ISLAND COUNTY COMMISSIONERS – MINUTES OF MEETING
SPECIAL SESSION - FEBRUARY 9, 2000

The Board of Island County Commissioners met in Special Session at 6:00 p.m. on February 9, 2000, in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Wm. L. McDowell,. Chairman, William F. Thorn, member and Mike Shelton, Member, present.
[Notice of Special Session GMA doc. #5476]

The purpose of the special session was to conduct a Public Hearing to consider amendments to proposed Ordinance #C-151-99 amending chapter 17.02 ICC and establishing Best Management Practices to comply with the Order of the Western Washington Growth Management Hearings Board relating to certain provisions of the county's critical area Regulations relating to existing and on-going agricultural activities. The hearing was continued from January 10, 2000, and a legal notice of hearing published in local newspapers.

Attendance:
Public: Approximately 50 people attended [Attendance Sheet GMA #5440]
Press: Chris Douthitt, Whidbey News Times
Consultant/Staff: Keith Dearborn, Larry Kwarsick

Hand-outs
1. Proposed Amendments #1 – #7, AG BMPs sent 1/21/00 prepared by the Board of County Commissioners that respond to public comments received at the last hearing as well as written submissions received during that time period GMA doc. #5432

2. Proposed Amendments # 8, 9 & 10, AG BMPs [cover sheet dated 1/24/00] after reviewing comments on amendments #1-7 by a variety of people in writing and by e-mail, GMA doc. #5431

3. Technical Amendments dated 2/7/00 to proposed Ord. C-151-00 based on comments that do not change the substance but make parts clearer , GMA doc. #5428

4. Exhibit B, composite: Draft Final Agricultural Best Management Practices (BMPs) includes amendments #1-10 and technical amendments. Language in bold are amendments #1-10; crossed-out or underlining are considered technical changes. GMA doc. #5427

5. Exhibit C: Findings and Legislative Intent 2/9/00 GMA doc. #5429

6. Summary: Requested Amendments [that have not been proposed] dated 2/9/00
a summary of all comments received that have not been addressed through amendments
GMA doc. # 5430

OPENING PRESENTATION

Mr. Dearborn through use of view graphs [GMA doc. #5479 pages 1-10] explained what the county is proposing and why and an explanation of how we got here. In 1990 a stronger more concerned view of GMA about wetlands protection became the rule. The Growth Board nine months' earlier ruled that Skagit County could not extend their exemption to rural lands, only Commercial AG, and Island County did not succeed in convincing the Growth Board was wrong in Skagit County. After getting the Growth Board decision, Island County elected to spend time on developing BMPs that would protect critical areas and then go back to the Growth Board and try convincing them again, and BMPs are absolutely essential to the County's ability to try to do that. The Growth Board has said that critical area protection is far more important than AG in the rural area. The County through the BMPs is trying to get back to 1998 in terms of balance between protection to critical areas and the ability for farmers to continue to farm. He clarified for a member of the audience that indeed, lakes were included in wetlands and streams as far as critical areas. The County values farming activity in the rural area.

Some commercial dairies have already developed farm management plans, and some have developed plans through the Conservation District. If those provide a level of protection equal to standard BMPs the County will accept those plans as sufficient to satisfy requirements. BMP compliance includes complying with standard BMPs or preparing a BMP farm management plan. Compliance is required for: Commercial AG – 3 years' from the date BMPs are adopted; Rural Ag and rural - 3 years' from the date "ag" exemption is approved. Standard BMPs protect wetlands and streams through: stocking limits; fencing requirements; containment area standards; nutrient management; seasonable restrictions. Critical area rules are changed by: buffers reduced; continued farming permitted for wet meadows. For those who are in RA and R if on wet pasture and farming within critical areas are probably not legal now; it is not permitted unless the County successfully convinces the Growth Board.

Mr. Dearborn advised that a letter was received late this afternoon from the Northwest Region Department of Ecology, from Susan Meyer, regarding comments on proposed Ordinances #C-03-00 Critical Area Ordinance and C-151-00 agriculture BMPs [GMA doc. #5477] indicating that these restrictions are not strict enough.

For farmed wet meadows not adjacent to a stream or wetland may continue normal farm activities but must limit livestock grazing to an annual average of one animal unit (1 animal unit = 1,000 pounds) per acre of the wet meadow that is being farmed [an annual number]. The stocking rate may be increased through an FMP. On a farmed wet meadow adjacent to a stream or wetland the farmer may continue normal farm activities but must limit livestock grazing to annual average of 1 animal unit per acre of wet meadow; stocking rate may be increased through a FMP; maintain an AG buffer of 25' to 50' from a stream or wetland; maintain an undisturbed buffer within the AG buffer of no less than 25' from a stream or wetland. Under certain circumstances the property owner will be required to install a fence at least 25' from a stream or wetland. Usually no manure spreading or tillage adjacent to the stream/wetland is permitted within the AG buffer between Nov. 1 and March 31 and the farmer may need to modify animal containment and nutrient storage areas that are close to a stream or wetland.

Next, Mr. Dearborn took the time to review each of the proposed Amendments #1 thorough #7 using the document dated 1/24/00

1. explains in more detail the proposed purpose

2. addresses what critical areas are covered by this regulation

3. makes it clear what compliance deadlines are

4. provides enforcement process for compliance the same as a zoning code violation

5. Farm Management Plan. Makes clearer how the plan will be reviewed, the standards, etc.

6. Standard BMP buffers and makes it clear what that buffer is and what can be done within that buffer

7. Fencing requirement made clear. If the farmer has no fence today adjacent to a stream, as an example, a fence will have to be installed if livestock can get into the stream except at a designated watering spot. If topography is such that stream is in a ravine and livestock cannot get to that stream a fence would not be needed. The fence would have to be installed 25' from the stream.

After receiving and reviewing comments on those 7 amendments, the Board had three amendments prepared on Monday, e-mailed to everyone who provided an e-mail address and mailed to everyone who provided a mailing address:

8. Concern raised by the Coalition about the need to make it clear what the farmer on a wet pasture does and does not have to do. The amendment clarifies the wet pasture as it relates to the overall question of protection.

9. Requested by Ton Roehl who had a concern that the term "affect critical areas " is used in a number of places and is ambiguous. Concern is activities adjacent to a wetland or stream or area in the buffer of a wetland or a stream. The amendment makes that clear by changing the reference from affected to reference in the buffer or adjacent.

10. Requested by WEAN who raised some questions that staff and the Board believed to be of concern. The amendment effectively says that in that buffer for the wetland or stream nutrients [i.e. manure] could not be applied between Nov. 1 and March 31 of each year.

Plowing or tilling within that buffer would not be allowed during those dates either. The Commissioners had been concerned this was an arbitrary time period and that seasonably the times could be quite different. Page 14 provides that the Public Works Director on an annual basis has the ability to change the November 1 – March 31 time period if weather conditions permit.

Mr. Dearborn also reviewed briefly the proposed technical amendments.

PUBLIC INPUT

Ray Gabelein, Jr., South Whidbey, had a number of concerns, comments and questions:

- Have absentee landowners been notified in any way about this proposal and how are they going to be able to provide input?
- The focus of the Growth Management Hearings Board is supposed to be only on GMA legislation passed and he thought some of the things proposed went way beyond that.
- The vast majority of landowners, taxpayers and citizens support less restriction.

Using Exhibit B, Mr. Gabelein suggested some changes:

Page 3, paragraph 2, second from the last line, the phrase "equivalent to standard BMPs" used here and throughout the document. If FMPs have to be equivalent to the BMPs then farming has not been given any benefit at all. He does not agree that the burden of proof should be on the farmer that the FMP is equivalent to the BMPs.

Page 3, bottom, provides an option to switch to a different crop but on page 4, second paragraph, Agricultural activities, last sentence states that forest practices are not included in this definition. He asked whether or not that was a conflict with the previous page. The concern is that pulpwood could be viewed in the future as a forest practice.

Commissioner Shelton responded that pulpwood would not be viewed as a forest practice; in fact within the ordinance called out such things as Christmas trees and pulpwood are not covered under forest practice regulations.

Page 5 " buffer maintenance includes the elimination and removal of noxious and non-native species vegetation" causes concern this would require that the farmer go in without any equipment and remove those weeds and non-native species.

Commissioner Thorn explained here that the original intent was to enable the farmer to do that as opposed to requiring it. Mr. Dearborn confirmed there is no requirement to do buffer maintenance for non-native species, unless there are noxious weeds. This was intended to be enabling. Chairman McDowell thought it was a good point and that a technical correction be prepared to make it clear the County is not saying the landowner has to maintain it.

Page 10, the first full paragraph, he asked that the word "dredging" be included with cleaning out farm ditches. He can see problems in the future as to what clean out might mean.

Page 14, confinement area management, (f) paragraph 2, the 5 year time period has been stricken.

Mr. Dearborn noted that it is 3 years from the time the County enacts the proposal and given green light on the

exemption.

Bottom of page 15- nothing indicates a cost to the landowner as far as a fee the County would charge for reviewing or accepting a farm management plan.

Mr. Kwarsick clarified that there is no fee proposed. Mr. Dearborn commented that in other ordinances where the Board intended no fee it has been specific about that in the ordinance.

Page 19, second paragraph, c, allowing only 60 days to re-submit if there is a problem with a plan is not enough time and thought 6 months more reasonable. Also, one horse, one cow, one sheep triggers the plan if next to a critical area and there should be a threshold. No. 2, paragraph b, a time of 20 years is specified, but it would appear to him the County then could pull the rug out after 20 years - and have a new set of rules.

The Commissioners thought that the 20 year time frame probably came from the 20 year planning horizon under GMA.

Page 20: who will pay for monitoring?

Commissioner Shelton observed that provisions state that the BMP program will be monitored by the County, but it does not say that at some point there will not be a fee required. That is not the intent, but based upon ordinance language there probably should be some language added about fees as well.

Mr. Gabelein concluded by urging that the County Commissioners protect farmers' property rights, feeling that the majority of the people want the farmers' property rights protected more so than a very small group who introduced no scientific data to do otherwise.

Bill Bone, Maxwelton Area, South Whidbey, questioned what would happen to those who for years and years had a contract with the State of Washington for Open Space Ag and now, because of recent regulations, not able to meet the Open Ag requirements dollar wise. Will they be subject to all the severe penalties with not now being able to meet State requirements for Open Ag and have to take the property out of Open Ag? This is something that needs to be addressed. He was not sure of the zone he is classed under as far as the County.

Mr. Dearborn recalled that staff discussed this issue and were very concerned about it. In the rural zone there are approximately 60 acres of land in the AG tax program. All of the land in the rural AG zone is in the tax program. Records show there are approximately 60 acres of farmland in the Rural zone that are in the AG tax program; the impact on those people in the Rural zone has already occurred and not something being done tonight. The County is trying to restore the ability of the farmer to continue to farm in the Rural zone and if in the tax program to stay eligible for the tax program. The Ag tax program is managed by the Assessor based upon State regulations and the County has no control of that. Staff will determine what Mr. Bone's property is zoned and help understand what the impacts are of the regulations.

One of the things pointed out by Commissioner Shelton to Mr. Bone was that under the Critical Areas Ordinance his property would be more impacted than with BMPs. With BMPs the County is trying to make a better situation for farmers than if there were no BMPs.

Joyce Fossek, Langley, addressed her property which is located in an urban growth area, a contract in effect with the state under the Open Space Act since 1972. Looking at the proposal, it appeared to her that one state agency under the Growth Board worked directly in opposition to an existing law on the books a lot longer. Her comments on the proposal were:

Page 13, RBZ Buffer Marking. This calls for placement of permanent markers around a riparian buffer zone of inexpensive steel posts. For grazing animals the posts become rubbing posts. If haying instead, the person with the mowing machine will run into those posts. She has one place on the entire farm that borders on a wetland. She did not see where she affects the wetland at all; the wetland drains further on down the field and drains onto her property

into tiles. She inquired whether electric fencing was acceptable.

Mr. Dearborn explained when not installing a fence it is so it can be readily determined whether the owner is staying out of the buffer or not. He reminded that this area is an area that animals are not allowed and haying is not allowed within.

Commissioner Shelton understood the reason for keeping animals out of that first 25' but did not understand if merely mowing hay why the farmer would have to stay 25' away from a wetland. If the issue is truly a water quality issue, most agree that the minute someone stops mowing hay in areas adjacent to wetlands the berry bushes will be drastic and immediate. It is also known that berry bushes choke out anything underneath that would remotelyresemble anything that might filter impurities out of water that would enhance the water quality in the wetlands. The Commissioners realized that the BMPs did not call out the type of fencing, but agreed that electric fencing was "fencing".

Steve Erickson, representing WEAN, regarding Amendments #8-10 did ask for a chance to go over them in greater detail and look at them altogether. He submitted a two-page letter for the record dated 2/7/00 received 2/9/00, with extensive comments [GMA doc. #5426]. Referring to the second page in that letter showing a table, a quick GIS analysis of Maxwelton Watershed, he corrected a typographical error. Where it says "based on National Wetland Mapped ", should say based on National Wetland Inventory Mapped " . The Maxwelton Watershed is about 7,719 acres, has 81 wetlands mapped by the National Wetland Inventory. Of those, 37 are farmed, 44 unfarmed, based on his personal knowledge and working off the computer screen from 1990 aerial photographs. He is aware of wetlands in the Maxwelton drainage area not on the NWI maps, and a few that were mapped he thought were somewhat questionable as being wetlands. Wetlands by acres, the one mapped total about 500 acres, of those about 2/3 are farmed Class B wetlands. In terms of percentage by area, wetlands as a whole are about 6-1/2% of the total Maxwelton Watershed, of which 4.4% are farmed. According to the County's South/Central Whidbey Watershed Assessment Report from 1997, the Health Department found fecal coliform in Maxwelton Creek higher than in any Seattle metropolitan area stream.

He thought that language in the R.C.W. with regard to open space said something like an area designated for AG open space can include wetlands and that area can still be designated as open space. In terms of removal of the area from actual productivity is a different question, and is a question of interpretation because based on dollars per acre and a question of how the Island County Assessor interprets that.

The question raised about vulnerability of posts to cows and mowers was something to think about. He thought the answer may be just to have a permanent fence there of some kind. The reason for protection is not just water quality but also important for wildlife habitat. Generally most of the areas on South Whidbey will eventually revert to forest if left alone for awhile. As to the question of applicability of the conditional exemption he thought the solution in terms of Rural AG is to change the provision in County ordinance that says Rural AG is not designated resource land. Otherwise, WEAN would probably accept the exemption applying to all the lands for instance in the AG open space designation, but will not accept it being applied to the entire County essentially. Other comments following Exhibit B:

> Page 3, definition of agriculture is not the definition found in GMA. Pulpwood has been included and he had a problem with that because of the lack of definition at the State level, i.e. someone logging an area in a non-conversion DNR permit saying they will not convert it to another use then replanting it with pulpwood species and being able to say they are now in AG. There is also a provision for new activities in those areas and changes in activities and he is trying to figure out how this would work.
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> Definition of critical areas, new category specified critical areas, has a serious problem in the way it is used throughout. It is the impacts through the category B wetlands that are the major impacts and many type 5 streams flow into wetlands and he was concerned this provision would exempt all those streams completely.

Typographical error noted in farmed wet meadows, should say "continuous disturbance" and not "contiguous disturbance".

Page 6 – definition of streams, Type 5 stream s that flow into a wetland are exempted.

He saw that there is now some limitation on grazing in category B wetlands or farmed wet meadows. He agreed not every farmed wet meadow is a category B wetland but the only category B wetlands he knew of that were not being farmed are those that are rapidly going back to being category A wetlands by natural vegetative succession.

Glad to see the limitation on the stocking rate but is concerned that without a seasonal limitation still will not be adequate. Once the rains hit it is not just the livestock nutrients sitting on the surface, but by the surface flowing water that is there in the winter. Glad to see timing restrictions added on spreading manure, plowing and tillage, but November 1 is too late in the year and does not apply to Category B wetlands. Regardless of what are best buffers, probably they should just be fenced, and set a reasonable time for that to happen; just putting posts in will really not do it.

Provision on page 13 about seasonal restriction being waived from year to year by the County to account for actual weather conditions is a problem because there is no easy way to notify all the people who should be notified that grazing has to be ended earlier in the year, or can graze later in the year. He thought it was a great idea but did not see how the county could implement it.

Where Mr. Erickson commented that where areas are fenced along a stream going back to blackberries first but eventually would go back to forest, Commissioner McDowell asked if Mr. Erickson agreed that when the property is in blackberries the grass underneath is eventually gone: is there less filtering action with a stand of blackberries than a mowed hay field.

Mr. Erickson took the long-term view and one of the problems going in and mowing initially and then planting trees would speed the process up considerably if it is an area already dominated by blackberries. He agreed that probably there would be less filtering action with a stand of blackberries than a mowed hay field but not having cows depositing nutrient packets there would not be as much to filter.

Mr. Erickson confirmed that in his submittal dated 2/7/00 received today where he states in his last paragraph: "The failure to deal with this major problem (grazing of category B wetlands and type 5 streams) causes the latest draft BMPs to be essentially meaningless" that statement was made before having received the latest amendments where he acknowledges there is a restriction on grazing and a stocking restriction. A lot of his letter is still appropriate, however.

When he speaks of a seasonal restriction on a wet meadow he is talking about telling a farmer that during a period of time in the year, if there are no associated wetlands other than the wet meadow, that part of the year he will have to take his cows off that wet meadow or have a very low stocking rate. He has a concern about the stocking rate as it applies year around. It is not just the total volume of nutrients produced and where deposited but when deposited.

One of the things Mr. Dearborn pointed out was that testimony almost uniformly from farmers on this issue to date was that they do not run cows in a wet meadow in the winter; the cows do not want to be there and it is not the practice of the farmers. If cows are not there in the winter effectively there is a seasonal restriction created by the circumstance.

The concern Mr. Erickson raised was the area immediately surrounding for a certain period of time before it gets cool and wet because that is when pollutants are most likely to be transported. He has to review the matter in order to say whether he thinks the provision is sufficient because there has been a number of changes.

Roy Hagglund, Clinton, addressed the issue of fecal matter in Maxwelton Creek and his opinion this was probably as much from human nutrients as from cattle. He thought it was a matter that would be easy to check. He talked with

someone who tests the water and claims Maxwelton Creek is fish friendly; the Department of Fish and Wildlife has agreed, yet it seems all these problems arise and he was frustrated to hear claims with no scientific data. Fecal matter is a natural event and mother nature has a way of dealing with this. If push comes to shove, he hoped the County Commissioners would have enough courage to let a judge make that decision.

Earl Darst, Central Whidbey, oriented people towards the Soil Map posted on the wall showing all classes of soil on Whidbey Island, prepared by the Soil Conservation Service of the U. S. Department of Agriculture, with the different classes of soil depicted by color: green represents the best soil; pink is class 3 soil, the predominant class soil for Whidbey and Camano islands is class 4, marginal soil which is rocky, gravely and rough; and white represents soils classes 6 and 8, very poor soil that is not economically farmable – the main soil class involved in the open space tax classification property. This poor soil class is mainly in the AG designation which he does not think is right or a good idea; the rural AG category is not necessary and does nothing. His recommendation: eliminate rural AG and put it all in Rural. He asked why the rural was changed from a 5 acre minimum to a 10 acre minimum.

Mr. Dearborn explained that the County was under an Order of the Growth Board based upon the Coalition and Wean's appeal to do that by August 10th, and if not, invalidate the whole rural zone. That would have meant there would be no activities except very limited circumstances that could be done on anything but existing lots. It is temporary and not a permanent regulation, temporary until the County adopts permanent regulations; a hearing is scheduled February 14 at 1:30 p.m. on that question.

John Graham, representing the Island County Growth Management Coalition, gave a concise presentation of the Coalition's position:

Amendment 8

Page 2, I.4. Too rigid and implies that all agricultural activities negatively affect critical areas which is not true. Suggest omit purpose #4 in favor of purpose #6, and change the word "address" in purpose #6 to "minimize".

Page 3. II.4 The language "and type 5 streams that are either tributary to a type 3 or 4 stream and discharge directly into Puget Sound" a drafting error. Need to insert after "discharge" the phrase "into a Class A or B Wetland or". Example: Fiske Road, a big wetland toward the Puget Sound from where he lives; a class 5 stream winds around his house and goes into that wetland and disappears. What comes out the other side is another class 5 stream which then goes into Maxwelton Creek and then into Puget Sound. As written #4 means that that first stream is not covered by the BMPs. While he has been assured that is not the intent, he would like that corrected; the same point appears four or five other places.

Next paragraph. Glad to see apparent drafting error corrected, one that made it ambiguous whether farmed wet meadows were covered by BMPs or not, but in the redraft not all instances were caught, in his opinion. Two examples are in the next paragraph beginning "New activities…" the third line the sentence ending "if these activities affect specified critical areas"; the words "or farmed wet meadow" should be inserted. On the next line, after "specified critical areas are not required" insert the words "or farmed wet meadows" after the words "critical areas". Wet meadows are not covered under specified critical areas.

Definition of Critical Areas. Same point on type 5 streams. Insert the words "into a Class A or B wetland or" just before "directly into Puget Sound".

Page 4. VII.A.1 Insert "and farmed wet meadows" after "the word buffers in the first sentence.

Page 7. VIII.A.1.b)(i) Elsewhere there is a statement that fencing is required except for a crossing point or where topography makes fencing impossible or unnecessary. Therefore he wondered why this section is needed because the fencing is now to be installed in all places other than that. The second sentence calling out November 1st to March 31st of each year, he asked how were cows to be kept out for the rest of the year without the fences unless a farmer is forced to completely clear cattle off the land? Same point on the next page where the same point is made, under b) (ii) 2.c (i)

Amendment #9

Suggested in 6 places the words "affect" or "may affect" be deleted and the words "are adjacent to or within the buffer required by Chapter 17.02 ICC for certain…" be inserted instead. The Coalition opposes the change largely because there are a lot of activities that are not within or adjacent to a critical area buffer that may well affect the buffer. [example 50' buffer on a wetland and have a large manure pile 55' from the wetland; because there are no BMPs, no cover crop or ground cover, that pile could negatively affect the wetland].

On the next page under BMPs suggested introducing the words "reduce or minimize potential adverse" the Coalition would object to the word "reduce". The idea is to minimize these negative impacts.

Technical Amendments

Page 3. Paragraph at the top of the page ends with a new sentence: "The FMP is required only for those standard practices that a farmer or property owner wishes to modify". While the Coalition agrees with the intent as explained, he did not understand intent when reading this sentence. Rather, reading the sentence would seem that the land owner has complete choice to do whatever he wants and pick and choose on the far management plan and that is not true and this needs to be redrafted to make it clear.

Page 5. Definition of Streams. Insert the phrase after the word discharge "into a class A or B wetland or".

Page 8. B. Insert the phrase "or farmed wet meadows" after the word critical areas.

Exhibit B.

Page 3, second paragraph, two lines up from the bottom, insert "or farmed wet meadows" after protect specified critical areas.

Page 4. Same change on the definition of Best Management Practices [4 lines down] inserting "or farmed wet meadows" after "into specified critical areas".

Page 14. Paragraph 2 near the top, after the word "discharge" insert "into class A or B wetlands or".

Page 16. Paragraph B near the top, second line up from the bottom, after "specified critical areas" add "or farmed wet meadows". Paragraph C in the middle of the page, three lines up from the bottom, refers to a list of things a farmer can put into a FMP. It is not appropriate to say if you do 6 and 7 it completely replaces 1 through 5. Strike the words "in lieu of Group 1-5 practices when restoration or enhancement can provide an equivalent level of protection" .

Page 18, middle of the page, paragraph E.3. After "specified critical areas" add "or farmed wet meadows".

Page 19, paragraph 2.c). Same change, second line from the bottom, after the words "specified critical areas" add "or farmed wet meadows".

Page 21. Top of the page top after the words "specified critical areas" add "or farmed wet meadows".

Mr. Graham addressed the statement made by several people that all the problems with regard to BMPs was created by a small group of people who presented no rational and acting irresponsibly. He said that he was not an irresponsible person and had not led the Coalition irresponsibly. Many times the Coalition was able to work with the County on some serious issues over the last two years and would continue to do so. The Coalition has asked that the County obey the Growth Management Act. The Coalition is not a small group in Island County. He has two file cabinets full of data of submittals to the Growth Board and other organizations. Change is not a change in wetlands themselves but a change in the perception of the value and the fragility of wetlands.

[copy of Mr. Graham's annotated comments GMA doc. #_____]

Joseph O'Malley, North Whidbey, thought there was enough information to show that wetlands do regenerate the purity of the water and the earth's ability to renew itself. He saw an attack being made on people who have

historically farmed the land under laws of the land, their lives and economics structured around what existing laws were. Now, that is being turned around for everyone in the County or the State, with farmers asked to give up sections of land and productivity without compensation, as well as having to go to the expense of running new fences and maintaining same. If it is for the good of all, he felt that the State and County should come up with funds to compensate for lost land and expenses for fencing and restoring the property.

David Keller, Oak Harbor, noted one of the premises of the GMA and the County Plan was to maintain rural character. For him, on his small 6 acre parcel, he has horses and ostriches'' and a daughter; that is his livelihood. They want to live the island life and he has hard problems being pushed down the environmental road. His thought on the matter was that this is America where a property owner owns his property and if denied its use, would be compensated. He has a real problem with non elected officials dictating decisions on GMA that directly affect how he uses his property.

Gary Piazzon, Coupeville, quoted from Herman Daily an economist for the World Bank who stated that the "Moral outrage should result from the dawning realization that we are destroying the capacity of the earth to support life and counting it as progress as the inevitable cost of progress at best". Mr. Piazzon empathizes with the farmers' plight but sees a bigger picture. Although some have said that agricultural promotes biodiversity he does not agree that is true, rather that agricultural benefits certain forms of wildlife but also creates habitat that benefits those forms to the disadvantage of others. As an example, brown headed cow birds, a prairie animal, reproduce and with fragmentation of the forest, destroy song birds because of the fragmentation. One of the most damaging impacts of human activities has been on wetlands and riparian habitat. He mentioned that Representative Dave Anderson in talking about the problems with salmon in Maxwelton Creek said that the problem was that salmon will not swim up a culvert. Speaking with Howard Garrick, an expert on orcas, Mr. Piazzon was told that salmon was only part of the problem of why orcas were dying, the other part was these animals have become toxic barrels. Creating efforts to address BMPs and mitigate the impact of farming on critical areas Mr. Piazzon thought was important work that would affect everyone into the future. He thought Mr. Erickson's contributions especially in terms of looking toward the long term progression of the landscape offered some options probably not previously thought of, i.e. planting trees can act as a fence and as a biofilter. If adequate filters are created, there would be no need for as much dredging. Extending partial protections to the whole rural zone will not offer enough protection to the big picture.

Vance Tillman, Langley, expressed the thought that to take a man's livelihood away where he cannot use it needs to receive something in return: either take it off the tax rolls or buy it form him;' it will work no other way.

Ray Gabelein, Sr., South Whidbey, felt exactly as Mr. Tillman expressed; the only alternative is to go to court. He has several miles where people drain onto his land in a district ditch. It is impossible to follow the proposed program and stay in the farming business and he did not know what he would do as this would completely wipe him out. His 40-acre upland has a beautiful view now development is 10 acres. The Assessor has valued a portion at $100,000 an acre – no road, no water. That is the only thing they have for retirement. He thought that the term "wetlands" was being misinterpreted.

John Williamson, South Whidbey, reminded this was not just a farming issue but a landowner issue as well. He asked that people not forget that some generations want to hand the next generation something. If it comes down to compensation for farmers, that is in order, but do not take their land away from the next generation in doing it.

Claudia VanderPol, South Whidbey, asked that the Board consider adopting the work that Tom Roehl has done representing them [his review and comments on Exhibit B]. The stocking rates going from two to one she found unacceptable and encouraged it be two or three animal units per acre.

In response to Ms. VanderPol's question about who would approve and monitor the FMPs, Chairman McDowell said it was the Director of Public Works who would have a staff member do that.

Ms. VanderPol in talking to some Snohomish County farmers who have done FMPs was told there are farmers included on the review board for FMPs and she thought that would be a good idea for Island County She is reluctant

to submit herself to another group of regulations unless she knows it will work on her behalf and will gain some protection by doing so. She hoped that Island County would look into some of the things being done in Snohomish County and assure Island farmers there will be some reasonableness and not extremism. With regard to monitoring, she asked that the County also consider water fowl contamination when monitoring in the winter months for fecal contamination. She asked that the County Commissioners have the courage to make decisions that will not make farmers extinct.

Joyce Fossek, South Whidbey, observed that regulations first started with wetlands and woodlands and now wondered how long it would be before another group wants protection of uplands to go with the wetlands and woodlands. With any kind of riparian wetlands where a person has to fence off his own land from livestock that the County, through the Growth Management Act and Hearings Board, is taking on the role of lessee; the land of no value any longer to the farmer and it becomes a taking issue. As to cow deposits, she reminded that roots of grass continue to grow in the winter and takes in nutrients all the time.

Ray Gabelein Jr. commented that it was a different situation in Skagit County where one of the major salmon rivers in the State is located. He understood that in Skagit County farmers were compensated at the rate of $300 per acre per year for the buffer area required and thought that was something Island County needed to look into.

Bill Steiner, Clinton, observed in the BMPs a lot of concern for trying to protect the critical areas, noting water quality to be the key issue. He thought it should be performance based. To take broad sweeping statements about conditions all over the country and apply them to this area is wrong. Farmers care about the environment; they live on the land and watch it. The issue is water quality and should be performance based.

Dean Campbell, Langley, thought the Commissioners were doing the best they could under the circumstances, but did not think farmers could live with the proposal. He thought that the GMA overstepped bounds and went too far. Folks need to deal with the State on this.

STAFF COMMENTS

Mr. Kwarsick explained that Island County in the late Eighties identified and ranked its water-sheds. The areas of most concern existed on North Whidbey and as a result, embarked upon a watershed plan for North Whidbey now complete. Part of the planning effort included baseline monitoring of stream flow water quality. From that was proposed an implementation program and a long term monitoring program, the County received a grant to implement the North Whidbey Watershed Plan and as part of that implementation to look in more depth and longer duration water quality issues on North Whidbey. In the initial water quality assessment on North Whidbey some elevated fecal coliform levels were found and other potential contaminants. Water quality sampling was taken within Deception Pass State Park but during the winter elevated fecal coliform levels were found and there are no cattle grazing in Deception Pass State Park. This calls to light that the identification of fecal coliform in stream flows can be demonstrated by lab analysis but the source is a complex undertaking.

Central and South Whidbey is a watershed plan currently being done, expected to be complete this year. Some baseline sampling has been done on some 8 or 9 stream systems, and some fecal coliform contamination was found above state levels. Mr. Kwarsick reminded that this is a snapshot not a scientific study. Of interest found on South Whidbey was that in the Maxwelton area acceptable, except for one lab sample, levels of fecal coliform during the high flow winter months and elevated fecal coliform levels during baseline flows. No conclusions can be drawn other than the fact there needs to be a longer term monitoring program as part of the overall watershed mandates of the State.

For the record, Mr. Kwarsick submitted a copy of a Department of Ecology Report #99-345 October, 1999, Fecal Contamination Source Identification Methods in Surface Water
[GMA doc. #5478] addressing fecal contamination and identification methods, and read the following excerpt from page 13:

"The study concludes that there is no easy low-cost method for differentiating between human and non-human

sources of bacterial contamination. Quantifying the contribution from each source is still not possible. The best approach for an investigator at this time is to consider the land uses and sources under investigation, and tailor the method or methods to fit the situation."

Mr. Kwarsick's opinion was that by implementation of these practices if there is a contribution to fecal coliform levels or other contaminant sources in streams flows BMPs and their application will not improve that situation.

Another document entered into the record by Mr. Kwarsick was a copy of the USDA Proper Animal Stocking Rates on Pasture 2/9/00 [GMA doc. #5423] noting the general guideline of one animal unit per acre equivalent to 1,000 pounds, but notes it is a complex question and that on a site by site basis could be quite different depending on the practices of the farmer.

COMMISSIONERS COMMENTS

Commissioner Shelton assured those attending that the process had not been to please only a small number of people at the expense of everyone else, but an attempt to limit the impacts of critical areas ordinances imposed on operations as farmers, and to make it as reasonable as possible. Complying with the critical areas ordinances would be more difficult and more expensive than complying with BMPs. In terms of BMPs and buffers what is attempting to be achieved relates to a water quality issue. While Mr. Erickson has stated that it is a wildlife corridor issue as well, it would seem amazing to entice the wildlife of Whidbey Island close to stream beds when at the same time trying to fence domestic animals out. He recalled having read the editorial in the paper a few weeks' ago about the water quality issue based upon one sample out of Maxwelton Creek; one water quality sample does not meet the test of best available science. Over time, as Mr. Kwarsick indicated, additional samples taken were much more near acceptable levels of fecal coliform. The BMPs ultimately adopted need to provide the County with the best chance to prove to the Hearings Board that necessary steps have been taken to protect critical areas.

Everyone in the County seems to agree on the maintenance of rural character; agriculture is a critical part of the rural character. Testimony given on January 10 particularly from the owners of the Maxwelton Farm about the grazing program and how livestock was moved around in relatively small areas; obviously the stocking rate was much higher than one per acre but based on a rotational grazing program seemed to work well in the Maxwelton Valley – exactly the types of things that he believed would be approved under a farm management plan. Review of farm management plans will be a critical part of the County's program and the suggestion an excellent one that when we set up the folks who review farm management plans agriculture farmers need to be represented on that board.

Commissioner Thorn agreed with many things Commissioner Shelton stated and truly believed
the County was doing its very best to protect rural character on a broader basis, largely determined by presence of farms and forests. The Commissioners recognized in previous months AG activities in a commercial agricultural area, rural agricultural area and the rural zone on parcels as small as 5 acres, which is a break in tradition in the way AG is viewed. The Board wants to extend the exemption to areas other than commercial AG and in order to make a case to the Hearing Board for that the County must have a good set of BMPs.

There were some very relevant comments made by Ray Gabelein and John Graham dealing with some almost technical corrections or clarifications which he thought had merit. He too liked the suggestion of including farmers in some sort of a review panel when looking at farm management plans.

Commissioner McDowell was reminded of his father, a farmer/rancher, who said on a recent visit: it is year 2000 expenses and about 1950 income. He too supports including a farmer whatever review board is put together. His specific comments using Exhibit B were:

Page 1. I.4 something similar to what John Graham suggested, i.e. when talking about negative effects of agriculture

Page 3. Second paragraph, two lines up from the bottom stating "…equivalent to standard BMPs". Mr. Gabelein suggested there should be some give and take and someone else suggested performance based. He suggested

language "that is performance based" instead of BMP standards and asked Mr. Dearborn to draft a potential amendment for that.

Page 3. Item V. The concern about pulpwood he thought now answered. The definition where pulpwood appears clearly says it is an AG practice and did not believe a change necessary.

Page 5. Buffer Maintenance. Need to be a little more clear that other than removal of noxious weeds that is not mandatory.

Page 10. Understood the concern to be more clear in the term "clean out ditches". He did not believe intent was to limit that to a No. 2 spade, rather would allow mechanical equipment to clean out the ditches.

Page 16. No fees are proposed for item C and there should be a firm statement included there will be none charged such that it would require formal action of some future Board to do so.

Page 19. Agreed with the comment that the 60 day time period should be changed to something else and would like to receive staff comment on what that should be by February 28th. Where comment was made about the 20-year timeframe being fairly insignificant in the life of a farm he saw a real issue there and was interested in comment as a possible amendment.

Commissioner Thorn's initial reaction was that extending would be analogous to something like a conservation easement which is in perpetuity He would not have a problem going to that with a farm management plan unless interdicted by some federal or state law the County had to comply with.

Commissioner Shelton was sure that before 2020 there would be changes in laws. How well the farm plan can be shielded from changes in state and federal law remains to be seen. Twenty years is a good start. He would love to say it is in perpetuity as well in terms of county code but everything seems to be written in 20 year increments in terms of land use planning.

As far as Page 20. B.2 Monitoring Commissioner McDowell made the same comment as he did for the item on page 16.

Commissioner Thorn added comment to note it time to put the matter to bed, his goal on February 28th to come to an approved final document.

HEARING CONTINUED

The Chairman clarified that written comments would be accepted through February 18th on Amendments 8, 9 and 10. On February 22nd available to the public will be any proposed changes to the amendments, with final public hearing to be held on February 28th. If there are any significant changes released February 22nd, public testimony will also be allowed on those.

By unanimous motion, the hearing was continued to February 28, 2000 at 7:00 p.m.
(Notice of Continuation GMA doc. #5480]

There being no further business to come before the Board at this time,
the special session adjourned at 9:25 p.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

_____
Wm. L. McDowell, Chairman

_____
William F. Thorn, Member

_____
Mike Shelton, Member

ATTEST:

_____
Margaret Rosenkranz, Clerk of the Board