

**ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
REGULAR SESSION - APRIL 23, 2001**

The Regular Meeting of the Board of Island County Commissioners was held on April 23, 2001, beginning at 11:30 a.m. for a Roundtable with Elected Officials, followed by other topics at 1:30 p.m. as outlined on the agenda, *including* Diking Improvement District #4. The meeting was held in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with William F. Thorn, Chairman, and Mike Shelton, Member, and Wm. L. McDowell, Member, present.

ROUNDTABLE MEETING WITH ISLAND COUNTY ELECTED OFFICIALS

Attendance

Elected Officials: Tom Baenen; Greg Banks; Robert Bishop; Maxine Sauter; Suzanne Sinclair; Others: Margaret Rosenkranz; Dick Toft.

Elected Officials Salary Proposal.

Chairman Thorn provided feedback regarding Elected Officials' salary proposal submitted March 26th. He saw no dispute as far as it being an issue to review, but at this point in time had some difficulty due to budgetary uncertainties such as: indications are that the County will not receive I-695 backfill to the full extent, or potentially none [State's budget is being considered in special session starting Wednesday]; sales are relatively flat and does not look real optimistic, and interest rates are down. Taken together, could be a potential hit of ½ million dollars to the County's general fund.

Commissioner Shelton believed that Island County Elected Officials were underpaid and need to be raised, realizing Island County Elected Officials work just as hard as elected officials in other counties.

Since Commissioner McDowell was absent from the last Roundtable he was interested to hear individually from Elected Officials with regard to the proposal. He did point out that from a budget standpoint, Elected Officials and Appointed Department heads have budget workshop sessions with the Board. The Board was able to set aside for the entire year \$100,000 in Commissioner contingencies, and the \$30,000 request from Elected Officials would represent 1/3 of that. As far comments about raises provided to other non-elected officials, those were budgeted during this year's budget process. He noted that it is much easier to budget during budget sessions for the year, than dealing with a mid-year request.

Mr. Baenen made the point that the request amounted to about \$30,000 annually, a drop in the bucket compared to ½ million dollars. County Elected Officials form a nucleus as far as how the county functions and there is a need to look at remunerating those officials. Island County Elected Officials are 10-12% under counties customarily used for salary comparisons. The potential is there for having a far-reaching effect should there continue to be a large spread in salary between elected officials and appointed officials and department heads, which could result in less and less candidates for office with the necessary abilities and qualifications desired in representing Island County. He recalled that the Board had found funds for comparable salary issues related to non-elected officials.

Ms. Sinclair brought out the concern others may have raising a family on the salary schedule for Elected Officials in Island County and thought there was some merit to the idea Mr. Baenen brought out about the potential for fewer and fewer qualified candidates being attracted to run for office.

Mr. Bishop added to earlier comments to note the possibility of only having interest from those with second incomes or retired instead of enthusiastic and active elected officials. Mr. Bishop and Ms. Sauter addressed the raises that were provided to some of the non-elected officials.

Mr. Banks was not part of the Elected Officials petitioning for a raise, but supported everything the officials put forth.

Roundtable adjourned at Noon. Inasmuch as the next Roundtable falls on a Holiday, May 28, 2001, the session will either be rescheduled or canceled [to be announced].

VOUCHERS AND PAYMENT OF BILLS

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

Warrants #510741-#150258..... \$ 273,627.80.

MINUTES APPROVED

Minutes from the previous meeting, April 16, 2001, were, by unanimous motion approved and signed.

STAFF SESSION SCHEDULE – MAY, 2001

The Board by unanimous motion, approved for distribution, the May, 2001 Staff Session Schedule, May 2nd and May 16th, both regular staff sessions the first and third Wednesday of the month.

LIQUOR LICENSE #083207-3E, SMILIN’ DOG COFFEE HOUSE & CAFÉ, LANGLEY

Having received recommendations of approval from the Sheriff’s Office, Health Department and Planning & Community Development Department, the Board by unanimous motion approved new application for Liquor License #083207-3E, d/b/a Smilin’ Dog Coffee House & Café by One Little Turnip LLC, located at 5603 Bayview Road, Langley [BICC 01-268].

HEARING SCHEDULED: RESOLUTION #C-55-01 SUPPLEMENTAL APPROPRIATION TO THE FOLLOWING 2001 ISLAND COUNTY FUND BUDGETS

By unanimous motion, as presented by Budget Director Margaret Rosenkranz, the Board scheduled a public hearing on May 14, 2001 at 9:55 a.m. for the purpose of considering Resolution #C-55-01 Supplemental Appropriation to the following 2001 Island County Fund Budgets: Current Expense Fund, Alcohol & Substance Abuse Fund, Public Health Pooling Fund and Public Works Fund. The proposed supplemental appropriation recognizes previously unrecognized additional funding from State or Federal sources in the amount of \$20,121 for the Current Expense Fund; \$32,408 for Alcohol & Substance Abuse Fund; \$51,675 for Public Health Pooling Fund; and \$29,410 for Public Works Fund.

HEARING SCHEDULED: RESOLUTION #C-56-01 EMERGENCY APPROPRIATION IN 2001 FUND BUDGETS

By unanimous motion, as presented by Ms. Rosenkranz, the Board scheduled a public hearing on May 14, 2001 at 9:55 a.m. for the purpose of considering Resolution #C-56-01 an emergency appropriation to the following 2001 Island County Fund Budgets: Current Expense Fund, Mental Health Fund, Capital Facilities (REET 2) Fund and Conservation Futures Fund. The proposed appropriation would recognize \$122,912 for Current Expense Fund; \$6,000 for Mental Health Fund; \$49,528 for Capital Facilities (REET 2); and \$244,921 Conservation Futures Fund.

RESOLUTION #C-57 -01 CONTINUING WELLNESS INCENTIVE PROGRAM PLAN

The Board, on unanimous motion, adopted Resolution #C-57-01 continuing the Wellness Incentive Program Plan for Island County Employees for 2001 for Plan 1a and Plan 2a, with analysis of potential cost reviewed prior to April 1, 2002.

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

**IN THE MATTER OF CONTINUING THE WELLNESS)
INCENTIVE PROGRAM/PLAN FOR ISLAND COUNTY) RESOLUTION C-57-01
EMPLOYEES)**

WHEREAS, the Board of Island County Commissioners adopted Resolution #C-52-00 on June 5, 2000 which continued the Wellness Incentive Program; and

WHEREAS, the above Resolution requires an analysis of potential costs to be reviewed no later than April 1, 2001, after which the program may be renewed based on the previous year's accrued sick leave for program year 2001; and

WHEREAS, by participation in the program, the Island County employees demonstrated that a percentage of employees favored incentives for maintaining healthy life styles and incentives for unused sick leave; and

WHEREAS, absenteeism is expensive to the County, both in paid time off and lost productivity to the organization;
NOW THEREFORE

BE IT RESOLVED, that after review it has been determined that the Wellness Incentive Plan for 2001 is renewed and will contain only Plan 1a and Plan 2a as described on Attachment A; and

BE IT FURTHER RESOLVED, that an analysis of potential cost will be reviewed prior to April 1, 2002 at which time the program may be renewed for program year 2002.

ADOPTED this 23rd day of April 2001.

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

ATTEST: Margaret Rosenkranz, Clerk of the Board
BICC 01-261 [Exhibit on file with the Clerk of the Board]

RESOLUTION #C-58 -01 TRANSFERRING FUNDS WITHIN THE 2001 ISLAND COUNTY CURRENT EXPENSE FUND BUDGETS; CAPITAL IMPROVEMENT (REET 1) FUND BUDGET; AND CONSERVATION FUTURES FUND BUDGET

As presented by the Budget Director, reviewed previously at staff session, the Board by unanimous motion approved Resolution #C-58-01 transferring funds between budget categories within the 2001 Island County Current Expense Fund Budgets; Capital Improvement (REET 1) Fund Budget; and Conservation Futures Fund Budget.

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

**In the Matter of Transferring Within the 2001) Resolution # C-58-01
Island County Current Expense Fund Budgets,)
Capital Improvement (REET 1) Fund Budget)
and Conservation Futures Fund Budget)**

WHEREAS, all funds and department budgets are adopted and fixed by the Board of County Commissioners for each fiscal year, with expenditures listed in three general categories; Salary, Wages & Benefits, Maintenance & Operation and Capital Outlay, and

WHEREAS, it is permissible to transfer between these categories only by resolution of the Board, and

WHEREAS, various departments have requested transfers of funds between portions of their budgets, and

WHEREAS, it is necessary to transfer between these categories in order to cover for unexpected or heretofore unknown expenditures in one category from other budget category excesses, or from budgeted reserves, **NOW THEREFORE**

BE IT RESOLVED, that funds will be transferred in the 2001 Fund Budgets per the attached Exhibit A.

ADOPTED this 23rd day of April, 2001.

**Board of County Commissioners
Island County, Washington**
William F. Thorn, Chairman
Mike Shelton, Member
Wm. L. McDowell, Member

ATTEST: Margaret Rosenkranz
Clerk of the Board
BICC 01-264 [Exhibit A on file with the Clerk of the Board]

HIRING REQUESTS & PERSONNEL ACTIONS

As presented and summarized by Dick Toft, Director, Human Resources, the Board by unanimous motion, approved the following Personnel Authorization Actions:

<u>Department</u>	<u>PAA #</u>	<u>Description</u>	<u>Position No.</u>	<u>Action</u>	<u>Eff. Date</u>
Public Works	038/01	S.W. Atten II .5 fte	#2248.01	Replacement	4/30/01
Health	039/01	Asses/Comm. Dev. Supv.	#2426.00	Replacement	4/23/01
Health	040/01	Pub Health Nurse III	#2404.02	Replacement	4/23/01

RESOLUTION #C-59-01 DISPOSAL OF SURPLUS COUNTY PROPERTY

Resolution #C-59-01, prepared and submitted by Lee McFarland, Assistant Director, GSA/Property Management Division, was approved by unanimous motion of the Board, a follow-on to Resolution #C-48-01 adopted on April 9, 2001, with regard to disposal of surplus county property in conjunction with the Courthouse expansion project.

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

**IN THE MATTER OF THE DISPOSAL)
OF SURPLUS COUNTY PROPERTY)**

Resolution No. C-59-01

WHEREAS, Resolution C-48-01 declaring certain County property surplus, as shown on Exhibit "A", was signed by the Board of Island County Commissioners on April 9, 2001; and

WHEREAS, the Board of Island County Commissioners have determined the value of the property to be less than \$2,500.00; and

WHEREAS, negotiations for sale of the property have shown that the value of the surplus property is insufficient to pay for removal of the property; and

WHEREAS, the Board of County Commissioners have determined that time is of the essence in removing the surplus items from the Courthouse to allow the renovations to begin as scheduled; and

WHEREAS, a contract in the amount of \$4,000.00 has been negotiated for removal of the items, after taking into consideration the value of the surplus items; and

WHEREAS the Board of County Commissioners has determined that it is in the best interest of the County and the citizens thereof that said items listed in Exhibit "A" be sold/disposed of; NOW THEREFORE,

BE IT HEREBY RESOLVED THAT the items listed on Exhibit "A" shall be sold or disposed of by paying Island Recycling \$4000.00 to remove and dispose of said property in accordance with Island County Code Chapter 2.31.100.(B).

ADOPTED this 23rd day of April 2001.

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON
WILLIAM F. THORN, CHAIRMAN
MIKE SHELTON, MEMBER
WM. L. MCDOWELL, MEMBER**

ATTEST:

**MARGARET ROSENKRANZ,
CLERK OF THE BOARD**

BICC 01-265 *[Exhibit A on file with the Clerk of the Board]*

RESOLUTION #C-60-01 - LEASING OF SURPLUS COUNTY PROPERTY

Resolution #C-60-01, prepared and submitted by Mr. McFarland, Assistant Director, was approved by unanimous motion of the Board, authorizing structure on the property to be utilized for a caretaker residence and authorizing the Property Manager to enter into negotiations for the lease of subject property [identified on Exhibit A – Natoli Property].

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

**IN THE MATTER OF LEASING)
SURPLUS COUNTY PROPERTY)**

RESOLUTION NO. C-60-1

WHEREAS, Island County Code Chapter 2.31, Sale Or Lease Of Surplus County Property, was adopted on April 11, 1994; and

WHEREAS, Island County owns property as identified on Exhibit "A"; and

WHEREAS, property as shown on Exhibit "A" is surplus to County needs for the next eight months; and

WHEREAS, Island County Code Chapter 2.31.150 authorizes the County to lease surplus property; and

WHEREAS, subject property includes a residence; and

WHEREAS, Island County Code Chapter 2.31.160 authorizes the County to enter into private negotiations to lease real property that has been designated to be utilized for a specific service to the County; and

WHEREAS, the County desires that the residence on the property as shown on Exhibit "A" be utilized for a

caretaker's residence for subject property for a period of eight months; and

WHEREAS, the Board of Commissioners of Island County Washington feel it is in the best interest of the Citizens of Island County that this residence be used as a caretakers residence; NOW THEREFORE,

BE IT HEREBY RESOLVED by the Board of County Commissioners of Island County, Washington that the aforementioned structure be utilized for a caretakers residence and the County Property Manager be directed to enter into negotiations for the lease of subject property.

Adopted this 23rd day of April, 2001

**BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON
WILLIAM F. THORN, CHAIRMAN
MIKE SHELTON, MEMBER
WM. L. McDOWELL, MEMBER**

**ATTEST: MARGARET ROSENKRANZ,
CLERK OF THE BOARD**

BICC 01-269 [Exhibit A on file with the clerk of the Board]

LEASE AGREEMENT, NATOLI PROPERTY

Following action above, the Board by unanimous motion approved Residential Lease Agreement between Island County and Royce L. Natoli and Rhea Natoli, 585 S. Lewis Lane, Camano Island, ending 10/17/01.

HEALTH CONTRACTS APPROVED

The following health contracts were approved by unanimous motion of the Board, the first three having been approved by the Board of Health, and the Human Services contract reviewed at recent staff session with the Board:

Contract HD-02-01, Island County and Whidbey General Hospital, \$14,560.
Contract Amendment G9900038(1), Watershed Planning, \$166,700
Interlocal Agreement Amendment HD-06-00(1), \$3,800 San Juan County
Contract HS-02-01(1) Substance Abuse Treatment – Catholic Community Services \$33,202.70.

OLYMPIC SECURITY SERVICE CONTRACT FOR LAW & JUSTICE BUILDING

As presented by Betty Kemp, Director, GSA, and having been processed through the County's Contract Review Process, the Board by unanimous motion approved Contract #RM-GSA-01-0035 with Olympic Security Services, Inc., to provide security officer services for the purpose of screening the public entering the secured Island County Law & Justice Building located at 101 NE 6th Street, Coupeville, for a total of 56 hours per week, commencing April 30, 2001 and ending December 31, 2001.

PUBLIC INPUT

Jim Cavanaugh, 1703 Parker Road, Coupeville, approached the Board with about the proposed application for NEXTEL Corporation to locate a 120' high tower at 1803 Parker Road, providing two submittals for consideration:

(1) Memorandum regarding proposed NEXTEL Corporation application to locate a 120' high tower at 1803 Parker Road, requesting:

- a) Planning & Community Development Department be tasked to determine the tree height/tower height ratio if the tower site was changed to the County Coupeville Dump site
- b) County consider if the tower height growth potential is applicable for a cell tower site application for a lower height, i.e. should the developer pick a site that would allow a 150' tall tower when requesting approval for a 120' tower?
- c) That the NEXTEL tower site be moved to the County Coupeville Dump site; and
- d) The County try to not co-mingle housing and cell towers.

Mr. Cavanaugh reminded that County development regulations specify that the community meeting is to be taped and a

transcript made available, and he wanted to make sure that in this case Planning staff would listen to the transcription from the community meeting with NEXTEL.

(2) Recommended Change to Island County Planning and Development Regulations:

- (a) It is thought the regulation could be improved by adding a statement to read: "Cell tower location should not be located less than 500 feet from residentially zoned areas if other sites are available."
- (b) To positively motivate developers to not co-locate cell towers with residential areas, add the following statement: "Waiver requests of the landscape/tower ratio will be considered for proposed sites more than 1000 feet from residentially zoned areas."

Some of the things the Commissioners pointed out included:

- If the applicant could live with a shorter tower at another site the County would not have a problem with applicant wanting to relocate,
- Unless provisions for waiver are built into the code, the Board had no authority to waive a condition or standard.
- Federal Telecommunications Act bars the County from considering anything relative to radiation.
- Request for change in code is a matter that could be considered during the normal annual review [this year's cycle is already committed].

RESOLUTION #C-61-01 (R-20-01) APPROVING PLANS, SPECIFICATIONS & CALL FOR BIDS-ASPHALT CONCRETE PAVEMENT OVERLAYS-CAMANO IS.

As presented and recommended by County Engineer Lew Legat, the Board by unanimous motion, approved Resolution #C-61-01 (R-20-01) in the matter of approving Plans and Specifications and Authorizing Call for Bids for Asphalt Concrete Pavement (ACP) Overlays on Camano Island, under CRP 01-01, Work Order 357.

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

IN THE MATTER OF APPROVING PLANS & SPECIFICATIONS AND AUTHORIZING CALL FOR BIDS FOR 2001 ASPHALT CONCRETE PAVEMENT OVERLAYS CAMANO ISLAND, CRP 01-01, WORK ORDER NO. 357)	
)	
)	RESOLUTION NO. <u>C-61-01</u>
)	<u>R-20-01</u>
)	
)	

WHEREAS, sufficient funds are available in the Island County Road Fund for 2001 Misc. Asphalt Concrete Pavement Overlays, Camano Island; NOW THEREFORE,

BE IT HEREBY RESOLVED that the Plans and Specifications are approved and that the County Engineer is authorized and directed to call for bids for furnishing said construction. Bid Opening is to be the 30th day of May 2001, at 11:00 A.M. in Meeting Room 3, Courthouse Annex, Coupeville.

ADOPTED this 23rd day of April, 2001.

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

ATTEST: Margaret Rosenkranz
Clerk of the Board BICC-01-277

RESOLUTION #C-62 -01(R-21-01) – APPROVING PLANS & SPECIFICATIONS & AUTHORIZING CALL FOR BIDS FOR ASPHALT CONCRETE PAVEMENT OVERLAYS – WHIDBEY ISLAND

As presented and recommended by Mr. Legat, the Board by unanimous motion, approved Resolution #C-62-01 (R-21-01) approving Plans and Specifications and Authorizing Call for Bids for Asphalt Concrete Pavement (ACP) Overlays on Whidbey Island under CRP 01-02, Work Order No. 358.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF APPROVING PLANS)
& SPECIFICATIONS AND AUTHORIZING)
CALL FOR BIDS FOR 2001 ASPHALT)
CONCRETE PAVEMENT OVERLAYS)
WHIDBEY ISLAND, CRP 01-02, WORK)
ORDER NO. 358)

RESOLUTION NO. C-62 -01
R-21-01

WHEREAS, sufficient funds are available in the Island County Road Fund for 2001 Misc. Asphalt Concrete Pavement Overlays, Whidbey Island; NOW THEREFORE,

BE IT HEREBY RESOLVED that the Plans and Specifications are approved and that the County Engineer is authorized and directed to call for bids for furnishing said construction. Bid Opening is to be the 30th day of May 2001, at 1:00 P.M. in Meeting Room 3, Courthouse Annex, Coupeville.

ADOPTED this 23rd day of April, 2001.

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

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

ATTEST: Margaret Rosenkranz
Clerk of the Board BICC 01-278

WSDOT LOCAL AGENCY HAUL ROAD/DETOUR AGREEMENT HRD 1-0283 – WSDOT PROJECT OL3326, SR 525-JUNCTION BAYVIEW ROAD

The Board, by unanimous motion, approved and signed Local Agency Haul Road/Detour Agreement #HDR 1-0283 with Washington State Department of Transportation (WSDOT) for the proposed detour route for WSDOT project OL3326, SR 525 Junction Bayview Road located in Section 17, Twp. 29N., Rge. 3E, detour roads Marsh View Road and Howard Road.

HEARING HELD: CANCELLATION OF FRANCHISE #313 – SUN MOUNTAIN CONSTRUCTION; SEWER LINE FRANCHISE – HULTMAN ROAD

Chairman Thorn opened a Public Hearing at 2:20 p.m. as advertised, for the purpose of considering proposed cancellation of Franchise #313, Sun Mountain Construction, for sewer lines franchise in Hultman Road; Sec 18, Twp 32N, Rge 3E. Condition #11 of Franchise #313 approved on November 15, 1999 states that the construction that is authorized through the franchise shall commence within one year from the date; otherwise, the franchise shall be null and void and terminated upon notice.

Mr. Legat recommended termination of the franchise effective this date because no application has been submitted for a permit to do work within the County right-of-way; there has been no authorized construction since the franchise was granted. Notification as required was provided to Sun Mountain Construction twice, and verbally with the franchise holder on a visit to the Courthouse recently and the franchise holder expressed no interest in maintaining the franchise.

There were no comments made by members of the public either for or against cancellation of subject franchise. Franchise holder was not present at the hearing.

The Board, by unanimous motion, canceled Franchise #313, Sun Mountain Construction, for sewer lines in Hultman Road; Sec 18, Twp 32N, Rge 3E.

CONSULTANT AGREEMENT PW-0120-20 FOR BOGUE PIT RECLAMATION PLAN

Mr. Legat recommended approval, with regard to proposed development of a reclamation plan for the Bogue Pit, of an agreement with the firm of Fakkema & Kingma, #PW-012020 [W.O. 111] in the amount of \$22,652 to develop a reclamation plan. The Bogue Pit is owned by the County, and consists of 13.3 acres adjacent to Taylor Road, on North Whidbey. The property was identified as mineral lands in the Comprehensive Plan as well as adjacent lands, and has been used as a gravel pit by the County in the past. Adjacent property owner is in the process of applying for permits to open adjacent lands as a surface mining operation. Original intent was to do a joint site reclamation plan but DNR advised that the County had to go through the full permitting process.

- By unanimous motion, the Board approved Agreement #PW-012020 with Fakkema & Kingma to develop a reclamation plan for the Bogue Pit.

- **PETITION SUBMITTED FOR VACATION OF PORTION OF WILKES GARY RD.**

- Petition for Vacation of County Road for a portion of Wilkes Gary Road, Camano Island, petitioned by J. B. Garrison, Plat of Wilkes Gary Heights, Lots 4-1 and 4-2, Sec. 25, Twp 30N., R 3E, was by unanimous motion of the Board, referred to the County Engineer for review and processing, and recommendation back to the Board.

- **CONSULTANT AGREEMENT PW-012013 – AERO-METRIC, INC. - PHOTOGRAMMETRIC MAPPING SERVICES**

Based on review and recommendation of approval by the County Engineer, the Board by unanimous motion approved Consultant Agreement #PW-012013 with Aero-Metric, Inc., Seattle, for the Iverson Farm Photogrammetric Mapping Services under Work Order 397, in the amount of \$6,512.00. This relates to a required feasibility study.

- **GRANT AGREEMENT SRFB 00-00-1844N (PW-012016) – SALMON RECOVERY FUNDING BOARD (SRFB) & ISLAND COUNTY; SALMON SUPPORTING CREEK INVENTORIES, RESTORATION AND CULVERT ASSESSMENTS**

Grant Agreement SRFB 00-00-1844N (PW-012016) with Salmon Recovery Funding Board (SRFB), handled by IAC, the Interagency Committee for Outdoor Recreation, for Salmon Supporting Creek Inventories, Restoration and Culvert Assessments [Maxwelton, Glendale and Chapman Creeks], for a total project cost of \$205,000, was presented to the Board with a recommendation of approval from the County Engineer. Of the total project cost, \$155,000 comes from the SRFB grant, with \$50,000 County share, of which \$15,000 will be donated labor from various organizations within the area and \$35,000 from the Road Fund.

By unanimous motion, the Board approved and signed Agreement SRFB 00-00-1844N (PW-012016) with Salmon Recovery Funding Board (SRFB), for a total project cost in the amount of \$205,000.

TERRY'S CORNER PARK & RIDE FACILITY – CLOSING PAPERS AND RELATED DOCUMENTS REQUIRED FOR PURCHASE OF 5 ACRES FROM BROWN & COLE

By unanimous motion, related to Terry's Corner Park & Ride Facility, the Board authorized Chairman Thorn to sign all closing papers and any related documents required for purchase of 5 acres from Brown & Cole per Letter of Understanding dated October 26, 1999, and the Purchase and Sale Agreement dated November 6, 2000 [BICC 99-068], including amendments, providing there are no changes to the dollar amount or conditions already discussed and approved.

PRESENTATION TO COUNTY ENGINEER: CERTIFICATE OF GOOD PRACTICE YEAR 2000 APPROVED BY RESOLUTION OF THE COUNTY ROAD ADMINISTRATION BOARD

On behalf of the Board of County Commissioners, Chairman Thorn presented to the County Engineer the Certificate of Good Practice Year 2000 approved by Resolution of the County Road Administration Board.

- **HEARING HELD: ORDINANCE #C-19-01 (PLG-001-01) - ADOPTING SUBSTANTIVE AMENDMENTS TO THE ISLAND COUNTY SHORELINE MASTER PROGRAM, CHAPTER 16.21 ICC, AND CHAPTER 17.05 ICC.**

Chairman Thorn opened a Public Hearing at 2:45 p.m. having been continued from March 12, 2001, on proposed Ordinance #C-19-01 (PLG-001-01) In the matter of adopting Substantive Amendments to the Island County Shoreline Master Program, Chapter 16.21 ICC, and Chapter 17.05 ICC.

Attendance:

- **Staff:** Phil Bakke, Planning and Community Development Director
Jeff Tate, Planning Manager
Public: Approximately 12 [Attendance Sheet GMA # _____]
Press: Mary K. Doody, Coupeville Examiner

- **Correspondence Received since last hearing**

4/7/01 Letter from Maxine Keesling – Adoption of Substantive Amendments to SMP GMA # _____

4/23/01 E-mail from Barbara Brock, Member, Island County Water Resources Committee, Camano Island, Regarding Shoreline Master Program GMA # _____

4/23/01 Fax from Steve Erickson, WEAN, regarding Proposed Substantive Shoreline Amendments GMA # _____

Hearing Documents: [same documents as provided 3/12/01]

- Ordinance #C-19-01 (PLG-001-01) In the matter of adopting Substantive Amendments to the Island County Shoreline Master Program, Chapter 16.21 ICC, and Chapter 17.05 ICC as introduced and set for hearing [GMA record #6291]
- Cover memorandum and packet dated 2/8/01 from Jeff Tate - memorandum outlines each Substantive Amendments proposed to the Shoreline Master Program [GMA record #6292]

Mr. Bakke clarified that today's hearing was on the 27 proposed amendments as outlined in Mr. Tate's Memorandum, not the Shoreline Master Program [SMP] altogether. This is not a hearing to comply with the fairly newly-released DOE shoreline guidelines to address the listing of salmon as a protected species and path A and B approach.

As Mr. Tate commented, the Board in 1998 adopted the Comprehensive Plan with all required elements. Unlike other elements of the Comprehensive Plan, the SMP requires approval and filing with the Department of Ecology [DOE] prior to implementation. When the Board adopted elements in 1998 all went into effect immediately except for the SMP, which was transmitted in 1998 to DOE for review. In 1999 during DOE's 30-day public comment period, a number of groups submitted comments which were transmitted to the County for response as far as how the County thought those concerns and issues had been addressed. The next step will be for the County to transmit a response back to DOE, and DOE will prepare a responsive summary dealing with the County's comments.

Alice Schisel, Northwest Regional Office, Department of Ecology, Bellevue, noted that from the time the SMP was submitted to DOE for review and approval, County staff and DOE have been working to iron out some areas. Some of the changes DOE would have proposed have in fact been addressed by the County, non-substantive in nature easily addressed and now officially changed through ordinance. The changes proposed today represent the last group of substantive issues separating the County's submitted version and DOE; DOE believed there were some inconsistencies with the Shoreline Management Act. The next step will be for the Northwest Regional Office to forward the official packet to Tom Fitzimmons, Director, DOE, Olympia, who will send the County a letter approving the program with some substantive changes and the County will need to review its work to make sure those have been addressed. When the County assures DOE through an ordinance that the County has officially approved the changes will be the day on which the County's master program becomes effective. There are a few minor changes that DOE and staff have discussed. The process requires DOE to send the County letter saying what the issue or concern is what is required to change it. The actual wording may differ somewhat from the wording presented in the letter, but has to be substantively the same. The proposed changes presented today she was familiar with and prepared in concert with what staff and DOE have been discussing. Should there be substantial disagreement on receipt back from DOE the appeal process is to the Growth Management Hearings Board, but Ms. Schisel did not believe there would be a huge disagreement between where it is and where it will be with these changes.

What Mr. Bakke anticipated today was that the Board would receive public input on the 27 proposed amendments, following with Board deliberations, closing public testimony with the exception of communication from DOE so the County can then transmit the packet to DOE, and Ms. Schisel present those to Mr. Fitzimmons for review and formal communication to Island County prior to a projected hearing continuance date of May 14.

Mr. Tate then went through each of the proposed 27 amendments briefly prior to the public testimony using the hearing documents [GMA record #6291 and #6292] inviting audience members to follow along using the same documents. Following the summary of 27 proposed amendments, he provided to the Board and public Staff Supplemental Technical Corrections and reviewed each of those proposals, most typographical errors, redundant sections or statements, etc. [GMA # _____]

Supplemental Technical Corrections

Page 3-5, Line 7 – Delete “in archaeological sites”

Page 3-16, Line 3 – Change heading to “ENVIRONMENT”

Page 3-24, Line 3 – Change “the NATURAL Environment” to “other environments”

Page 3-47, Lines 9 and 14 – Delete references to the Washington State Attorney General

Page 3-67 and 68 – Delete entire section related to Shoreline Environment Designations

Page 3-69, Line 2 – Remove purpose statement #4

Page 3-70, Line 22 – add “and SMA regulated wetlands” after “(WAC 173-18-190)”

Page 3-72, Line 9 – Change reference to “Washington State Department of Fish and Wildlife”

Page 3-73, Line 12 – Change reference to “Washington State Department of Fish and Wildlife”

Page 3-83, Line 21 – Add “and shoreline associated wetlands” after “stream beds”

Page 3-86, Line 18 – Delete “Accessory structures shall be constructed to protect existing views from adjacent principal residences and to minimize adverse impacts to the environment” and add “and are not located within the native vegetation buffer” to the end of the sentence.

Public Testimony

Holly Keesling Towle, Seattle, spoke on behalf of her family who has been the owner of property known as Surfcrest Beach Association for 50 years. She provided a letter from legal counsel dated this date from Alan Wicks, Preston/Gates/Ellis LLP, Seattle, regarding Surfcrest Beach, focusing on Amendment #13, page 3-62 [GMA #_____].

Ms. Towle objected to proposed Amendment #5 [Page 3-20] to the extent it could be construed to apply to existing development such as Surfcrest, stipulating that all new subdivisions and non-residential development in the Conservancy designation should be required to provide community public access. Over the years her family has never been able to figure out the designation of the property; although County planning maps show the property designated as Rural, they have been told orally it is Conservancy. Surfcrest is a gated residential community with privately owned tidelands and no public areas, and is about 40 years old. Language should be added to clarify that, otherwise she believed it would raise a constitutional taking problem.

One objection to Amendment #13 is that it takes what is now permitted in Conservancy i.e. building a single family residence, and makes it conditional. Put together, #5 and #13 would mean in order to get a permit to build a single family home must provide community public access to private tidelands, which would not only violate the Surfcrest covenants, but would be an unconstitutional taking. Although the language states “all new subdivisions...” she questioned if it really meant that especially when the next sentence reads: “new non-residential development does not include remodeling, reconstruction due to natural disaster, minor expansions. If it does not apply to Surfcrest, she would withdraw the objection. She pointed out as well that there are recorded easements within Surfcrest that allows members of the community to have access to the beach, which she views as a private contractual arrangement. She referred to the letter she submitted today which goes through some of the legal reasons why that amendment should not be made, requesting that current code language be retained keeping it as permitted instead of conditional.

Mr. Tate confirmed intent was that this apply only for newly platted lots, so no member of Surfcrest would be required to provide for community public access. Intent also was to require community public access to mean to serve the residents of that plat. Commissioner Shelton agreed this needed to be clarified because, agreeing with Ms. Towle’s assessment that when talking about community access that does not refer to development access, but community access.

Ms. Towle acknowledged that some of the problems came as a result of Surfcrest having been mis-designated in the first place, something she and her family tried over and over again to change during the Growth Management hearings. Surfcrest has a road that serves the whole community; underground telephone, electricity and water; has a 50,000 gallon concrete water reservoir with vested water rights from the State. There are two developments to the south of Surfcrest that have exactly the same terrain and have been designated Shoreline Residential. Next, she reviewed from page 2 of her submittal some of the legal problems with passing the amendment from permitted to conditional, and raising the whole issue of unconstitutional takings, also documented in several previous letters from the family that should be included in the County’s Growth Management files. Although Mr. Tate’s Memo and set of 27 proposed amendments explains some of the reasoning by DOE, she did not believe the rationale addressed the difference between permitted and conditional. The Conservancy designation itself is defined as an area which permits varying densities of human activities, and it was her opinion the way to get density with humans was a house, etc., yet the proposal is to take that permitted part out.

She referred to page 3 of her submittal talking about Shoreline Residential designation and how that interplays with the unconstitutional taking issue. Her belief is that the appropriate designation for the property is Shoreline Residential. Her family has said they could live with that as long as they can build, do what the covenants for that property require them to do and the buyers of their property think they get to do. She asked that the County not make the change from permitted to conditional. If that change is made, or even if it is not, that the County re-designate Surfcrest as Shoreline Residential.

As to the issue of unconstitutional taking, Mr. Tate cited from the Washington Administrative Code [WAC] the following reference to exemptions from the substantial development permit [SDP] process:

- “an exemption from the substantial development permit process is not an exemption from compliance with the Act or the

local Master Program nor from any other regulatory requirements ”

- “a development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use must obtain a conditional use permit even though the development or use does not require a substantial development permit”.

He interprets that to mean that a use can be exempt, yet the County can still require a conditional use permit. As far as the designation of the property, he looked at it when received the first letter from Maxine Keesling and it was Conservancy. He did not know what the designation was of the next development, Moran Beach. Although he did not know how Surfcrest became designated Conservancy, he did know it had been designated such for a long time, and guessed even since the 1970's and noted that things changed since then in terms of other code requirements for development. The venue for someone wanting to change the designation would be through a legislative amendment, considered during the annual review of the Comp Plan. Changing a shoreline designation ultimately would require DOE approval as well.

Ms. Schisel believed that Island County's Conservancy lands were so designated because at least in large part comprised of critical areas or have portions of critical areas such as steep unstable slopes, wetlands, etc. It may be very appropriate for lands so designated to be developed with a single family house, there may be other cases where a single family home or any kind of development would not be appropriate. She could not speak to the subdivision in question. It is not uncommon for jurisdictions to have conservancy environment residential uses as conditional uses.

Tom Fisher, representing Citizens Growth Management Coalition [letters are included in the record] made some additional comments:

Amendment #8. Inconsistent language where it says the watermark or within shoreline associated wetlands shall be prohibited as far as mining but under 6, 7 and 8 that language has been toned down to say that activities should be encouraged, and he thought that should be “shall be encouraged”. Likewise in #7 and #8.

Amendment #12. Modified language is correct and appropriate but did not understand the rationale given. The rationale seems to make clear that the regulations do not preclude any further fill from being put on the property but it is confusing because it seems as though the first permitted use of 250 cubic yards or less could be made, then another fill applied for.

A clarifying point was made by the Commissioners to note that the language under rationale is not code language. And Mr. Tate explained that whether or not it is an exemption this only states that 250 cu. yds. brought in at the time the house is constructed, and fill that meets criteria for A, B and C will be processed under an exemption permit which means this will be reviewed under a building permit. Any more fill would require a SDP at that time or later on. There is still an avenue if someone wanted to bring in beauty bark and spread it over a certain portion where a SDP is not required for that.

Amendment #18; page 3-83 where the language states in one sentence “mining of marine and lake beaches and stream beds including but not limited to sand, gravel, cobbles, bolder or quarry rock” he would like included in the next sentence too “or stream bed”. since stream bed”. He believed it was a redundant sentence [in an unequal way]; if retained, should include stream bed for consistency.

Amendment #21, page 3-87 – item #19. Second sentence should read: “The native vegetation zone shall be designated on the site plan, approved by the County planning staff and recorded with the County auditor” where it reads should right now.

Mr. Bakke also noted that the word staff should be changed to Department in item 19.

Amendment #22; page 3-88, item 26. There needs to be some definition for the term “shed”.

Amendment #26; page -96; item U, “Use of downed logs, snags or rock work to enhance habitat and to provide a more natural appearance to the shoreline should be encouraged to be incorporated into the design where appropriate”, requested that should be changed to shall.

Commissioner McDowell explained that the word encouraged was the controlling word; this is a policy statement and using the word should is more appropriate.

Margaret and Greg Olson, Seattle, purchased two lots in Surfcrest, closing on January 5, 2001 with plans for building their dream retirement home, Mrs. Olson having been born and raised on the Island. They also bought 200' of waterfront. When making their offer to purchase in November, the Olsons followed up by checking with Planning and the Building Department and told they would just need to file for a permit; setbacks were agreed and understood; agreed to an easement with Surfcrest for other homeowners for access to the beach; agreed to several other buffers within Surfcrest. They hired an attorney to go through the paperwork; had the

land surveyed; checked with Krieg Construction about fill and driveways; spoke with the builder, Scott Yonkman to make sure everything was in order. If nothing else, they feel that Surfcrest should be grandfathered in. Their concern deals with permitted versus conditional question and the buffer under Amendment #21 and want to know that they can build a single family home, their retirement home. Their decision to buy was based on the fact it was a permitted area, and now are concerned with the possibility of their rights being taken away.

Tom Roehl, T. J. Roehl & Associates, Project Planning & Management Services, Freeland, representing himself, the South Whidbey Port District and Freeland Water District, submitted a letter dated 4/23/01 regarding proposed changes to ICSMP – comments and attached pages with edits regarding changes proposed to the SMP and associated use requirement codes [GMA # _____]. He added the following summarized comments.

Amendment #13. Wherever a change is proposed for something now exempted so that it becomes conditional instead of permitted, the Board should not exercise that option because the alleged benefit does not exist. Even though the DOE representative indicated that perhaps the criteria for Conservancy has something to do with critical areas, in fact within the designation of criteria for Conservancy the presence of critical areas is an additional item only if one or more of the preceding items exist first. If Surfcrest [or other such areas] was designated Conservancy the County should make sure that Conservancy designation was placed only where criteria is met.

Page 3-52-53, Item DD, the definition for landfill, and again in Use Regulations where it appears under dredging and landfill, he is concerned about the definition of Landfill, where a proposed phrase is added making it inconsistent with the exemption section about adding landscaping or soil enrichment. The addition should not be made, or it should be made clear that even if more than 250 cu. yds. it should be regulated some way other than landfill if adding a couple of inches of topsoil to their lot for example. To him these are two different sentence structures with two different purposes. The definition of landfill and the exemption section need to be coordinated better.

Mr. Tate referred to page 3-61 and suggested language could be changed in #2 to say landfill instead of fill. The intent was to make this threshold exempt.

Page 3-61. Use of the words “original construction” goes too far. The WACs allow that in calculating the 250 cu. yds. to not include fill necessary to build a septic system or drainfield. With regard to the statement in 2.b, “not to include fill required for parcel flood proofing”, he noted that within that 250 cu. yds. the property owner should be allowed to make their own choice about using that 250 cu. yd. exemption for elevating for flood plain requirements. Insert after “building code” the words “or flood plain ordinance requirements”. The language now included “or other fill activities” unless changes he suggest are made, then the septic drainfield will be subjected to that rule as well.

On behalf of the Port District of South Whidbey he saw a significant difficulty with language on page 3-83, item #11 under use requirements: “Marina related structures or uses which are not in and of themselves shoreline dependent shall not be located over water”. If anything has to be done in this section, he suggested using the word enjoyment instead of shoreline dependent.

Mr. Tate explained there was a difference between what exists today and what would be new: if a restaurant exists now and discontinues and someone else wants to open up a different restaurant, that would be allowed. If someone were operating a real estate office over water and discontinued, and someone wanted to operate an insurance office that would be allowed.

Amendment #5. Shared comments made by the Keesling family and previous speakers about the community access issue. The term community access should be defined to clearly state it means community access to public lands, not private property. He did not agree about prohibiting mining and commercial AG, and there needs to be a definition of what mining is, such as was included from DNR incorporated into the Zoning Ordinance.

ATV's on Beaches and Tidelands. Asked for clarification whether intent really was to prohibit ATV's on beaches and tidelands county-wide. If so, he could see real problems and questions such as: how would that be policed and enforced; who would be cited; how can the landowner have control over that; what is the recourse and appeal? This is something that should be taken out of the shoreline act arena and first alert the public to the problem, and treat it as a separate issue through the police powers which has been upheld by the Supreme State Court in the case of jet skis in San Juan County. It is a big issue and more thought needs to be given. He did not believe that once in awhile the ATV activity would be damaging to the beach but acknowledged the practice was getting pretty profuse. The actual use pattern that is most common he agreed is damaging but thought the County had the police powers to regulate that.

Confirmation of intent provided by Mr. Tate in the affirmative as far as the prohibition.

Amendment #22, item #23, Stairways and tramways, page 3-87, a provision that stairways and tramways located adjacent to fish and wildlife habitat conservation areas shall not include over water structures, landings that require fill or shore protection structures. Almost all the shorelines are fish and wildlife conservation areas and having landings to support the bottom part is a critical element of designing a stairway or tramway 80-90% of the time. Landings are essential and he

suggested something other than this language.

Amendment #26, Items t) and u) are not consistent. New section needed to encourage soft shore armoring; soft shore armoring requires construction out on the beach. Riprap in a generic sense can include other materials than rock. Instead of stipulating clean quarry rock free of loose dirt language should say "shall be free of any pollutants". In u) where referring to use of downed logs, snags or rock work, he pointed out most of that in fact has loose dirt.

Amendment #27. On behalf of the Freeland Water District, the proposal would essentially prohibit water tanks within 200' of the shoreline when this use should be permitted in all designations, and could qualify that by indicating it had to be located on the tops of bluffs or some elevation above the beach. There is no best available science to indicate water tanks should be prohibited within 200' of the shoreline. The term needs to be defined to distinguish type of water tank.

In closing, Mr. Roehl hoped the Board would not make a final decision today; leave the record open for more than just DOE and if DOE has more comments those comments should be available to the public before the Board takes action.

Marty Behr, Freeland, a member of Citizens Growth Management Coalition but at this hearing appearing on behalf of People for Puget Sound, Seattle, raised a process concern. When the Citizens Growth Management Coalition submitted some suggested changes to DOE about two years' ago People for Puget Sound supported those changes especially those having to do with salmon habitat preservation on the shoreline. People for Puget Sound are asking that the Planning Department obtain from DOE the response showing the way in which DOE took into account issues raised by Citizens Growth Management Coalition, and having an opportunity to review that response to determine if there are other amendments beyond those that DOE has proposed that should be included in the deliberations before the Board of County Commissioners.

Ms. Schisel explained that the response and summary is a requirement in the WACs intended to assure that people who do take the time to comment on documents know how they are addressed by the approving authority, and the County must respond to all the issues raised in individual letters sent to DOE during the state comment period. The Island County Planning Department has done so and Ms. Schisel is in the process of addressing their comments and making her comments. The County's document is not a document generally made public or distributed rather something part of the record, but it is a public record and not distributed ever except upon request. She confirmed that the County could release a copy of the incomplete response and summary and will be available in DOE's file upon completion [WAC 173-26].

Mr. Tate confirmed that if DOE had no problem releasing the County's portion, he would provide same upon request. Ms. Schisel agreed that would be fine, and that when she finished preparing her comments and approved for DOE record, that would be available.

Mr. Fisher and Mr. Roehl indicated their desire to receive a copy as well. Others interested in receiving a copy should let County staff know and Ms. Schisel will provide a copy.

Alice Schisel responded to comments made thus far.

Landfill Issue. The WAC is actually quoted on page 3-61 and should be read very carefully because it does not say that 250 yards of fill is authorized, rather says "grading which does not exceed 250 cubic yards and that is aside from any grading or fill that is necessary for a septic system so the septic system stands alone. The County has attempted to define that inherent in that exemption for single family residences there has to be some fill – the fill needed for these specific purposes would be exempt. This exemption is and always has applied to original construction of a single family home. In terms of future landscaping not associated with the original building of a residence if not in a wetland or below the ordinary high-water mark and less than \$2,500 in value then it would be exempt. Landscaping at a later date, less than \$2,500, not in a wetland or below the ordinary high water mark but still within 200' of the shoreline, can be done.

Existing over-water marina development. DOE has no problem with rewording if necessary but she did not believe it was necessary, to make sure that adaptive reuse of existing over water structures can be a little more permissive than new construction. DOE would not encourage that the County allow non water dependent uses in a new over water marina development but for adapting to existing structures there is no concern.

Prohibition of ATV's on Tidelands. Agree that could be and other jurisdictions do regulate jet skis, etc., through police powers and did not believe there was reason to think that is not appropriate; however, it is also appropriate to leave it in the master program to make a good clear statement, alerts more people to the fact that these vehicles are not wanted on the beaches.

Stairways/Tramways. Agreed with regard to stairways abutting fish and shellfish conservation areas those may not be feasible unless supported by structures below the ordinary high water mark. DOE strongly recommended that not only on Conservancy shorelines but also areas abutting fish and shellfish conservation areas these be conditional uses. Suggest review of that section pertaining to fish and shellfish critical areas.

Mr. Tate said that if it did not require a landing, it could be looked at as an exemption; if it did require some sort of landing it would

be a conditional use permit. Ms. Schisel made the point that the County could not give a conditional use permit for something that is prohibited. [refer to page 3-87 #23].

Scott Yonkman, Oak Harbor, focused on proposed Amendment #13, the change of designation from permitted to conditional uses, and spoke in support of Margaret and Greg Olson who purchased property in Surfcrest, and the Keesling family with respect to the continued use of their property as it is developed now. Experience comes from being a builder in Island County for 20 years and having built many waterfront homes. The permit process in place right now to build a home on the waterfront is very thorough and protects the shoreline. His basic concern is for the continued ability to use property and waterfront property around Island County. Surfcrest is a beautiful beach but in his opinion, not a particularly sensitive area that would require more restrictive designation. It is no bank, no steep slopes, not a lot of vegetation or trees, no wetlands

anywhere near the designated building sites. He asked for caution in this process as to how these changes in designations are evaluated, particularly in the Surfcrest beach stretch of beach. Regarding fill [page 3-61] listing the type of fill allowed in his experience in building around the shoreline, in three situations this has become very sensitive issue, one in particular in the Mariner's Cove area. Some of these requirements are somewhat subjective i.e. "structural fill only as necessary to comply with building code requirements related to the structural integrity of the foundation and not to include fill required for parcel flood proofing, wetland fill or fill activities". Although he agreed wetlands should not be filled to build on, if it is a designated building site or lot as it was in all three cases the amount of fill necessary to just meet structural requirements for backfill and fill inside the foundations that were permitted and poured to bring up to a grade in order to then pour concrete floors well exceeded 250 yards in the one particular case.

As far as structural backfill inside the foundation, Ms. Schisel saw the issue to be the kind of permit. Single Family homes deal with the ordinary and the situation described seems to be extraordinary, a unique design and perhaps the applicant could have chosen another design and the fact they chose a particular design that required a whole lot of fill should not be treated as an exemption. In relation to the testimony about Surfcrest and whether or not a conditional use permit is required or perhaps an error was made in the designation of Conservancy, she was not very familiar with the Surfcrest environment, but believed it was because there were wetlands in the near proximity, but did not know how the wetlands relate to the property as a whole or to individual lots. It is her understanding in Island County that most of the property designated Conservancy was because there were some geophysical constraints such as wetlands or in many cases steep unstable slopes. It may be at least for a portion of that a redesignation would be appropriate rather than taking away the conditional use requirement.

To Chairman Thorn, that was analogous to split zoning which he was dead against. Ms. Schisel pointed out, however, that there are probably cases that existing subdivisions in the County are designated in more than one shoreline environment so designated on the basis of physical characteristics. Being a conditional use does not mean it will be denied.

Ms. Schisel went on to explain that a permitted use has to be allowed anywhere that environment designation exists as long as it meets the regulations that pertain to single family houses. An application for a residence in a Conservancy environment if for example the proposed lot is a steep unstable one and there are serious concerns about safety to the environment and neighbors and owners, the conditional use requirement gives the County and/or DOE a better hand at saying no if those conditions exist. From her experience, conditional use denials are not many. She thought the Board could consider for new subdivisions in Conservancy environments a conditional use and the development of existing single family lots permitted uses. Her major concern would be wetlands and steep unstable slopes that pose a real hazard to development.

In response to Rufus Rose who inquired about the process, whether public input would be closed today, and the record left open for additional comments in the future, the Chairman acknowledged that the process had been going on for years and it was the goal to get it to completion and put it to bed. At the same time the County is obligated to respond to the content of a letter the County has yet to receive from DOE. He was inclined to close public as of this hearing and bring the matter to closure.

Commissioner McDowell agreed that was his preference too, and unless there were substantial changes required by DOE letter he would not envision reopening any hearing.

Commissioner Shelton's perspective was that enough issues had been brought up such that he was willing to go back to the drawing board. If in fact some items are changed and present a new plan, the public needs to have another opportunity to comment. He was not so sure he agreed to close public testimony, make changes and adopt.

Ms. Schisel stated that DOE was in agreement with these changes and the very small modifications discussed today, and virtually guaranteed there would not be a whole new set of recommendations; DOE's required changes would deal with these. DOE could also probably agree with some of the minor changes discussed today, and would not see wholesale new changes. Any changes would have to be at the County's request as far as DOE is concerned, and DOE would really like to see it brought to rest as well. Once DOE's letter is received, the County will have to officially approve the changes in public hearing.

Rufus Rose, Clinton, who was the Chairman of the Island County Planning Commission in 1998 when the original document was approved, commented that what the Planning Commission adopted and recommended to the Board was significantly different than what DOE is asking to be incorporated. When the DOE representative absented herself just now, he believed that should mandate an extension of the public hearing with additional comments to be available. He asked that the Board consider changing the purpose

statement on page 3-5 because it has been expanded significantly by DOE. He sees this as a mandate from top down where the County is being told what it must do and apparently through staff negotiating. DOE appears to be on record ordering Island County or it will not be approved which seems to be holding County ransom. The Chair reminded that that was outside the scope of this hearing.

Mr. Rose further commented on the following:

250 cu. yds. With regard to the 250 cubic yards, for a standard 2000 sq. ft. footprint house comes to 3.375' of soil that can be moved around only under the foundation, which seems to be arbitrary. That threshold should be changed to reflect the size of the foot print of the house and size of the lot it is being built on.

Flood Zone. FEMA recognizes that the maps are not accurate and are trying to undertake revisions to those maps. That places an additional burden on the individual applicant and staff

Waterfront lots. DOE requirements abuse the customs and economic history of Island County by imposing restrictions that are not consistent with the way this county has developed. The requirement for a 330' waterfront lot is not traditional in Island County; historically it has been as low as 70 front feet waterfront lot and permitted; this stipulates that in any area it must be 330' which is convenient in a perfect section that has been divided perfectly with 330' frontages. The reality is there are numerous aliquot part waterfront lots that have been divided as aliquot parts, and he encouraged modification to that section of the code. He did not object to the concept of approximately 330', but objected to the fact that just because of the way the earth is built all sections are not square.

Mr. Tate clarified that every lot that would be created along the shoreline has 330' of frontage along the shoreline, that number used because it is the normal dimension of a 5 acre lot 330' x 660' ; this is for creation of new lots in the Natural designation only. Estimate that about 80% of the natural environment is public lands.

Community Access. The requirement to require community access to a beach deserves definition. Should not put that kind of government mandated restriction or covenant on private property and urged that be deleted. Requested the County not require private property owners regardless of location to have to let someone cross their property, and do not let the Planning Department use that as a condition of plat approval.

Mr. Tate verified intent was for local community access applicable to all new subdivisions to provide for public access to the beach and tidal area. Mr. Bakke explained this was not just to be able to walk up and down the beach; it is also for water access. The rationale for creating more public access is to not put the strain on the limited amount of public access to the beach that exists now.

Page 3-33, lines 11-12. "Although many commercial developments benefit by a shoreline location, only those that are water oriented or dependent...". His question was why, and did not think it was any business of the state or county to do that kind of thing. There are public health and safety regulations already in place, and this is not necessary.

Mr. Tate answered in this case this broadens the provision now in the Master Plan. The words dependent and water dependent are now used in the Master Program, and this change would expand the opportunity for businesses that are water oriented [the umbrella term] in the shoreline jurisdiction. Mr. Rose still believed it should be left out – why limit someone with the wherewithal to put a business at the end of a pier or dock.

Page 3-34, lines 8-10. Are those uses grandfathered if they exist now.

Commissioner Shelton confirmed none existed.

Page 3-34, line 13-1/2. Is the County using US Department of Agriculture definition or Island County's.

Mr. Tate explained that the language "or on prime agricultural lands" came about as a matter of consistency with the Zoning Ordinance, but really had no effect whether included or not. If this is deleted there is a later section that states it is not allowed – the same reference.

Page 3-61, Item #2, line 8. There used to be a 500 cu. yd. clearing and grading permit. This is confusing. Write in that there will be no charge for permit.

Page 3-61, Item 2a. Beauty bark included in the 250 cu. yds under normal landscaping and should not be included, it is organic not mineral. The allowance of 250 cu. yds. needs to be changed depending on the site and the house conditions. Whatever the number is, other landscaping materials that are organic should not be included in that.

Chairman Thorn agreed that landscaping materials of any type should not be included.

Page 3-86, #11. Accessory Structures – views. Who arbitrates how many degrees a person is allowed to block someone's view? This says none, and he questioned if that was reasonable. If it is the main view corridor, say that.

With respect to this issue, Ms. Towle suggested as a legal matter the County should obtain legal advice. She agreed to put this issue in writing for the Board's follow-up.

Page 3-90, #3, Mr. Rose noted as good.

Page 3-95, item r), lines 15-19. Words like "design and material of bulkheads shall be decided based upon a thorough analysis of alternatives; the preferred alternatives...". If someone needed a bulkhead who tells the property owner what is right; whose analysis? There should be provisions for flexibility. He would rather leave it up to the property owner.

As far as application of the code, Mr. Tate referred Mr. Rose to the previous page above the designation regulations under item n) , item vi indicates technical evidence indicating the need for the bulkhead..." and that would be a portion of the analysis.

Page 3-95, lines 21-22-1/2. Riprap – "sufficient size and weight to prevent movement by water" is physically impossible, therefore, such language cannot be enforced.

Amendment #13. DOE refused to cooperate with the Land Use Study Commission to obey the Legislature's order to have this done as part of the Land Use Study Commissions' proposed changes to the Legislature.

Amendment #27. Water Storage Tanks should not be prohibited within 200' of the shoreline provided the structure satisfies reasonable engineering for public health and safety.

Reece Rose, Clinton, Chair, Libertarian party in Island County, believed in local government, small government, responsive to the people. It is no longer the case that Island County controls its local planning because right now DOE is doing local planning for the County. Proposed Amendment #21 talks about the natural environment but the rationale indicates that DOE does not want to see residential development in the natural environment. This is top down planning and does not work; one size does not fit all.

Jean Wilcox, Langley, representing herself as a home and property owner, and the Property Rights Alliance, expressed concern about the ambiguity and openness to interpretation of much of the ordinance. Of real concern is that DOE will not approve and file Island County's Master Program unless these changes are adopted, which is a hammer of authority hanging overhead.

BOARD ACTION

By unanimous motion, the Board removed from consideration proposed Amendment #13 on Page 3-61 related to changing permitted to conditional for single family residences, thereby making no change current code leaving in place single family residences under Conservancy as a permitted use.

Further, the Board by unanimous motion, closed the public input portion of the hearing, but extended time by ten days for submittal of additional written input on the proposed 27 amendments, with the hearing continued to May 14, 2001 at 1:30 p.m. [Notice of Continuance – 5/14/01 @ 1:30 p.m. Ord. C-19-01 GMA #_____]

There being no further business to come before the Board at this time, the meeting adjourned at 6:45 p.m. The Board will meet next in Regular Session on May 7, 2001, at 9:30 a.m. Special Session to be held on April 25, 2001 at 11:30 a.m.

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

William F. Thorn, Chairman

Wm. L. McDowell, Member

ATTEST:

Mike Shelton, Member

Margaret Rosenkranz, Clerk of the Board