ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
REGULAR SESSION - MARCH 20, 2000

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on March 20, 2000 beginning at 9:30 a.m., Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Wm. L. McDowell,. Chairman, William F. Thorn, member and Mike Shelton, Member, present.

VOUCHERS AND PAYMENT OF BILLS

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The following vouchers/warrants were approved for payment by unanimous motion of the Board:

Voucher (War.) . . . . . .#70913 - 71156 $211,873.18.

HIRING REQUESTS & PERSONNEL ACTIONS

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As presented by Dick Toft, Human Resource Director, the Board by unanimous motion approved the following Personnel Action Authorization for the Public Works Department:

PAA #	Position	Action	Eff. Date
040/00	S. W. Att II, 20 hr. wk. #2248.03	Replacement	3/20/00

APPOINTMENTS/RE-APPOINTMENTS

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The following appointments were made by unanimous motion of the Board:

Keystone Ferry Advisory Committee
Bill Skubi, Coupeville, refilling vacancy left on resignation of Elizabeth Galloway, for a term to expire August 31, 2004.

Central/South Whidbey Watershed Management Advisory Committee
James "Kelly" Williams, Langley, filling vacancy on resignation of Bill Steiner

Freeland Planning Committee
Nolan A. "Rocky" Knickerbocker to fill the vacancy left by the untimely death of Steve Schrecengost

Commissioner Shelton elaborated on his nomination of Mr. Knickerbocker inasmuch as the Committee forwarded two names, Herb Hunt, Jr. and Nolan A. "Rocky" Knickerbocker, and expressed no preference. His nomination of Mr. Knickerbocker was based on the fact that he lives within the planing area which is something missing on the existing committee to some degree. Also important to note Mr. Knickerbocker is one of the elected commissioners for Freeland Water District, and it is the County's hope that the connection achieved between those organizations responsible for infrastructure would include the Freeland Water District.

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CLAIM FOR DAMAGES, R00-003CD, PUGET SOUND ENERGY

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Betty Kemp, Director, GSA/Risk Management, presented Claim for Damages #R00-003CD submitted by Puget Sound Energy for alleged damage by mower to PSE primary concentric riser in the amount of $1,368.96. On investigation it was determined that Island County had no work crew in this area during this time frame, Ms. Kemp recommended the Board deny the claim.

Based on the recommendation of the Risk Manager after investigation with the Public Works Department, the Board by unanimous motion, denied the claim.

CONTRACTS APPROVED

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In each case, the Board adopted a unanimous motion to approve the following contracts:

Hearing Examiner Contract between Island County and Michael Bobbink, Contract #RM-PLAN-00-0029, approved for a two year period, effective 4/1/00, for total contract Amount of $89,370.

State and Local Assistance Contract with Washington State Military Department Military Depart-ment, Contract #EM010189 (#RM-GSA-00-0024) in the amount of $11,868 for Island County Emergency Services

Interlocal Agreement for Detention Services with Snohomish County Contract #RM-JUV-00-0020, for a one year period not to exceed $4,000 based on $129.00 per day and $64.50 for half day.

Agreement for Maintenance of Computer Software with TEC Services, Contract #RM-CENT-0021[real property taxation system maintenance] for a one year contract in an amount up to $47,600

DSHS, Developmental Disabilities, DDD Interagency Work Order Amendment 1, #RM-HLTH-99-0054, in the amount of $63,000 [$45,000 Empowerment Grant; $18,000 transfer from Snohomish County]

Center for Community Support, HS-08-99(2) #RM-HLTH-98-1004, the amount of %5400 transferred from Snohomish County to provide services to four Developmentally Disabled individuals who moved from Snohomish County to Camano Island

Contract: HD-01-00, between Island County and The Opportunity Council, for Childcare Consultation Services by a public health nurse, in the amount of $7,800.00, the Board of Health having approved the contract on 2/28/00.

HEARING SCHEDULED: ORDINANCE #C-23-00 - AMENDMENTS TO PROVIDE FOR PROCUREMENT OF ELECTRONIC DATA PROCESSING AND TELECOMMUNICATION EQUIPMENT, SOFTWARE AND SERVICES

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On presentation by Cathy Caryl, Central Services Director, the Board by unanimous motion scheduled a public hearing to be held on April 10, 2000 at 9:50 a.m. to consider Ordinance #C-23-00 adopting Amendments to Provide for Procurement of Electronic Data Processing and Telecommunication Equipment, Software and Services.

RESOLUTION #C-24-00 (R-09-00), EMERGENCY CLOSURE, PORTION OF DOESKIN COURT, PLAT OF MAPLE GROVE BEACH, 1ST ADDN., DIV. # 3, CAMANO ISLAND

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Larry Kwarsick, Public Works Director, presented a proposed resolution for the emergency closure of a portion of Doeskin Court in the Plat of Maple Grove Beach, 1st Addition, Division # 3, Sec 23, Twp 32N., R 2E, Camano Island, until repairs have been made and the road determined safe. Four homes are involved; one would have access and the other three would have only pedestrian access.

By unanimous motion, the Board adopted Resolution #C-24-00 (R-09-00) – Emergency closure of a portion of Doeskin Court in the Plat of Maple Grove Beach, 1st Addition, Division # 3, Section 23, TWP 32N, Range 2E.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF EMERGENCY ROAD) **CLOSURE OF A PORTION OF DOESKIN)** **COURT AT MILE POST 0.05 TO MILE POST)** **0.08 IN THE PLAT OF MAPLE GROVE BEACH,)** **1ST ADDN, DIV. NO. 2, SEC 23, TWP 32N., R 2E)**	**RESOLUTION C-24-00** **R-09-00**

WHEREAS, RCW 47.48.010 authorizes local governments to restrict vehicular traffic whenever the condition of such road is dangerous to the traveling public; and

WHEREAS, an emergency exists, caused by the vertical dropping of the embankment section of Maple Grove Road that started on January 22, 2000; and

WHEREAS, the county road crews have protected the failing roadway by covering the cracked pavement with plastic sheeting and barricaded the roadway; and

WHEREAS, on or about January 24, 2000, said roadway dropped another 0.5 feet vertically, blocking all vehicle passage; and

WHEREAS, on 7 February 2000 the Board of Island County Commissioners closed a portion of Maple Grove Road through Resolution R-06-00 to ensure the safety of the traveling public; and

WHEREAS, a portion of Doeskin Court also needs to be closed to ensure the safety of the traveling public; and

WHEREAS, the Board of Island County Commissioners has determined that additional road failure due to saturated soil conditions and subsequent rain that could cause another subsidence of greater proportions; and

WHEREAS, the Board believes that an emergency road closure is necessary until the landslide threat has passed; and

WHEREAS, the closure of county roads for safety reasons is a function of police power properly exerciseable by the Board of County Commissioners; NOW, THEREFORE,

BE IT HEREBY RESOLVED by the Board of Island County Commissioners that the following road is closed to vehicular traffic:

Doeskin Court, from its intersection with Maple Grove Road, at Mile Post 0.05 westward to Mile Post 0.08, Section 23, T32N, R2E

The above roadway will be closed to vehicular traffic effective March 28, 2000, until such time as repairs can be made and it is determined to be safe for use by vehicular traffic.

ADOPTED this 20th day of March, 2000

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 BICC 00-175

RESOLUTION #C-25-00 (R-10-00) – APPROVING SPECIFICATIONS AND AUTHORIZING CALL FOR BIDS FOR TRAFFIC CONTROL SIGNS

The Board approved, on unanimous motion, Resolution #C-25-00 (R-10-00) Approving Specifications and Authorizing Call for Bids 4/18/00 for Traffic Control Signs for Whidbey Island and Camano Island.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING	**}**	
SPECIFICATIONS & AUTHORIZING	**}**	**RESOLUTION #C-25-00**
CALL FOR BIDS FOR: FURNISHING	**}**	
TRAFFIC CONTROL SIGNS	**}**	RESOLUTION #R-10-00C

WHEREAS, sufficient funds are available in the ROAD/E.R.& R. FUND for the purchase of:

TRAFFIC CONTROL SIGNS for a minimum period of two years with two-one year extensions for Whidbey Island and Camano Island, Island County, Washington

NOW, THEREFORE, BE IT HEREBY RESOLVED that Attachment A, Specifications, is approved as written, and the County Engineer is authorized and directed to call for bids for furnishing Island County with said supplies; **BID OPENING** to be the 18th of April, 2000 at 10:30 a.m., in Conference Room #3, 1 N.E. 6th Street, Coupeville, Washington.

ADOPTED this 20th day of March, 2000.

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 BICC 00-176

RESOLUTION #C-26-00 (R-11-00) – ATTORNEYS TO SERVE AS SPECIAL COUNSEL IN CONNECTION WITH ISSUANCE OF BONDS, DEVELOPMENT OF PUBLIC UTILITIES, SOLID WASTE CONTRACTING AND ON-CALL SERVICES

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Relating to issuance of bonds, development and formation of public utilities, solid waste contracting and on-call services, Mr. Kwarsick presented and recommended approval of a resolution to employ Foster, Pepper and Schefelman, PLLC, Seattle, to serve as special counsel, Contract #RM-002010. The contract has been reviewed by the Risk Manager and Prosecutor's Office, and presented to the presiding Superior Court Judges as required and signed. Foster, Pepper and Schefelman were attorneys previously hired to develop the County's special and complicated long-term contract on solid waste services and continue to provide support for administration of that contract. These attorneys assisted the County in development of the Marshal Storm and Surface Water Utility and also provided special bond counsel services when the County initiated bond indebtedness programs and have special expertise with regard to the County's capital facility program.

With respect to the hourly rate stipulated in Exhibit A, Scope of Work, $260.00 and $200.00, Chairman McDowell made the observation that hourly rate was well above what was proposed in another legal service contract the Superior Court Judges turned down as being too expensive. And Commissioner Thorn noted apparently the Judges did not disapprove of $260.00 per hour in principal.

As far as the implied bonding of the juvenile detention facility, Commissioner Thorn was not supportive of that at this point in time from what he knows about the dollar figures. Mr. Kwarsick confirmed that, along with some other capital issues were included, that still remain unfunded for Coupeville Courthouse improvements, but in no way does it commit to that.

By unanimous motion, the Board adopted Resolution #C-26-00 (R-11-00) in the matter of employing attorneys to serve as special counsel in connection with issuance of bonds, development of public utilities, solid waste contracting and on-call services, and expressly waive the competitive procurement by competitive solicitation under Island County Code ICC 2.29.030(L).

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF EMPLOYING ATTORNEYS)
TO SERVE AS SPECIAL COUNSEL IN)
CONNECTION WITH ISSUANCE OF BONDS,) RESOLUTION C-26-00
THE DEVELOPMENT OF PUBLIC UTILITIES,) R-11-00
SOLID WASTE CONTRACTING AND)
ON-CALL SERVICES)

WHEREAS, it is necessary and in the best interests of the County and its inhabitants that the County obtain specialized attorney services relating to issuance of bonds, development and formation of public utilities, solid waste contracting and on-call services; and

WHEREAS, the County is engaged in the following projects needing such services: Task 1 – Public Utility Formation and Specialized Solid Waste Legal Services and Task 2 - bond counsel services for financing the completion of construction of the of Island County Law and Justice Facility, the renovation of the Courthouse and Annex Facilities, the construction of a Juvenile Detention Facility and bond counsel certifications on Centennial Clean Water Fund and other loans from Washington State; **NOW, THEREFORE,**

BE IT RESOLVED by the Board of County Commissioners of Island County, Washington, as follows:

Section 1. The law firm of Foster Pepper & Shefelman, PLLC, of Seattle, Washington, is employed by the County as special counsel relating to issuance of bonds, development and formation of public utilities, solid waste contracting and on-call services as detailed on attached Exhibit A. Compensation to be paid by the County shall not exceed $25,000 for each of the two tasks without authorization by another resolution.

Section 2. Any actions previously taken by officers or employees of the County and consistent with the provisions this resolution are hereby ratified and confirmed.

ADOPTED this 20th day of March, 2000.

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

ATTEST:
Margaret Rosenkranz
Clerk of the Board
BICC 00-177

Agreement to furnish attorney services approved by Foster Pepper & Shefelman, PLLC this 13th day of March, 2000.

Peter Ehrlichman
Member, Executive Committee
Contract Approved:
Vickie I. Churchill
Presiding Judge
Island County Superior Court

EXHIBIT A

SCOPE OF WORK

Foster Pepper & Shefelman PLLC ("Special Counsel") will provide legal services to the County as requested relating to issuance of bonds, development and formation of public utilities, solid waste contracting and on-call services. These services may include, but are not limited to the following:

Task #1 – Utilities - Surface Water, Septage, Sewer, Water and Solid Waste:

- Advise the County on state law issues relating to utilities and related matters.
- Advise and represent the County on contract issues relating to utilities.
- Prepare implementing regulations, Interlocal agreements, and review proposed rate structures.
- Negotiate, draft, and review existing and new contracts and/or amendments thereto, as necessary.
- Brief County commissioners and other officials, as necessary.

Standard hourly rate is between $140 and $260
Estimated Cost - $25,000

Task #2 - Bond Counsel:

- Assist in procuring and preparing security instruments and other documents related to carrying out the contracts, including grants and loans.
- Brief County commissioners and other officials, as necessary.
- Perform such other tasks as are requested by the County.

Estimated Cost - $25,000

Special Counsel will perform such services at the following rates:

Steve Dijulio	$260.00/hour
Grover Cleveland	$200.00/hour
Kyle Branum	$140.00/hour

RESOLUTION INITIATING PUBLIC WORKS PROJECT AND APPROVING CONTRACT AND NOTICE TO PROCEED WITH LAW AND JUSTICE FACILITY, COURTHOUSE EXPANSION AND IMPROVEMENT PROJECT PHASE 1B

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Mr. Kwarsick next presented a resolution to initiate project PWP-01-00, Work Order #301, Contract and Notice to Proceed with the Law and Justice Facility, Courthouse Expansion and Improvement Project, Phase 1B, and recommended the Board execute the contract with Haskell Corporation, Bellingham, successful bidder, and provide Notice to Proceed. The total budget appropriation for the project is $5,444,334.00 including sales tax and contingencies. The funds are currently available and allocated to the project. Review by the Deputy Prosecuting Attorney and Risk Manager occurred as part of the contract review for the bid package. One of the best demonstrations of cost containment is the results of the bids, based upon well thought out and well presented plan by the Architect. Team effort will be to minimize change orders. Furniture is not a part of this, but is a budgeted item. The commitment the Board made to go through a bonafide comprehensive community-involved planning program is really what led to the project's success.

By unanimous motion, the Board approved Resolution #C-27-00 (R-12-00) initiating Public Works Project PW-01-00 under Work Order #301, and approved the Contract and Notice to Proceed between Island County and Haskell Corporation for the construction of the Law & Justice Facility.

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AMENDMENT #3-STANDARD FORM OF AGREEMENT BETWEEN ISLAND COUNTY AND BRYAN YOUNG, P.C., ARCHITECTS AND PLANNERS

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The Board, by unanimous motion, approved Amendment No. 3 to the existing Agreement between Island County and Bryan Young, P.C., Architects and Planners, a scheduled CPI adjustment to the compensation for basic services according to contract language, resulting in an increase in compensation of $64,933.

FINANCIAL REPORTS

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Auditor Monthly Review of Revenues and Expenditures

Suzanne Sinclair, Island County Auditor, elaborated on her 3/9/00 financial report for the period ending February, 2000 [copy on file]. The only issue of note she referenced was on the page of her report related to revenues for other funds listing three categories going to criminal justice purposes: the first 1/10th of 1% criminal justice sales tax, a portion of which goes to support patrol services; criminal justice fund which is funded from state dollars and M-VET dollars for general criminal justice type purposes; and a juvenile detention facility budgeted for 906,500 [with $490,000 estimated to be collected from the sales tax and included in that amount is a beginning fund balance of $296,500 and grants of $120,000]. The Auditor's Report shows under Sales Tax Equalization the budgeted amount of $294, 000 but having only received $71,000. The Budget Director will check to see if there will be another payment forthcoming. Other "flags" would be those budgets that are over the percent they should be this time of year, 16.7%.

Treasurer: Current & YTD Cash Report; County Investment Report & Status

Although the Treasurer did not attend the meeting, she did submit a Current Expense Cash Report for the period ending February, 2000, under Memorandum dated 3/11/00 received on 3/13/00 [copy on file]. No investment report was provided.

An issue of concern was discussed by the Board related to previous correspondence *[May 27, 1999; June 2, 1999; and June 7, 1999]* from the County's Chief Civil Deputy Prosecuting Attorney having to do with County Finance Committee responsibility. The County Finance Committee is composed of the Chairman of the Board of County Commissioners, the Treasurer and the Auditor, and the according to Mr. Jamieson, the Treasurer simply giving a financial report to the Board at a Board of County Commissioners meeting is not a substitute for a meeting of the finance committee. The Treasurer apparently disagrees and has not called any meetings of the County Finance Committee believing that the presentation of the Treasurer's monthly financial and investment reports in the presence of the Finance Committee was sufficient and complies with the requirements. The Board directed the Chairman send a memorandum to the Treasurer requesting that she convene the County Finance Committee in accordance with the RCWs *[RCW 36.29.020; 36.33.190; 36.48.070; and 42.17.245*].

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HEARING HELD: ORDINANCE #C-118-99 (PLG-001-99), AMENDING CHAPTER 17.03 ICC REGARDING COMMUNICATION TOWERS

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A hearing was held beginning at 1:30 p.m., continued from 12/13/99, 2/7/00 and 3/6/00 on Ordinance #C-118-99 (PLG-001-99), Amending Chapter 17.03 ICC regarding Communication Towers, also having been the subject at staff sessions held on 3/1/00 and 2/23/00. The matter was forwarded to the Board from the Planning Commission. At the last hearing, the Board continued the hearing to this date and time, and directed that Mr. Bakke make the changes the Board agreed to, and that the next hearing the only topic open for further public comment would be the 1/3 – 2/3 ratio issue.

Attendance:

Public: 7 Attendance Sheet GMA doc. #
Staff: Phil Bakke

Handouts:

Amendment #2 – dated 3/17/00 0, Exhibit A - Communication Towers 17.03.180.L.8 and 17.03.040 Definitions; and Exhibit C – Findings of Fact and Legislative Intent GMA doc. #_____

Correspondence since last hearing received by the Commissioners

3/1/8/00 e-mail Robert Kenny, Langley GMA doc. #_____
3/20/00 e-mail Rich Melaas, NAS Whidbey GMA doc. #_____

Record Documents

GMA doc. #5596 - Staff Notebook on communication towers

Mr. Bakke reviewed the proposed changes contained in Amendment No. 2. Changes are shown in bold italics, most technical in nature, resulting from hearings and comments from members of the public and industry, summarizing:

Page 6, Item g. Proposed language: Average tree height shall equal two-thirds of the overall height of the tower. This means there is a two part test: the first is that the communication facility not exceed 45' above the average tree height; second, that the average tree height needs to count for coverage of 2/3 of the facility proposed (example 90' communication facility the average tree height would need to be 60' [whichever is less 45' or 2/3]). A cellular communication tower located in an open field where there are no trees within a 150' diameter would not be permitted in the County. A tower would have to be located in an area where there are existing tree growth which can be preserved. Where a piece of property may not have a dense tree growth County will require that that facility employ concealment technology.

Page 9, p.(iii) Rich Melaas, NAS Whidbey, has had an opportunity to review the requirement for the 7460-1 Airspace Form be completed prior to county review of projects, and offered comment that the County should not require that prior to application approval if the facility is not within 5 miles of an airport.

Page 8, item m) added, on request of the Coalition and Commissioner Thorn to acknowledge the bird hazard issue added a sentence: "Unless otherwise required by Federal or State authorities tower mounted lights shall be intermittent rather than steady.". Section l) reworded as a result of adoption of a County sign and lighting ordinance so provisions related to ground based lighting standards for communication towers was removed and now references the lighting standards.

Page 10, new item vii: "Carriers shall employ bird warning devices on all facilities extending above the average tree height. Applications shall include specifications of such devices including proposed mounting locations.".

Added Finding 257.d to Exhibit C: "Applicants who have pending applications at the time of the adoption of this ordinance should be given the opportunity to choose to apply all the standards provided in the Communication Towers Ordinance ".

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Technical corrections:

Page 4, item c. Since it is the intent of the County that roof-mounted wireless communication antenna arrays be permitted in all zones, the end of the first sentence needs to be rewritten to read: "…decision pursuant to Section 16.19 ICC in all zones.".

Page 5, item (ii) (2) Rewritten to say: "Facilities located in **all** other zone**s**…" . Item (iii) Last sentence revised to reflect intent: If the project meets these standards it shall be processed as a Type I Applicant pursuant to Chapter 16.19 ICC **in all zones**.

Page 10, vii. Rewrite to begin the sentence: Carriers shall employ bird warning devices/flight deverters ".

PUBLIC COMMENTS

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Bill Monroe, representing U.S. West Wireless, thought that by and large the ordinance was an excellent proposal. One area he brought up was that when talking about the area above the trees that the County needs to take into consideration co-location, numbers of poles in a given area, and the kinds of technology used on the antennas. Pole least pleasant to view are those with top hats, essentially old technology. Newer technology is dual polarization where there are three individual antennas mounted on the pole which from a distance seem to appear as part of the pole and are not so objectionable visually. Every one of the 12 or 13 applications pending on Whidbey Island by U. S. West Wireless are the dual polarization antennas and for them work great.

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Bill Stebbens, Clinton, agreed that the tree height subject, 45' or 2/3rds, was a good rule, but was nervous how the average tree height in the surrounding area would be calculated, afraid there would be some incentive for an applicant to quickly cut down all the lower trees and have a few tall trees establish the average tree height. He believed there was some need for screening at the lower level. He did not believe every site would use new technology. He commented in November in writing that section 17.03.180.L in his copy of the Comp Plan was for Mobile Homes, with Section J relating to Institutional Uses. Most commercial antennas he thought were commercial and not institutional and should not be included under institutional use. Section B has been reserved in the Comp Plan for communication towers. With respect to air safety, Mr. Stebbens noted that State responsibility for air safety was de-codified several years ago but there remains an remains an Aeronautical Aviation Division in State government. The FAA submits the 7460-1 form to the State Aviation Division and he thought the County's proposed ordinance seemed to essentially prohibit any lighting or marking unless the FAA requires it and the ultimate responsibility for safety is art the permitting level and the State may recommend things which would not be allowed this ordinance. Wrong to prohibit marking and lighting as recommended by the State or as determined by this organization. Noise requirement refers to the state noise level which is different than the County noise level but will the county be enforcing that and will it be retroactive.

Gary Piazzon, Citizens Growth Management Coalition, applauded the work done on this ordinance, describing it as thorough and sensitive about an issue people feel strongly about: aesthetics, environmental issues affecting the birds. Having done further research regarding tree height ratio issue, he learned from Extension Service that trees here grow to different dimensions given different environmental conditions. The dominant tree is Douglas Fir, with some Cedars, Hemlocks, and Alders. Conifers grow to 80 to 100'; Hemlocks about 10' taller than Douglas Firs; Alders grow only 40' to 60' and lose leaves for half the year. Consulting an architect and running the 2/3rds scenario by him and to consider other scenarios, the architect thought 2/3rds scenario was about as good as it would get for mitigating the visual impact. Mr. Piazzon drew up some crude mock-ups under different circumstances and possible scenarios and what they would look like with the top hats, and those drawings were submitted into the record as follows:

Drawing depicting 100' trees and 145' tower	GMA doc. #5618
Drawing to show a 120' tower around an 80' buffer of trees	GMA doc. #5619
Drawing depicting 60' trees with 90' tower	GMA doc. #5620

Andy King, representing Sprint, reiterated concerns about height limitations and the linkage between height of towers with average tree height, and felt the proposal too restrictive given the general nature of the topography in Island County and the fact there are varying tree heights within

that rolling topography. Wireless technology works on line of sight transmission and signal strength is dissipated and blocked by vegetation. It is critical to be above the trees in order to have a viable facility. His recommendation was that the County allow for an increase in antenna array height in those cases where existing abutting and adjacent tree heights would result in a significant diminution in radio frequency signal strength propagation and that staff be allowed to increase the antenna array restriction based on the applicant's submittal of additional documentation that demonstrates adverse impact of the height restriction, on a site by site and application specific basis. A uniform requirement is not practical for a new free standing antenna structure when trying to provide for co-location because it ends up with second or third carriers below the tree height and will not be a workable scenario. The combination of topography and tree heights does not allow not allow for facilities high enough to provide any kind of a coverage objective. Another issue is the need to allow for the modification of existing communication towers increase in height to allow for co-location.

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Liz Corrosqueco, Nextell Communications, idea of average tree height idea of designing facility taking into tree height into account and 1/3 – 2/3 good idea and things we try to do in general anyway when we go to site a monopole. Concern is that first and foremost the design and placement is driven by technology and cannot always choose the most forested property and still achieve coverage objective. look for some kind of allowance in the ordinance so that is the goal and is encouraged but there is flexibility when not possible to look at other alternatives. There are different technologies with different antennas but there s always a trade off and does not work uniformly for all kinds of technology. Concern is if proposing a 120' tower, diameter of 150' - which relates to one to two, meaning acres of trees that would have to be surveyed, enormously costly and difficult to do. There would also be the question if Alders were on one part of the parcel and Douglas Fir on the other resulting in a huge discrepancy in heights making it hard to plan a facility using that requirement.

Bill Therkildson, Greenbank, commented on tree height and noted his trees were growing approximately 4' a year. He thought the Federal government controlled the height of towers to a 150' maximum. His concern was about the growing trees and how the company would compensate as trees grow. Towers if installed the base should be adequate, inspected so tower remains safe and radius returned to 50' or 60' from the base of the tower. Limiting sub-leasing of the towers is a good thing.

Mr. Stebbens asked that if the Board responded to the request to allow provisions for raising existing tower installations that it be limited to the new proposed limitations regarding setback and height above the trees.

Mr. Piazzon understood tree topping did not kill the trees, and in fact, a very popular craft involving shaping trees.

Commissioner Thorn commented that with regard to the implementation there is a certain straight-faced test and that should be what mean height is in this instance. If there are a group of trees 20' shorter because a different species or a variety of tree heights including immature 3' – those won't be counted it is referring to mature trees. Chairman McDowell agreed: it is looking at is the skyline of the trees. And Commissioner Shelton agreed as well, commenting that it would take the preponderance of the taller trees i.e. a wooded lot with certain amount trees at 70', and alder in another area, you would use the 70' trees.

Mr. Piazzon pointed out different forms that average can take including mode, which is the most frequently occurring number applied take the mode of the predominant tree species in the surveyed site.

Andy King thought the intent was to locate the facilities in mature trees and suggested incorporating "significant" and then define what a significant tree is - a tree having a certain diameter, for example.

Mr. Monroe suggested this be as simple as possible, i.e. use the average skyline, do a photo simulation and provide that to the reviewer.

BOARD DISCUSSION

The Board discussed the issue of average tree height and each commented from their own perspective as far as intent:

> Commissioner Shelton: "The height of the trees used to screen the tower and not all the trees within a 150' radius. "
>
> Commissioner McDowell: "The typical height of the apparent tree line seen on the horizon."
>
> Commissioner Thorn: "The typical height of the existing tree skyline within a 150' radius of the facility site. The height of trees used to screen the tower and not all the trees within a 150' radius are the trees to be considered."

As far as the point Mr. Stebbens brought up about code and institutional use, Mr. Bakke confirmed the code had been reorganized a great deal since originally printed and this is the section of the code reserved for this ordinance under institutional uses. One of the things mentioned today about use of existing technology, the code does require the County and applicant review the type of technology the facility uses to ensure they are proposing the latest technology associated with their company that leads to the most stealthy type of facility.

BOARD ACTION:

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Commissioner Shelton moved that the Board approve Ordinance #C-118-99 (PLG-001-99] in the matter of amending Chapter 17.03 of the Island County Code regarding communication towers, as amended by Amendment No. 2 dated 3/17/00, Exhibit A-Communication Towers 7.03.180.L.8 and 17.03.040 Definitions, with the following changes:

17.03.40 Definitions

Average Tree Height: The typical height of the existing tree skyline within a 150' radius of the facility site. The height of trees used to screen the tower and not all the trees within a 150' radius are the trees to be considered

17.03.180.L.8.c.(i) At the end of the first sentence after "16.19 ICC" add the words "in all zones".

17.03.180.L.8.c.(ii) (2) The first line delete "any" and replace it with "all"; the word "zone" to read "zones".

17.03.180.L.8.c(iii) At the end of the last sentence after "16.19 ICC" add the words "in all zones".

17.03.180.L.8.p(vii) Correct the first sentence to read: "Carriers shall employ bird warning devices/flight diverters on all facilities extending above the average tree height.

and that the Board adopt Exhibit C, Findings of Fact and Legislative Intent adding 257.d: "Applicants who have pending applications at the time of the adoption of this ordinance should be given the opportunity to choose to apply all the standards provided in the Communication Towers Ordinance.".

Motion, seconded by Commissioner Thorn, carried unanimously. [GMA Doc. #_____]

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING CHAPTER 17.03	)	
ISLAND COUNTY CODE REGARDING	)	ORDINANCE C-118-99
COMMUNICATION TOWERS	)	PLG-001-99

WHEREAS, the Board of Island County Commissioners adopted the Island County Growth Management Act Comprehensive Plan and Development Regulations by Ordinance C-123-98 on September 29, 1998; and

WHEREAS, on October 1, 1998 the Board of Island County Commissioners remanded the communication towers regulations in Chapter 17.03 ICC to the Planning Commission for further review and consideration; and

WHEREAS, the Island County Planning Commission held public meetings on November 24, 1998, December 15, 1998 and January 5, 1999 and a public hearing on January 12, 1999 in Coupeville concerning communication towers and the Planning Commission adopted the recommendation attached hereto as Exhibit "1"; and

WHEREAS, wireless communication has become an essential part of the lives of the citizens of Island County and is used by our residents, law enforcement and other essential service providers; and

WHEREAS, every effort should be made to locate new wireless facilities in such a way that all impacts of the facilities are minimized; and

WHEREAS, pursuant to WAC 197-11-600, the County SEPA Official has determined that the proposed changes to Chapter 17.03 ICC relating to communication towers, are not likely to have significant environmental impacts that were not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations; and

WHEREAS, the proposed amendment is consistent with the adopted Comprehensive Plan and adopted Findings of Fact and Legislative Intent; **NOW, THEREFORE,**

IT IS HEREBY ORDAINED that the Board of Island County Commissioners hereby adopts the communication towers regulations in Chapter 17.03 ICC attached hereto as Exhibit "A". Material stricken through is deleted and material underlined is added. The Board also adopts the Findings of Fact and Legislative Intent attached hereto as Exhibit "C".

Reviewed this 27th day of September, 1999 and set for public hearing at 7:00 p.m. on the 6th day of December, 1999 at a location on Camano Island to be determined and at 1:30 p.m. on the 13th day of December, 1999 in the Commissioners Hearing Room, Coupeville.

BOARD OF COUNTY COMMISSIONERS OF

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

ATTEST: Margaret Rosenkranz
Clerk of the Board BICC 99-544

APPROVED AND ADOPTED as amended at Public Hearings on 12/6/99, 12/13/99, 2/7/00, 3/6/00 and 3/20/00, Exhibit A amendment #2, and Exhibit C, Findings adopted 3/20/00 this 20th day of March, 2000.

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

ATTEST: Margaret Rosenkranz
Clerk of the Board

APPROVED AS TO FORM: Exhibit A as proposed
David L. Jamieson, Jr.
Deputy Prosecuting Attorney
& Island County Code Reviser
[Note: Exhibits on file with the Clerk of the Board]

EXECUTIVE SESSION

The Board met in Executive Session beginning at 2:50 p.m. for the purpose of discussing with legal counsel representing the County, pending and/or potential litigation as allowed under [R.C.W. 42.30.110 (1) (i). The session lasted until 4:45 p.m. and no announcement was made on return to open public session.

HEARING HELD: ORDINANCE #C-151-99 [PLG-049-99] AMENDING CHAPTER 17.02 ICC TO COMPLY WITH THE ORDER OF THE WWGMHB RELATING TO CERTAIN PROVISIONS OF THE COUNTY'S CRITICAL AREAS REGULATIONS RELATING TO EXISTING AND ON-GOING AGRICULTURAL ACTIVITIES

A Public Hearing was held beginning at 7:00 p.m. to consider Ordinance #C-151-99 [PLG-049-99], *continued from 1/10/00, 2/9/00 and 2/28/00,* Amending Chapter 17.02 ICC to comply with the order of the WWGMHB Relating to Certain Provisions of the County's Critical Areas Regulations Relating to Existing and On-going Agricultural Activities. For tonight's hearing, testimony is to be focused on the operating document dated as the 3/20/00 draft.

Attendance:
Public: Approximately 30 [Attendance Sheet GMA doc. #5602]
Staff: Keith Dearborn; Larry Kwarsick; Phil Bakke

Correspondence received by the County Commissioners since the last hearing:

3/20/00 letter from Earle E. Darst, Darst Bulb Farms GMA doc. #5603
3/17/00 E-mail from Larry and Carol to Ray Gabelein regarding AG BMPs GMA doc. #5607
3/15/00 E-mail from John Graham regarding Coalition comments on 3/6 BMP draft GMA doc. #5588
3/19/00 E-Mail from Thomas J. Roehl – comments on alleged final draft AG BMP amendments and proposal of 3-6-00 GMA doc. #5599
3/20/00 submittal from Steve Erickson, Frosty Hollow Ecological Restoration, Langley,
Extent and Analysis of Agriculture and Wetlands in the Maxwelton Watershed, Whidbey Island, Washington, with attached area maps GMA doc. #5609

Hand-outs:
- Proposed Amendment to Ord. C-151-99 Technical Amendments Exhibit B ~~3/06/00~~ 3/20/00 GMA doc. #5604
- Proposed Amendment to Exhibit C – Findings 3/20/00 GMA doc. #5605

- Table: Standard BMP requirements illustrated in summary form [to be attached to Exhibit C, Finding #11] GMA doc. #5606

STAFF PRESENTATION

Keith Dearborn briefly reviewed what had occurred since the first of the year:

First hearing held on 1/10/00. Exhibit B the product of a variety of efforts including review by the AG Committee. Approximately 30 public comments received verbally along with 6 or 7 written submittals ; hearing continued to 2/9/00 to consider amendments based on those comments. Public distribution made on January 24, 2000 on 7 amendments to Exhibit B. Comments on those amendments were received from a variety of people and amendments 8, 9 and 10 were prepared. On 2//9/00 the Board considered 1 through 7 and received public testimony, and those who wished to testify on 8 9 and 10 invited to do so. Hearing continued to 2/28/00 and the public offered an opportunity to comment on amendments 8, 9 and 10. The Board considered further amendments which were distributed on March 6 for tonight's hearing. Staff prepared for tonight Technical Amendments. Shaded comments in the 3/20/00 draft are amendments prepared in response to comments received on the March 6th draft. The 3/30/00 draft does not include WEAN's comments but does include the written comments of the Coalition and comments staff recommends that were proposed by Tom Roehl. A number of individuals had conversations with individual Commissioners about specific areas and issues and asked for additional changes in the document. Exhibit C also distributed also distributed on 3/6/00 shows one minor change [shaded].

The summary table shows what people have to do to comply with best management practices: reviews the standard BMPs and the categories of critical areas and indicates in an abbreviated form what has to be done.

Larry Kwarsick reviewed what Island County is doing to deal with environmental issues especially related to watersheds.

Island County completed the North Whidbey Watershed Action Plan and recently received an implementation grant. The County is in the final stages of the South Whidbey-Coupeville Watershed Action Plan and recently applied for grant funds to commence the Camano Watershed Action plan. The goal is to control and prevent non-point pollution and protect beneficial uses of water and associated habitats. AG BMPs relates to one of a broad spectrum of potential non-point pollution sources that can impact and degrade water resources. In Coupeville and South Whidbey area the plan indicates there are approximately 173 farms of various sizes and of those, 88 currently have active conservation plans on file; on North Whidbey there are 145 farms with 33 active plans on file, a strong indication of stewardship and responsiveness of the farming community to environment concerns and the land.

Special attention was given to comments from the State Department of Ecology on the BMPs. Farmed wet meadows are Category B wetlands by definition; although tilled, farmed, grazed and pastured, farmed wet meadows meet the regulatory definition of a wetland. Staff tried to break apart farmed wet meadows from the other Category B wetlands to mimic the way the Federal government treats agricultural activities on farmed wet meadows. Farmed wet meadows are treated a little differently from other types of sensitive critical areas specified in the ordinance, but consistent with the way the federal government treats existing and on going agricultural activities. With respect to the Department of Ecology's recommendation to establish a minimum 50' riparian zone adjacent to lakes, deep water habitats, salmon bearing streams and all category A wetlands, the County established a 50' agricultural management zone adjacent to those areas; 25' of that is a riparian buffer zone; the other 25' is an agricultural management zone in which there are specific limitations that affect operations, either continuously or seasonally to give reasonable assurance that runoff from agricultural fields would be adequately treated prior to entering a critical habitat area. It is clear that existing and on-going agricultural activities and the program established do not allow those existing riparian zones that exceed 25' to be altered except by strict adherence to the terms and conditions of the critical area ordinance. Therefore, in some cases, the County may more than achieve DOE's minimum requirements.

Mr. Kwarsick explained that the number of farms were identified, in the case of the North Whidbey Watershed Action Plan, in coordination with the Conservation District and some field inventorying, also the case on South Whidbey, both in terms of numbers of farms and active conservation plans. The South Whidbey document is still a draft document. The farms were classified in terms of size and also classified in terms of the farming activity itself whether talking about pasture or crops, dairy farming, or raising horses, etc., but not located.

Mr. Dearborn reviewed the summary table provided as a hand-out, showing farmed wet meadows are Category B wetlands in Island County; those pulled out of Category B wetland requirements for purposes of existing AG and treated different than other Category B wetlands. If farming a wet meadow, required under the BMPs would be to maintain stocking rate for livestock of one animal unit per acre which equals 1,000 pounds. If a farmer today is farming a wet meadow and has more than one animal unit per acre, to be able to continue to do so requires submittal of a farm management plan. To comply with standard BMPs the farmer would have to reduce the stocking rate to one animal per acre. This standard is from the National Conservation Service the most common rate of animal volume on an acre of land in a county like this county for wet pastures without doing damage to the wet pasture [annual average]. For a pasture, wet or otherwise, that has on or adjacent to it a Category A wetland more will be required. If animals are in the wetland now under some circumstances the animals will need to come out of the wetland and the wetland fenced and buffer maintained between 25' and 50' depending on type of wetland. If fencing cannot be done because of topography the farmer will need to have defined areas where the animals are allowed to water. If there is a confinement corral within a certain distance of that area will require meeting some special standards. Storing manure within a certain distance of Category A or B wetlands will mean certain additional requirements related to the manure and obeying the seasonal restrictions on plowing, grazing, nutrient spreading, etc. If there is a salmon-bearing stream on the property the farmer has similar requirements to a Category A wetland. For a stream not salmon-bearing requirements will be similar to those of a Category B wetland.

Mr. Dearborn noted a correction to Finding #12 in Exhibit C, Findings and Legislative Intent, distributed on March 6th, page C-3 shown in

highlighting to delete manure containment reference and replacing it with stocking place reference.

Technical amendments if adopted would become the BMP for the County for agriculture, and reviewed for all present the technical changes [in shaded color] made since distribution of the document on March 6th:

Page 2. Reword I.D to make intent clearer.

Page 3. Add the word "to"

Pages 5 and 6. Correct error correcting an error in the ordinance making it clear at the bottom of page 5 that farmed wet meadows are Category B wetlands, and deleting an incorrect sentence on page 6 which stated: "Under Island County's Critical Area regulations farmed wet meadows may be classified as Category B wetlands."

Page 8. Rewording of A.1 to read in a way describes exactly what is trying to be done.

Page 10. VIII.A.a.b) Minor change to better reflect intent: delete "Normal" and replace with "Existing and On-Going agricultural activities…" i.e. those activities in effect on October 1, 1998.

Page 11. Clarifying change

Page 12. Correct typographical error "Seasonal restrictions may be waived" changed to "Seasonal restrictions may be modified".

Page 15. C.1 and C.4 specify should be specified.

Page 15 – top of the page. No disagreement that the idea of allowing someone to enhance a wetland or buffer in lieu of doing other best management practices is something that should be encouraged but the question previously was about standards for doing so. The standard would be a showing the effect of the enhancement accomplished essentially the same thing as the practices would.

Page 16 and 17. Minor revisions to requirements for a farm management plan; #3, #4 and #5 respond to comments received after March 6th. Number 6 is as a result of his review based upon another issue [who pays for monitoring] and expanded what must be included in a farm management plan relating to monitoring.

Page 17.F. Based on comments received 2/9/00 proposed is the creation of a Farm Plan Advisory Committee to advise the County on farm management plans, and this makes it clear the Director in his approval will be considering the comments of that committee.

Page 18. Change deals with language making it clear with regarding to monitoring of BMPs with provisions to go back and modify BMPs. At the bottom of page 18 is a minor change to make it clear the process that will be used.

Page 19, top, responds to comments received from the public to make it clear that all monitoring and the cost of all monitoring of BMPs, standard or special BMPs through a farm management plan, the cost would be the obligation of the County and not the property owner. [the last sentence in the first paragraph on page 19 is a deletion and should have been shown in shaded color]

Other changes on Page 19 include language to make it clear that the standards set forth in Section 2 are County monitoring requirements, and corrects the term "salmonid habitats" to "salmon habitats"

Mr. Dearborn requested the Board consider for purposes of this hearing to begin by substituting the 3/20/00 version of Exhibit B for the prior version incorporated into the ordinance on 10 January 2000 and open public comments.

The Board, by unanimous motion, substituted and used for this public hearing Exhibit B dated 3/20/00 to Ordinance #C-151-99.

PUBLIC COMMENTS

TOM ROEHL, GREENBANK. Mr. Roehl spoke for himself as a rural resident of the county, the Property Rights Alliance and farmers who are members, farmers he knows and others he has known for a long time. He felt there was some misunderstanding of concepts, that in fact the areas to be protected are specified critical areas and areas regulated to do that are those areas that are regulated wetlands in the County and have been farmed.

Mr. Dearborn pointed out those two concepts were only partially correct: a wet meadow is also being protected because those are critical areas, category B wetlands. To the statement by Mr. Roehl that if a farmer has a wet field and tills and plants it in a crop every year and till and

plant it in a crop every year that wet field is not a wetland, Mr. Kwarsick indicated was not correct because under the definition of wetlands it is under normal circumstances would grow the hydrophytic vegetation that would meet the final test for a wetland, consistent with Clean Water Act provisions.

Mr. Roehl disagreed with that interpretation, and his example was a field that has hydric soils and the farmer planted peas, corn, wheat, etc. every year and during a good part of the season, is wet throughout – the only vegetative cover is man-planted crops. He warned about the breadth and scope of the regulation based on interpretation and expressed concern about what he felt was a rush to add "and farmed wet meadows" every place the term specified critical areas is used.

Mr. Kwarsick clarified that what Mr. Roehl described was a farmed wet meadow and the ordinance is intended to regulate that. Mr. Dearborn verified that the ordinance does not and cannot convert a crop into wetlands vegetation. This is a technical argument as to whether a property is or is not a wetland which is a matter that will need to be resolved on a case by case basis, and has no bearing on this ordinance. The only thing that a farmed wet meadow must do is to maintain a stocking rate; if in crop land growing peas there is no regulation imposed by these AG BMPs.

Commenting specifically on Exhibit B, Mr. Roehl's comments were:

Page 5 - Animal Unit. Asked if the 1,000 pound requirement intended to mean mature livestock.

Mr. Dearborn confirmed calves were counted; it is the cumulative animals grazed on the wet pasture. This issue was carefully reviewed, consulting NRCS as well as Cooperative Extension Service who provided guidance on what the industry treats as an animal unit.

Buffer complex definition. Previous ordinance indicated the buffer complex zone shall not exceed the minimum necessary to accomplish the purposes of the BMW program and questioned why it had been deleted.

Mr. Dearborn noted that comments were received from a variety of people who asked how they would know if they met the purposes of the BMP program or not and felt it too ambiguous. Comments also were received that the minimum necessary was inconsistent with the distances established because minimum necessary in the view of some was far greater than proposed.

Buffer Maintenance. "and non-native species": hard to understand the purpose. Suggested at the end of Buffer Maintenance after the word "restoration" on the last sentence to add the phrase "or modification".

Critical Area, Specified. The word "unfarmed" in the second line of the first sentence has been crossed out yet that was added in response to previous comments to make it clear. Specified Critical areas was used as the area being protected and kept from being polluted. As a general matter he thought staff should go back through and double-check where the term "specified" is used.

Mr. Dearborn noted this was not in the ordinance to begin with on January 10 and recalled that Mr. Roehl had asked that it be included which was done. Mr. Kwarsick and his staff, as well as Alison Moss, reviewed that and agreed it was incorrect to include it because critical areas in terms of Category A and B wetlands are both farmed and unfarmed in terms of the regulation, and to put the qualification unfarmed would leave a major gap in the ordinance. The farmed wet meadow is a subset of a category B wetland and what people used to call farmed category B wetlands. He looked at Mr. Roehl's written submittal and believed those had been picked up where needed to be included.

Riparian vegetation . The phrase "that tolerates and/or requires moist conditions and periodic free flowing water, thus creating a transitional zone…" should be deleted [illustrated on the blackboard]

Mr. Dearborn pointed out there was no requirement to create a riparian zone or replant a buffer or restore a buffer or even maintain a buffer in the ordinance; there is a requirement to maintain a 25' fenced setback from that stream. To use vegetation in lieu of fencing, a farm management plan [FMP] needs to be submitted demonstrating how the vegetation would accomplish the same thing as fencing.

Page 8, change to A.1. Add "to specified critical areas" after "…if any inadvertent damage occurs". To A.3 in the last sentence add the word "specified" after the words "…expand agricultural activities into". In B.1 Plowing, at the end of the sentence instead of "wetlands" the term should be "specified critical areas".

Page 9, Maintenance of Drainage Systems. Fifth line down "management practices to minimize" insert "adverse" and after "impacts to" add "specified". The last sentence in the first paragraph
should be changed so that line reads: "…tidegate would result in adverse alteration of the hydrology of unfarmed regulated wetlands". This would allow repair and maintenance of tidegates if there is no adverse alteration to the hydrology of the unfarmed regulated wetlands. Farmers should be allowed to try to protect their farm area from further inundation and flooding so as to continue farming. The last paragraph in this section the word "documented" should be replaced with the word "identified".

#7 on Page 10. Maintenance of Ponds Used in Farm Operations. This should say farmed wet agricultural fields or meadows and the phrase "or construct" should allowed, in order to read: "You may dredge or otherwise remove accumulated sediment and repair/replace or construct the berm, dam and principal spillway of an existing pond or ponded area within farmed wet agricultural fields or meadows". The last part of the last sentence should read: "…or result in adverse changes to unfarmed wetlands upstream or downstream of the pond". Many areas receive runoff from upland residential development and are starting to develop ponded areas in those fields; the farmer has to be able to contain the size of the farmed wet meadow portion of the pasture so the whole pasture does not eventually become a wetland.

#9 on Page 10 - Livestock Grazing. With regard to construction of farm roads, it should be applicable to farmed wet meadows or agricultural fields to provide ingress or egress to or from new or existing agricultural fields or other resource lands.

VIIIA.b)(i) The restriction on livestock in the AMZ from November to March of each year should include "or when year-around vegetative ground cover is maintained".

Page 11, c) now shown as stricken should be reinserted. If there is a dike and the dike is preventing the water from running off into the Sound then the purpose seems to be accomplished by the dike.

Mr. Kwarsick asked to delete that because he was not aware of any areas that would qualify under c) in the county and the provision unnecessary. There are dikes in Island County but he was not aware of any levees in Island County that are constructed along river courses as are in Skagit County and other areas. Testimony is welcomed at this hearing to provide information where that specific language would be applicable in Island County.

Page 12 #3, seasonal restrictions, the word waived being changed to modified limits and should say waived or modified.

Chairman McDowell observed that modified was a broader term and could include waived, but also could include something less than waived. Commissioner Thorn's view was not that modified included waived; dates could be adjusted according to the weather but there was never any discussion of a complete waiver of that.

Mr. Dearborn stated there was no requirement for a wet meadow in terms of seasonal restrictions. The only restriction is a livestock restriction in terms of the number of animals. If the wet meadow is adjacent to a Category A wetland or stream, there are seasonal restrictions but not on the wet meadow itself, but grazing next to the stream or wetland in the AMZ. The modification ability is not something done on a farm by farm basis, rather on weather conditions in the County to account for unusually dry years and not because a particular farmer's property happens to be dry.

Page 16. E.2 This should only refer to the applicability sections of the various regulations i.e. "meet the applicable environmental quality standards…".

Page 17. #6 "farmed wet meadows" should not be included

F.2.b) An approved farm management plan should not be limited to 20 years, rather should be whatever the farmer and the County agree to as a time period, and not open the door in 20 years to subjecting the farmer to more regulations. An FMP at least should survive any future regulatory changes by the County.

Page 18 d) new section being proposed includes farmed wet meadows and specified critical areas. He sees this as an effort to regulate more than what is necessary.

Mr. Dearborn stated that standard practice is one animal unit per acre on a farmed wet meadow. This protects both farmed wet meadows and specified critical areas. For a farmed wet meadow adjacent to Category A or B wetland or a stream the farmer has to pull cows back from the stream or category A or B wetland under these regulations.

Monitoring and Enforcement. This should not be limited to just remedy and penalties, rather should also include the due process and appeal provisions. Long ago it was promised that the FMP approval process would be a type I decision between the County and the property owner and should state so specifically.

STEVE ERICKSON, WEAN. Expressed some confusion about the difference between farmed wet meadows and category B wetlands. Farmed wet meadows are wetlands and he therefore questioned the difference and what would control in any given situation.

Chairman McDowell heard the question asked now from both sides; he believed that the table Mr. Dearborn handed out and explained clearly shows how specified critical areas and farmed wet meadows will be regulated. Mr. Kwarsick clarified that the difference between a category B wetland and farmed wet meadow is going to relate to the vegetative type. When something is a farmed wet meadow the provisions of the ordinance that deal with farmed wet meadows control; Category B provisions would not control.

Mr. Erickson commented on the definition of Critical Areas, Specified. The reference to areas altered prior to …in such a manner that the area does not meet the hydrological criteria for a wetland". He remembered this came up during an Army Corps of Engineers wetlands delineation course and found that what controls are State criteria for determination whether an area is a wetland or not and the County must follow that. And he thought the sentence possibly at odds with those State criteria.

[Page 8] Under VII B. The statement "…these activities may continue only if they comply with either the standard BMPs set forth in Section VIII…" for all practical purposes farmed wetlands are completely exempt from Section VIII. Section B.1 regarding plowing would seem to allow plowing of previously untilled category B wetlands. In terms of not allowing an increase in activity needs to include not just the size of an area being impacted but also the intensity of the activity.

[Page 9] 5. Maintenance of Drainage Systems. Last paragraph the last portion of the last sentence added is an improvement but WEAN has a concern about people deciding that hydrological conditions have changed because of increased runoff from somewhere else with no real documentation.

Page 10 VIII Standard BMP Requirements. b) omits farmed wet meadows or category B wetlands completely. D.2 – fencing, refers to established watering access points and is unclear if that refers just to any place where cows have previously been drinking or gaining access to a creek or if that refers to a more formally designated place. The concern is that an area can be hardened and repaired so it can handle the impact a lot better if the cows have access to it. It is unclear whether an existing location is automatically grandfathered in or whether it will have to be brought up to some kind of standard to handle those impacts.

E – Confinement area management refers to specified critical area management and omits farmed wet meadows and would concentrate livestock in Category B wetlands or farmed wet meadows.

F.2 has the same problem for storage of nutrients.

Page 14-15 IX Farm Management Plan. The list of the various NRCS BMP groups virtually all have been changed so instead of referring to critical areas refer to specified critical areas again reducing applicability in a serious way.

Page 16 E.2 the various references to RCWs and WACs controlling water quality in Washington,
under ultimate authority of the Federal Clean Water Act, the only substantive standards in the entire ordinance that can be measured and encouraged those be retained. E.3 now just refers to specified critical areas instead rather than including or farmed wet meadows.

Chairman McDowell referred Mr. Erickson to E.5 which is the section with respect to stocking rates.

Page 17. E.4 has been weakened by striking the reference to stocking rates and limiting applicability only to specified critical areas. In F.1.b) the reference to Section IX does not really have much in the way of having any kind of substantive requirements.

Page 19. Section X – Monitoring and Enforcement. B.2. WEAN strongly suggests this include a non-degradation provision.

There was some discussion earlier about regulation of Category B wetlands or farmed wet meadows being done only so that vegetative cover is maintained, but Mr. Erickson made the point there can be damage far before all vegetative cover is lost, including trampling and compaction. Even small trails can result in channelization of the surface water flows resulting in less time for pollutants to settle out. It is a particular concern when talking about grazing. Mobile manure deposition in Category B wetlands or farmed wet meadows especially in the winter or late fall when rains hit.

He earlier provided for the record results of a study he performed [3/20/00 submittal, Frosty Hollow Ecological Restoration, Extent and Analysis of Agriculture and Wetlands in the Maxwelton Watershed, Whidbey Island, Washington, with attached area maps] a wetland classification and AG land classification of the whole Maxwelton watershed which is in his GIS and found some interesting results:

68% of all the wetlands in Maxwelton watershed are farmed. Those wetlands only make
up about 26% of all the agricultural land in the watershed which means that agriculture is impacting the wetlands much more than stopping farming in those wetlands or restricting it
impacts agricultural as a whole.

Mr. Erickson recalled that a farmer testified earlier during the GMA process that that land was very poor and still saline. As global climate change continues and the sea level rises, that area will be less and less tenable for farming or anything else other than restoring it to an estuary. Removing those changed it some but not entirely, resulting in the conclusion that 58% of all the wetlands in Maxwelton Watershed would be farmed but those wetlands would then only make up 18% of all the farm land. The point is that it may affect individual property owners but in terms of agriculture as a whole farming in wetlands is not a make or break. The methods he used: aerial photos taken by the USGS in June of

1990; another layer on the GIS, the National Wetland Inventory Maps prepared by U. S. Fish and Wildlife Service and overlaid those and then went through and based on personal knowledge of the watershed and appearance from the photos he classified the wetlands into either farmed or unfarmed categories. He next went through the photos and added a new layer drawing lines around all the areas in the watershed that appeared to be in agricultural use for comparison. He acknowledged some of this was "fuzzy" because there was not much of any ground-truthing involved and was based on 1990 data.

Snap shot of the relative conditions of the watershed he came up with were:

Maxwelton Watershed is about 7719 acres; 1396 acres that are in farm land or about 18%, 538 acres of wetlands altogether in the watershed of which 364 are farmed (68%) and 173 (32%) are not farmed. Farmed wetlands make up 26% of all the farm land.

JOHN GRAHAM, CITIZENS GROWTH MANAGEMENT COALITION, congratulated Mr. Dearborn and Mr. Kwarsick for the work done, especially the latest draft which represents not only a very good attempt to balance interest but also some excellent research and really hard thinking. He made a few specific comments and suggestions as follows.

Middle of Page 3, II.D. The words "into a class A or B wetland" be inserted between discharge and directly. The point is made in Finding of Fact #16. The same point is repeated on page 5 in the definition of specified critical area.

Page 5, definition of Buffer Maintenance, a new sentence has been added that says: "Farmers and property owners may, but are not required to, carry out buffer maintenance activities.". He suggested the sentence is not needed and creates a problem because buffer maintenance activities include allowing or encouraging appropriate native vegetation to grow in the buffer and other natural and hydrological and biological functions of buffers to continue or increase, a literal reading of the suggested new sentence is that farmers are free to not allow appropriate native vegetation to grow in the buffer, and free to not allow other natural hydrological and biological functions of buffers to continue or increase.

He submitted an article for the record a Letter to the Editor in the South Whidbey Record March 11, 2000 viewpoint by Robert L. Barnes entitled "Maxwelton Creek's health isn't too bad". Mr. Barnes reiterates the comments made by Mr. Kwarsick about month ago of a study done in the Maxwelton valley. Mr. Barnes is not a scientist but is an active experienced responsible layman who has been monitoring the Maxwelton Valley for at least six years.
[GMA doc. #5608]

When public debate is closed, he believed the Commissioners pay attention to the small things; that adding or subtracting the word "specified" is not word-smithing, nor is adding or subtracting " and farmed wet meadows". In his view, Mr. Dearborn and Mr. Kwarsick carefully reviewed language and made no mistakes, those words there for a reason. In terms of Mr. Roehl's suggestions, most would weaken the protections particularly on farmed wet meadows and many would remove farmed wet meadows from restrictions on exemptions, for example, dealing with pond maintenance and road construction. He urged that the Board reject all of Mr. Roehl's suggestions that would weaken the ordinance, noting this would make the difference between having a good shot at a positive ruling by the Growth Board and no chance at all. The Coalition will oppose any weakening of the draft especially on points that were nailed down two or three drafts ago. There is no intent to expand it on the Coalition's part.

FRED FOSSEK, LANGLEY, made the following comments related to Exhibit B.

Page 19, Item X.2.b). Seven categories listed - who is responsible for salmon conditions. He wants to be sure the land owner is not responsible for keeping these conditions, that these are naturally occurring to be monitored as a monitor for the condition of the stream, regardless of category.

Mr. Dearborn explained that these were perimeters the County is committing to monitor, and would not create any obligation on the property owner not already in the BMPs.

Page 19 – Enforcement - punitive versus educational; important the last resort is punitive and there be interim steps that are educational.

VII Standard BMP Requirements. Understand the concept of one animal unit equals 1,000 pounds average annual cap; however, most cows weigh in the 1,000 pound category or more; there are growing calves, and bulls weigh 2,000 pounds. Preparing a FMP to get approval to have 4-1/2 animals on a specific acreage calls into concern potential arbitrary judgments by members on a board appointed by elected officials. Farmers need consistency for where they stand year to year. Very important that members on that board have an agricultural background, university studies in agriculture or hands-on experience.

Mr. Dearborn clarified with respect to #9 Livestock Grazing, that in the summer a farmer can have higher stocking rates without a FMP as long as an annual average is maintained of one animal unit per acre there can be seasonally higher rates.

The Chairman noted too that with regard to the concern about things changing over time, the ordinance provides that the farmer has that for at least 20 years.

VIII Page 11. Appropriate vegetative cover. Most of the coverage along streams is blackberries, especially Himalayas which are not native [the language is important regardless of zone]. As a kid he fished a lot of the little creeks and is aware that when the blackberries grow the creek is somewhat poisoned; as those leaves deteriorate, ferment and rot do not produce a good condition.

Pages 12 & 13. Fencing is a big issue for most people in agriculture and the question of cost to the property owner is critical. Fencing has to be purchased and maintained, and there is an implied aspect of not being able to use part of the property. It could be interpreted that once fenced off and the farmer no longer able to use that portion of the property, it is a form of taking.

Tax reduction is mentioned on page 14 in item H, Voluntary Additional Buffers. The issue comes back to compensation to the landowner for land not now useable. Tax reduction is one of the nicest ways of doing it.

Page 17, item F.a) "The Director shall have the authority to approve…". It is a critical issue that the position of the Director be the job of trained personnel, a consistency of philosophy.

Page 12 #3: With regard to seasonal restrictions, recommend the following language: "Seasonal restrictions may be modified from year to year by the County to account for actual weather conditions, soil types, soil water retention qualities and water runoff rate".

With regard to the issue of 20 years for a farm management plan, he encouraged that be made as long as possible. Agriculture is not like modern technology in the computer business; it is on-going long lasting type of enterprise and is 50% of the State's economy even in the year 2000, and under attack by all kinds of regulations.

RON MUZZALL, MUZZALL FARMS, Scenic Heights Road, North Whidbey, stressed the fact that it is Spring farmers must make decisions about this cropping season. There are cattle to be moved out onto pasture and ground that needs to be plowed for people: when, what and how are they to make this all happen with the BMPs and the critical areas. He gave some examples:

- a property owner wants to know when he is going to plow his ground but is next to a class A wetland but Mr. Muzzall is unsure because he would not want to be in violation of this regulation.

- landowners would like him to sign on a lease but he does not know if he can run cattle in the manner he has in the past and whether it is worth it.

- farmed wet meadows and whether or not the vegetation is natural in a Class B wetland: where does that put the cranberry grower?

- The whole Hastie Lake area historically has been farmed and historically exempted; now there is a complete change but by and large the landowners within that area are not aware of it because they have not necessarily been notified that there current practices are against the law.

Mr. Dearborn confirmed that as the result of a Growth Board decision, legally the only landowners that are exempt today from the critical area regulation are those that are in the Commercial AG zone. Leased property not in the CA zone that is a farmed wet meadow or adjacent to a critical area will require compliance with the critical areas ordinance. For CA land the owner has three years' from the date of adoption to comply with the BMPs. On lands that are not CA the County first has to convince the Growth Board or Superior Court that the County should be able to allow that same activity to occur on the non commercial land as it is on CA. Under the Growth Board decision the County is not allowed to create an exemption under the critical areas regulations for the Rural AG zone or Rural Zone. WEAN has indicated a willingness to extend the exemption to Rural AG but not to Rural even if complying with BMPs. A letter was sent to every Rural AG landowner and every Rural landowner known to be farming advising of the Growth Board decision and this process, inviting them to come and testify. The County has hired a full time person [Keeva Kroll] to manage best management practices, including AG practices on a property owner by property owner basis and is available to come and look at a particular property and try to help decide what to do.

LEN ENGLE, ENGLE FARMS, Coupeville, thought what he heard was that class 2 and 3 soils in Central Whidbey were now class B wetlands.

Mr. Kwarsick explained the issue was not that simple nor correct. He invited Mr. Engle, and any other property owner, to request assistance with the BMP program relative to the classification of wetlands or specified critical areas to call Keeva Kroll. Under the Federal Clean Water Act there are two types of situations that can be present: one is a farmed wet meadow which really is a wetland that has been modified but not drained, still hydric soils present to allow the growth and development of wetland plants, but because the farmer is managing that land other plants [crops] are present. Hydrology is present, soils are present, but the vegetative type is not there. Prior converted crop land is another category under the Clean Water Act and is something that used to be a wetland but has been so altered [drained, ditched and so changed] it does not possess the fundamental characteristics any longer of a wetland. If someone under Federal or County law allowed that prior converted cropland to go fallow,

not maintain drainage systems, so that the perimeters of the wetland were restored, it would then become a regulated wetland, but there is a 5 year time period.

Mr. Engle was concerned that because of the Town, State and County roads he has a piece of property previously drained and used for farming in class 2 soils that now has turned into a wetland completely out of his control, and the concern is about who is responsible from keeping that from becoming a wetland when he had nothing to do with the source of that runoff.

Mr. Dearborn commented that as a result of the AG committee process potentially those areas could be removed from the CA designation because of what Mr. Engle described – an agreement reached by all the parties. In the alternative under the BMP proposal as a part of maintenance a farmer could go in and dig ditches and create a new drainage system to drain the area that was farmed that now is getting flooded with water. There is a provision allowing remedy of the problem but does not say the farmer will be compensated by the upstream property owner.

Mr. Engle suggested for monitoring there needs to be some kind of basis so it does not keep changing so BMPs put in place today are not affected by technology later. Technology is progressing faster than ability to borrow money. He understood the need for some protections but most lands in Central Whidbey are under a management plan already through the Conservation District. He recommended that folks on the advisory board not only have an AG background but economic background as well.

Mr. Dearborn confirmed that this specifically suggested that the members of the committee have technical expertise in agricultural operations and critical area protection and ideally it would be people that know both.

RAY GABELEIN, JR., LANGLEY, talked about his fears with regard to farmed wet meadows: while the charge shows today only regulating livestock stocking limits, too many times what is promised in one meeting changes down the road based on interpretation. Separating out farmed wet meadows seems to be creating a new potential protected critical area that would not otherwise be protected. He referred to an article from the Everett Herald about a proceeding in Snohomish County concerning the 25' buffers, the AG Board specifically asked to be able to go in and restore grass and other native growth that act as filters next to streams inside the 25' buffer. Mr. Gabelein attested to his experience as to what happens to a hay field or pasture when mowing or grazing no longer occurs: the blackberries take over. Grazing or mowing in order to maintain grass is scientifically proven to be one of the best filters and is much better than blackberries. Specific comments made with regard to Exhibit B are as follows:

Page 9. Maintenance of Drainage Systems. First paragraph line 5 "…and immediately to restore any disturbed critical area or its buffer" when cleaning a drainage ditch similar to the dike and drainage district his concern is that will be interpreted to mean to restore it to what it was before the ditch was cleaned, which is impossible. The proposed added sentence at the end of the third paragraph should use the word "identified" rather than documented. There may well be a problem that has not been documented but does need to be taken care of.

Page 11. Section c) proposed for deletion should be reinstated. There are people he is aware of not present tonight who think this clause would allow them to continue what they have in the past. The Bayview area, Maxwelton area were mentioned as examples.

Commissioner Shelton brought up the Maxwelton area; Commissioner Thorn suggested property at the foot of Lands Hill and Iverson Spit on Camano Island. Chairman McDowell brought up Dugualla Bay. A member of the audience suggested Crockett Lake and Navy lands. Ralph Ferguson from Camano Island stated there were several hundred of acres on Camano Island which are protected by dikes and are drained.

Mr. Kwarsick explained that but after talking to folks in Skagit County about its applicability it did not seem applicable in Island County, but would do no harm to include it.

Page 17. #2.b) There should not be a limit of 20 years.

Page 18. Agree with the change made in B. Monitoring as the County's responsibility.

Page 19. 2.b) County monitoring will include section – a huge rathole for money to go down.

JEANNE BABIK, FREELAND, brought up everyday life and a way of life. She and her husband own an 18 acre hobby farm where they raised three children, cows and horses. The kids grew up to be good adults, raised with large animals and in the 4-H program of the County. The County should not tighten regulations to cause hardships for families. In her case there is an intermittent stream going through the property she considers drainage from ponding next door. She agreed with Mr. Gabelein and others, for example, that putting in fencing around a 25' buffer - there is no way that salmon would ever impact that particular stream on the property. The culvert in the corner of Goss Lake Road and East Harbor Road inserted by the County Roads is so high that if it ever backed up, nothing could ever come up that stream

AL LUHN, CLINTON, farms what he considers an upland farm, with a creek and some wetlands, the majority of farming either on leased or other lands he hays on. He senses that the regulations would severely discourage and limit drainage of land. He is still replacing cedar ditches in the ground 80 years' ago – should have been replaced earlier but a good drainage ditch should last at least 20 years. With regard to Page 19

Monitoring, #2.b) (i) through (vii) he asked how his AG practices impact those, and what did pools, riffles in the pond and turbidity have to do with any of his farming practices? He questioned if this were a free trespass for who would be doing the monitoring, noting he has certain liabilities for his operation.

RAY GABELEIN, SR., CLINTON, saw the proposal as a taking of land with nothing in return to the farmer. His farm has a drainage district ditch running on three sides, and another tributary coming from seepage of the dike and he has had nothing but fences and blackberries. As a Diking Commissioner he is aware that it is impossible to keep the marsh drained. Everything drains on his place, coming from Lone Lake up towards Goss Lake to Freeland. He suggested that it is not cattle causing the pollution, rather as a result of added human population, summer homes and septic tanks.

RALPH FERGUSON, CAMANO ISLAND, as evidence on the importance of inserting back into the ordinance section c) on page 11, he addressed the farmland on Camano Island that has been diked and drained, a total of several hundred acres, using the map posted on the wall to point out the property to Mr. Dearborn and Mr. Kwarsick, and he believes this is the same as Skagit County and Snohomish County where there are diked farmed areas. He asked if it would be possible to reduce the setbacks suggested in the ordinance with scientific evidence showing that 10' or 15' setback properly constructed would eliminate all of the contamination.

Mr. Dearborn stated that a 50' setback could be modified in such a manner as proposed through a FMP with demonstration of the protection of the critical area.

Mr. Ferguson stated that the Clean Water Act was revised in 1986 by Congress and requires new regulations be based on scientific data or hard science and concerns given to costs of the regulation and asked in this case if anything was done with regard to cost impacts and the evaluation of those cost impacts of these regulations.

Mr. Dearborn answered that GMA requires the Board to use best available science when making a decision on management practices. It applies in one way directly: the Board can look at documentation and using cost and other factors as a concern decide to use a 25' buffer instead of a 50' buffer. The Growth Board told the County it could not allow agricultural to continue to be exempt from the critical area regulations unless complies with best management practices.

Mr. Ferguson thought it might be worth pursuing as a possibility because if cost impacts are great and the benefit minimum there might be some relationship that could address cost impacts and provide some relief and suggested that be reviewed. These regulations address AG yet in the overall BMP document there is a sentence with regard to wetlands that says that wetlands usually require water, plants and soil, and further states that if one or more is present should apply them as a wetland. If in fact someone reviews the document itself and looks to wetlands and applies that here, there is an immediate conflict. There is some confusion with regard to a farmed wet meadow and should be clarified so there is no misinterpretation, and suggested it be deleted.

Mr. Dearborn noted that the Hearings Board required all farming activities in any land in the county comply with best management practices. If the farmed wet meadow has been farmed in such a way that it no longer has wetland plants on It or hydrology, it is prior converted cropland and is not a critical area. If farming is stopped on that for 5 years and wetland plants come back and the drainage, it is a wetland again.

Mr. Kwarsick clarified with regard to Federal, State and County law. At the federal level wet pastures, farmed wet meadows are regulated wetlands; at the State level as well as Island County ordinance they are regulated wetlands.

EVA MAE GABELEIN, CLINTON. In she and her husband's case, farming is not good at best and cannot make very much money; they have survived and raised five children who seem to also like farming. Their situation is such that they will not be able under current rules to develop the good property, and through added expenses for wet pastures, will not be feasible to keep farming. If they have to quit farming and pay compensating tax between the AG tax and today's true and fair value, her question was who would help them pay that.

STEVE ERICKSON, SPEAKING ON BEHALF OF FROSTY HOLLOW ECOLOGICAL RESTORATION, repeated the Army Corps of Engineers definition of a wetland, underscoring "…a prevalence of vegetation adapted to wet soil conditions". The Army Corps wetland delineation manual under normal circumstances includes a three perimeter test for determining if an area is a wetland: hydric soil; plants that normally grow in hydric soils; and there must be hydrology or indications of hydrology inferred from the condition of the soils. It is a non issue: they are wetlands.

TOM ROEHL stated that when talking about the enforcement section, farmers should be treated the same way stated in 17.03. The whole process depends on how well it is received by the people. This is something worth fighting for even with sanctions; there are times when principles are more important. He did not think there should be a FPCA committee, rather a simple straight-forward decision by the Director appealable to the Board. With regard to the Findings, he referred to a copy he sent with his comments, and felt more effort should be made with the findings. For instance he thought there were more than several members of the AG remand committee who felt the exemption should be extended to all zones, clearly a majority. When describing the community meetings that took place, a narrative description should explain what those 60 people felt and how strongly they felt and the input received at those meetings.

RAY GABELEIN, JR. With regard to Page 5, Buffer Maintenance definition, third line down, he asked that the proposed added sentence remain and not be taken out as John Graham suggested. He thanked the Commissioners, Mr. Dearborn and Mr. Kwarsick and others involved for having the patience to stick with it, and asked they not quit or back down.

RALPH FERGUSON believed that contrary to the definition of wetland with regard to water, soils and vegetation, if the water is eliminated, it is drained wetland and no longer a wetland. If water is imposed on to that drained wetland it becomes a man made wetland. It is obvious most of the farmed areas are really category C wetlands. Consideration should be given to exempting all farm lands that are now covered as wetlands by making them Category C wetlands because they are human made.

LEN ENGLE mentioned he had encountered at his farm were recently found tiles probably 80 years' old. He provided an example to show one of his concerns: he is getting ready to plant peas in three day, a cold weather crop and must be in early and off by the first of July. It costs twice as much to plow before November 1 as it does after November 1 and costs twice as much to plow after March 31 as it does before March 31. Equipment wise the plow wears out twice as fast when plowing dry type soils. Also, the more winter farming that can be done the less chemicals used.

Mr. Dearborn noted that under the definition of existing and on going agriculture specifically provides that activities could change. Since Mr. Engle has an approved plan for his dairy he suggested that Mr. Engle submit that to Mr. Kwarsick for approval as a farm management plan.

Regarding comments about committee consensus is controversial and Mr. Dearborn recalled that the issue Mr. Roehl mentioned came up at the very last meeting. There was no formal committee discussion of the exemption issue and was not an agenda item. Ron Muzzall came to the workshop and spoke on this issue but the committee never deliberated on it.

Based on public testimony, along with the comments of Mr. Dearborn and Mr. Kwarsick, the Board took the following action.

On motion of Commissioner Shelton, seconded by Commissioner Thorn, the Board adopted unanimously Ordinance #C-151-99, the Agricultural Best Management Practices, with the following Amendments to Exhibit B dated 3/20/00:

Page –3- II. D **At the end of the sentence after the words "Puget Sound" add the following:**

"For example, some type 5 Streams discharge into wetlands that then drain into streams or discharge directly into Puget Sound. These streams are considered tributary to Type 3 or 4 streams or Puget Sound and are also covered by these BMPs.".

Page –5- Buffer Maintenance. **At the end of the last sentence after the word "restoration" insert "or modification".**

Critical Area, Specified.

Delete the sentence "Wetlands do not include areas that were altered prior to October 1, 1998 by existing and on-going agricultural activities in such a manner that the area does not meet the hydrological criteria for a wetland".

At the end of the last sentence add the following sentences: "For example, some type 5 Streams discharge into wetlands that then drain into streams or discharge directly into Puget Sound. These streams are considered tributary to Type 3 or 4 streams or Puget Sound and are also covered by these BMPs.".

Page –6- Riparian vegetation. In the THIRD sentence delete the word "native" [the sentence beginning The benefits of native…]

Page –8- VII A
1. In the second sentence after the word "destroy" insert the word "specified"; and in the third sentence after the words "inadvertent damage occurs" insert the phrase " to specified critical areas".

The last sentence after "expand agricultural activities into" add the word "specified".

Page –8- VII A
II B 1. Strike the last word "wetlands" and replaced with "specified critical areas".

Page –9- 5. Maintenance Drainage Systems
Third paragraph, last sentence the word "documented" is replaced with "identified".

Page –10- 7. Maintenance of Ponds Used in Farm Operations
Last line of last sentence replace the word "wetlands" with "specified critical areas".

Page –11- Restore c)

"c) The agricultural buffer for salmon bearing waters shall not apply to areas located adjacent to and landward of the dikes and levees tributary to drainage systems utilizing tidegates or floodgates and/or pump stations."

Page –14- H. Voluntary Additional Buffers
First line after the words "which contains a" insert "specified".

Page –15- C.
The shaded word "specify" be corrected to read: specified

4. The shaded word "specify" be corrected to read: specified

Page –16- E. 2. In the first line add the word "applicable" after "Be sufficient to meet the".

Page –17- 2.b. After "period of twenty (20) years" add the following: "minimum or such longer time period as mutually agreed; "

Page –19- C.1 After the words "subject to" in the second to the last line strike the word "all". Strike the phrase "remedies and penalties provided for in" to replace it with "enforcement provisions of", so the last sentence reads: "Such violations shall be enforced by the Planning Director and shall be subject to the enforcement provisions of Chapter 17.03 ICC.".

By unanimous motion, the Board adopted Exhibit C dated 3/20/00 with the following changes:

Add the following sentence to Finding #11: "Standard BMP requirements are illustrated in summary form on the attached table."

Add Finding #17 as follows:

"17. The immediate restoration requirement specified under the maintenance of drainage system exemption provision is intended to allow the landowner the flexibility to re-vegetate the disturbed area using grasses or mulch mixtures. If an erosion threat is present the disturbed ground area will be protected using standard erosion and sedimentation control techniques."

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING CHAPTER 17.02.ICC TO	)	
COMPLY WITH THE ORDER OF THE WESTERN WASHINGTON	)	ORDINANCE C-151-99
GROWTH MANAGEMENT HEARINGS BOARD RELATING TO	)	
CERTAIN PROVISIONS OF THE COUNTY'S CRITICAL AREA	)	PLG-049-99
REGULATIONS RELATING TO EXISTING AND ON-GOING	)	
AGRICULTURAL ACTIVITIES	)	
	)	

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 the existing and on-going agriculture provisions of the County's Critical Area Regulations did not comply with the requirements of the GMA and remanded these matters to the County for further action; and

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

WHEREAS, pursuant to WAC 197-11-600, the County SEPA official has determined that the proposed changes to Chapter 17.02 ICC relating to Critical Area Regulations 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 Commission-ers hereby adopts the proposed amendments to Chapter 17.02 ICC, attached hereto as Exhibit A; Best Management Practices attached hereto as Exhibit B; and the Findings of Fact attached

hereto as Exhibit C. Material stricken through is deleted and material underlined is added.

BE IT FURTHER ORDAINED, that the amendment to ICC 17.02.107.E relating to existing and ongoing agriculture will replace the interim regulations first adopted by C-77-99 and re-adopted by C-152-99. This amendment shall not take effect until the Western Washington Growth Management Hearings Board determines that it does not substantially interfere with the goals of the GMA. After said action by the Growth Board, C-77-99 and C-152-99 will no longer remain in effect.

Reviewed this 22nd day of November, 1999 and set for public hearing at 1:30 p.m. on the 10th day of January, 2000. Rescheduled from 1:30 p.m. to 7:00 p.m. January 10, 2000 by motion of the Board December 13, 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

APPROVED AND ADOPTED this 20th day of March, 2000, as amended at public hearings on 1/10/99, 2/9/00, 2/23/00 and 3/20/00. Exhibit B and Exhibit C dated and adopted 3/20/00.

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

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

APPROVED AS TO FORM:
DAVID L. JAMIESON, JR.
Deputy Prosecuting Attorney
& Island County Code Reviser
BICC 99-660

[GMA doc. #5610; Exhibits placed on file with the Clerk of the Board]

ORDINANCES INTRODUCED AND SET FOR PUBLIC HEARING

The Board by unanimous motion set the following ordinances for public hearing at a Special Session to be held on April 5, 2000 beginning at 3:30 p.m., Island County Courthouse Annex, Coupeville, Wa.:

- Ordinance #C-28-00 [PLG-007-00] In the Matter of Amending Chapter 17.02 ICC to Comply with the Order of the Western Washington Growth Management Hearings Board Relating to the Critical Areas Exemption for Existing and On-going Agriculture. This ordinance continues interim regulations for the exemption of existing and on-going agriculture activities in the CA Zone from critical area requirements and will remain in effect for six months or until the County adopts permanent amendments to chapter 17.02 which comply with the Growth Management Act whichever date occurs earlier.
  GMA doc. #5614

- Ordinance #C-29-00 [PLG-008-00] In the Matter of Amending Chapter 17.03 ICC to Comply with the Order of the Western Washington Growth Management Hearings Board Relating to the Rural Zone. This ordinance continues interim regulations regarding minimum lot size relating to the lands classified in the Rural Zone and will remain in effect for six months or until it is determined that permanent changes are not needed to the five acre minimum lot size for the Rural Zone to comply with the Growth Management Act, whichever date occurs earlier. GMA doc. #5615

With no further business to come before the Board at this time, the meeting adjourned at 12:10 a.m. The next Regular Meeting of the Board is scheduled for March 27, 2000 beginning at 11:30 a.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