hearing Examiner, as outlined in File No. SPR 082/98 Findings of Fact, Conclusions of Law and Recommendation signed on August 16, 1999 by Matthew Elich, Island County Hearing Examiner, Pro Temp, recommending approval with conditions. Ms. Tucker understood that the , WA.

Hearing Examiner Recommendation: Approval with Conditions applicant had no objections to any of the conditions. Applicant was made aware of this meeting date and time.

The approval sheet prepared for the Board's signature indicates that the development shall be undertaken pursuant to the conditions of approval set forth in Findings, Conclusions and Recommendation of the Island County Hearing Examiner dated August 16, 1999. No mention is made about waiver of final site plan approval and Ms. Tucker stated that the Hearing Examiner included a recommendation that the applicant prepare a final site plan application.

However, Board members noted what appeared to be an inconsistency in the Hearing Examiner's document under "Decision " the first paragraph states that the pro temp Island County Hearing Examiner recommends that the Board of Island County Commissioners grant preliminary site plan approval to SPR 082/98 with waiver of final site plan subject to the following conditions : " yet the Examiner in Conditions 6 and 8 refers to final site plan review.

By unanimous motion, the Board continued the matter until September 20, 1999 during the Planning Agenda at 10:45 a.m., with Ms. Tucker in the meantime to obtain a clarification of the Hearing Examiner's intent with regard to waiver of site plan approval; review the record to determine whether or not waiver of final site plan review was requested by applicant.

### **Ordinance #C-108-99 [PLG-036-99] RECLASSIFYING TWO 10-ACRE PARCELS FROM RURAL FOREST TO RURAL BY JAMES LUX AND DEREK ANDERSON**

Phil Bakke, Comprehensive Plan Manager, presented for Board action, Ordinance #C-108-99, reclassifying two 10-acre parcels from Rural Forest to Rural, James Lux and Derek Anderson, South Whidbey; Parcels R32920-510-3700 and R32920-435-3600. The request is to amend the Island County Zoning Atlas to reflect a decision of approval on ZAA 762/99 and ZAA 763/99 made on August 17, 1999 by the Planning Director.

By unanimous motion, the Board approved Ordinance #C-108-99, PLG-036-99, as presented to reclassify 2 ten reclassifying two 10-acre parcels from rural Forest to Rural by James Lux and Derek Anderson.

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

|   |   |
|---|---|
| IN THE MATTER OF RECLASSIFYING TWO 10-ACRE PARCELS FROM RURAL FOREST (RF) TO RURAL (R) – JAMES LUX AND DEREK ANDERSON | )<br>) RESOLUTION C-108-99<br>) PLG-036-99<br>) |
|---|---|

**WHEREAS**, applications for Zoning Amendment, ZAA 762/99 and ZAA 763/99, were accepted as complete for review on June 25, 1999; and

**WHEREAS**, the applicants each proposed to reclassify a 10-acre parcel from Rural Forest (RF) to Rural (R); and

**WHEREAS**, a SEPA Threshold Determination of Non-Significance (DNS) on the parcels, R32920-510-3700 and R32920-435-3600, located off Becker Road on South Whidbey Island, WA, was not found to have adverse environmental impacts; and

**WHEREAS**, the proposal was evaluated for consistency with the Comprehensive Plan and applicable development regulations per ICC 16.19.100, and conforms with the requirements provided for a reclassification pursuant to Section 17.03.220.D.1; and

**WHEREAS**, the proposed reclassification from Rural Forest to Rural was approved by the Island County Planning Director on August 17, 1999, pursuant to Section 17.03.220; and

**WHEREAS**, as a result of the approved reclassification from Rural Forest to Rural the official Island County Zoning Atlas must be updated to reflect the reclassification.

**NOW, THEREFORE, IT IS HEREBY ORDAINED** that Parcels R32920-510-3700 and R32920-435-3600, described in attached Exhibit A, were reclassified from Rural Forest to Rural and the official Island County Zoning Atlas will be updated to reflect the reclassification.

Approved and adopted this 13<sup>th</sup> day of September, 1999.

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

Mike Shelton, Chairman

William. F. Thorn, Member

Wm. L. McDowell, Member

**ATTEST:**

Margaret Rosenkranz

Clerk of the Board

BICC 99-507

[Exhibit A and Map placed on file with the Clerk of the Board]

### **DEVELOPMENTAL DISABILITIES "BRIDGE" CONTRACTS APPROVED**

On presentation by Tim McDonald, Health Services Director, and the Board having discussed same during a recent staff session, the Board approved by unanimous motion, three "bridge"

contracts for various developmental disabilities contracts:

Contract: HS-05-99, Toddler Learning Center, \$17,856.00

Contract: HS-06-99, Island Employment Services, \$29,076.00

Contract: HS-07-99, Service Alternatives, \$20,544.00

#### **Amendment 4 - Consolidated Health Contract #C-07711(4)**

Amendment No. 4 to Consolidated Health Contract #C-07711 was approved by unanimous motion of the Board, as presented and explained by Mr. McDonald.

#### **Biennium Contract: Department of Alcohol & Substance Abuse**

By unanimous motion, the Board approved Work Order # 6882-0, with the Department of Alcohol & Substance Abuse, in the amount of \$973,811.00 for the biennium contract.

#### **Interlocal Agreement between Island County and I-COM for State Enhanced 911 Salary Assistance**

Contract Review approval having been received from the Deputy Prosecuting Attorney and Risk Management office, the Board by unanimous motion approved and signed Interlocal Agreement, #RM-BOCC-99-0061, with Island County Emergency Services Communications Center (I-COM) for funds through State Military Department EM019010 salary assistance from State Enhanced 911 account. Total funds to be reimbursed to I-COM shall not exceed \$256,680 [and at least \$124,000 expended by I-COM by June 30, 2000].

#### **Intergovernmental Agreement with Washington State Military Department for E-911 Program EM19042**

A Contract Review approval was received for a new contract with the Washington State Military Department, signed off by the Deputy Prosecuting Attorney and Risk Management Office, Contract #EM019042, to assist and facilitate Enhanced 911 implementation and operation. Total funds to be reimbursed to the County under the agreement are not to exceed \$272,499, used solely for expenses necessary to operate Enhanced 911 countywide, for costs incurred between July 1, 1999 and June 30, 2000. The Board by unanimous motion approved and signed Interlocal Agreement #EM19042.

#### **Membership Compact of the Washington Counties Risk Pool**

##### **membership Contract RM-GSA-99-0069**

[The *Compact* is a commitment to strengthen the Washington Counties risk Pool (WCRP)) by helping its member counties implement local Risk Management Programs to reduce losses and support the best management of the WCRP and its resources. The *Compact* establishes obligations to support these goals through three major elements]

Mrs. Kemp presented the agreement, explaining this to be an agreement between Island County with Washington Counties Risk Pool, each member County asked to sign *Compact* providing the specific thresholds to which each

County is committed to reach. Island County has been through the self assessment and Mrs. Kemp is level two trained. Agreement would be effective October 1, 1999.

On confirmation that the Deputy Prosecuting Attorney reviewed the contract and signed off on the Contract Review Form, the Board by unanimous motion, approved the Agreement between

Island County with Washington Counties Risk Pool.

**PUBLIC HEARING SCHEDULED: ORDINANCE #C-109-99 [PLG-038-99] Amendments to the Island County Zoning Atlas to Implement the Adopted Langley Interlocal Agreement**

By unanimous motion, the Board scheduled a public hearing for October 4, 1999 at 10:45 a.m., to consider Ordinance #C-109-99, PLG-038-99, Amendments to the Island County Zoning Atlas to implement the adopted Langley Interlocal Agreement, for October 4, 1999 at 10:45 a.m. [GMA doc. #4762]

**PUBLIC HEARING SCHEDULED: ORDINANCE #C-110-99 [PLG-039-99]**

**AMENDING FINDINGS OF FACT OF IS. CO. COMP PLAN & DEVELOPMENT REGULATIONS-- AREAS OF MORE INTENSIVE RURAL DEVELOPMENT [RAIDS]**

By unanimous motion, the Board scheduled a public hearing for October 4, 1999 at 10:45 a.m. to consider Ordinance #C-110-99, PLG-039-99 concerning Amending Findings of Fact of Island County Comprehensive Plan and Development Regulations pertaining to areas of more intensive rural development [RAIDS].

**Ordinance #C-108-99 [PLG-036-99] RECLASSIFYING TWO 10-ACRE PARCELS FROM RURAL FOREST TO RURAL BY JAMES LUX AND DEREK ANDERSON**

Reclassifying two 10-acre parcels from Rural Forest to Rural, James Lux and Derek Anderson, South Whidbey Island, WA. Parcels R32920-510-3700 and R32920-435-3600.

[GMA doc. #4763]

**PUBLIC HEARING SCHEDULED: ORDINANCE #C-109-99 [PLG-038-99]**

**Amendments to the Island County Zoning Atlas to Implement the Adopted Langley Interlocal Agreement**

By unanimous motion, the Board scheduled a public hearing to consider Ordinance #C-109-99 for October 4, 1999 at 10:45 a.m.

**PUBLIC HEARING SCHEDULED: ORDINANCE #C-110-99 [PLG-039-99]**

**AMENDING FINDINGS OF FACT OF IS. CO. COMPREHNSIVE PLAN AND DEVELOPMENT REGULATIONS PERTAINING TO AREAS OF MORE INTENSIVE RURAL DEVELOPMENT [RAIDS]**

By unanimous motion, the Board scheduled a public hearing for October 4, 1999 at 10:45 a.m. to consider Ordinance #C-110-99.

**JOINT Public Hearing: Board of County Commissioners and Planning Commissioners Joint Public Hearing**

At 1:30 p.m., as advertised and scheduled, a joint public hearing was held by the of the Board of Island County Couy Commissioners and the Island County Planning Commission on Ordinance #C-105-99 [PLG-034-99] Amending Chapter 17.03 ICC to comply with the order of the Western Washington Management Hearings Board relating to the Rural Agriculture and Commercial Agriculture Zones.

**Attendance:**

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

Planning Commission Members: Dave Osterberg; Mike Joselyn; George Crampton; Shielah Crider

Consultant/Staff: Keith Dearborn; Jeff Tate

Audience: Attendance Sheet [GMA doc. #4756 ]

Mr. Dearborn opened the hearing by explaining that the proposed ordinance embodied the recommendations of the AG Remand Committee. Anne Pringle represented the Planning Commission on that committee. The Planning Commission and the Board met in a joint workshop on August 27<sup>th</sup> to receive the recommendation of the Committee, and set the hearing date based on consensus the proposal needed to go forward for public hearing.

**Maps Posted:**

Map posted on the left depicted the proposal for designation of both Commercial AG and Rural AG [GMA doc. #4728\_\_\_\_\_]

Map on the right, a new map Jeff Tate prepared relevant only because of the proposal now to allow parcels under 10 acres to opt in to the Commercial AG zone [GMA doc. #4761\_\_\_\_\_]

The "opt in" provision is voluntary. The , and Mr. Dearborn noted that the map on the right showed s in red the 66.08 acres which in total represent 8 owners who could be eligible for inclusion in the designation if they so choose. And Mr. Dearborn noted too that the choose to do so. The ordinance was is drafted such that the property owner has to be in the AG tax program or qualified to be in the tax program – then they could request to be in Commercial AG zone. The Committee discussed parcels smaller than 5 acres and recommended 5 acres as the smallest parcel for Commercial AG. The mandatory parcels for Commercial AG would be 20 acres and larger, with certain soil requirements met. Those parcels that are 10 acres and in the tax program would be included in the Rural AG zone. The major change is that instead of Commercial AG being large farm ownerships, it is now farming in a broader under the Committee recommendation and looking at smaller parcels as also viable for Commercial AG. The significance for a small parcel to be in the program it that it would be provided the nuisancenuisance protections from adjacent properties that the larger parcels have. The Committee made a number of recommended changes to the EDU program.

**Additional Hand-Outs:**

- Exhibit C to Ordinance #C-105-99 Zoning Atlas [GMA doc. #4759\_\_\_\_\_]
- Exhibit D to Ordinance #C-105-99 Findings and Legislative Intent [GMA doc. #4760\_\_\_\_\_]

The Planning Commission will meet tomorrow to discuss the proposed ordinance and determine whether to recommend to the Board adoption of Ordinance #C-105-99, and to determine whether amendments are appropriate, and discuss findings. Next Monday the Board will hold a hearing on Camano Island at 7:00 p.m. The following Monday, the Board will conduct a final hearing, both hearings on the Planning Commission recommendation, not the recommendation of the Committee. He will prepare language for tomorrow on any of the testimony heard today that the Planning Commission asks him to prepare.

Mr. Dearborn mentioned one letter received on the recommendation of the Committee dated 9/9/99 from Linn Emrich, Camano Island, responding to the County's letter 8/31/99 about the proposal to include his acreage in a Commercial AG zone [GMA doc. #4757\_\_\_\_\_].

## **PUBLIC INPUT**

### **Public Input**

Tom Roehl, Project Planning Services, Freeland, member of the AG Remand Committee, was

pleased with the efforts, the process, and was happy the committee reached consensus. He called attention to problems with the ordinance as proposed: , in

Exhibit B page 13, relating to H. Verification of Commercial AG zone Classification (opt out process) for the RA zone. He questioned the process – if a land owner shows property zoned in error it should not be termed "opt out" but a correction and the burden not be on the property owner to apply for a rezone application, pay fees, wait a year for annual review, go through SEPA and hearing process when it is actually an error correction. For the CA zone that process has been created, and there should also be such a process for the RA zone since the RA zone is being zoned based on information available at the time the maps are done. This section has been moved from section .050 and he suggested the Commission and Board consider moving it back to that section.

John Graham, Island County Citizens Growth Management Coalition, also a member of the AG Remand Committee, felt good about the process. Consensus was created that delicately balanced competing interests. He noted problems having to do with the document handed out at the August 27, 1999 workshop dated August 24, 1999 "Agriculture Remand Committee Recommendations" [GMA doc. #4537 and 4538\_\_\_\_\_].

- Recommendation should not state that consensus included an element to keep the agriculture exemption for CA and RA. He did not argue one way or the other on the point, only that it was not part of the decision of the Committee.
- EEDU Program. The Committee Recommendation states "EDUs only derived from CA and RA land", also something he believes an editing error. The Committee did not deal with RF issues. His notes say that the Committee agreed EDUs are not derived from RA land but made no decision on RF lands EDUs.

Mr. Graham pointed out some housekeeping husekeeping suggestions:

Exhibit A, Page A-1 mid-page, the sentence: "Although the County wants to encourage such micro-farming activities, the scattered tracts on which it is occurring are not critical to its growth or continuance, since new entrants will select from the full range of rural parcels within the county, not simply from parcels currently in use for micro farming.". Strike to be consistent with the sentence on A-2 which has been stricken: "but preserving those tracts as a land base for the industry does not appear to have any significant bearing on the future viability of such operations". He suggested A-1 could be fixed by having the sentence read: "The county wants to encourage such micro-farming activities" and strike the remaining sentence, strike "However" in the next sentence and start with: "If requested .....". He thought conceptually the shift to involve small farms 20 years from now will be considered a far sighted idea taken in 1999.

Page A-6 - Did not understand why the language has been struck from Policy B "of

which no more than 15% can be allocated to community area as defined in chapter 16.17 ICC".

It is part of the PRD ordinance, why strike it in this one instance?

Mr. Graham suggested that the RF commented on the RF isissue was a matter that had to be sue, an issue that has to

be dealt with before November 10th, specifically the RF issue dealing with EDUs. He said that Growth Board Order #3 asked the County to reconsider provisions in rural designations to ensure development density is capped to preclude future need for urban services and conflicts with resource use and rural character. He thought believed that EDUs in RF were in fact are covered in that Order, and that the County order and the County needs to do something about that as part of the remand process. The document today repeats the RF program as it was last September. He wondered if the RF program should have an EDU program in it. The County has agreed to bring back the opt- out for RF lands. His question: if RF people can opt out of RF land why would you want an EDU program?

Using the document handed out today, Mr. Graham commented as follows:

Exhibit B-2 First note says: "All uses allowed in the Rural Zone are allowed in the RF zone upon approval of a Forest Management Plan", but there is no such thing as a Forest Management Plan. The AG Remand Committee decided most, but not all, NR uses allowed in the rural zone were okay in the EDU part of the CA zone, and cut out about 4 or 5. That same list should be shortened for RF if a farm/forest management plan continues.

Exhibit B-14 Chart – Earned Development Units Per Acre. This was remanded by the Growth Board in CA lands. If the County is to have EDUs for RF, it has to be in perpetuity and the box on this page must be changed. A figure of .20 was decided for CA land and presumably it would be something less for RF land. Looking at Rural Forest EDUs, he suggested the need to review this to begin looking at: do we want an EDU program for RF lands; and if so, it cannot be any more than that for CA land and should be somewhat less

Exhibit B-16 Farm/Forest Management Plan. Need to review; if continued, fine; if not section G needs to be changed.

Exhibit B-17 Item 5 has the old language of 75% in commercial production for no less than 10 years. That should be 85% and in perpetuity.

Exhibit B-18 Zoning Amendments-Standards D. Growth Board stated that the old opt-out provisions for RA and RF to R should be reconsidered. That has been done for RA but the RF rezone reinstated by the Board in the July 12<sup>th</sup> session. If the County retains the automatic opt out for RF land for all 15,000 acres now in RF, there will be 89.7% of the rural area in 1 and 5 one and five zoning, or equivalent and places evennt, and places enourmousenormous pressure on the Rural Density Committee.

Mr. Dearborn clarified that the Board did not decide to continue the opt out program for rural forestry in July since the Growth Board did not invalidate that portion of the Code. The County Commissioners in July eliminated the opt out for Rural AG because the Growth Board indicated they would invalidate that provision for Rural AG. Everything in Rural AG that was less stringent than Commercial AG by the Growth Board's order had to be made as stringent as Commercial AG ion order to comply with the Order on an interim basis until this process has been completed. There was no such Order from the Growth Board regarding rural forestry and the Board of Commissioners has not decided to remove the opt out provision for RF. Language relating to RF is existing code. Mr. Graham's substativesubstantive points are important and should be considered. Regarding the EDU program for RF, it has not be reinstated; it exists today and until modified, continues to exist; it is not invalidated and is an on-going program. He agreed Mr. Graham

John may have identified a small change needed in the code regarding oee – refer to farm/forest management plan. When the Planning Commission deliberated it was clear as far as intent that there when pc went thru their deliverabion there . clear as far as intent there are two different plans, and that can be made clearer in terms of the language.

and can make that clear in terms of the language.

Linn Emrich, 998B Good Road, Camano Island, clarified to point out now that the 100 acres of lower ground of diked-in property was conveyed to him in dissolution papers, and a 10 acre tract of the upper portion [County documents are out of date and need to be changed]. He testified to two points that should be further reviewed and considered:

- As to the recommendation of the AG Remand Committee to exclude diked and drainage land, he pointed out that a dike is a burden to a piece of property. He spent the good part of 10 years rebuilding a mile of dike. The dike has to be maintained to keep the land farmable, not just the land but the tide gates, drainage channel outside

the dike and the channels inside the dike. He has 2-1/2 miles of drainage ditch in the 100 acres. This does not just drain the 100 acres, but also drains 150 acres of Lands Hill including the north half of SR 532. He is not in a drainage district or diking district; district; he maintains the dike and the ditches from his own pocket, and his request is to exempt that land from CA zoning.

- Consider including compatible institutional recreational activities as a permitted use in the AG zone. Having managed a recreational airfield at Issaquah for 27 years, attested to the fact it was a huge support to the community. Island County could provide for a nice tourist attraction on his property by allowing recreation such as dog racing events, the dike popular among the wildlife folks who hike and take pictures, equestrian activities. He has done two weekends of testing the market for recreational gliding and people liked it.

Jay Leque, Leque Farm at Livingston Bay, Camano Island, spoke to Exhibit A-5 in regard to designation criteria for Commercial AG. Section A-4 states that the parcel is not located within a drainage and diking district, and he suggested changing the and to or because in Island County and others, there are separate diking districts and drainage districts.

With no further members of the public indicating a desire to speak at the hearing, the public comment portion of the hearing was closed.

## **BOARD AND PLANNING COMMISSION DISCUSSION/ACTION**

Mr. Osterberg with regard to comments from Mr. Roehl about an opt out provision for RA, was interested in seeing he would like to see some proposed language for the Commission to review tomorrow and have staff address that.

Mr. Crampton [page A-8, the paragraph starting "minimum parcel size"] asked about the opt-in provision for parcels down to 5 acres on Commercial AG, the ordinance stating 1 DU per 20 base density – what happens with someone who has 5 acres and a house – how opt in?

Commissioner Thorn answered that the property owner would opt in as existing use in that zone, but would not be precluded from Commercial AG designation. Mr. Dearborn recalled that the Committee discussed at some length smaller parcels and recommended it be a type 2 decision rather than type 1 decision. There was a lot of discussion and concern and the reason for setting up a separate process. The property owner would not be able to use EDUs; they would get the protection of the nuisance laws of 16.25.

Mrs. Crider asked if someone had a small parcel of land to commit to this use today and later on in retirement wanted to build a small home on the parcel, would there be any preclusion for them doing that?

Mr. Dearborn answered that in that case they would have available to them all of the permitted and conditional uses in the Commercial AG zone, if they can meet standards in the code but would have to meet standards of the code. Single family housing would be one they could do even after being designated in Commercial AG.

Mrs. Crider was aware the issue Mr. Emrich brought up was a matter called to the attention of the Commission a number of times on Camano Island. Many people brought up the point about wanting to have in some manner a recreational vehicle facility.

Mr. Dearborn recalled that in

in June the Board made a number of changes changes to the NR uses in the Rural zone, one was to permit which was to permit recreational vehicle vehyhible parks as an allowed use in rural zone and chose not no5 to include that use in Rural AG or Commercial AG. Mr. Emrich rural ag or Commercial AG zone. Mr. Em4rich has raised a second issue about passive or semi-passive recreationoin uses, and those are not . Those are no5t allowed now in either RA or CA, but are allowed in the Rural zone as a small scale recreation use. The AG Committee did not discuss the issue one way or the other. Once a farm management plan is ay or another.

Commissioner Thorn referred to Exhibit B-1, showing campgrounds and recreation vehicle park as conditional uses;

however it would not cover what Mr. Emrich has suggested.

Mr. Dearborn mentioned that once a farm management plan is approved a campground recreational vehicle park could be a permitted use as long as standards are met in the rural zone. Mr. Emrich's idea of small scale recreation use has not been addressed and as written now, would be excluded. This may be something that has fallen through the cracks, and he will bring for the Planning Commission to review tomorrow, the section of the code that defines small scale recreation uses adopted June by the Board.

The other issue raised by both Mr. Emrich and Mr. Leque regarding drainage and diking districts, changing the and to or, the Commissioners agreed AND be changed to OR, because there are individual drainage districts and individual diking districts.

Chairman Shelton made the point that it is not difficult

and Shelton it is not difficult to identify diked property; if there is a dike the there the property is protected because of that dike whether it happens to be a district maintaining it or not, the dike is still there. maintain it is or not; the dike is still there.

Commissioner Thorn thought that was the and I think that was the intent of the Committee, and committee and did not believe the committee meant to exclude privately owned dikes.

won dikes

Mr. Dearborn agreed to prepare an amendment for the Planning Commission to consider. Mr. Graham also amendment to take that into account,

Mr. identified some Comp Plan comp plan language he thought should should be modified and as the drafter Mr. Dearborn took no pride of authorship give I authorship in what has been deleted or added and agreed there probably were better ways to state what has been added and there is probably probably language that should be deleted. Mr. Graham has identified an inconsistency from one page to another.

Chairman Shelton commented on the table in B-1 and B-2, and wondered why Rural AG and Commercial AG had been stricken under "Note".

asking about in the table in Exhibit B B 1 and B2 wondering why Rural AG and Commercial AG was struck under "note".

Mr. Dearborn answered that was because the Committee recommendation was that only limited non residential uses that could be permitted in the Rural zone would be allowed in CA zone as a result of the approval of a farm management plan. Asterisks on page B-1 are the uses the Committee felt were appropriate additional uses; B-2 is a narrowing of what was once a broader listing. The "x" on the chart is in effect a check mark. After hearing further comments of the Commissioners, he agreed that it would be easier to read by changing the "x" to reflect "P" = permitted or "C" = Conditional.

Commissioner McDowell, in referencing a comment by Mr. Graham that A-1 and A-2 were inconsistent, A-1 the first half is correct; the second half is correct; the only question is whether the middle part of the sentence "are not critical to its growth or continuance" is correct.

Commissioner Thorn, in A-2 the portion struck, agreed what it says is accurate – that micro farming can occur virtually anywhere, but did suggest a rewording.

Mr. Dearborn in his previous answer clarified he had been referring to A 6 – policy B when he did not know why that had been struck [the 15% for community area]. It is existing code.

Mrs. Crider proposed language for the sentence in A-1: "The county wants to encourage such micro-farming activities, from the full range of rural parcel within the county not simply from parcels currently in use for micro farming".

Commissioner Thorn saw that as a positive statement and concurred with Mrs. Crider.

Mr. Dearborn agreed that amendment could probably just be made by hand in the recommendation. He will draft the opt out issue as a technical amendment for Rural AG.

Chairman Shelton agreed with Mr. Roehl's comment about the need to change the term opt-out; he agreed that was poor terminology when what is really being referred to is correcting an error.

Mr. Dearborn agreed and noted that would apply to Commercial AG as well. It is a technical process for both situations. On the matter of recreation, he will provide the small scale recreation section of the code and the Planning Commission can discuss what can be done now versus treating it as an amendment to be addressed in the next year. He will also work with some proposed language for the review of the Commission associated with: small scale recreational code; language with regard to dealing with diked or drained property; and comp plan language changes identified.

In response to a question from Commissioner Thorn, John Graham commented that as far as recreation use and tourist attractions, gliders pulled into the sky by a light plane was drastically different from a hobby park. Looking at small scale recreational uses in the Code, four or five are listed as examples. The AG Committee looked at all of those and decided which part of small scale recreation use makes sense. It was not a collision between the Coalition and Property Rights Alliance; rather the farmers on the Committee were asked about it and the recommendation reflects that. He did recall that the specific uses such as Mr. Emrich mentioned, dog use and gliders, were not put to the Committee. He recalled that diking and drainage districts had been excluded just as were State farms and Navy – a place where you cannot farm. If someone has an old dike on part of their land but still able to farm the land he would question whether or not any exception should be made for that situation. In terms of what is being termed error corrections, he had no problem with Mr. Roehl's comment that if a mistake has been made and not trap someone into farming if the land cannot be farmed. However, he cautioned this not get anywhere towards the old opt out on demand; i.e. he would not include all four points listed as opt out criteria for CA land.

Mr. Graham agreed that Mr. Dearborn was correct in saying the Board in July did not invent any new RF policies, only continued them. He did not think that negated his concern, as expressed in his letter of September 3<sup>rd</sup> [GMA record #4758]. He thought Mrs. Crider's suggested language in A-1 was a good idea.

Commissioner McDowell questioned how a dike paid for and maintained by a private individual and performing the same function would be considered any differently from a diking district. Mr. Graham explained the philosophy was not to trap anyone in to something when it could not be farmed; if in fact a privately owned diking system would do that, he would agree with the change.

#### Dog use and gliders

Commissioner Thorn thought accommodations should be attempted in some manner of definition the kind of recreation Mr. Emrich suggested. The sites he referred to were two unique sites on Camano Island where there has been glider activity in the past, a fairly remote location away from other activities. He pointed out the importance of looking now at what has to be done. This task deals with Commercial AG and should not be confused with other legitimate issues Mr. Graham brought up concerning other rural issues; RF comes later.

In answering some questions from Mr. Dearborn about glider operations, Mr. Emrich stated no improvements to the land are needed and that the activity occurs seasonally, weekends mostly. Adding to that, Mrs. Crider thought an event

that could be coordinated might be an event where a grass field is needed, such as balloon rides; a hayfield or cornfield already cut would be ideal.

Mr. Dearborn thought language could be developed for recreation uses that do not require facilities or improvement to the property and have some type scheduled or infrequent use that occurs casually, He will provide copies of the code tomorrow to the Planning Commission to see is something can be fashioned of the nature Mr. Emrich is talking about.

One note of caution was provided by Mr. Osterberg which was the danger of drivers on the highway watching the event overhead instead of the road i.e. "rubberneckers". Mr. McDowell

glider and

Here, Mr. Dearborn pointed out that small scale recreation use is a type 2 or 3 decision, includes SEPA review, traffic analysis, etc. to ensure compatibility, and in this case, safety.

Commissioner Thorn addressed Exhibit D, noting the need to include a paragraph relative to EDUs pointing out that the land conserved is in

Exhibit D

add paragraph relevant to EDUs and point out that the land conserved is in perpetuity; ;

reflect the increased percent of land conserved from 75% to 85%; conserved

and points capped by eliminating any bonuses under the EDU itself capped is how far you can go with density. re how far you can go with density

**PLANNING COMMISSION ACTION:Joint Hearing:**

By unanimous motion, the Planning Commission moved to close the hearing, and deliberate tomorrow.

Planning Commission:

Planning Commission hearing terminated. Moved Mike Joselyn seconded George Crampton. unanimous

**Board of County Commissioners ACTION::**

By unanimous motion, the Board continued the public hearing until Monday, September 20, 1999, at 7:00 p.m., Terry's Corner Fire Station, Camano Island, on the Planning Commission recommendation proposed amendments responding to public testimony received at the September 13, 1999 hearing.

Board: BT move continue Board's public hearing on C-105..... until next Monday

at 7:00 p.m. on Camano Island. seconded MM carried unanimously.

**GMA PUBLIC HEARINGS HELD**

-

**3:30 p.m. Public HearingS HELD:**

-

**Ordinance #C-97-99 [PLG-019-99] Amending chapter 17.02.ICC to comply with the Order of the Western Washington Growth Management Hearings Board relating to certain provisions of the County's Critical Area Regulations [continued from August 23, 1999]**

- **Ordinance #C-98-99 [PLG-025-99] Amending Chapter 17.03 ICC Regarding the Rural Forest and Commercial Agriculture Zones [continued from**

**August 23, 1999]**

The Public Hearing, as scheduled and advertised, was opened at 3:30 p.m. on both ordinances.

**Attendance:**

Staff/Consultants: Keith Dearborn; Alison Moss

Public - Attendance Sheet [GMA doc. #4732]

**ORDINANCE #C-98-99 [PLG-025-99].**

When this ordinance was last discussed, Mr. Dearborn recalled that based on comments received about unintended consequences and in review with Larry Kwarsick, the majority Board conclusion was, prior to receiving testimony, that the ordinance should be withdrawn and sent back for further work.

Commissioner McDowell thought that from comments made previously there was an easy modification that would rectify the unintended consequences of using alternating series of boundary line adjustments and unregulated subdivisions would be by inserting the words "between existing lots" in Exhibit A, section 17.03.110.E.5 and 17.03.110.D.5 to read:

**"The Lot size limitations set forth above shall not apply when the new Lot is proposed to be modified through a boundary line adjustment between existing lots pursuant to Chapter 16.06 ICC.**

"

Mr. Dearborn suggested after hearing public testimony the Board then refer the matter back to Larry Kwarsick. He did point out that the Code defines existing as lots that were effectively lawfully created or vested as of December 1, 1998.

John Graham, Citizens Growth Management Coalition, did not believe the suggested language would work. The problem was that a land developer could use a rotating combination of boundary line adjustments and unregulated subdivision, one after the other in a pattern and get huge densities. The change proposed deals only with the boundary line portion between existing lots, but the problem is in the creation or unregulated subdivisions. The only way it would work would be to say: between existing lots, never in any combination with the process of unregulated subdivisions".

Commissioner McDowell pointed out that clearly it is existing lots, and once done, the person has no more existing lots in effect 12-1-98 and could not get that exemption any longer.

Mr. Graham was open to looking at some language. His thought was the proposal was far too complex, and if considered, should include something that to specifically negate use of unregulated subdivisions in a ratcheting fashion.

Commissioner Thorn suggested clarifying intent by adding a second sentence to say that an existing lot is one that existed on 12-1-98; therefore this opportunity is presented for only one cycle.

Steve Erickson, WEAN, still had a problem with the language because it would still allow the creation of a substandard lot and did not understand the purpose. Allowing the creation of a substandard lots means creating the ability to build later on a substandard lot in that area.

One of the beneficial consequences of the change pointed out by Commissioner Thorn was that some upzoning is done at the same time [depending on the purpose] and it would be an advantage to keeping the rural character.

By unanimous motion the Board continued the Public Hearing on Ordinance #C-98-99, PLG-025-99, until September 27, 1999 at 4:00 p.m. It is anticipated that between now and the next hearing Mr. Kwarsick will provide in writing his opinion on the change to make sure there are no unintended consequences.

### **ORDINANCE #C-97-99 [PLG-019-99].**

Mr. Dearborn pointed out this was the second of the critical area ordinance amendments to respond to the Remand Order. He anticipated there would be amendments the Board will want to consider based upon public testimony, recalling that a number of letters were received at the hearing held on August 23<sup>rd</sup>. It was his suggestion that if the Board wanted to consider amendments at the end of public testimony, that the hearing be continued until October 11, and those amendments be prepared and made available by the end of September so that the public has an opportunity to see them before October 11<sup>th</sup> and on that date, the Board take further testimony on the amendments.

With regard to remaining critical area issues not included in Ordinance #C-97-99 and how those are being addressed, Mr. Dearborn commented that the Board on October 4<sup>th</sup> will be setting a public hearing date on a second amendment packet to address the remaining critical areas, tentatively to be set on October 25<sup>th</sup> in the afternoon. Also on October 4<sup>th</sup>, prepared will be the findings in support of Type 5 streams ordinance adoption, to be heard in public hearing on October 25<sup>th</sup>. Assuming the Board takes action on October 25<sup>th</sup>, he believed the Board will have addressed all the issues involved in the Remand Order relating to critical areas.

### **HAND-OUTS PROVIDED:**

#### **1. Hand-outs from the hearing held on August 23, 1999**

Matrix – series of three charts showing the status of all the critical areas amendments, in

three categories [GMA doc. #4636]

-Stipulated Issues Compliance: taken care of in Ordinance C-78-99

-Invalidity Issues: Type 5 Stream Buffers & Existing and on-going AG exemption were addressed in C-96-99 and C-77-99

-Remand Issues: A portion are included in Ordinance C-97-99 and remainder the scheduled explained by Mr. Dearborn today.

Material submitted 8/23/99 by Andy Castelle during the hearing on Type 5 Stream Buffers and including: [GMA #4637]

-Survey of scientific studies on the Efficacy of 25' riparian buffers

-Clark County ccc 13.36.340 adjusted base buffer width

-Memo May 17, 1999 from Diana Allen, West Team Planning Technician to

Mary Pakenham-Walsh, Wetlands Biologist, RE: Opus/205 Distribution Center (SPR 99-035) Fully Complete and Wetland Comments w map attachment

-Skagit County Article 5. Fish and Wildlife Habitat Conservation Area

-Clark County, Title 13 Public Works Chapter 13.51, Habitat Conservation Ordinance 13.51.055 Locally Important Habitat

-Kittitas County 17A.07.025 Habitats for species of local importance and 17.07.030

species of local importance

A hand-out provided by Larry Kwarsick - packet of memos prepared by Julie Buktenica, Water-shed Project Manager, RE: review existing stormwater regulations and identified not only within the regulations but also within the design manual component of the regulations those elements that provide for controls relative to direct discharges as well as indirect discharges into those areas. [GMA doc. #4635]

### **1. Hand-outs Provided Today**

9/13/99 Memo to Alison Moss from Andy Castelle, Adolfson & Associates, providing comments on some issues still facing the adoption of Island County Critical areas ordinance: species and Habitat of local importance; wildlife and wildlife habitat protection with respect to Category B Wetlands and their buffers, and Wa. Dept. of Fish & Wildlife recommendations for type 5 stream buffers [GMA doc. 4736]

Alison Moss commented that Ordinance C-97-99 begins with Exhibit A which proposes to readopt the provision for functionally isolated buffers. The Growth Board found that the public process was not sufficient before. and quoted from letters from agencies which suggested that the Growth Board believed that the purpose of the functionally isolated buffer provision would be to allow the Director to determine that the buffer was functionally isolated by a dirt driveway, a dirt road or scattered rural residential. Ms. Moss clarified that was not at all what was in mind when that provision was drafted. Those kinds of things will not usually create such an isolation that the buffer on the outside of them does not provide the protective buffer functions.

Ms. Moss referenced a 9/9/99 letter from the State Department of Ecology signed by Susan Meyer, Wetland Specialist,

Shorelands and Environmental Assistance Program, commenting on the Critical Area Regulations ordinance regarding functionally isolated buffers; category A wetlands; protection of recreation shellfish, kelp and eelgrass beds, herring and smelt spawning areas; and type 5 stream setbacks [GMA doc. #4735]. Also, Steve Erickson, WEAN submitted a comment letter dated August 18, 1999, on the ordinances proposed for adoption on 8/23/99 PLG-018-99 and PLG-019-99 [GMA doc. #4624]. These both seem to have the same notion about what that provision was trying to do.

To clear that up, she referred back to the document with the list of scientific documents. The provision was modeled directly on a provision from the Clark County code "13.36.340 Adjusted Base Buffer Width; subsection 3 entitled functionally isolated buffer areas. She noted this was almost verbatim what the Board adopted last year. She called the Clark County Planning Department to find out if this provision had been used and if so, to obtain some examples of how it had been used. The Wetlands Planner she spoke to indicated it was used on a fairly regular basis and apply a straight face test: is the interruption in question one that really would cause an interruption or is it something that does not pass the straight face test. An example was provided [the next document in the package under #4637] of a plat proposal in which they found there was functional isolation. The provision should be reviewed in concert with those others and determine if warranted. What was in mind was the case when the area outside of whatever the interruption is really is not functioning as a buffer.

Commissioner McDowell cited an example: West Beach Road; that road clearly a vertical interruption to the buffer and to say those lots are now impacted by the buffer to that wetland does not make sense.

Ms. Moss agreed and noted a frequently offered example was a wide public improved paved road. One of the examples in the hand-out is a railroad track that runs through the corner of a plat on a raised bed; a corner of the plat is on the other side of the railroad bed. If the buffer was applied from the edge of the wetland it would go across the railroad track on to that corner. Clark County determined in that case there was functional isolation on the area on the outside of the railroad track and should not be regulated as a buffer. For Island County, it is something that existed before the adoption of C-62-98. She suggested if the Board readopted the provision the buffer would be reduced only where the interruption exists, not all the way around the critical area. There was a question raised by WEAN on the process for making the determination of whether there was functional isolation and that process is explained in 17.02.107.I.

Commissioner Thorn commented that in light of that and the other buffer reduction guidelines, he wondered why this provision would even be retained. One other note was that within the document when quoting a certain manual to be utilized, the suggested the language indicate "current revision of" because of the modifications and updates.

Ms. Moss noted the next amendment proposed, Exhibit B on page 6, amending 17.02.110.A.3 to make clear that all estuarine wetlands are Category A. This was thought to have been done in C-62-98 by deleting the reference to the term introduced and adding a Finding in Exhibit C to make it clear that invasion by spartina would not cause an estuarine wetland to fall from Category A to B. While the Board of Commissioners intent was that estuarine wetlands be Category A, the Growth Hearings Board thought that unclear and directed addition of estuarine wetlands to the Category A classification. WEAN, the Coalition and Department of Ecology request elimination of the ¼ acre size threshold for regulated Category A wetlands at least as it applies to estuarine wetlands. Ms. Moss explained that had not been done because she understood that issue was outside the scope of the remand and the Growth Board directed it be made clear what had been done previously, which was to regulate estuarine wetlands as Category A.

Ms. Moss noted a few corrections to be made. WEAN commented that if the estuarine wetland were invaded by non-native species or had non-native species, that could drop it down to Category B. Looking at the designation criteria, she pointed out the "or" after each of the subsections, therefore she thought it would not have that effect. The Department of Ecology with regard to Page 6 of the Ordinance, item 3 a) second line, refers to provisions of "b) ii below" the reference to "ii" should be removed. The ordinance adopted last year struck that but in preparation of a clean copy did not get struck. On the next Page under d), first line, after the word "wetland" the word wetland should be plural and "or" between wetlands and buffers.

The next topic addressed by the Growth Board was subsection 110 C h) Species and Habitats of Local Importance and in this case, Ms. Moss understood the Growth Board's remand was that even if someone nominated a species meeting

all criteria the Board of Commissioners could choose not to designate it, and directed the County make the standards automatic: if the standards are met the Board must designate. To make it clearer, this has been broken down into two sections: h (i) the standards for an individual making a nomination; h (v) standards the Board of Commissioners must apply. [correction of numbering noted here duplicate iii – change and renumber accordingly]. She reviewed what other jurisdictions had done. Mr. Castle explains in today's memo, the ordinance originally mirrored language in Skagit County's ordinance, and Skagit County has a very similar process.

Ms. Moss recalled comments received about criteria relating to cost, practicality and impact on other GMA goals. She reviewed all cases on application of best available science, looked at recent Court of Appeals cases, and believed those require that the County take into account those kinds of factors and that the County must balance all the goals of the Growth Management Act.

WEAN has pointed out the provision in h) (v) (3) "Is not protected by other county, state or federal policies, laws, regulations or non-regulatory tools" . In looking at that the County has to make a determination whether that protection is adequate, the word "adequate" implicit in the word "protect".

There are some comments made that seem to be asking for changes to things already made in response to comments a year ago. Section h) (i) (2) stating that local populations which are in danger of extirpation. This was originally drafted in the March 9, 1998 public review draft and referred to locally declining populations. At that time the County received testimony from the Department of Fish and Wildlife and WEAN that it could be very hard if not impossible to demonstrate an actual decline; therefore that reference was removed. The Coalition is now asking that that reference be reinserted. In h) (i) (4) WEAN questioned the reference to locally rare species, but Ms. Moss noted that phrase had been added last year as an example of special value in response to their comments. Attempt was made to clarify the process in h) (iii), but Ms. Moss agreed it could probably be made more clear.

Comment has been made on h) (i) (5) use of the habitat is documented. She noted it was obvious you would not necessarily see a particular species, but could find evidence. The example in one of the comment letters was pileated woodpeckers. Use can be documented by recent workings in trees and not necessarily have to find the species.

Page 15 of Exhibit B dealing with buffers adjacent to kelp and eelgrass beds, herring and smelt spawning areas, commercial and recreational shellfish [nearshore marine habitat]. Reference has been removed to existing infilled lots; intent is that existing infilled lots must either provide the 75' buffer required by paragraph two or comply with BMPs according to the Best Management Practices Manual to be out in early October for public review. A section has been added on Page 16 to make clear that where the County has adopted a standard management plan, such as it has for bald eagles, that the applicant may either use that or have an individual management plan adopted. This section will need to be amended depending on what is done insofar as heron and osprey.

With regard to the DOE's comment on functionally isolated buffers, Ms. Moss believed perhaps DOE misunderstood intent. DOE also commented they did not believe a finding was included in the original ordinance regarding spartina. Ms. Moss pointed out two different exhibits of findings to the ordinance, Exhibit C, Finding 22. DOE pointed out as well in their 9-9-99 letter a typo in Section 17.02.107 E 4, a section not being amended: the second to last sentence was to be revised as follows "maintenance or hydrophytic repair of the tidegate". Ms. Moss confirmed that in the October 4 amendments that will be proposed as a technical amendment.

## PUBLIC INPUT

John Graham, Citizens Growth Management Coalition, referred to the Coalition's letter of 8/22/99 [GMA doc. #4612]. On the first issue of functionally isolated buffers, he was not sure that had been cleared up yet. The example of a railroad track he thought was precisely the sort of thing critters could easily cross and was not sure that was a good example of something that would make the other side of the tracks functionally isolated. He agreed with Commissioner Thorn that considering all other buffer reduction provisions in the Critical Area ordinances why this was needed at all. The Coalition's position is that this concept did not survive scientific scrutiny any better now than it did in June. The Coalition agrees with the 8/18/99 [GMA doc. #4624] WEAN analysis that ICC 17.02.107 H is operational and scientifically flawed and should be repealed.

With regard to the issue of estuarine wetlands, the Growth Board's order requires designation of all estuarine wetlands as Category A in Section 17.02.110.A.3.a. The County has amended that section to designate estuarine wetlands as Category A but imposed an arbitrary size limitation of ¼ acre, and the Coalition objects to that limitation, as inconsistent with the goals of GMA and best available science, in conflict with staff recommendations [Issue Paper, Workshop Draft January 15<sup>th</sup>, Page 7]. The Coalition suggests a language change: "(ii) The wetland is an estuarine wetland of any size; or".

Setbacks 17.02.110.A 4 (b). Current code establishes minimum setbacks of 100' for Category A wetlands and 25' for Category B, which may be further reduced by the Planning Director to provide a reasonable building area for single family residences and accessory buildings. The Coalition believes current language would allow opportunity for detrimental encroachments on sensitive areas and diminish critical functions. The same workshop paper in January 15, 1998 provides staff discussion, Page 7, stating: "The 25' buffer required for Category B wetlands is generally reserved for very low value wetlands in most jurisdictions. A 25' buffer may not fully address many types of potential impacts". The Coalition suggests adopting a recommendation of 200' and 50', and clarify the term reasonable building area.

Encroaching Existing Lots 17.02.110.A.4.d (iii). The words "if possible" effectively negate the provision. The Coalition suggests: "In the case of existing lots which encroach into the required buffer, clearing, grading and placement of structures shall respect the required buffer ~~if possible~~ **unless doing so would deprive the owner of reasonable use of his/her property.**"

Fish and Wildlife Habitat Conservation Areas Designations. Exhibit A. Growth Board

Order #13 requires that the County adopt criteria for designation of species and habitats of local importance, management plans for great blue heron and osprey and deal with nominations already submitted by WEAN and Audubon. Growth Board Order #10 requires the County finish the BMP manual and enforce the requirement to use BMPs. The fact there is no BMP manual and so many things refer to it makes it impossible to reach any kind of reasoned judgment.

New Section 17.02.110.C.1 Conservation Area Designation. This section raises the level that would ensure no habitats or species would be designated. Sub subsection h) (iii) and (iv) seems to allow political judgments to take precedence over scientific ones, and does not address the aspect of resource protection.

Fish and Wildlife Habitat Conservation Areas Designation. The Department of Fish and Wildlife strongly recommends other important and vulnerable categories be included in land use planning. Such categories have already been incorporated into the Fish and Wildlife Priority Habitat Species [PHS] program. The Coalition believes adopting the PHS program would be a step in moving away from a "'one frog on one lily pad" approach. The suggested change: adopt PHS program as representing the best available science.

Species and Habitats of Local Importance. Island County is responsible for identifying and designating species and habitats of local importance; it is unrealistic to insist that the citizen undertake investigative work required. Suggested change: 17.02.110.C.1.h) "Island County is responsible for identifying and designating Species and Habitats of Local Importance. It will act on recommendations or nominations by individuals, groups, agencies or its own staff".

Designation of Species and Habitats of Local Importance 17.02.110.C.1.h) (i) (2) (4) (5) (6). (2) Change to the Coalition's suggested change: "Local populations which are in danger of extirpation if existing trends continue". (4) suggested change: retract request to delete . (5) Coalition agrees with WEAN. Suggested change: rewrite to reflect that it is not the specific piece of habitat, but the type of habitat and the ecosystem processes which produce and maintain that habitat which are most important. (6) The term "high quality" needs to be defined to include habitat which has been degraded but has excellent potential for recovery.

Ms. Moss asked Mr. Graham by e-mail 9/11/99 to provide local examples [GMA doc. #4737] and Mr. Graham now provided to Ms. Moss in response a 9/13/99 e-mail from Gary Piazzon providing a list of degraded habitat [GMA doc. #4733] .

Management Strategies. 17.02.110.C.1. h) (iii). Coalition position is that the reference to best available science is too

week and suggest the change, following the first sentence: "Management strategies must ~~consider~~ **be based on** best available science".

Planning Commission Recommendations. Current code indicates the Planning Commission decides which proposals are accurate, potentially effective and within the scope of the Title. There is nothing to indicate what standards the Planning Commission will use to make the judgment. The Coalition sees this wide open to political manipulation, and together with c.1.h)(iv)(4) makes nonsense of the entire section, and is not in compliance with GMA.

Suggested change: The Planning Commission will hold a public hearing for proposals found to be complete, ~~accurate, potentially effective and within the scope of this Title~~ and make a recommendation to the Board of Commissioners. Or, there be words included that make it very clear what standards the Planning Commission has to follow to make these judgments.

Commissioner Thorn pointed out that the Planning Commission has to make a judgment whether or not to a hold public hearing and that deals with the issue that the criteria used are explicit in what the Board has to use to approve whatever is recommended in the next paragraph (v).

John Graham good point but wondered then why (v) follow (iv). Perhaps it should be rewritten.

Role of Board of County Commissioners. Current code makes designation contingent on practicable, effective and economically feasible management strategies. The phrase economically feasible makes the whole thing unworkable. For these things to be used as criteria area and wide open to interpretation. Suggested change: delete provision or at least the words "economic and feasibility".

Board Designation. Current code states designation must be consistent with all goals of GMA and Island County Comp Plan. The Coalition realizes this may be impossible since some GMA goals are contradictory and the Act calls for balancing. Number (4) and (6) seem to be saying the same thing.

Shoreline Setbacks. GMHB Order #17 requires the County delete 17.02.110.C.4.b.i.(a) and (b) dealing with reduction of shoreline setbacks. The County has done that but the new language creates new problems. The provision now applies only to residential subdivisions or construction of any new non-residential facility and the developer is given the choice of complying with the buffer requirements or adopting BMPs that do not yet exist. The Coalition is of the opinion that single family residences must be included. BMPs cannot take the place of a minimum required buffer. Suggested Change: begin section (2): "All applications for **single family residences** for residential subdivisions, or for...".

As a personal aside, Mr. Graham commented that it seemed by and large a lot of good things had occurred; had reached agreements on some important things and taken as a whole, seemed to be moving in a reasonable direction, except for critical areas. He asked if the County Commissioners were really sure that property rights concerns would be that endangered by a literal acceptance of the Growth Board's ruling on critical areas.

Commissioner McDowell asked if Mr. Graham thought the Board should address issues not related to the Growth Board Order.

Mr. Graham responded affirmatively, noting he would not by definition restrict it to remand issues. He is, however, concerned about those things that are remand issues, such as Type 5 streams and other issues brought up today. He saw the critical areas issues as a set of issues where there has been very little effort in moving toward common ground.

Commissioner Thorn, with regard to the comment about the characterization of the Board and where the Board was coming from, clarified it did not necessarily include all Board members.

Steve Erickson, representing WEAN, [letters on record 8/18/99 GMA do. #4624 and 8/23/99 GMA doc. #4641], first commented on stormwater and the problem he saw because of broad exemption for small development activities, although there is a provision included allowing the Director to impose stormwater regulations if likely to impact a critical area. He suggested that there needed to be a review mechanism to determine if those activities are likely to

impact a critical area, individually or cumulatively. He faxed a letter to Larry Kwarsick last week regarding stormwater regulation review [dated 9/8/99, GMA doc. #4730; and there is a 9/13/99 Larry Kwarsick response to Steve Erickson, GMA doc. #4731].

As far as Mr. Castelle's 9/13/99 submittal on adequacy of the fish and wildlife regulations in relation to Category B wetlands, WEAN will submit an analysis on that later.

On stream buffers, Mr. Erickson thought Mr. Castelle made it clear that the purpose of the buffers and the designation of those areas, was solely for in-stream habitat and water quality; Mr. Erickson did not think that did a good job of maintaining those either. Not protecting riparian areas for terrestrial wildlife is not the best available science. One of the prime functional attributes of riparian areas is as habitat for terrestrial wildlife – as habitat in and of itself and for movement corridors throughout the landscape.

He saw no scientific merit in the functionally isolated provision. The hand out Ms. Moss provided at the last hearing seemed to say the reduction is automatic, but there is no functional analysis nor identification of the functions. The ordinance was amended last year to allow the creation of lots even when it would impact a critical area to provide access; and in fact, those subdivision applications are being seen now. While Ms. Moss said this would only apply to pre-existing lots, he did not see that stipulation in the ordinance. On estuarine wetlands, he sees a problem of wetlands that are smaller than ¼ acre.

Species of local importance. There is a problem with the six criteria listed – with the word "and"; the only one that should apply to all criteria, all designations, is that the species or habitat is native to Island County. The rest should be "or". #4 as written should be deleted. Recommend amending #2, differently than he proposed before: "Local populations which are in danger of fragmentation or extirpation should trends continue". There needs to be a way to prevent fragmentation from occurring. There is no criteria for designation of habitat, only #5 where the use of that species or habitat is documented, or #6, the habitat represents a high quality native habitat. High quality native habitat is scarce and language should reflect instead "best remaining quality habitat" or "highest quality remaining habitat". He used Smith Prairie as an example of the best remaining northern glacial out-wash prairie in the Northern Puget Sound region. It is not high quality habitat any longer because it is too small, but it is the highest quality remaining habitat. The wording he proposed was: "When habitat is nominated it is of the best available quality in the area within which it occurs, or is rare, or where designation will reduce fragmentation of that type of habitat, or reduce isolation of populations that use that habitat."

Subsection h) (iv) talking about the Planning Commission holding a hearing, puts the cart before the horse. This asks the Planning Commission to make a decision without having had a process to evaluate whether to make that decision.

Subsection (v) the criteria listed (3) needs to be clarified that that protection must be efficacious to both protect and preserve the species or the functioning of the habitat to maintain the species.,.

Subsection (v) (6). It has to be clear that the designation has to be consistent with all the goals of GMA not that the County has to balance them.

Requiring habitat to be occupied is seriously flawed from a scientific standpoint. He referred to metapopulation dynamics, which minimally is a collection of relatively isolated spatially distributed local populations bound together by occasional dispersal between populations. These relatively long distance dispersal events may be infrequent but must occur often enough to provide for re-colonization of populations that have suffered local extinction. Refer to his 8/23/99 submittal for further information and comment[#4641]. With a patchy environment like a prairie that thrives and is maintained on periodic disturbance, i.e. burning, then at any given time a particular may not be suitable for the occurrence of a particular plant species; it takes some disturbance to create the conditions that will get it going. If that area is not subject to that disturbance or is lost to another use it will not be available later and in the meantime the original patch that would have colonized that new patch following disturbance will be lost. Fish and Wildlife habitat means maintenance of species throughout their natural geographic range such that isolated sub-populations are not created.

Commissioner McDowell called to Mr. Erickson's attention Adolfson & Associates comments on that issue [8/30/99

transmittal letter from Alison Moss regarding #C-96-99, sending 8/24/99 Memorandum from Andy Castelle regarding Island County Stream Regulations and two charts showing effectiveness of buffers in providing shade for stream water temperature moderation and large organic debris [GMA #4638].

Commissioner Thorn summarized what he thought Mr. Erickson was stating: you cannot look at species, habitat, functions or values as a stand-alone item; those have to be taken in context with each other to have meaning. Mr. Erickson agreed that was exactly what he was saying. The problem exacerbated because for example there is very little in the County Code as a whole that encourages or requires retention of native vegetation.

The Chairman pointed out a problem with that analysis, using the spotted owl as an example: if a spotted owl was located in a forest there would be no logging allowed and obviously that is not the way science has been pursued.

Mr. Erickson used an example of a means to deal to some extent with some of those kinds of problems: forest land on Saratoga Road managed by the owner for timber. If areas can be retained that still have fairly large trees or sufficient numbers of snags then there will be pileated woodpeckers. If those areas are too isolated the woodpeckers will be lost – not able to move around. There can be areas connecting those core areas and those can move around over time too. Requires taking a long view; it is more difficult and requires more planning.

Commissioner McDowell submitted that almost anything could be said to have a potential for fragmentation but certainly may be not extinction. Mr. Erickson explained this is in looking at the condition of the habitat patch itself: it is best quality for the area or will removing that fragment some other areas?

In response to a question from Commissioner Thorn, Mr. Erickson elaborated on the consequences of the fragmentation, the loss of diversity in the species, the susceptibility to disease, a step on the road to extirpation. Once you have the isolation and the fragmentation you are increasing chances that if a species goes locally extinct then the area won't be re-colonized. Among the reasons why it is more likely that species will become extinct locally in that particular patch if isolated, are genetic effects in breeding, genetic drift; demographic fluctuation, random local catastrophe, disease. If those occur throughout the landscape over time ultimately the species goes extinct in that region.

If science were well enough defined, Commissioner Thorn believed there could be established something equivalent to a nuclear energy critical mass for a population to sustain itself in a given site and/or grow and be able to re-colonize at another site.

The term "local importance" was a term Ms. Moss said was not defined in GMA. Minimum guidelines recommend designation of habitats and species of local importance but do not define what is meant by the term local importance. She assumed the term meant species or habitat of sufficient importance to the jurisdiction as a whole such. This is a case where the species are not yet in danger but for some reason very important locally.

In terms of "local importance" Mr. Erickson's view of the issue was from GMA's statement about creating isolated sub-populations; he takes the broader area view as well. Setback provisions

**Ordinance #C-97-99 [PLG-019-99] Amending chapter 17.02.ICC to comply with the Order of the Western Washington Growth Management Hearings Board relating to certain provisions of the County's Critical Area Regulations [continued from August 23, 1999]**

GMA RECORD ITEMS

1. Attendance Sheet \_\_\_\_\_
2. Material submitted 8/23/99 by Andy Castelle during the hearing on Type 5 Stream Buffers and including:

-Survey of scientific studies on the Efficacy of 25' riparian buffers

-Clark County ccc 13.36.340 adjusted base buffer width

-Memo May 17, 1999 from Diana Allen, West Team Planning Technician to

Mary Pakenham-Walsh, Wetlands Biologist, RE: Opus/205 Distribution Center (SPR 99-035) Fully Complete and Wetland Comments w map attachment

-Skagit County Article 5. Fish and Wildlife Habitat Conservation Area

-Clark County, Title 13 Public Works Chapter 13.51, Habitat Conservation Ordinance 13.51.055 Locally Important Habitat

-Kittitas County 17A.07.025 Habitats for species of local importance and 17.07.030

species of local importance [GMA #4637]

3. Fax transmittal to Vince Moore 9/3/99 from Mark Goldsmith, his letter from the State Department of Fish and Wildlife regarding the County's recent adoption of 24 foot buffers for type 5 streams in the County's critical area regulations (50' buffers for those flowing into salmon streams) and recommending buffers in the WDFW riparian management recommendations [GMA doc. #\_\_\_\_\_]

4. A 9/13/99 submittal into the record by Mark Goldsmith: a Washington Department Fish and Wildlife Management Recommendations for Washington's Priority Habitats –Riparian, dated December 1997 by K. Lea Knutson and Virginia L. Naef, specially noting page 89. [ GMA doc. #\_\_\_\_\_]

September 9, 1999 letter from the State Department of Ecology signed by Susan Meyer, Wetland Specialist, Shorelands and Environmental Assistance Program, commenting on the Critical Area Regulations ordinance regarding functionally isolated buffers; category A wetlands; protection of recreation shellfish, kelp and eelgrass beds, herring and smelt spawning areas; and type 5 stream setbacks. [GMA doc. #\_\_\_\_\_]

8/22/99 Letter from John Graham, Island County Citizens Growth Management Coalition submitted during hearing held on 8/23/99 regarding PLG-018-99, type 5 stream buffers, and: PLG-019-99: functionally isolated buffers; estuarine wetlands; setbacks; encroaching existing lots; Fish and Wildlife conservation areas designations; nominations by WEAN and Whidbey Audubon; new section 17.02.110 C.1 seriously flawed; shoreline setbacks [GMA doc. #4612]

Memo dated 9/13/99 to Alison Moss from Andy Castelle, Adolfsen & Associates, providing comments on some issues still facing the adoption of Island County Critical areas ordinance: species and Habitat of local importance; wildlife and wildlife habitat protection with respect to Category B Wetlands and their buffers, and Wa. Dept. of Fish & Wildlife recommendations for type 5 stream buffers [GMA doc. \_\_\_\_\_]

e-mail message from Alison Moss to John Graham regarding Critical Area

Amendments [GMA doc. #\_\_\_\_\_]

Copy of e-mail message from Gary Piazzon to John Graham dated 9/13/99 answering three of Ms. Moss's points in #8 [GMA doc. #\_\_\_\_\_]

8/23/99 letter from Steve Erickson, WEAN, re additional comments on Critical Area Ordinance revisions [GMA doc. #4641]

8/18/99 letter from Steve Erickson, comments on the ordinances proposed for adoption on 8/23/99 PLG-018-99 and PLG-019-99 [GMA doc. #4624]

8/23/99 submitted by Alison Moss during Type 5 Streams hearing 3-page chart:

-Critical Areas GB decision-stipulated issues compliance deadline 11/30/99 status

-Critical Areas GB decision-Invalidity Issues – status

-Critical Areas GB decision-remand issues, compliance deadline-11/30/99 status

[GMA doc. #4635]

Hand-out as provided for the record 8/23 by Larry Kwarsick - packet of memos prepared by Julie Buktenica, Watershed Project Manager, RE: review existing stormwater regulations and identified not only within the regulations but also within the design manual component of the regulations those elements that provide for controls relative to direct discharges as well as indirect discharges into those areas.

[GMA doc. #4635]

8/30/99 transmittal letter from Alison Moss to BOCC Office regarding #C-96-99, sending Andy Castelle described charts showing effectiveness of buffers in providing shade for stream water temperature moderation and large organic debris [GMA no. 4638]

PAM: additional GMA record items from Public Hearing 9/13/99 Ord. C-97-99 Critical Areas Regulations

Steve Erickson, WEAN, memo to Larry Kwarsick, regarding Stormwater Regulation Review

16. Larry Kwarsick 9/13/99 response to Steve Erickson RE Stormwater Regulation Review

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

adjourned the meeting at a.m. to meet in Special Session at 7:00

p.m., Terry's Corner Fire Station, Camano Island, to conduct a public hearing

on the recommendation of the Planning Commission on Ordinance #C-105-99 PLG-034-99, Amending Chapter 17.03 ICC comply with the order of the Western Washington Growth Board relating to the Rural Agriculture and Commercial Agriculture zones, continued from September 13, 1999.

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: \_\_\_\_\_

Margaret Rosenkranz, Clerk of the Board

in the County's critical area regulations (50' buffers for those flowing into salmon streams) and recommending buffers in the WDFW riparian management recommendations [GMA doc. #4705].

Ms. Moss understood that the Board wished to establish a 75' buffer adjacent to the nearshore marine habitat for any new division of land and that lots existing as of October 1, 1998 would be addressed through either a 75' buffer or compliance with best management practices manual which would have to be adopted concurrently. Through the subdivision, the buffer would be established around the lots created by the subdivision [on the subdivision map a recorded document].

Mr. Erickson stated that best management practices do not take the place of a minimal buffer, and he sees 75' as minimal. Allowing SFRs so close to the shoreline even puts people are in danger of drowning.

Alice Schisel, Department of Ecology, Northwest Regional Office, Bellevue, explained she was present today standing in for Susan Meyer, Wetland Specialist, Shorelands and Environmental Assistance Program, Department of Ecology, who provides the following comments:

Ecology has been providing comments on the critical areas ordinance for over two years and feels that although the County made some excellent improvements since the original draft, that there are still critical gaps in protection of the Island's natural resources. Ecology recommends that the County incorporate DOE's recommendations from their most recent letter dated September 9, 1999 [GMA doc. #4735]

including comments on functionally isolated buffers; category A wetlands; some language that dealt with the protection of recreational shellfish, kelp and eelgrass beds and spawning areas; type 5 stream setbacks; and several other more or less editorial changes. Best available science is constantly evolving and in Island County DOE has not been able to look at what it is that is being proposed as best management practices or best available science. Ms. Meyer wanted emphasis that DOE is only recently realizing how important the nearshore environment is for anadromous fish to complete their life cycle. Island County is fortunate to have a lot of nearshore habitat that is used by many species and which is important to the County for many reasons. These habitats need protection and DOE does not feel the current critical areas ordinance affords this protection. [The last statement Mrs. Schisel believed referred to the apparent lack of applicability of the 75' setback to single family residences.]. DOE believes it would benefit the County in the long term to be clearly consistent with the GMA, ESA and the SMA now so that future contention about the CAO can be avoided and the County can go about the task of implementing the many improvements in that ordinance.

In response to Commissioner Thorn, Mrs. Schisel confirmed her belief that if the recommendations Ms. Meyer made in the 9/9/99 letter were adopted that would totally satisfy all the points DOE makes about what should be done. DOE has submitted a lot of material over the last several years and in the process of going through that correspondence with staff and the Commissioners at other hearings, came to some understandings and perhaps some compromises and believed these to be the remaining issues of substance.

Commissioner McDowell observed that DOE's letter of 9/9/99 used examples that were not at all what Island County was saying are the examples; he thought there still seemed to be a misunderstanding with regard to what is being proposed.

Mrs. Schisel noted that Steven Stanley added some comments that were included in DOE's letter from Ms. Meyer, i.e. that what appears to be functionally isolated may not appear to other species that utilize that area to be functionally isolated. If DOE is misunderstanding what the current critical areas ordinance has in total about functionally isolated wetlands, she thought it probably had to do with the fact that DOE's Northwest Regional Office did not receive a complete copy of the critical areas ordinance. The comments in the 9/9/99 letter reflect comments on the changes proposed and were not read in context with the complete ordinance.

Keith Dearborn advised that he personally hand-delivered to Ray Hellwig last November the complete copy of the code and the complete copy of the Comprehensive Plan, along with all Findings, in advance of a meeting in November to review those, and other members of DOE attended that November meeting. Section 17.02 is part of the set of two volumes that were delivered. Copies were provided not only to the Northwest Regional Office but to the Olympia DOE office as well.

Ms. Schisel could not say what had happened, only that Susan Meyer and Steve Stanley did not seem to have a copy available to them. She agreed that it may not be the County's problem, rather a matter of DOE's distribution.

Ms. Moss commented to make it clear that there was not a separate critical areas ordinance; it is chapter 17.02. She asked Mrs. Schisel on return to her office to look for the large notebooks and if unable to locate same, she would be happy to provide another copy of the zoning code 17.02.

Mark Goldsmith, Habitat Biologist, State of Washington Department of Fish and Wildlife, suggested the County drop the provision for functionally isolated buffers because it would result in a loss of wildlife habitat; it is the responsibility of the County to protect not only fish habitat, but wildlife habitat. Even if there is no plumbing connection between the habitat on the other side of the road, wildlife will use that buffer. Wetlands are extremely important to wildlife and they use the lands around wetlands even if they cross the road. As to estuarine wetlands, he stated that the ¼ acre threshold made no biological sense. Even small estuarine wetlands are very important to, among other things, salmon. The Hearings Board ruling did not mention ¼ acre wetland, rather to protect all estuarine wetlands. WDFW

recommends the County drop the ¼ acre threshold and protect all estuarine wetlands.

With respect to habitats and species of local importance, he observed a lot of local expertise available in the County, people who know where lots of sensitive things are, and he thought it important to take advantage of that knowledge. Concern is that if they do meet the scientific criteria and if in trouble, there not be a way for the Planning Commission to derail a nomination biologically appropriate. biggest concern is there be a set of criteria that makes biological sense and if the species or habit fulfills those then it is automatically nominated. Regarding stormwater regulations protecting streams, the exemption for single family residences does not make sense and should be dropped. He indicated that single family residences should be considered along with all other forms of development.

Type 5 streams. [9/3/99 FAX to Vince Moore from Mark Goldsmith transmitting letter from State Department of Fish and Wildlife regarding County's recent adoption of 25' buffers for type 5 streams in the County's critical area regulations and recommending buffers in the WDFW riparian management recommendations, GMA doc. #4705]. WDFW strongly urges that the County reconsider the 25' buffer, as a buffer it is completely inadequate, seemingly based on some spotty references from the literature all on the very low side. What would be more appropriate he thought was to look at all of the literature available on the subject, and look more at the averages. Submitted for today's record by Mr. Goldsmith was a Washington Department Fish and Wildlife Management Recommendations for Washington's Priority Habitats –Riparian, dated December 1997 by K. Lea Knutson and Virginia L. Naef, specially noting page 89. [ GMA doc. #4734] Part of his submittal was a summary of the literature on protecting riparian functions such as sediment removal, pollution prevention, a summary of all the literature the WDFW did recently and put together in the published document. It shows the mean values that the literature suggests for protection – all way above 25'; and show the range some close to 25' but up to 100's – average way above 25'. He believed that information the Board was provided seemed to be about just a few of the functions of the riparian streams and he thought the County should be looking at all things necessary for fish and wildlife. As the information on the chart [included in the 9/3/99 letter] indicates, some of those functions require way above 25' and WDFW suggests the County go higher than the average, at least up to where the scientific literature as a whole suggests.

He explained that at the state level, WDFW reviews species on scientific criteria; the designation for threatened and endanger species solely done by WDFW; it is an auto designation if it meets the scientific criteria.

Chairman Shelton made the observation about WDFW seeming to on more than several occasions having taken a different set of circumstances than what has been presented to the County as having been scientifically sound. In talking about a 200' buffer on type 5 streams is a great distance, and he inquired of Mr. Goldsmith whether there was another County in the State of Washington that has protected type 5 streams to that degree.

Mr. Goldsmith explained he was referring to all those buffer functions that are in the letter – there are different figures on what it will take to provide the function, and for this function he thought the Department had been consistent in saying to provide all of the functions. And he thought he had been consistent from day one in advising that the County adopt those in the Department's Public Priority Habitats and Species Riparian Management Recommendations.

The Chairman pointed out an issue in Island County around type 5 streams: science received says 25' is an adequate buffer; WDFW says it is not. There are type 4 and 5 streams with high potential for erosion or slope failure with a 225' buffer; he suggested the Department show where any other County in this state has adopted a 225' buffer for a type 5 stream. Chairman Shelton made the observation that type 5 streams include ditches that run some water when it rains hard.

Mr. Goldsmith was not aware of any. He did note that the recommendation was published in December of 1997 and the reason most counties do not have buffers near that is because they adopted long before that was published. Goldsmith

Chair mentioned that the County has been trying to come up with a reasonable management plan for heron and osprey;

WDFW came in with a recommendation of something like a ¼ of a mile as a setback which seems to take all reason out of what is trying to be done. The County recognizes the need to deal with best available science, and hired a scientist who is a biological scientist. Mr. Goldsmith testifies that the scientist the County hired has taken the low end, but in his opinion, had presented a fairly convincing argument that 25' is an adequate buffer for a class 5 stream.

Mr. Goldsmith stated that the Department's published recommendations present a comprehensive view of all of the literature on the subject. He did not know what processes Adolphson & Associates went through, but if they disagree with WDFW he felt obligated to point out WDFW's recommendation was something different.

Fred Frei, Jr., Langley, Frei Tree Farm, presented a different perspective from the property rights and liberty viewpoint, using an example of a long time local farmer, Joe Long, and his family. Because Mr. Long lives along Maxwellton Creek it will be mandatory that he comply with the endangered species act with regard to salmon. As an elderly man, it would be difficult if pushed in a corner and had to do something above what is required by state and federal with regard to endangered species. Mr. Long should have the same options that have already been exercised by a lot of other people – if not, he should be compensated if required that he only now has 1 dwelling unit per 10 acres. Another example he used was the Fosseck family – the reason rural character is at the border of Langley is because Ray Fosseck loves the land and did not go the way of what was done in Brookhaven. He thought perhaps the Growth Management Act violates the principles this Nation was founded on.

Jeannie Hunsinger, representing the Frei Farm, found it very encouraging when Ms. Moss stated that courts are ruling in favor of balancing of the GMA goals. With the exception of Fred Frei, everyone who spoke today spoke in favor of perfect protection of the critical areas. She encouraged that the County continue seeking a balance. There cannot be perfect protection of the critical areas and perfect protection of property rights at the same time.

With no others indicating a desire to speak, the public input portion hearing was closed.

Commissioner McDowell cited issues for the staff to review:

- From comments today, which refer to remand issues and which do not
- Functionally isolated buffers: DOE's proposal seems completely different than the County's
- Species of local importance; comments made today that each should be "or" instead

of "and" so that if any one of those issues are in place, the Board would

automatically be required to adopt;

- Should the goals of GMA be balanced.
- Issue on the ¼ acre estuarine wetlands.

Ms. Moss addressed where she could the issues and topics Commissioner McDowell brought up. In terms of the testimony outside of the issues of the remand, wetland buffers were not remanded; the language dealing with wetland buffers about "if possible" to which Mr. Graham referred was not within the scope of the remand. DOE pointed out some things that were not in the remand and there were some typographical errors that need to be corrected. Other than that, Ms. Moss was not prepared to make a recommendation now. As to the "or" instead of "and" it was clearly intended to be and; she will re-look at that and make a recommendation. The reason all of the goals of GMA were included was precisely the balancing that many people have spoken to and points up the very difficult nature of trying to make this a mandatory action; impact on all the goals has to be considered. In terms of the ¼ acre estuarine wetlands, that has been in the regulations since she began working with the County and was in the regulation throughout the development of #C-62-98. It is true that the language of the Growth Board order says to designate all estuarine wetlands as category A. The issue the Commissioners were dealing with at the time was that some estuarine wetlands were invaded by spartina, an introduced species, and would drop down to a Category B. The County has had an extensive spartina eradication program. The word "introduced" was taken out of the designation criteria for Category A and added a finding about spartina. The Growth Board found that too confusing and County intent not clear enough, which was to include within Category A estuarine wetlands so added was a specific line that states estuarine wetlands. The issue of category A wetlands being regulated only if a ¼ acre or larger never was in front of

the Growth Board and not in her opinion subject to the remand. In a separate case the Growth Board found that the County took the correct steps in 1992 to rely on existing wetland regulations to comply with GMA and had no obligation to make any amendments at all.

Chairman Shelton had no particular comments other than to note by a quick calculation that if we had a 225' buffer on a class 5 stream that went through a 660x660 square ten acre piece, almost 7 acres of it would be buffer; he did not see that as balancing the goals of GMA.

Commissioner Thorn appreciated WDFW coming forward.

Ms. Moss stated that through testimony today and review of the written comments, it became clear that one of the issues that must be addressed is with regard to streams and wetlands. As Mr. Castelle's memo explains the stream buffers at least were intended to protect the streams themselves and the water quality and the habitat within the streams. It is her assumption that the wetland buffers developed with the same rationale, but not developed to provide wildlife habitat per se' but do in fact do provide habitat even though that was not the goal. Mr. Castelle has reviewed type 5 stream buffers and the category B wetland buffers in light of all the other recommendations that are aimed at protecting wildlife habitat and made a recommendation. The principle comment on functionally isolated buffers is that the portion of what would otherwise be a buffer that is across the isolation could still be used by wildlife. The buffers on the near shore marine habitats are also intended to protect water quality. The actual habitat trying to be protected is not right at the shoreline but quite a ways out and that is another factor to take into account. In terms of the process for habitats and species of local importance, the language on the process was taken directly from Skagit County.

WEAN and others pointed out it did not explain the process enough and therefore an explanation was added to show that the Planning Commission would hold a hearing; clearly it is not a hearing to determine whether the application is complete. It is the Department who will review it and if complete, forward it to the Planning Commission who will hold a hearing and make a recommendation to the Board. In the packet of handouts [#4637] included are provisions from Clark County and Kittitas County as other examples.

As far as preparation of amendments, Mr. Dearborn clarified that no amendments would be pre-

pared until the Board so advised staff. From a scheduling standpoint, if this hearing is continued to consider amendments, it would be to October 11, 1999 at 1:30 p.m., and any amendments would need to be prepared and available by September 30<sup>th</sup>.

The Board by unanimous motion continued the Public Hearing on Ordinance #C-97-99, PLG-019-99 in the matter of amending chapter 17.02 ICC to comply with the order of the Western Washington Growth Management Hearings Board relating to certain provisions of the County's critical area regulations, to October 11, 1999 at 1:30 p.m., for the purpose of hearing amendments to C-97-99.

There being no further business to come before the Board at this time, the Chairman adjourned the meeting at 6:20 p.m.. The next Regular

Session will be held on September 20, 1999 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:** \_\_\_\_\_

Margaret Rosenkranz, Clerk of the Board