

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING
REGULAR AND SPECIAL SESSION - OCTOBER 22, 2001

SPECIAL SESSION

The Board met in special session beginning at 9:30 a.m. on October 22, 2001, 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. The purpose of the special session was to conduct a Budget Workshop related to the following budgets for a general review with the Budget Director. Notes taken during Budget Workshop will be placed on file in the Office of the Board of County Commissioners and the Budget Director. Next budget workshop will take place on November 5, 2001 at 1:30 p.m.

REGULAR SESSION

The Regular Meeting of the Board of Island County Commissioners was held on October 22nd 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: Greg Banks; Mike Hawley; Jane Koetje; Maxine Sauter;
Suzanne Sinclair
Others: Elaine Marlow; Dick Toft

Public Information Law. Hand-out: Everett Herald article 10/21/01 entitled "Agencies routinely violate public information law, audit find". Mr. Banks provided copies of the article and information on how to receive by mail or down-load from the web a manual to assist with compliance with the Public Records Disclosure Act. In light of the article, Mr. Banks thought it timely to follow up and noted he will plan for his office to give a brief training session [potentially at a department head meeting] for elected officials and department heads because it is an area of potential liability exposure for the County.

2002 County Budget

The Chairman verified that the Board continued to look into a number of suggestions in an effort to find the best way to work through the budget in terms of revenue deficit. His opinion was that nothing suggested thus far was "off the table" and the Board is in the process of trying to make some preliminary decisions. The Board is looking at finding ways to stretch things out, such as, for the motor pool to extend the lifetime of vehicles from 7 to 10 years, with a couple of exceptions, one the Sheriff based on safety factors for the type of driving necessary.

Commissioner Shelton added that the Board has taken under review banked levy capacity, but even at the rate allowed, still would not be an overwhelming amount - \$500,000 when looking at a shortfall in the area of 1-1/4 million dollars.

With regard to health issues and funding at the State level in light of recent events, there was some discussion about whether or not the State would be looking to put additional monies into the public health system. One of the things that Chairman Thorn commented about was a scheduled "panel" to take place at the Camano Town Hall meeting scheduled for the evening of November 7th with such folks as Emergency Services and the Sheriff to review what systems are in place and the considerable ability we have to deal with some of these issues. He would like to see such a meeting occur on Whidbey Island as well.

Meeting adjourned at Noon. Next Roundtable scheduled for 11/26/01 @ 11:30 a.m.

MINUTES APPROVED

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By unanimous motion, the Board approved and signed minutes from Regular Session of October 8, 2001.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: Voucher/Warrant #s: 109429-109689\$567,987.67.

Veterans Assistance Fund: *[emergency financial assistance to certain eligible veterans; the names and specific circumstances are maintained confidential]*. Claim V1-21, on appeal, as recommended by the Veterans Assistance Review Committee, was approved by unanimous motion of the Board in the amount of \$324.64.

STAFF SESSION SCHEDULE FOR NOVEMBER 2001

The Board, by unanimous motion, approved the Staff Session Schedule for November 2001 for distribution, outlining the regular staff sessions to be held on November 7 and 21 beginning at 9:00 a.m.

APPOINTMENTS/REAPPOINTMENTS TO BOARDS, COMMITTEES, COMMISSIONS

Island County Board of Health

The Board of County Commissioners received today a letter from Peter Borden, President, Board of Commissioners, Whidbey General Hospital, advising that the Board of Commissioners of Whidbey Island Public Hospital District recommend that Barbara Saugen be appointed to the Island County Board of Health to fill the position formerly filled by Holy Schoenknecht. The process is as outlined in Island County Ordinance #C-132-99 adopted on November 8, 1999. Ms. Schoenknecht resigned from the position for personal reasons in a letter received October 10, 2001.

By unanimous motion, the Board appointed Barbara Saugen to represent the Board of Commissioners for Whidbey Island Public Hospital District on the Island County Board of Health to fill the position formerly held by Holly Schoenknecht.

Policy Board for Transportation Safety Project – SR 20 – Sharpes Corner to SR 536

A letter was received from Paul Johnson regarding formation of a Policy Board for the transportation safety project - SR 20 Sharpes Corner to SR 536, advising about the restructuring of the project and inviting a delegate from the Board of Island County Commissioners to sit on the policy board. By unanimous motion, Commissioner McDowell was appointed to serve on the Policy Board representing the Board of Island County Commissioners.

HIRING REQUESTS & PERSONNEL ACTIONS

The following Personnel Authorization Actions were approved by unanimous motion of the Board, after briefing by Dick Toft, Human Resource Director:

<u>Dept.</u>	<u>PAA #</u>	<u>Description/Position No.</u>	<u>Action</u>	<u>Eff. Date</u>
Juvenile Ct.	108/01	Vol. Pro Asst.CASA #1905.00	Replacement	11/12/01
Superior Ct.	109/01	CH Facilitator .2 fte #2009.00	Replacement	10/29/01
Central Ser.	110/01	Tele Specialist #707.00	Repl/Pers. Action	11/13/01
Central Ser.	111/01	Microcpr Supt. Tech #712.00	New Position	10/22/01

[new position 712; cancel position #708]

PAA #112/01, for Chief Deputy Auditor, Position #201.00 was presented and discussed. While the Commissioners

agreed on the proposed personnel action that the employee be paid at the base rate as opposed to entry level, there was some discussion as far as effective date. The Auditor's request was that the effective date be September 1, 2001. Commissioners Thorn and Shelton agreed. Commissioner McDowell was concerned about doing that since typically the action is effective the date approved.

On motion of Commissioner Shelton, seconded by Commissioner Thorn, the Board by majority vote approved PAA 112/01 with an effective date of September 1, 2001; Commissioner McDowell opposed.

RESOLUTION #C-129-01 SUPPORTING THE 2001 UNITED WAY DRIVE WITHIN ISLAND COUNTY

Dick Toft presented for the Board's action proposed Resolution #C-129-01, supporting the 2001 United Way Drive within Island County, typically an action taken annually this time of year.

Chairman Thorn sits on the United Way Board and is aware that with events of September 11th and subsequent events, many dollars have been directed to the East Coast and concern has been raised locally that sufficient dollars remain to deal with local concerns and problems. He stressed the importance of supporting local folks as well and the need for everyone to pitch in locally.

By unanimous motion, the Board approved Resolution #C-129-01 supporting the 2001 United Way Drive within Island County and designating the period of October 22nd to November 9th as the Island County United Way Fund Drive.

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

**IN THE MATTER OF SUPPORTING]
UNITED WAY DRIVE WITHIN ISLAND] RESOLUTION #C-129-01
COUNTY]
]**

WHEREAS, United Way of Island County is a major contributor of funds providing support to organizations serving community needs for infants, youth, adults, seniors, and those with physical; and mental health problems;

WHEREAS, many of these programs are proactive and address issues before they become County wide problems, it is in the County's best interest to provide active support to United Way;

WHEREAS, United Way returns 92% of funds collected directly back into programs that meet the needs and serve the citizens of Island County;

WHEREAS, all employees of Island County are encouraged to remember citizens of the County who find themselves in a time of need and who will benefit from our generosity;

WHEREAS, it is requested that each department identify an individual to be the department's 2001 coordinator who can answer questions and provide assistance in the conduct of this year's drive;

BE IT RESOLVED, that the Board of County Commissioners designates the period of October 22nd to November 9th, 2001 as the Island County United Way Fund drive.

ADOPTED this 22nd day of October, 2001.

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

William F. Thorn, Chairman
Mike Shelton, Member

Wm. L. McDowell, Chairman

ATTEST: Elaine Marlow
Clerk of the Board

BICC 01-696

HEARING SCHEDULED: ORDINANCE #C-130-01 – ORDINANCE REDESIGNATING HAZARDOUS MATERIALS INCIDENT COMMAND AGENCY

Betty Kemp, Director, GSA, recommended the Board schedule a public hearing to consider an ordinance to redesignate the command agency for hazardous materials incidents in the unincorporated areas of Island County from Island County Emergency Services Department to the Washington State Patrol. The ordinance was accompanied by her cover memorandum dated October 15, 2001, and an October 10, 2001 memorandum from David L. Jamieson, Jr., Chief Civil Deputy Prosecuting Attorney.

By unanimous motion, the Board scheduled Ordinance #C-130-01 for public hearing on November 26, 2001, at 1:45 p.m.

CLAIM FOR DAMAGES R-01-022CD – CHRISTOPHER A. GARDEN

Claim for Damages R-01-022CD received by Christopher A. Garden on September 28, 2001, alleging demotion without cause, violation of due process and invasion of privacy. Betty Kemp presented her recommendation under cover memorandum dated October 8, 2001, concurring with the Sheriff that the claim be denied based on previous conclusions reached with the assistance of legal representation for claimant, and the Sheriff's Office.

By unanimous motion, the Board approved the recommendation of the Risk Manager and denied Claim for Damages R-01-022CD by Christopher A. Garden.

**WASHINGTON STATE DIGITAL COPIER CONTRACT #05899-
BLACKBURN OFFICE EQUIPMENT**

Under State Purchasing Contract for Digital Copiers, Contract #05899, the Board by unanimous motion approved the Contract for a new copier for the Island County Clerk's Office c/o Blackburn Office Equipment, #RM-CENT-01-0098, in the amount of \$12,282.66.

LIBBY BEACH IMPROVEMENT CONTRACT

As a follow-on to the award of bid by the Board on September 24, 2001, for Libby Beach Improvement to Lyrch and Associates, Mt. Vernon, in the amount of \$160,987.95, Ms. Kemp now presented for approval the Contract and Performance Bond with that firm, #RM-GSA-01-0099.

The Board by unanimous motion approved the Contract and Performance Bond, with Lyrch and Associates #RM-GSA-01-0099 in the amount of \$160,987.95.

CONTRACT #HS-06-01 AMENDMENT (1) FOR CONTRACT MONITORING SERVICES WITH SHARON M. ROBINSON

Contract Monitoring Services with Sharon M. Robinson, Contract # HS-06-01(1), in the amended amount of \$1,200, for a new total contract amount of \$5,200, was approved by unanimous motion of the Board [RM-HLTH-99-0105], for the period 1/1/01 to 12/31/01.

FREELAND SEWER PROJECT - NOTICE OF INTENT TO SOLICIT LIST OF QUALIFIED APPLICANTS FOR PROFESSIONAL ENGINEERING SERVICES

Phillip Bakke, Director, Island County Planning & Community Development Department, by way of memorandum dated this date, asked for approval to advertise to establish the list of applicants for request for proposal for the

Freeland Sewer Project.

His memorandum pointed out that the request for proposal is a two step process for professional engineering services; first to develop alternatives to provide sewer service for the greater Freeland area; second to choose a preferred alternative to develop and complete a wastewater facilities plan to accommodate sewer service needs for the greater Freeland area in conjunction with the ongoing Freeland Non-Municipal Urban Growth Area Study. The work is to satisfy and be consistent with the Ecology guidelines and WAC 173-240 and Federal requirements for a wastewater facilities plan (CFR 35.917). If approved, the Department will immediately commence advertising for the purpose of establishing a list of qualified applicants prior to the call for bids RCW 39.80.

By unanimous motion, the Board concurred with the request and approved advertising to establish the list of applicants.

RESOLUTION #C-131-01/R-58-01 APPROVING PLANS & SPECIFICATIONS AND AUTHORIZING CALL FOR BIDS FOR 2001 GUARDRAIL PROJECTS, WHIDBEY & CAMANO ISLAND - CRP 01-06

Resolution #C-13101/R-58-01 Approving Plans & Specifications and Authorizing Call for bids for 2001 Guardrail Projects, Whidbey & Camano Island; CRP 01-06, was approved by unanimous motion of the Board, as presented and recommended for approval by Bill Oakes, Public Works Director.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF ISLAND COUNTY, WASHINGTON

**IN THE MATTER OF APPROVING PLANS)
& SPECIFICATIONS AND AUTHORIZING) RESOLUTION C-131-01
CALL FOR BIDS FOR 2001 GUARDRAIL) R- 58 -01
PROJECTS-WHIDBEY & CAMANO)
ISLANDS, CRP 01-06, WO 86)**

WHEREAS, sufficient funds are available in the Island County Road Fund for 2001 Guardrail Projects-Whidbey & 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 9th day of November, 2001 at 11:30 a.m., Meeting Room 2, located in the Courthouse Annex, Coupeville, Washington.

ADOPTED this 22nd_{day} of October, 2001.

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

ATTEST: Elaine Marlow, Clerk of the Board

PROPOSED RESOLUTION ADOPTING REVISIONS TO ISLAND COUNTY REAL PROPERTY RIGHT-OF-WAY PROCEDURES

Proposed Resolution /R-59-01 Adopting Revisions to Island County Real Property Right-of-Way Procedures was pulled from the agenda by Mr. Oakes, for further work and discussion.

CONTRACT/CONTRACT BOND WITH ISLAND CONSTRUCTION SITE & UTILITIES, INC. FOR

SEAWARD WAY ROAD REPAIRS #CRP 01-04

As submitted by Mr. Oakes with a recommendation of approval in accordance with prior award of bid, the Board by unanimous motion approved the Contract and accepted the Contract Bond for Seaward Way Road Repairs under CRP 01-04, Work Order 129, with Island Construction Site & Utilities, Inc. in the amount of \$299,984.30

AGREEMENT FULFILLMENT STATEMENT #PW-012101-EAST CAMANO DRIVE, PHASE 2, FENCE & DRAINFIELD RELOCATION - BRIAN & LYNNE KEGLEY

Mr. Oakes recommended approval of Agreement Fulfillment Statement #PW-012101, for East Camano Drive, Phase 2, under CRP 96-05, W.O. #208, fence and drainfield relocation, by Brian & Lynne Kegley, Parcel #510-0980, located in Sec. 7, Twp 1N., R 3E. Conditions of the Fence and Drainfield Relocation Agreement dated 2/2/01 [Auditor's File #20026276] have been fulfilled.

Based on that recommendation, the Board by unanimous motion, approved Agreement Fulfillment Statement #PW-012101, for East Camano Drive, Phase 2, under CRP 96-05, W.O. #208, fence and drainfield relocation, by Brian & Lynne Kegley, as presented.

SUPPLEMENTAL AGREEMENT # 6 – PW-962043, HARDING LAWSON ASSOCIATES, INC.

The Board, by unanimous motion, approved Supplemental Agreement # 6 , #PW-962043 to Professional Services Agreement with Harding Lawson Associates, Inc., for East Camano Drive, Phase 2, under CRP96-05, W.O. 208, adding \$65,000 to the scope of work for contract administration and construction inspection of the project, as recommended by the Public Works Director.

SUPPLEMENTAL AGREEMENT #1 – ON-CALL MATERIALS ENGINEERING & COMPACTION TESTING FOR MISCELLANEOUS PROJECTS – AGREEMENT #PW-0020-26

By unanimous motion, based on the recommendation of the Public Works Director, the Board approved Supplemental Agreement #1 to Contract #PW-0020-26 [RM-PW-012112] with Materials Testing & Consulting, Inc., revising scope of work by \$63,500.00, and extending completion date for work associated with Camano Road Maintenance Facility to 11/1/02.

RELEASE OF BONDS 76-0120-11876-97-1 & NO. 76-0120-14500-98-0 FOR BRENTWOOD DIVISIONS #1 AND #2, AND ACCEPTANCE OF BOND #400SC8198 DIVISIONS NO. 1, 2, & 3 - KRIEG CONSTRUCTION, INC.

As presented by Mr. Oakes, further detailed in a Memorandum dated 10/18/01 from Dick Snyder, County Engineer, the Board by unanimous motion, approved the release of bonds #76-0120-11876-97-1 and #76-0120-14500-98-0 from Krieg Construction, Inc. for Brentwood Divisions #1 and #2, in the amount of \$120,000.00 and \$334,606.25 respectively, and accepted Bond #400SC8198 from Krieg Construction, Inc., for Brentwood Divisions No. 1, 2, & 3 for completion of project requirements in the amount of \$127,484.38.

HEARING HELD: FRANCHISE #105(R), LIVINGSTON BAY HEIGHTS WATER COMPANY RENEWAL OF EXISTING WATER DISTRIBUTION SYSTEM

At 2:20 p.m. as advertised, Chairman Thorn opened a Public Hearing to consider Franchise #105(R), Livingston Bay Heights Water Company, renewal of existing water distribution system in the Plat of Livingston Bay Heights, located in Section 32, Twp. 32N., Rge 3E, Camano Island. Mr. Oakes summarized that: the Company has no plans for expansion of current system; all departments requested to comment responded with no objection; Prosecuting Attorney's office reviewed and approved the documents as to form, and reviewed and approved by Risk Management. At the time of hearing, no one was present in the audience to comment either for or against said

franchise renewal.

The Board, by unanimous motion, approved Franchise #105(R), Livingston Bay Heights Water Company, renewal of existing water distribution system in the Plat of Livingston Bay Heights, located in Section 32, Twp. 32N., Rge 3E, Camano Island.

**HEARING HELD: FRANCHISE #54(R), LONE LAKE SHORES COMMUNITY ASSOCIATION
RENEWAL OF EXISTING WATER DISTRIBUTION SYSTEM**

A Public Hearing was held as advertised beginning at 2:25 p.m. for the purpose of considering renewal of Franchise #54(R), Lone Lake Shores Community Association, for their existing water distribution system in the Plat of Lone Lake Shores, located in Sec 8, Twp. 29N., Rge 3E. As Mr. Oakes noted, outlined in memorandum dated 9/21/01, there are no plans for expansion of the current water system; all departments requested to comment responded with no objection; Prosecuting Attorney's office reviewed and approved the documents as to form, and reviewed and approved by Risk Management.

At the time of hearing, no one was present in the audience to comment either for or against Franchise renewal.

By unanimous motion, the Board approved Franchise #54(R), Lone Lake Shores Community Association, for existing water distribution system in the Plat of Lone Lake Shores, located in Sec 8, Twp. 29N., Rge 3E.

FEMA HAZARD MITIGATION GRANT APPLICATION

Dick Snyder asked that the Board approve the FEMA Hazard Mitigation Grant Application for submittal to Washington State Military Department Emergency Management Division and authorize the Chairman's signature once application finalized in light of October 31st submittal deadline and the fact there is no Board meeting on October 29th. A copy of the grant application form and details were briefly reviewed with the Board, and Mr. Snyder noted this application was for funds to assist with new road connection between Houston and Race Road to provide alternate detour in event of major highway closure. Once the application is submitted, he hoped the County would know by February whether or not they were successful in obtaining the grant. Potentially 1-1/2 million dollars is available and the local match would be about 10%.

By unanimous motion, the Board approved grant application submittal along the lines discussed today, and authorized the Chairman to sign the application once completed.

CENTRAL/SOUTH WHIDBEY NONPOINT POLLUTION PREVENTION ACTION PLAN

A resolution was proposed for the purpose of setting a public hearing on the Central/South Whidbey Nonpoint Pollution Prevention Action Plan. Under discussion, the Commissioners and Mr. Oakes agreed, particularly in light of #3 under Executive Summary, that the cart was in front of the horse, and the item pulled from the agenda at this time.

WSDOT - ISLAND COUNTY(PATMORE) LAND EXCHANGE

The topic of Washington State Department of Transportation (WSDOT) Island County (Patmore) Land Exchange was presented by Dave Bonvouloir, Solid Waste Manager, for review and discussion of the WSDOT proposal letter dated October 17, 2001 to re-bid the scaled back project. WSDOT is amending the design and agreed to split the dollar difference with Solid Waste to commit to a maximum additional amount of about \$63,000. Mr. Bonvouloir spoke in favor of the proposal, the project critical to Solid Waste and the future of the facility from a traffic and interior circulation perspective and the issue with respect to groundwater. The proposed agreement is as follows:

“We have reviewed your proposal letter of October 17th, 2001 and agree with your proposal to re-bid the scaled back project. With the intent that should the bid again exceed the \$289,968 limit, the County and WSDOT will have the option of again rejecting all bids or agreeing to award the contract. If the decision is to award, the

additional budget increase needed to award will be split 50%-50% between WSDOT and the County. This alternative funding is allowed by section 4.3 of our interlocal agreement GCA 3011."

The Board, after discussion and review with Mr. Bonvouloir, authorized the Chairman's signature on the letter to be signed by Bill Oakes to Washington State Department of Transportation agreeing with the proposal to re-bid the scaled back project.

RESOLUTION #C-132-01 (PLG-019-01) AMENDING BOUNDARIES OF LAKE GROVE WATER SYSTEM SERVICE AREA

Jeff Tate presented for the Board's approval Resolution #C-132-01 (PLG-019-01) Amending boundaries of Lake Grove Water System Service Area, Camano Island. A property owner was included in the service area and the water purveyor and the property owner want that parcel removed from the service area because it is already served by a private well. Mr. Tate was in favor of the Board's approval.

By unanimous motion the Board approved al Resolution #C-132-01 (PLG-019-01) Amending boundaries of Lake Grove Water System Service Area.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE)
SERVICE AREA FOR THE LAKE GROVE) RESOLUTION C-132-01
WATER SYSTEM AND INCORPORATING) PLG-019-01
THE AMENDED SERVICE AREA INTO THE)
COORDINATED WATER SYSTEM PLAN.)
)

WHEREAS, parcel S7067-00-00006-0, located in the plat of Grove Lake, is currently located within the Lake Grove Water Association service area boundary, as identified in Exhibit A; and

WHEREAS, parcel S7067-00-00006-0, located in the plat of Grove Lake is currently developed with a single family residence that is being served by a private well; and

WHEREAS, there is no further development potential on parcel S7067-00-00006-0 and the property owner and Lake Grove Water Association desire to modify the service area boundary to remove said parcel; and

WHEREAS, the Lake Grove Water Association plan and service area have been reviewed for consistency with the Island County Comprehensive Plan, the Island County Coordinated Water System Plan, and other applicable State and local codes and regulations; and

WHEREAS, pursuant to WAC 197-11-800(4)(b) appropriations of 2,250 gallons per minute or less of ground water are exempt from SEPA review; and

WHEREAS, the Lake Grove Water System has been appropriated ground water withdrawal at a rate of 15 gallons per minute which exempts this system from SEPA review; **NOW, THEREFORE**,

BE IT RESOLVED by the Board of Island County Commissioners that the service area of the Lake Grove Water System, attached hereto as Exhibit C, is hereby incorporated into the Island County Coordinated Water System Plan.

APPROVED AND ADOPTED this 22nd day of October, 2001.

BOARD OF COUNTY COMMISSIONERS OF ISLAND COUNTY, WASHINGTON

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

ATTEST:

Elaine Marlow

Clerk of the Board

BICC 01-706

[Exhibit A - on file with the Clerk of the Board]

**HEARING HELD: ORDINANCE #C-117-01 ESTABLISHING OUTDOOR
BURNING PERMIT & ENFORCEMENT PROGRAM**

A Public Hearing, as advertised and scheduled, was held at 2:55 p.m. on Ordinance #C-117-01 Establishing Outdoor Burning Permit and Enforcement Program, under the Washington State Clean Air Act, Chapter 70.94 RCW.

Betty Kemp summarized that Northwest Air Pollution Authority [NWAPA] will no longer be handling the outdoor burning permit program, and because of that, Island County in conjunction with Skagit County, entered into a Memorandum of Agreement to assume responsibility for issuing and enforcing outdoor burning permits and regulations for residential burning, land clearing burning, storm and flood debris burning and recreational fires. Proposed also today once the ordinance is adopted, is a fee schedule for burning permits in unincorporated Island County.

Rob Harbour, Manager, Ebey's Landing National Historic Reserve, raised a concern having to do with prescribed burns for the management of rare and endangered species or plant communities. He called NWAPA and Puget Sound Clean Air and was unable to get what he felt was a clear answer about how this Ordinance might affect that. The more he looked into it he thought the State Law was what needed to be changed as opposed to County Ordinance. With that in mind, he was curious about the intent of the ordinance is to prohibit a prescribed burn that might be done to encourage the growth of Wild Iris or Golden Indian Paintbrush or some other threatened or endangered species. Mr. Harbour concurred with that. Under Ordinance #C-117-01, prohibited burns are listed and permitted burns and hoped that adoption of this ordinance did not inadvertently prohibit a burn that should be allowed in the future, and if so, the Board then be open to amending this ordinance. He did take note of the footnote at the bottom of Page 3 includes "...rare and endangered plant regeneration fires and any other type of outdoor burning not covered by this chapter, contact the Northwest Air Pollution Authority".

Chairman Thorn stated that the Ordinance being silent on that subject was out of ignorance and was not something he recalled brought up in any discussions with staff or NWAPA. At the very least it could be considered land clearing burning and proceed accordingly. He did not know of any reason why the County would prohibit that.

Commissioner Shelton was aware of controlled burns in Eastern Washington to encourage the growth grasses and it is something tightly regulated by the Department of Ecology, and so he thought in those types of burns Mr. Harbour referred to would probably not rest with this Board or ordinance but more likely with the Department of Ecology. He did not think the Board with this ordinance intended in any way to outlaw such burns.

Chairman Thorn agreed that was not his intent. The definition of land clearing burning states it is "outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e. projects that clear the land surface so it can be developed, used for a different purpose, or left unused)." and he thought the type of burn Mr. Harbour was concerned about would qualify under that category.

Commissioner McDowell believed that kind of burn was allowed now; the bigger problem will be when unincorporated Island County population reaches over 50,000.

There were no further comments from members of the public and the public comment on the Ordinance was closed.

Commissioner McDowell brought up that on page 5, under Penalties, item C, the language provides that Civil infractions of this ordinance are Class 1 infractions carrying a \$250 penalty and he suggested that should be amended to say "...up to a \$250 penalty" because for some period of time focus will be an education process for the public rather than penalties.

Chairman Thorn was uncomfortable with having that flexibility built in, which he thought from an auditor's point of view too open to fraud; it is the principle and the way the auditors would look at it when left as optional.

Fire Warden Fred Wefer who has been working with the program in Whatcom County confirmed that provisions in Whatcom County give the ability to charge the full penalty for someone who habitually offender versus someone who is a first time offender working closely with NWAPA. Typically they are out to educate people to start with.

And Commissioner McDowell made the point that NWAPA has based the amount of penalty on the severity of the offense and number of offenses in making a determination on amount of fine.

The Board by unanimous motion adopted Ordinance #C-117-01 Establishing Outdoor Burning Permit and Enforcement Program under the Washington Clean Air Act, Chapter 70.94 RCW, with change on page 5 , under Penalties, item C, to add "up to" in front of the word a, so that section reads: Civil infractions of this ordinance are Class 1 infractions carrying up to a \$250 penalty...".

BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF ISLAND COUNTY, WASHINGTON

ORDINANCE ESTABLISHING OUTDOOR
BURNING PERMIT AND ENFORCEMENT
PROGRAM UNDER THE WASHINGTON
CLEAN AIR ACT, CHAPTER 70.94 RCW

ORDINANCE NO. C-117-01

WHEREAS, it is the policy of the State of Washington under the Washington Clean Air Act, chapter 70.94 RCW, to reduce outdoor burning to the greatest extent possible;

WHEREAS, a limited burning permit program has been established by the Northwest Air Pollution Authority under the Outdoor Burning regulations, chapter 173-425 WAC, adopted by the Department of Ecology;

WHEREAS, the Northwest Air Pollution Authority informed Island County that it intended to discontinue the outdoor burning limited permit program in the County unless the County agreed to assume the responsibility of issuing and enforcing burning permits for residential burning, land clearing burning, storm and flood debris burning, and recreational fires;

WHEREAS, the Board of Island County Commissioners considers it vital to the citizens of Island County that they continue to be allowed to conduct outdoor burning pursuant to the limited burning permit program;

WHEREAS, in conjunction with Skagit County, Island County entered into a Memorandum of Agreement with the Northwest Air Pollution Authority to assume responsibility for issuing and enforcing outdoor burning permits and regulations for residential burning, land clearing burning, storm and flood debris burning, and recreational fires;

WHEREAS, the population in the unincorporated area of Island County as determined by the Office of Financial Management for the year 2001 is 49,635, a population under 50,000, which means that under the Open Burning regulations that residential fires, outside of the Oak Harbor Urban Growth Area where residential fires are prohibited, are allowed without a permit so long as they do not exceed four (4) feet by four (4) feet by three (3) feet; and

WHEREAS, the Memorandum of Agreement requires that the County adopt an ordinance to allow the limited outdoor burning permit and enforcement program for residential burning, land clearing burning, storm and flood debris burning, and recreational fires; NOW, THEREFORE,

IT IS HEREBY ORDAINED that the Outdoor Burning Permit regulations attached hereto as Exhibit "A" are adopted. Attached Exhibit "B" depicts the boundaries of the Oak Harbor Urban Growth Area referred to in section 14.03D.030 of Exhibit "A." Ordinance C-55-93, codified as chapter 14.03C ICC – Burning Permits, adopted August 12, 1993, is repealed.

Reviewed this 10th day of September, 2001, and set for public hearing on the 1st day of October 2001 at

11:00 a.m. in the Commissioner's Hearing Room.

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

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

ATTEST:

Elaine Marlow
Clerk of the Board

BICC 01-604

Ordinance C-117-01 is adopted this 22 day of October, 2001 following public hearing.

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

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

ATTEST:

Elaine Marlow
Clerk of the Board

APPROVED AS TO FORM:

David L. Jamieson, Jr.
Deputy Prosecuting Attorney and
Island County Code Reviser

EXHIBIT "A"

NEW CHAPTER

Chapter 14.03D

Outdoor Burning Permits

Sections:

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14.03D.010 Authority

This ordinance is enacted under the authority of the Washington Clean Air Act, Revised Code of Washington sections 70.94.745, 70.94.750, 70.94.780, 70.94.430, 70.94.431, Washington Administrative Code (WAC) section 173-425-060 and the Memorandum of Agreement between the Northwest Air Pollution Authority, Island and Skagit Counties, signed by the Board of Island County Commissioners on August 6, 2001.

14.03D.020 Definitions

Unless a different meaning is clearly required by context, the following words and phrases as used in this chapter shall have the following meanings:

- A. "Land clearing burning" means outdoor burning of trees, stumps, shrubbery, or other natural vegetation from land clearing projects (i.e., projects that clear the land surface so it can be developed, used for a different purpose, or left unused). (RCW 70.94.750(2)).
- B. "Natural vegetation" means unprocessed plant material from herbs, shrubbery, and trees, including grass, weeds, leaves, clippings, prunings, brush, branches, roots, stumps, and trunk wood. (WAC 173-425-030(11))
- C. "Nuisance" means an emission of smoke or any other air contaminant that unreasonably interferes with the use and enjoyment of the property upon which it is deposited. (RCW 70.94.030(2))
- D. "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion. (RCW 70.94.743(2)).
- E. "Recreational fire" means cooking fires, campfires, and bonfires using charcoal or firewood that occur in designated areas or on private property for cooking, pleasure, or ceremonial purposes. Fires used for debris disposal purposes are not considered recreational fires. (WAC 173-425-030(21))
- F. "Residential burning" means the outdoor burning of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee. (RCW 70.94.750(1)).
- G. "Storm or flood debris burning" means fires consisting of natural vegetation deposited on lands by storms or floods that have occurred in the previous two years and resulted in an emergency being declared or proclaimed in the area by the county or state government and burned on such lands by the property owner or his or her designee. (RCW 70.94.743 (1)(c)).

14.03D.030 Burning Prohibited/Burning without Permits/Burning Permits Required

A. **Types of Burning Prohibited – Oak Harbor Urban Growth Area.** Pursuant to WAC 173-425-040(2), both residential burning and land clearing burning are prohibited in the Oak Harbor Urban Growth Area as designated under ICC 17.03.080 and depicted in the Island County Zoning Atlas and Appendix B to Ordinance C-123-98. Residential burning and land clearing burning of material originating in the Oak Harbor Urban Growth Area that is transported outside the urban growth area is also prohibited. Recreational fires and storm or flood debris burning in the Oak Harbor Urban Growth Area are allowed as set forth in subsections B. through H. below.

B. **Burning Allowed Without Permit.** The following types of outdoor fires are allowed in the unincorporated areas of Island County, except on State Department of Natural Resources protected lands as defined by RCW 76.04.005(4)^[1], without a permit so long as they comply with the other conditions of this chapter and chapter 173-425 WAC:

1. Any size recreational fire outside the Oak Harbor Urban Growth Area;
2. A recreational fire within the Oak Harbor Urban Growth Area where the burning fuel area is equal to or less than three (3) feet in diameter and/or two (2) feet in height; and
3. Residential burning, outside the Oak Harbor Urban Growth Area where such burning is prohibited, where the burning fuel area is equal to or less than four (4) feet in diameter and/or three (3) feet in height.

C. **County Burning Permit Required.** A person may only cause or allow an outdoor fire in the unincorporated area of Island County, except on State Department of Natural Resources protected lands as defined by RCW 76.04.005(4), if the person first obtains a burning permit issued by the Island County Fire Warden or his designee for the following types of outdoor burning as allowed under chapter 173-425 WAC^[2]:

1. Residential burning, outside of the Oak Harbor Urban Growth Area where such burning is prohibited, where the burning fuel area is greater than four (4) feet in diameter and/or three (3) feet in height;
2. Land clearing burning, outside of the Oak Harbor Urban Growth Area where such burning is prohibited;
3. Storm and flood debris burning; and
4. Recreational fires, within the Oak Harbor Urban Growth Area, where the burning fuel area is greater than three (3) feet in diameter and/or two (2) feet in height.

D. Conditions on Recreational Fires Allowed without a Permit or with Verbal or Electronic Permit.

Recreational fires allowed without a permit, as allowed under subsection B.(1) or (2) above, or allowed by a verbal or electronic permit, must comply with the following conditions:

1. The person responsible for the fire must contact the Island County Fire Warden or his designee for information on the burning conditions for each day;
2. A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area;
3. The fire must be fueled only by firewood, that is, bare untreated wood, or charcoal and the fire must not include garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance that normally releases toxic emissions, dense smoke, or obnoxious odors when burned;
4. If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately;
5. A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it;
6. No fires are to be within fifty (50) feet of structures;
7. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire.

E. Conditions on Residential Burning Allowed without a Permit or with Verbal or Electronic Permit.

Residential burning without a permit, as allowed under subsection B.(3) above, or allowed by a verbal or electronic permit, must comply with the following conditions:

1. The person responsible for the fire must contact the Island County Fire Warden or his designee for information on the burning conditions for each day;
2. A fire may not be ignited, and must be extinguished, if an air pollution episode, impaired air quality condition, or fire danger burn ban that applies to the burning, is declared for the area;
3. The fire must not include garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, paper (other than what is necessary to start a fire), cardboard, treated wood, construction/demolition debris, metal, or any substance (other than natural vegetation) that normally releases toxic emissions, dense smoke, or obnoxious odors when burned;
4. The fire must not include materials hauled from another property;

5. If any emission from the fire is detrimental to the health, safety, or welfare of any person, if it causes damage to property or business, or if it causes a nuisance, the fire must be extinguished immediately;
6. A person capable of extinguishing the fire must attend it at all times, and the fire must be extinguished before leaving it;
7. No fires are to be within fifty (50) feet of structures;
8. Permission from a landowner, or owner's designated representative, must be obtained before starting an outdoor fire;
9. Any burn pile must not be larger than four (4) feet by four (4) feet by three (3) feet;
10. Only one (1) pile at a time may be burned, and each pile must be extinguished before lighting another;
11. If an outdoor container is used for burning, it must be constructed of concrete or masonry with a completely enclosed combustion chamber and equipped with a permanently attached spark arrester constructed of iron, heavy wire mesh, or other noncombustible material with openings not larger than one-half (1/2) inch; and
12. No fire is permitted within five hundred (500) feet of forest slash.

Persons not able to meet these requirements or the requirements in WAC 173-425-050 must apply for and receive a written permit from the Island County Fire Warden or his designee before burning. Failure to comply with all requirements of this subsection voids any applicable permit or permission to burn without a permit, and the person responsible for burning will be subject to enforcement action under ICC 14.03D.050 below as well as all other penalties and enforcement provided in chapter 70.94 RCW and chapter 173-425 WAC.

F. To be valid, a permit must be issued by the Island County Fire Warden or his designee. Conditions may be imposed in the permit for the protection of life, property, or air quality, and the Island County Fire Warden or his designee may suspend or revoke permits when conditions warrant. A permit shall be effective only under the conditions and for the periods stated therein.

G. The Island County Fire Warden or his designee may inspect or cause to be inspected the area involved and issue a burning permit if:

1. All requirements relating to fire fighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;
2. No unreasonable danger will result; and
3. Burning will be done in compliance with air quality standards established by chapter 70.94 RCW and ICC 8.08A.390, Island County Health Regulations, regarding outdoor burning.

H. Either with or without a burning permit, it is unlawful for any person to cause or allow outdoor burning that causes an emission of smoke or any other air contaminant that is detrimental to the health, safety, or welfare of any person, that causes damage to property or business, or that causes a nuisance. The Island County Fire Warden or his designee may refuse, revoke, or postpone permits to burn, or order burning not requiring a permit to cease, when necessary for the safety of adjacent property such as during a burn ban, when the burning would or is causing a nuisance, or when necessary in his judgment to prevent air pollution as provided in chapter 70.94 RCW.

14.03D.040 Burning Permit Fees

The fees for burning permits shall be established by resolution of the Board of Island County Commissioners.

14.03D.050 Penalties

- A. Failure to obtain a written burning permit as required by this chapter, failure to comply with any condition of a burning permit once issued, or any other burning in violation of this chapter shall be a civil infraction. Each day of violation constitutes a separate infraction.
- B. A notice of infraction of this burning permit ordinance shall be processed pursuant to the provisions of RCW chapter 7.80 and the Infraction Rules for Courts of Limited Jurisdiction (IRLJ). The Island County Fire Warden or his designee is the enforcement officer.
- C. Civil infractions of this ordinance are Class 1 infractions carrying up to a two-hundred-fifty dollar (\$250) penalty and payment of the required burning permit fee if it has not already been paid.
- D. Other or additional penalties or enforcement provisions apply as contained in chapter 70.94 RCW and chapter 173-425 WAC.

14.03D.060 Limitation of Liability

This chapter is not intended to create any specific persons to be benefited or protected or any class of persons to be benefited or protected nor to create any reliance relationship between Island County and any persons. This chapter is not intended to create any duty running in favor of any particular persons, but is adopted to promote the general health, safety and welfare of the public at large. The obligation to comply with the provisions of this chapter is upon those who cause or allow outdoor fires and their agents. Acts or omissions to act under this chapter by Island County, its officials or employees shall not create any liability on the part of Island County, its officials or employees.

14.03D.070 Conflicts/Severability

To the extent that any provision of this chapter conflicts with provisions of the Washington Clean Air Act, chapter 70.94 RCW, or the implementing Department of Ecology Outdoor Burning regulations, chapter 173-425 WAC, those provisions of state statutes and regulations shall prevail. Should any section, subsection, paragraph, sentence, clause, or phrase of this chapter be found unconstitutional or invalid for any reason, such finding shall not affect the validity of the remaining portion of this ordinance.

RESOLUTION #C-133-01 ESTABLISHING FEES FOR BURNING PERMITS IN UNINCORPORATED ISLAND COUNTY

Following adoption of Ordinance #C-117-01, the Board by unanimous motion adopted Resolution #C-133 01 Establishing fees for burning permits in unincorporated Island County as presented and recommended for approval by Betty Kemp.

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

IN THE MATTER OF ESTABLISHING)
FEES FOR BURNING PERMITS IN) RESOLUTION NO. C- 133 -01
UNINCORPORATED ISLAND COUNTY)

WHEREAS, outdoor burning is a potential hazard from both a fire safety standpoint and a public nuisance standpoint; and

WHEREAS, RCW 70.94.743 and 755 of the Washington State Clean Air Act give the Northwest Air Pollution Authority (NWAPA) and counties contracting with NWAPA the authority to cooperate in implementing the limited burning policy authorized by RCW 70.94.743 through .765; and

WHEREAS, by agreement with NWAPA, Island County has accepted responsibility to carry out the permitting and/or enforcement activities in unincorporated Island County for outdoor fires allowed by chapter 173-425 WAC; and

WHEREAS, pursuant to RCW 70.94.650(2), WAC 173-425-060(3) and the agreement with NWAPA, permit

fees are to be set by rule to not exceed a level necessary to recover the costs of administering and enforcing the permit program; NOW THEREFORE,

BE IT RESOLVED, that the following burning permit fees are required:

1. Residential Fires that exceed 4’x4’x3’ - \$20.00 per site. The \$20.00 permit will allow up to two (2) separate burns each calendar year within a duration of a seven (7) day limit for each burn as specified in the permit;
2. Land Clearing Burning - \$50.00 per day per site;
3. Storm/Flood Debris burning when an official disaster is declared - No Fee; and
4. Recreational Fires that exceed 3’x3’x2’ in the Urban Growth Area (UGA) outside of City Limits – No Fee

DATED this 22nd day of October, 2001.

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

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

ATTEST:

Elaine Marlow, Clerk of the Board

BICC 01-709

There being no further business to come before the Board at this time, the meeting adjourned at 3:07 p.m., to meet next in regular session on November 5, 2001 beginning at 9:30 a.m. [October 29 is a 5th Monday and there is no regularly scheduled Board meeting].

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

William F. Thorn, Chairman

Mike Shelton, Member

Wm. L. McDowell, Member

ATTEST:

Elaine Marlow, Clerk of the Board

[\[1\]](#) For burning permits and burning regulations on State Department of Natural Resources protected lands, contact the Department of Natural Resources. For burning permits in the City of Oak Harbor, Town of Coupeville, and the City of Langley, contact those cities or town.

[\[2\]](#) For burning permits for agricultural burning, weed abatement fires, fire fighting instruction fires, rare and endangered plant regeneration fires, Indian ceremonial fires, and any other type of outdoor burning not covered by this chapter, contact the Northwest Air Pollution Authority.