

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 23, 1999**

**The Board of Island C ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 23, 1999**

ounty Commissioners met in Special Session on November 23, 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 Wm. F. Thorn, Member, present. The special session was called for the purpose of the following:

- **9:30 a.m. Executive Session** with special legal counsel to discuss pending and/or potential litigation, as allowed under R.C.W. 42.30.110 (1) (i). The Executive Session will be held in the Hearing Room, Courthouse Annex, Coupeville. Anticipated length of the Executive Session is approximately 1 hour.

- **10:30 a.m. GMA PUBLIC HEARING - Continued from November 22, 1999**
 - A. Ordinance #C-121-99 (PLG-043-99) adopting Oak Harbor Interlocal Agreement governing land use decisions within the Non-Municipal portion of Oak Harbor's UGA [continued from 10/25/99 & 11/22/99]

 - B. Ordinance #C-131-99 (PLG-045-99) In the Matter of Adopting Findings of Fact regarding Type 5 Stream Buffers and Certain Provisions of the County's Critical Areas Regulations

 - C. Ordinance C-133-99 (PLG-040-99) - Amending the Comp Plan and Development Regulations to comply with the Order of the Western Washington Growth Management Hearings Board relating to the Rural Forest Zone [continued from 11/8/99 & 11/22/99]

 - D. Ordinance C-134-99 (PLG-041-99) - Amending the Comp Plan and Development Regulations to comply with the Order of the Western Washington Growth Management Hearings Board relating to Planned Residential Development [continued from 11/8/99 & 11/22/99]

 - E. Ordinance C-135-99 (PLG-042-99) - Amending the comp Plan and Development Regulations to comply with the Order of the Western Washington Growth Management Hearings Board relating to Rural Densities in the Rural Area [continued from 11/8/99 & 11/22/99]

EXECUTIVE SESSION

The Board met in Executive Session at 9:30 a.m. with special legal counsel to discuss pending and/or potential litigation, as allowed under R.C.W. 42.30.110 (1) (i). The session lasted approximately 1 hour and no announcement was made when the Board returned to open public session at 10:30 a.m.

GMA PUBLIC HEARINGS, CONTINUED FROM NOVEMBER 22, 1999

Attendance:

Staff/Consultant: Keith Dearborn

Public: Attendance Sheet GMA document #5171

Ordinance #C-121-99 (PLG-043-99) adopting Oak Harbor Interlocal Agreement governing land use decisions within the Non-Municipal portion of Oak Harbor's UGA

Commissioner McDowell requested that the Board consider continuing this matter to some future date since he continues to work on the agreement with the City, with status now down to having reached agreement virtually on everything with the one exception of some non residential development on Goldie Road.

Sheilah Crider, Oak Harbor City Council, and Chairman of the Island County Planning Commission, agreed with Commissioner McDowell's assessment, and noted that continuing the matter will allow the City an opportunity to complete the work and get a final document to the County for review.

By unanimous motion, the Board continued Ordinance #C-121-99 to February 7, 2000 at 1:30 p.m. [Notice of Continuance: GMA doc. #5223]

Ordinance #C-131-99 (PLG-045-99) In the Matter of Adopting Findings of Fact Regarding Type 5 Stream Buffers and Certain Provisions of the County's Critical Areas Regulations

At the beginning of the Public Hearing on Ordinance #C-131-99, extra copies were made available of the proposed revisions to Exhibit C as had been handed out during yesterday's hearing dated 11/22/99, as well as a prior hearing. For the Board's consideration, Keith

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Dearborn suggested that the Findings in Exhibit A and B be deleted from this ordinance, and the ordinance limited to Findings in Exhibit C only, with appropriate modification to the cover ordinance.

Commissioner Thorn agreed. Commissioner McDowell did not agree that was the position of the entire Board, although he did agree to look at that another day and to deal only with Exhibit C at this time.

Commissioner Thorn moved adoption of Ordinance #C-131-99, PLG-045-99, with the following changes:

- In the title of the ordinance strike the words "Type 5 Stream Buffers and"
- Delete the third and sixth Whereas paragraphs;
- The Be It Hereby Ordained paragraph to read as follows: "Be It Hereby Ordained that the Board of Island County Commissioners hereby adopts the findings of Fact relating to certain critical areas provisions attached hereto as Exhibit A."
- In the Exhibit title itself, change C to A.

Motion was seconded by Commissioner McDowell.

Public Testimony

Steve Erickson, WEAN, encouraged the Board to adopt the motion and therefore on the basis that the motion is adopted he would not address the existing Exhibit A. On Exhibit C, proposed to be Exhibit A, mentioned that with regard to functionally isolated buffers it was still unclear which functions are to be considered in terms of their isolation. WEAN is pleased with the wording of the ordinance with respect to habitats and species of local importance, and the wording about financial guarantees and restoration plans is an improvement. In Finding #21, he suggested it may be clearer just to delete the last sentence; the same with Finding #22 in the next to the last sentence. Finding #38 that refers to the Comp Plan designating 77% of Island County for low-density rural, rural agriculture, rural forest and commercial agriculture uses was an accurate statement in that his argument is that 5 acre zoning is not low-density rural and is actually at the upper end of the density that can be considered rural. With regard to Finding #39, WEAN does not believe the existing scheme of the ordinance does adequately protect wildlife overall. With regard to management plans for heron and osprey may be at a point that everyone can live with. Finding 41 discusses the ability to use secondary sources which is appropriate. WEAN still has a problem with exempting small residential development from all controls [re stormwater regulations]. WEAN is somewhat pleased that will make a physical inspection of each property, but he did not think one could always tell from inspecting the property whether that will impact critical area, especially if the critical area is off the property. The problem is dealing with cumulative impacts over time .

Tom Roehl, T. J. Roehl & Associates, Freeland, requested Finding #5 be clarified to make it clear that public roads include arterial streets and roads that happen in title to be privately owned [Useless Bay, Sandy Hook] as opposed to county owned; these may be privately owned and maintained but function just like any county road. Mr. Dearborn pointed out that the word public had been used advisedly and not limited to County public roads. With regard to Finding #32, he asked if the term "introduced" remained removed from the process, and whether it had any affect on other wetland Category A processes.

In that regard, Mr. Dearborn deferred to Alison Moss as far as the consequence who did not indicate to him there was a consequence and he worked on the assumption that leaving it deleted would be okay.

In regarding to Finding #38 discussing that 77% of the County being in low-density zoning, Mr. Roehl disagreed with what Mr. Erickson said about that, and felt the other way around, that five acres are very large size and if the pattern is examined through aerial photographs of some of the more well-known 5-acre subdivisions in the County [i.e Maple Glenn in Freeland] and the manner in which people have developed their homes it never ever is the pattern found that is described in testimony by others building in one spot creating a wall keeping animals from being able to move around freely. On the contrary, it shows there is no pattern of where on a five acre tract someone builds their homesite, and finds them heavily forested, with very small portions of these five acre tracts for the most part being used the way other testimony indicated.

With no others indicating a desire to comment, the public input portion on Ordinance #C-131-99 was closed.

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BOARD DELIBERATION/ACTION:

Commissioner Thorn moved to amend his original motion, on Page 2 of 12, item 5, after the words "public roads" add in parenthesis (regardless of ownership). Add sentence: It is intended that "public" includes improved private roads used by the public. Motion, seconded by Commissioner McDowell, carried unanimously.

The original motion, as amended, carried unanimously. *[Ordinance #C-131-99 as adopted GMA doc. #5224] [Any Exhibits to the Ordinance have been placed on file with the Clerk of the Board]*

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

IN THE MATTER OF ADOPTING FINDINGS OF FACT REGARDING CERTAIN PROVISIONS OF THE COUNTY'S CRITICAL AREAS REGULATIONS)))))
ORDINANCE C-131-99
PLG-045-99

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

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

WHEREAS, the Board found certain provisions of the County's Critical Areas Regulations did not comply with the requirements of the GMA and remanded these matters to the County for further action; and

WHEREAS, the Board also directed the County, for its regulation of functionally isolated buffers, to either repeal this provision or reopen the hearing to permit further public review; and

WHEREAS, on October 11, 1999, the Board of Island County Commissioners adopted Ordinance C-97-99 amending Chapter 17.02 ICC to change other critical area provisions; and

WHEREAS, amendments to adopted Findings of Fact and Legislative Intent are needed to reflect the amendments to Chapter 17.02 ICC. **NOW, THEREFORE,**

BE IT HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the Findings of Fact relating to certain critical areas provisions attached hereto as Exhibit A.

Reviewed this 11th day of October, 1999 and set for public hearing at 1:30 p.m. on the 1st day of November, 1999.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON**
Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

ATTEST: Margaret Rosenkranz
Clerk of the Board BICC 99-579

APPROVED AND ADOPTED with changes this 23rd day of November, 1999.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON**
Mike Shelton, Chairman
William F. Thorn, Member

ATTEST: By: Ellen K. Meyer, Deputy for
Margaret Rosenkranz, Clerk of the Board

~~APPROVED AS TO FORM:~~
The prosecuting attorney does
not review findings of
fact or graphs as to form

DAVID L. JAMIESON, JR.
Deputy Prosecuting Attorney
& Island County Code Reviser

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Ordinance #C-133-99 (PLG-040-99) - Amending the Comp Plan and Development Regulations to Comply with the Order of the Western Washington Growth Management Hearings Board Relating to the Rural Forest Zone

A Public Hearing was held on Ordinance #C-133-99 [dated 10/18/99] , dealing with the Rural Forest Zone, continued from November 8, 1999 and November 22, 1999.

Hand-outs:

Amendment #1 [available at the 11/8/99 hearing]	
Amendment Package #2 through #4	GMA doc. # _____
Revised Findings , Exhibit C	GMA doc. # _____
Amendment #5	GMA doc. # _____

Amendments #1 through #3 were available at the last hearing and briefly reviewed. Amendment #1 reinstates the verification provisions. Amendment #2 changes the time of the effect of the ordinance. Amendment #3 relates to EDUs and may be superseded if Amendment #5 is adopted [deleting the EDU program]. Amendment #4 relates to rural rezone standards and may be superseded if the Board adopts Amendment #5. The discussion at the last hearing ended with an attempt to continue to seek changes in the ordinance that would allow consensus on Amendment No. 4, which resulted in correspondence from a variety of parties, leading to Amendment No. 5. Exhibit C was originally handed out at the last hearing, Findings and Legislative Intent; underlined or crossed out words in bold are modifications that have been made to the ordinance as a result of the amendments before the Board for consideration today. staff suggestions for additions to the ordinance needed to support the action taken. Two tables have been added to exhibit C: (1) listing of 10 largest rural forest land owners in the County; (2) distribution of the rural forest zone, reflecting the request of Steve Erickson, WEAN, for this distribution information.

Public Testimony

John Graham, Citizens Growth Management Coalition, addressed the global issue of how these issues interlock, and noted three things important to keep in mind, noting all three applied to this process:

1. Look for the nature of the structure and the trade offs;
2. Understand the nature of the risks; and
3. Figure out how you can get a better deal.

For the County he thought the most crucial thing was in further down zoning. For the Coalition, it was not so much five acre zoning as the pattern of five acre lots. The least bit of “wobble room” for the Coalition was protection of habitat, critical areas and their natural affect on rural character of the Island. Because of the imbalance in priorities, Mr. Dearborn was able to find a middle ground in looking at ways to bring both sides together, exactly structurally what Mr. Graham thought was the proper thing to do; to find out at the end game of a negotiation where there is an imbalance in priorities and then attempt to have each side gain a lot by giving a little. As far as the issue of risk, at a certain point in negotiation you simply have to tell yourself the risk has been minimized. The Board of Commissioners can identify some risks and the Coalition seems to be taking a risk to trust that the committees in Freeland and Clinton will actually produce something. Also a risk was to believe that a significant number of the 43,000 people coming to the County in the next 20 years would chose the PRD option. The Coalition’s strategy has been based upon significant risks that PRDs will be used, therefore the new PRD considerations are important and second, that in terms of the two major population centers in the South end that the right thing will be done. Lastly, the Coalition has to figure out whether it can get a better deal, looking toward the Growth Board and beyond that to the courts. The Growth Board said there has to be a variety of densities. Under the old plan, as long as there was an easy opt out from RF, something like 88% of rural lands were in the one and five zoning; now if Amendment 5 is adopted the RF rezone would be considerably more difficult, i.e. 74% of Island County’s rural lands in one in five and 26 are not. Whether 26 and 74 is enough of a variety of densities or not, Mr. Graham noted it was better than 88 and 12.

He was aware what the GMA says about advising clustering: it is a good option and lists clustering in a series of other good options, but does not say clustering is mandated. While the Coalition would love to have mandatory PRDs in the countryside, he did not see that coming out of the Growth Management Hearings Board nor from the courts. The Growth Board has required a look to see whether five acre zoning is a threat to critical areas. While six weeks’ ago Mr. Graham would have said “yes”, because the County made a number of concessions on critical areas the case was made that much harder for the Coalition to go to the Growth Board and assert that five acre zoning endangers critical areas because the protection for critical areas has

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grown if these ordinances are passed, as well as those scheduled for hearing on January 10th.

The Growth Board stipulated on critical area regulations: estuarine wetlands; the listing of species and habitats; shoreline setbacks; functionally isolated buffers. In those areas the County seems to have wholly or at least substantially met its obligations. On behalf of the Coalition in looking at a "better deal" Mr. Graham he did not see a realistic chance the Coalition could get a better deal under these circumstances considering what has occurred, particularly in the last ten days. Looking at the political climate in the State, his opinion was that the courts would by and large say this was hair-splitting in a tiny county. It was also his opinion it would be much more difficult to raise money for an expensive case to carry this further because the major issues have been settled: rural standards and uses, key AG areas, etc. and progress made so far along with the three documents today.

Mr. Graham confirmed that the Coalition accepted this package, viewing it as the best deal the Coalition can get. The Coalition see the risks as "risky" but was willing to take those risks. He understood that the package for today's consideration in many ways was very similar or somewhat better than the proposal the Coalition made about six weeks ago and had already accepted. As a human being he told the Board it was "time to put a wrap on this". In looking at where this started two years' ago, what happened last September 28th, what happened to rural uses and standards, what happened to the AG agreement which he saw as a state-wide precedent, the way mining has been dealt with, Mr. Graham thought the BMPs in this spirit would turn out to be something quite good in January, and at that point, would have achieved a package that serves the county and its people.

Mr. Graham supported Ordinance #C-133-99 before the Board today, noting that he and Tim Martin worked out the language for the rezone. He found out from the Coalition's legal counsel that any reference to the WAC did not work: if you say you cannot forest the land, make commercial use of it as forestry land, it has to be for something other than personal need, and cannot be just because of the need to send a child to college or even because of a medical emergency, rather it would have to be something that is tied to the land and the ability to grow crops of trees. He explained the problem with the reference to the WAC. Because that was the same WAC provision used a year ago by the county to demonstrate there were no forest lands of long term commercial significance, fear of legal counsel for the Coalition was that a forester could have said: the WAC 365 is used as a criteria, and it says that the case has already been decided, there is no forest land and by definition I should be down zoned. Although Mr. Graham did not like the ten acre zoning, it was one of those things he was willing to go along with as part of the total package. He would have preferred 20 acre RF zoning but the Coalition is not insisting on that.

Tim Martin, South Whidbey, speaking on behalf of Waterman Enterprises, Inc. and the Waterman Family, stated that consensus had not been reached as far as Ordinance #C-133-99. As stated in ICC 17.03.110 the primary purpose of RF zone is to protect and encourage the long term productive use of the County's forest land resources of local significance. It is established to identify geographical areas where commercial forest management practices can be conducted in an efficient manner and to help maximize the productivity of the land so classified. The designation criteria for the classification are: contiguous ownership of 20 acres or more and the placement of a parcel in classified or designated forest tax classification for purposes of property taxes.

He illustrated his clients concerns by the following hypothetical: there are two parcels, one owned by Phil Bakke; the other by Mr. Martin, both 20 acre parcels.

The Martin parcel has no commercial grade timber, poor soils for growing trees, difficult topography and terrain, surrounded on three sides small parcels developed for residential purposes. By any objective criteria it is not well suited for commercial forestry but to save money two years' ago the land was placed in the designated forest tax classification. Under 110C his property will be zoned rural forest.

Mr. Bakke's parcel is surrounded on all sides by large undeveloped tracts, covered with a stand of large commercially harvestable timber. The property is now and will continue for the foreseeable future be able to support commercial forestry. For decades this property has been in designated forest tax program until before December 1, 1998 when he removed the property from that program paid all the back taxes, interest and penalties, and the property will be zoned rural with a minimum lot size density of one per five acres.

He and his clients' position is that it is not fair or reasonable and thought there were numerous legal problems with the classification, including substantive and procedural due process questions, equal protection questions and partial taking questions. To reduce the adverse impacts of the rural forest designation criteria his client proposed the minimum lot size be reduced in the RF zone to 10 acres and the base density be one dwelling unit for ten acres; in turn, proposed

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criteria for reclassification from the RF zone to R zone which he believed satisfied each of the objections previously made at the last hearing by the Coalition and WEAN to the reclassification originally proposed in this ordinance. As noted by Mr. Graham probably the most important change is the deletion of the reference to WAC 365.190.060, regulations adopted pursuant to GMA to guide municipalities in designating resource lands and forest lands. He understands Mr. Graham's concern and agreed to delete that reference to WAC regulations. The Hearing Examiner under the proposed reclassification criteria could consider evidence relating to factors similar to the points mentioned in the WAC. The proposal he and Mr. Graham came up with changes to the ordinance in that the WAC regulations no longer incorporate by reference in the zoning code. What this has done is to go from an automatic opt-out to a situation that will pose a real challenge for someone seeking to reclassify. He suggested that not only do the reclassification criteria bear a clear rationale relation to the purpose and intent of the RF zone, the reclassification criteria clearly will withstand scrutiny by the Growth Board. Taken together the rezone standards and proposed 10 acre RF minimum lot size are fair and reasonable, and agreed with Mr. Graham's analysis that in the process of negotiation if it is working right, at the end everyone is mildly dissatisfied, no one a huge winner; no one a clear loser. He believed that the proposal on the table now for the RF zone, including the reclassification criteria, was consistent with requirements of GMA and the June 2nd decision of the Growth Management Hearings Board, particularly in light of the action that is being taken, and has been taken by the County in the last few days. The County went through the June 2nd opinion, took each of the points raised, responded, addressed and resolved those concerns, and Mr. Martin believed had satisfied the spirit and technical language of the June 2nd decision. He suggested regarding Ordinance #C-133-99, Exhibit A-3, proposed Comp Plan amendments item K should be changed to track identically the language in the ordinance itself primarily because it was good draftsmanship to make it clear there is no conflict whatsoever between the Plan and the Ordinance.

Tom Roehl, Project Planning Services, Freeland, agreed that he had never thought using the WAC citation was wise and recalled having previously commented and suggested rewriting that section to use five applicable concepts from the WAC and list them specifically as a guidance tool. He agreed with Mr. Martin that these criteria would make it very difficult for rezones. Dealing with almost more than two dozen people and families in the situation of owning rural forest land as such as the example Mr. Martin described, he noted all of them wanted to keep their land: as much of it and as long as they can. The Davis family, as one example, has a mix of AG and forest zone and they need the 10 acre option just to bring their family on to the farm and go to the bank and finance to build another house and continue to do forestry and farming. The majority of these people do not have a high interest in doing PRDs or developing their land. The amendments proposed today would provide them with the tools they need within their family and this proposal has the highest probability of keeping the ownership of the land in the hands of the people who have held it for many generations. With regard to the rural density issue, he did not believe a viable case could be made that by itself 5 acre parcels or that the total package of zones created is a threat to critical areas, even without the proposed changes under consideration. By itself parcel size is historically not the thing that matters very much when it comes to protecting critical areas; the tool proven to be most effective is regulation and not zoning. He did wish the rezone criteria could be made clearer.

Specific comments Mr. Roehl made on the Comprehensive Plan Amendments were:

Page A-2 item D, questioned the proposal for deleting item D entirely because EDUs he thought were still in place for AG uses

Amendment No. 1 is needed, but the numerical reference is still incorrect and should be section 110 Rural Forest Zone.

He supported the clause that continues to make the reclassification process not effective until a ruling is received from the Growth Board [until then the old one stays in effect].

Amendment #3 regarding deletion of the maximum parcel size, he noted was the section of the ordinance in question is the section on EDUs. This needs to be there for those in AG.

Mr. Dearborn commented that with regard to Amendment #3, it was potentially superseded by Amendment #5 but did amend a provision that applies to CA.

With regard to Tim Martin's testimony about the Comp Plan portion, he agreed with the words he suggested, and in proposed Findings and Legislative Intent, page C-4 No. 160 he thought contained a typo "charge" should be "change". Enhance findings further to include other factors that have helped to achieve a greater variety of densities.

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Steve Erickson, WEAN, referred to his 11/22/99 letter entered into the record [copies available for those in the audience], noting in this case, WEAN as the “naysayers” inevitable because who they represent do not vote or pay taxes, have no standing unless someone else who does stands up. He too takes a global view. Density causes fragmentation; every single family home that is built adds more roads, clears more land, converts more native vegetation, creates more proximity to remaining habitat of cats, dogs, etc. and all has an impact. He referred to the second page of his hand-out, table #1, prepared by using figures provided by Jeff Tate [other than the number of parcels for Rural AG for which he had made an assumption that Rural AG is at 20 acres for those parcels.] Rural AG is a small area, only about 6% of the rural lands.

Using a blackboard he drew three circles about the same size, showing in Island County to represent: (1) parcels at 20 acres or more; (2) parcels between 5 and 19.99 acres; and (3) those parcels under 5 acres = about three equals areas. In the category 20+ acre parcels, there will be one 20 acre parcel that has 1 dwelling unit. For parcels between 5 and 19.99 acres there will be an equal area that has 3 dwelling units; and less than 5 acres – 22 parcels under 5 acres. The proposal before the Board now he thought would make the situation worse in many respects, and to illustrate, drew four circles representing an equal area, adjusted for the percent of the County covered: (1) 20 acres R AG ; (2) 10’s RF; (3) 5 to 8.99 acres; and (4) less than 5 acres, these equal:

	Area	Percentage
(1) 20 acres	1 du	6.3%
(2) 10 acres	2.3 parcels	14.7%
(3) 5 to 8.99	26.9	47.5%
(4) 5 & less	80	31.5%

Whether that is sufficient rural variation density, Mr. Erickson stated that the question was whether it was rural character. The reality is that with increased developed there is increased fragmentation, etc. as he stated earlier; no one is the straw that breaks the camel’s back; it is a cumulative process that creeps onward over time. Ultimately there are two main tools that can mitigate that if these densities are allowed: requiring retention of native vegetation and spatially arranging the development so it does not cause as much fragmentation [clustering].

Finding #163 is accurate as far as it goes. The criteria for choosing open space in the PRD ordinance is very good. WEAN does have some problem with some of the densities allowed but the problem is that historically, PRDs are not used much; only a total of some 31 between the years 1984 and 1997. The only way WEAN sees to mitigate affects of this kind of density would be to require clustering to make PRDs mandatory. There is already 15.4% of those rural lands between 5 and 8.99 acres and the 31.4%, and 24,000 parcels nearly that are below 5 acres averaging 1-1/4 each so in many respects the remaining 50% of the County of the Rural areas could be subdivided down to 5 and 10 acres and if that happens, wildlife will be lost in the future because of the loss of wetlands over time which sets in motion those future conditions that will cause. In terms of impacts to critical areas and wildlife functions, critical areas do not exist in isolation. There would have to be enormous buffers on the critical areas to retain wildlife and habitat function and let those densities happen and would have to turn those critical areas into fairly major reserve areas.

Mr. Erickson stated that he appreciated the steps the County had taken, and was pleased the County had been willing to move as far as it had, but noted, it came back to those WEAN represents; to retain non- humans and other organisms so they will persist over time. And he saw this as a recipe for massive degradation and massive fragmentation over time. He believed it was possible to have ten acre zoning possibly in the forest zone and to mitigate that by some ways other than requiring clustering but did not think that was possible if the entire rural zone is allowed to go down to 5 acres. Rural AG tends to be mixed and he concluded that Rural AG is kind of resource land but does protect habitat function.

Looking that about 78% of all the rural lands being in 5 acres or below; those 5 to 9 acre parcels average about 5.6 acres each, on a parcel that small he concluded that retention of vegetation could not really be required because it is too small to work with in those terms. Ten acres probably could work, with a requirement to retain native vegetation. Forty-five percent is already below 9 acres and most of that is below 5 acres and he could not see any way to mitigate the impacts on wildlife, habitat and critical areas. While WEAN does not support the 20 acre provision or the 10 acre provision for Rural Forest because of the context it is being placed in, they do support the rezone language proposed in Amendment #5.

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Tom Roehl stated that there are only a limited number of habitat species native to Island County that need broad ranging territory. He put forth an alternative hypothesis to Mr. Erickson's: that it is a question of...is the government going to decide if you have four building sites on 20 acres and the choice is to have four 5-acre tracts or four small lots in one corner, resulting in a better management method of that particular 20 wildlife habitat.

He contended it could be demonstrated that the people who own four 5 acre tracts will and are the type of people with a demonstrated track record of living rural lifestyles on those five acre tracts and living in a manner sensitive to the environment. His hypothesis a stronger one to assert both in terms of the history of the County's development and looking at aerial photographs and see visually how much habitat fragmentation there really is. An example [from the AG committee]: photograph comparing the 40 acre PRD that was totally logged before the PRD was done; right next door a chunk of land developed in 5 acre tracts and the contrast amazing. There is no guarantee because a development is clustered that the people who live on it will be better care takers of that same 20 acres. Again, rural character is defined by the way people live in the rural environment.

Tim Martin commented that while Mr. Erickson wants to protect habit and therefore did not want to see rural forest minimum size reduced from 20 acres to 10 acres, one should keep in mind that the designation criteria for the rural forest zone is property tax classification which has no correlation to habitat; therefore the argument must be there will be big parcels does not work either. His hypothetical with the two 20-acre parcels would seem to be a far better chance that the Bakke property has habitat but under this proposal there was no rationale basis to distinguish between these lands or to arbitrarily say all property in the forest tax classification will be taken to protect habitat; it logically fails.

Steve Erickson, on the question of whether or not people who move on to individual 5 acres are better stewards than people who move on to PRDs, stated that all things being equal, it would probably be about the same, but the question was: what are the effects people have, regardless of their wishes? If there are 4 houses, as an example, in a cluster, there will be less road than four houses disbursed over a larger area. If in a cluster then the absolutely maximum area they can convert from predominant vegetation is into lawns, gardens, etc. There is no guarantee just because a parcel is in rural forest that has a forest on it but generally speaking does mean it has forest on it at some stage. It is true there are extensive portions of the rural zone that are well forested and have other habitat values as well. As land becomes increasingly subdivided wildlife function degrades. These large parcels should not be able to continue subdividing.

In response to a question from Commissioner McDowell regarding the comment Mr. Martin made that the Comp Plan language should be the same as 17.03.220 reclassification, Mr. Graham concurred with that but assumed the second sentence in bold would also be left in. He thought it fairly obvious now that an appeal would be made on these ordinances and he hoped that the Commissioners would not throw up their hands and also file an appeal. He thought that a very difficult balance had been struck and the Commissioners had come as far as they would go; the Coalition had gone as far as it would go and reached an accommodation. Therefore, he urged that the Board pass the amendments and the ordinances today essentially as written, and not with major changes.

In response to a question from Commissioner McDowell, Tom Roehl pointed out a possible concern in Item L in A-3, the last item, where he thought there were situations where that may be an impossibility [neighboring property overlooks your property].

Mr. Dearborn explained that the provision had been included intentionally, and from his review, thought it easier for a rural forest parcel to be able to achieve this than for a rural parcel because of the larger parcel size and the forest land cover. With this limitation there is a recognition that some properties that could otherwise achieve a PRD would not be able to. The screening provision was previously discussed, recognizing this screening is achieved by a variety of mechanisms and a Finding has been prepared relating to this as a part of the PRD ordinance.

Commissioner McDowell recalled his concern had been related to limiting PRDs to forested areas and the concern raised by Mr. Roehl, viewing from the roadway looking up. He was interested in hearing thoughts on this issue from WEAN and the Coalition [PRDs limited to the top of a hill as opposed to the side of a hill].

From conversations with John Graham, Mr. Dearborn thought the Coalition far less concerned about the aesthetics of a PRD than they were about the retention of the larger open space opportunities in a PRD.

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Mr. Dearborn's recommendation was to complete review on all items but L; take final action after adoption of Ordinance #C-134-99 and make sure of consistency with C-133-99. The Board agreed it may come back to this item.

Public Testimony Closed.

BOARD DELIBERATION/ACTION

Mr. Dearborn explained that hand written change on A-2 from 20 to 10 was a correction. Turning to Exhibit C, Legislative Intent, page C-3, he suggested that if the Board wanted to make the amendment relating to EDUs and the minimum parcel size, Amendment #3 would need to retain Finding #157 [and appropriate number changes to subsequent amendments to be consistent]. On page C-4 #158, second to the last line referring to classified or designated classified should be capitalized; and the word "charge" should be changed to "change". The 4th Whereas paragraph on the cover ordinance is not necessary.

With regard to C-5, the top of the page, Subsection C, Mr. Roehl had commented and made a statement better reflecting intent and suggested some language: "...that would allow existing forest land owners to retain these lands for forest use". The concern with the land owners that own forest lands classified in the rural forest zone is to try to find ways to ensure they can continue to do what they have been doing, which has primary and secondary benefits to the County, and the purpose of these changes based on the compromises negotiated by the interests in the county are principally to do that.

Commissioner Thorn moved adoption of Amendment No. 1 to Ordinance #C-133-99 confirming change to the section heading 17.03.90 to be changed to 17.03.110, and Rural Agriculture (RA) Zone to be corrected to Rural Forest (RF) Zone. Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner Thorn moved adoption of Amendment No. 2 to Ordinance #C-133-99. Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner Thorn moved approval of Amendment No. 3 to Ordinance #C-133-99. Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner Thorn moved that the Board adopt Amendment #5 to Ordinance #C-133-99, with the following changes:

Exhibit A-2 Under Policies A. The number 20 in both places is to be changed to 10, to read: Minimum parcel size is 10 acres. Base density is one dwelling unit per ten acres.

Exhibit A-3 Item K revised to read as follows: Reclassification from RF to R shall be granted if requested by the Owner when the Owner cannot make reasonable economic use of the Parcel for commercial forestry, considering all relevant factors. Provided, that the determination of whether the Owner can make reasonable economic use of the Parcel for Commercial forestry shall not involve consideration of the personal circumstances of any particular Owner.

Motion, seconded by Commissioner McDowell, carried unanimously.

Board consensus: Amendment No. 4 not adopted.

Commissioner Thorn moved to adopt Exhibit C to Ordinance #C-133-99, PLG-040-99, with the following changes:

C-3 Finding #157 is to be retained in its entirety and the paragraph numbers following would subsequently be changed

C-4 Finding #158 the word "classified" toward the end of the sentence should be capitalized

C-4 Finding #160 in the last sentence the word "charge" is to be corrected to "change"

C-5 Finding #161 Item (c) at the top of the page, should read:
"Given the above, land owners need flexible options that allow existing forest land owners to retain these lands for forest use."

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
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Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner Thorn moved that the Board adopt updated changes to the Rural Forest Lands table dated 11/23/99 reflecting the distribution of lands, as a replacement attachment to Exhibit C Findings and Legislative intent as it applies to Ordinance C-133-99, reflecting total number as 13991.69 acres with the other changes that add up to that. Motion, seconded by Commissioner McDowell, carried unanimously.

Commissioner Thorn's motion to adopt Ordinance C-133-99, including change to the cover page of the Ordinance, the first page the 4th whereas paragraph, with amendments, as seconded by Commissioner McDowell, carried unanimously. [GMA doc. #5225]

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

IN THE MATTER OF AMENDING THE COMP PLAN AND DEVELOPMENT REGULATIONS TO COMPLY WITH THE ORDER OF THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD RELATING TO THE RURAL FOREST ZONE))))))
Ordinance C-133-99
PLG-040-99

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

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

WHEREAS, the Board found that certain provisions of the Earned Development Unit (EDU) section did not comply with the GMA and therefore replacement regulations are needed to govern land use; and

WHEREAS, in 1998, the County completed environmental review under Chapter 43.21C RCW, SEPA, on its Comp Plan and Development Regulations including the Rural Forest Zone as well as the EDU Program; and

WHEREAS, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to the Comp Plan and Chapter 17.03 ICC to comply with the Order of the Growth Board, relating to the EDU Program are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations.

NOW, THEREFORE, BE IT HEREBY ORDAINED in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commissioners hereby adopts the amendments to the Island County Comp Plan (Exhibit A); the Zoning Code, Chapter 17.03 ICC (Exhibit B); and Findings and Legislative Intent (Exhibit C) all attached hereto, relating to the use of Earned Development Units and the Rural Forest Zone. Material stricken through is deleted and material underlined is added.

Reviewed this 18th day of October, 1999 and set for public hearing at 1:30 p.m. on the 8th day of November, 1999.

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

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

ATTEST: Margaret Rosenkranz
Clerk of the Board BICC 99-589

APPROVED AND ADOPTED as specified in the October 1999 Memorandum from the County's Code Reviser Changes were accomplished on October 25, November 1, and Nov 23, 1999, this 23rd day of November, 1999.

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

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 23, 1999**

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

ATTEST: By: Ellen K. Meyer, Deputy for:
Margaret Rosenkranz, Clerk of the Board

Exhibit B-Development Regulations

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.
Deputy Prosecuting Attorney
& Island County Code Reviser

Ordinance #C-134-99 (PLG-041-99) - Amending the Comp Plan and Development Regulations to comply with the Order of the Western Washington Growth Management Hearings Board relating to Planned Residential Development

Ordinance #C-134-99 was continued to this date and time from November 8 and November 22nd. Public input was taken and concluded at the November 8th public hearing. Exhibit D, Findings, was not available on November 8, and handed out at this time as prepared and made available 11/11/99 [GMA doc. #_____]. Public testimony will be offered today on Exhibit D, Findings.

Based on his review of the Board's action taken with regard to the Rural Forest Zone, Mr. Dearborn suggested a revision which he thought would help ensure that the PRD proposal which now can be used in the Rural Forest zone works effectively, Page C-3, item E, which now reads:

"Proposal within the Rural Agriculture or Commercial Agriculture Zones shall not be located on prime agriculture soils or interfere with commercial agriculture or forest use of the land."

The concern is that the way written, it could be interpreted that a PRD could not be on prime AG soils and Mr. Dearborn thought what was really being referred to were houses within a PRD; the PRD open space actually gives preference to open space preservation of the prime AG soils. The reference to Rural and Commercial AG zones should be deleted. Revised wording suggested:

"Except for the designated open space and access road, proposals within the rural Agriculture or Commercial Agriculture zones shall not be located on prime Agriculture soils or interfere with commercial agriculture or commercial forest use of the land."

Commissioner McDowell believed that, clearly, intent was to put the buildings on the non farm property and allow the open space to be part of that farmed property.

The Chairman indicated that public testimony would be offered on this proposed change as well.

In the interest of discussing changes, Commissioner Thorn proposed that B-4 item 3 at the top of the page, proposing to say "rounded off to the next whole number". Commissioner McDowell did not support that change.

Mr. Dearborn reported that a quick staff analysis had been made [table at the beginning] finding that as far as rounding upward for typical parcel sizes did not obtain for anybody an additional unit. Using the more traditional rounding at .5 and higher, that 20 acre parcel would achieve a little bit of additional density. Mr. Thorn's suggestion would not have a consequential negative impact on density and would be more in keeping with the traditional way of calculating.

Public Input

John Graham, Citizen's Coalition, questioned about the status of PRDs in Rural AG.

Mr. Dearborn answered that no bonus is permitted.

Steve Erickson, WEAN, some of the criteria for PRDs have been vastly improved and requirements for choosing what is the open space. WEAN still has quite a few qualms about the densities that are possibly allowed.

Public Input closed.

BOARD ACTION:

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 23, 1999**

Commissioner Thorn moved approval of Exhibit D dated 11/11/99, Findings and Legislative Intent for PRDs as it relates to Ordinance #C-134-99, PLG-041-99. Motion, seconded by Commissioner McDowell, carried unanimously.

By unanimous motion, the Board approved Ordinance #C-134-99, PLG-041-99, with the following modification on page Exhibit C-3, item E, the sentence to read:

Except for the designated open space and access road, proposals within the Rural Agriculture or Commercial Agriculture zones shall not be located on prime agriculture soils or interfere with commercial agriculture or commercial forest use of the land.

[Ordinance #C-134-99 as adopted GMA doc. #5226]

(Note: exhibits have been placed on file with the Clerk of the Board)

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

IN THE MATTER OF AMENDING THE COMP))))))
PLAN AND DEVELOPMENT REGULATIONS	ORDINANCE C-134-99
TO COMPLY WITH THE ORDER OF THE	
WESTERN WASHINGTON GROWTH	PLG-041-99
MANAGEMENT HEARINGS BOARD	
RELATING TO PLANNED RESIDENTIAL	
DEVELOPMENT	

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

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

WHEREAS, the Board found certain provisions relating to Planned Residential Development (PRDs) to not comply with the GMA and therefore replacement regulations are needed; and

WHEREAS, the Board directed the County to limit the overall size and intensity of development allowed in PRDs to ensure compatibility with rural character and preclude the future need for urban services; and

WHEREAS, in 1998, the County completed environmental review under Chapter 43.21.C RCW, SEPA, on its Comp Plan and Development Regulations including the provisions relating to PRDs; and

WHEREAS, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to the Comp Plan and Development Regulations to comply with the Order of the Growth Board, relating to PRDs, are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comp Plan and Development Regulations.

NOW, THEREFORE, BE IT HEREBY ORDAINED in order to comply with the June 2, 1999 Final Decision and Order of the Western Washington Growth Management Hearings Board, the Board of Island County Commissioners hereby adopts the amendments to the Island County Comp Plan (Exhibit A); the Zoning Code, Chapter 17.03 ICC (Exhibit B); PRD Ordinance, Chapter 16.17 ICC (Exhibit C); and Findings and Legislative Intent (Exhibit D) all attached hereto, relating to the use of Planned Residential Development. Material stricken through is deleted and material underlined is added.

Reviewed this 18th day of October, 1999 and set for public hearing at 1:30 p.m. on the 8th day of November, 1999.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON**
Mike Shelton, Chairman
Wm. L. McDowell, Member
William F. Thorn, Member

ATTEST:
Margaret Rosenkranz

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
SPECIAL SESSION - NOVEMBER 23, 1999**

Clerk of the Board
BICC 99-590

APPROVED AND ADOPTED as specified in the October 1999 Memorandum from the County's Code Reviser changes were accomplished on October 25, 1999 and changes made by the Board on this date, this 23rd day of November, 1999.

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

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

ATTEST: By Ellen K. Meyer, Deputy for:
Margaret Rosenkranz
Clerk of the Board

Exhibits "B" & "C", Development Regulations,

APPROVED AS TO FORM:

DAVID L. JAMIESON, JR.
Deputy Prosecuting Attorney
& Island County Code Reviser

Ordinance #C-135-99 (PLG-042-99) - Amending the comp Plan and Development Regulations to comply with the Order of the Western Washington Growth Management Hearings Board relating to Rural _____ Densities in the Rural Area

Given discussions with WEAN in Executive Session, Mr. Dearborn recommended action be held on Ordinance #C-135-99, and continue the matter to January, at the same time that findings are considered on Type 5 streams, to provide WEAN a further opportunity to consider the proposal made to them. If the Board concurs, there is another action that needs to be taken, although no ordinance has been prepared for today. Yesterday, the Board extended the AG exemption interim ordinance for four more months, and on the same day, adopted a Rural Zone ordinance that changed the minimum lot size in the rural area from 5 to 10; that expires in December and the County will need to adopt an interim ordinance and schedule it for hearing on January 10th as well.

By unanimous motion, the Board continued the public hearing on Ordinance #C-135-99 until January 10, 2000 at 1:30 p.m. [Notice of Continuation GMA doc. #5227]

**PUBLIC HEARING SCHEDULED: ORDINANCE #C-153-99 [PLG-052-99] IN THE
MATTER OF AMENDING CHAPTER 16.26 ICC HEARING SCHEDULED:
ORDINANCE C-153-99**

By unanimous motion, the Board scheduled for public hearing, Ordinance #C-153-99, PLG-052-99 set for hearing 12/13/99 @ 10:45 a.m. to incorporate the new standards in 16.26 relating to balancing GMA goals. [GMA doc. #_____]

There being no further business to come before the Board at this time,
the Chairman adjourned the meeting at 3:00 p.m., to meet in
in Special Session on November 24, 1999.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: _____
Margaret Rosenkranz, Clerk of the Board