

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
DECEMBER 20, 2005 - SPECIAL SESSION
AGRICULTURE BEST MANAGEMENT PRACTICES**

The Board of Island County Commissioners met in Special Session at 1:30 p.m. December 20, 2005, in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6th Street, Coupeville, Wa., with video conferencing available at the Camano Courthouse Annex on Camano Island. Mike Shelton, Chairman, Wm. L. McDowell, Member, and William J. Byrd, Member, were present. The Special Session was called for the purpose of receiving and discussing the recommendation of the Island County Planning Commission on Agriculture Best Management Practices (AG BMPs), and if determined by the Board to be needed, schedule the matter for a future public hearing. Thirteen attendees signed an attendance sheet circulated and placed on file with the Clerk of the Board [GMA #8506]. Staff members present: Don Meehan, WSU Extension Agent; Keith Higman, Environmental Health Services Director; Phil Bakke, Planning & Community Development Director; Bill Oakes, Public Works Director, and Keith Dearborn, providing legal and consulting services.

Hand-out Packets provided to the Board and the record included the following:

December 19, 2005 Letter of Transmittal to the Board from the Island County Planning Commission Recommendations – Existing Agricultural Use Ordinance [GMA #8520]

Proposed Ordinance #PLG-021-05 In the Matter of Updating Island County's GMA Critical Area Regulations Relating to Existing and Ongoing Agriculture, including Exhibits A, B, C and D [GMA #8521]

Agricultural Uses in the R, RF, RR Zones, A Summary Report Prepared by Island County Planning and Community Development September, 2005 [GMA #8511]

Brochure: Tips on Land and Water Management for Small Farm and Livestock Owners in Western Washington [GMA #8505]

A Packet entitled "Farming in Island County: Island County Planning & Community Development from the October 25, 21005 Planning Commission Hearing including [GMA #8384] :

Final Draft: Report and Recommendations of the Agricultural Review Committee prepared by Island County Planning and community Development on behalf of the Island County Agricultural Review Committee, September 2005

A Summary of the Proposed/Revised Agricultural Regulations

History of Environmental Rules as they Pertain to Agriculture

Presentation: October 25, 2005 Planning Commission Hearing on Critical Area Update Relating to existing and on-going Agriculture

Introduction to Conservation District Planning Services prepared by Whidbey Island Conservation District

Frequently Asked Questions

Exhibit A – PLG-012-05 C-89-05: AG BMP Update Schedule

Proposed Ordinance PLG-021-05 [showing Exhibits A, B and C only]

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Island County Brief filed with the Growth Management Hearings Board

General Information

Island County Planning & Community Development phone extension listing

Bill Massey, Chairman, Island County Planning Commission, representing the Planning Commission by unanimous direction, addressed the Board and presented the letter of transmittal and recommendation for approval of the ordinance [already entered into the GMA record as #8520]. The transmittal contains two elements of particular importance to the message that the Planning Commission want to send to the Commissioners:

This type of regulation has the potential over a period of time to degrade the rural character we all hold so dearly in Island County. It has the potential to create a decline farming in Island County at least as a result of the perception of more government intrusion. While the Commission is recommending the ordinance and understand the legal constraints requiring this process, the Commission want to send a message very clearly.

A key element heard over and over again is the issue of water quality monitoring and the transmittal urges that the Board proceed post haste with a water monitoring quality program that ultimately identifies the sources of pollution in Island County.

Mr. Massey referenced comments from Scott Yonkman, which on a personal level he supported as reflective of the results of the process.

Scott Yonkman read his comments for the record [GMA #8527]. Although a current Island County Planning Commission Member, he indicated his comments were made as a private citizen representing his personal summary comments on proposed Ordinance PLG-021-05:

After a long series of public hearings, reports and recommendations from Island County Planning and Community Development staff, Island County Public Works staff, active members of Whidbey and Snohomish Conservation district, WEAN and others, please consider the following comments and recommendations.

1. There are few things that virtually all residents of Island County agree on, but it has become abundantly clear to me that the majority of citizens and certainly all of the members of the Agriculture Review Committee believe that maintaining our rural character and even promoting further growth of farms and horticulture activity in our county is of high value and a high priority.
2. Based on the testimony of many many local farmers and ranchers, it was also abundantly clear that operating and maintaining our local farms and ranches, which make up our rural character, is difficult business and generally a break even financial situation. In many cases, the owners of these farms work additional jobs so they can support their farming activities which they love.
3. Testimony makes it clear that if we impose further regulations and restriction on our farmers and ranchers, especially without solid tangible scientific proof that their operations are causing a negative impact on our local environment and critical areas, we will force them out of business and force them to sell their land into the hands of commercial and residential developers. Regarding negative impact on the environment, testimony indicates that the by-products of commercial and residential development are far

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more harmful to our environment and critical areas than our existing agriculture activities.

4. It seems to me that we should be extremely cautious and handle our existing farmers and ranchers with great care and give them the benefit of the doubt before imposing any more regulations on them. Testimony indicated that these farmers care deeply about their land and they are applying the current BMPs established and adopted in 1999-2000 (ordinance C-151-99).
5. These best management practices currently in place pose a financial burden on our farmers, a burden they have been willing to bear because they too are concerned about protecting critical areas. We should not place further burdens on them until proof is available that their operations are having a negative effect on critical areas. Testimony indicated that there is very little accurate and consistent water quality testing or other environmental testing going on of our critical areas. We must not subject our farmers to a guilty until proven innocent standard which the radical environmentalist seems to advocate. As a people, including the environmentalist, radical and otherwise, we need to spend our time and tax dollars investing in developing fair science-based water quality testing methods and wildlife monitoring in our critical areas and beyond. These testing and monitoring methods must be as flexible as the law allows, protect the environment as mandated by the State Growth Management Act, and that gives farmers as much say as possible in the management of their lands. Additionally, this management should be developed and conducted at the local level.
6. I therefore recommend that regarding protection of critical areas in Island County, we focus our energy and resources on developing monitoring programs that will find and target only real problems effecting critical areas and water quality. Until then, I recommend we impose no further regulation on existing agriculture in Island County.

Only if and when a particular problem or impact has been identified, should BMPs and or custom farm plans be implemented, as outlined in the proposed ordinance PLG-021-05. Additionally, any regulatory actions taken must include adaptive management options that can lead to a reduction in regulation should on-going monitoring show that water quality is not or is no longer negatively impacted by the agriculture activity. The actions we take must show the farmers and ranchers that we support them together with the environment. I believe this approach is in line with the collective purposes of the Growth Management Act.

Ray Gabelein, Planning Commission member, commented as a private citizen, fully supporting the letter of transmittal Mr. Massey submitted and Mr. Yonkman's comments. Without the comments in the letter of transmittal he stated that he probably would not have been supportive of the ordinance, and supported the ordinance "holding his nose" because of what it asks of the farmers and legal counsel indicated it necessary to withstand possible legal challenges. The ordinance is financed on the backs of farmers and agricultural land users. He believes that land owners must be compensated for property they are asked to give up and he did not see that as the case with this ordinance. At least 95% of the public testimony asked for less restrictions and regulations on agriculture. He was concerned about the message this would send to the next generation of farmers and wondered if they would want to continue after watching this process. As a result of this ordinance, he believed farms would be lost, sold off and developed, contrary to the goals of the GMA. He suggested that perhaps farmers should challenge the ordinance before the Hearings Board in that it does not meet the goals of agriculture and open space. He asked that Island County join with other counties that find themselves in this situation and take legal action against the State of Washington, and was encouraged to hear that Island County had joined with Clallam County along those lines. He thought that existing and on-going agriculture must be grandfathered in. He noted that the Washington State Farm Bureau would have an initiative on the ballot in 2006, and he thought with enough counties raising awareness

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the initiative would pass.

Staff played a 15-minute video presentation [given to the Planning Commission at one of their meetings] prepared by Don Meehan, WSU Extension, and the Muzzall Family on behalf of Muzzall Farms and 3 Sisters Cattle Company [GMA record #8502]. The presentation shared information about the lands the Muzzall family farm, parcels/acreage's/maps/soils/zoning; environmental challenges faced; pressures faced from GMA in the form of buffers and other zoning regulations; wetland and wildlife benefits from these open spaces, creating rural character. Pointed out that in order to continue this beneficial relationship they need consistent regulations using good environmentally sound agricultural practices.

Ron Muzzall, Muzzall Farms, 938 Scenic Heights Road, Oak Harbor, saw this as the most unfair of government in the fact that those in agriculture without a trial or jury or a preponderance of evidence are being convicted of environmental degradation and forced to give up lands for that purpose. He guessed there were more pollutants on a rainy day from asphalt in Island County than an entire year from agriculture. It is a misunderstanding about the Muzzall family land – it is not just AG land, but rural AG, rural, rural residential lands. The video tried to show the affect this is having on the Muzzall family. It is a very small margin industry and they do it because they love it and want to practice the history of their forefathers. However, it is becoming more and more difficult to look down the road and see any future in commercial agriculture. This is just another battles they face and fight that helps to convince them that there may be other ways they should go.

Don Meehan talked about the importance of maintaining cultural heritage that the Muzzalls and others have created and maintain. He hoped government would do things that support activities such as AG that preserve cultural heritage and keep these families successful in farming. Having been around long-time farm families he knows they care a lot about the environment, the land they work with, the habitat they have provided for others and animals that everyone enjoys.

Steve Erickson, WEAN, claimed that the County had only listened to one side of the community and had staged “show hearings” he referred to as political rally’s for the farm bureau’s initiative, and had mailed out 28,000 misleading inflammatory fliers. He told the Commissioners that the ordinance did not even require use of BMPs for standard plan and the standard plans just check lists. Some of the portions he said were ludicrous, such as allowing animal confinement areas within 100 feet of a well and buffers that are completely inadequate. In the Maxwellton Valley one of the recognized problems is lack of shading on the streams; allowing mowing of buffers would continue that and not protect the critical areas. Most of the near shore environment is recognized as habitat for juvenile salmonids, migrating salmonids and adequate protection is not being provided. He believed that the findings of fact with the ordinance contained inaccuracies; for example the claim that the County’s windshield survey showed 13,800 acres in the rural, rural forest or rural zone is inaccurate. WEAN took the County’s data, cross linked it in a data base with the Assessor’s data base and found that about 1200-1300 acres of that actually was open space AG status which would suggest that it is Rural AG or Commercial AG. Another 700 acres turned out to be activities that are so small and pretty clearly already fell within the exemption for existing residential landscaping. Taking those numbers out left roughly about the same amount of land as is in rural and commercial AG together. He noted for the record that today was the first chance the ordinance was available to the public (the final version as transmitted to the Board]. The ordinance includes an amendment that if an activity was existing as of 1998 or a structure was existing as of 1998, a modification cannot be required, and contended that under that provision, could not require someone to put gutters on a barn that is in a wetland or near a stream

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Commissioner Byrd acknowledged that much public input had been taken on this issue, and the Commissioners recognize farms are not the only contributors of pollution getting into Puget Sound, rivers and streams. The County must take into consideration pollution from septics, animals, wild as well as stock, and road runoff. At a farm symposium he attended in Skagit County, comments from dairy farmers indicated more pollution was created by residential areas than by farms. Along that line, he read for the record from an e-mail dated December 19, 2005 from Andrew Craig, State Department of Ecology, Bellingham Field Office, to Rick Haley, Skagit County, regarding comments on AG versus urban water pollution [GMA #8507]:

Volume 1 page 20-25. This section is entitled Effects of Urbanization. It specifically describes how water quality is impaired when land is converted to urban uses (i.e. more pavement/impervious surfaces = more pollutants and higher flow durations/volumes). If you compare this urban land use to AG land use – which have less impervious surfaces and less numbers of pollutant sources – there is a clear argument to be made that you get less pollution of state waters when such AG lands are managed well (e.g. apply right amount of fertilizer at the right time and at the right amount).

Commissioner McDowell, coming from a family ranch background in Texas, was aware of the concept that farmers and ranchers basically have the revenue of for 1975-1980 yet expenses of 2005, and is one of the reasons why farming and ranching is so difficult, as well as difficulties when all these new additional and continually changing rules are thrown in. He could not imagine what other types of business would do if their rules changed like GMA rules for ranching and farming. Most other businesses are grandfathered in, accepted and continue with the way they do business. He never appreciated or accepted the fact that somehow farmers are pulled up short, yet are a group of the most reasonable stewards of lands compared to almost any other urban business. Why farming is considered fair game as the rules change he had no answer for and thought it was absolutely wrong. He tended to agree with the comment that rural character is really at risk. Even if the County is successful in trying to give existing farming activities some break on the critical areas ordinance, said nothing for those folks that might come along later and be “the new guy in town”. Existing farmers have a tough enough time meeting all the changing requirements let alone future farmers who have to meet even more stringent requirements. Having heard almost from day one the concept of liking rural character, and he did not know what typified rural character more than farming activities; almost everyone appreciates seeing, for example, Muzzall cows in the pasture t in the pasture versus two houses. As one County Commissioner he assured those present he would continue to do what he could to ensure that agriculture gets a break on critical areas. The heritage is very strong for some portion of the County and he suggested at least 99% if not 100% of the people appreciated AG.

The County embarked on a water quality monitoring program, hired some specialists to assist, and Public Works has identified some impaired surface waters, and Commissioner McDowell inquired of Bill Oakes the source of falling below state standards.

Bill Oakes stated that the State DOE has a category listing system from five to one of impaired waters, ranked in order of concern. The source has not been identified for any of those pollutants, and would be part of the water quality monitoring program to identify the source, where possible, in surface waters.

Commissioner Shelton observed that in Island County Agriculture is valued, albeit a different kind of AG than what is generally described in the GMA talking about commercially significant agricultural lands. It has not been that long ago, 1940's to 1950's, when Island County was clearly a County predominated by agricultural practices. He submitted that even though Island County does not have a “Skagit Flats” those agricultural areas Island County does have remaining are even more important.

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Mr. Muzzall attested to the dramatic decrease in the number of dairy farms in North and Central Whidbey in the last twenty years and there is need to ensure the two remaining dairies continue and the County not be responsible for their discontinuing the operations as a result of regulations. What the Planning Commission testimony clearly said to him was that it would be preferable to do nothing and allow pre-existing agriculture to continue in Island County the way every other business has continued pre 1998. It is not because of what the Board of County Commissioners decided, but because of interpretations of the GMA that things cannot continue the way it once did. He thought clearly what the farming community is saying it that if the County values agriculture, leave it alone to continue; unfortunately, he did not believe that possible.

The Chairman reiterated from Mr. Yonkman's memo, item #3:

Testimony makes it clear that if we impose further regulations and restriction on our farmers and ranchers, especially without solid tangible scientific proof that their operations are causing a negative impact on our local environment and critical areas, we will force them out of business and force them to sell their land into the hands of commercial and residential developers. Regarding negative impact on the environment, testimony indicates that the by-products of commercial and residential development are far more harmful to our environment and critical areas than our existing agriculture activities.

He asked Keith Higman the following: the County adopted regulations around not only surface water but ground water as well; Island County is a sole source aquifer, and have adopted numerous regulations in order to protect that aquifer and ensure the quality of drinking water on into the future. He gave him a hypothetical example of a 40 acre parcel of property in an aquifer recharge area and various levels of agriculture that might be going on, an asked Mr. Higman to address the differences and what his understanding is of potential impacts to the aquifers with the 40 acres of AG or versus what could occur with the rurally zoned property - eight 5-acre tracts with a house, driveway and other attendant features.

In support of this process, Keith Higman stated that the Department (Doug Kelly, Hydrogeologist) had conducted a significant amount of analysis of existing data on ground water quality. One of the questions posed of the Health Department was: "can you differentiate changes in groundwater chemistry associated with land use, specifically agricultural land use versus non agricultural land uses". What was found was that there are certain areas of the County which the County has defined as being more critical or more susceptible because of stratigraphy of the ground, fast pass of water, no clay or hard pan protecting the aquifer, that are more vulnerable to impacts from surface activities, using nitrate as the indicator. Going through that exercise, they found higher nitrate concentrations in groundwater in areas classified as being more highly susceptible based upon stratigraphy. They were, however, unable to define if there was a significant difference in terms of lands zoned agricultural or lands that have been designated to be maintaining agriculture activities and residential lands. They found that all land use activities have the potential to contribute nitrates to groundwater and that when comparing both of those land use activities in highly susceptible areas, have nitrate levels that are above county averages, telling them that the scenario of eight houses on 5 acres each have a similar maybe even greater potential in terms of groundwater contamination using nitrate as an indicator. Septic systems are a significant contributor to nitrates into the environment and groundwater. Use of chemicals on lawns and over-applying lawn fertilizers has the potential to do the same thing. It depends on site specific conditions, but certainly, residential development has as great or probably even greater potential in this community in terms of impacting ground water quality.

Mr. Higman's professional opinion, and the opinion of many other agencies, was that the work done in Island County surrounding ground water, has resulted in one of the best ground water monitoring and

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analysis programs of any county in Western Washington. Island County has assimilated an enormous amount of data and developed a tool that allows assessing that data, and in fact, now have the State DOE coming to the County looking for information they do not have. Island County has a very comprehensive system. The County's ability to tease out land use versus ground water quality is complicated by a number of factors that have nothing to do with the system used, rather when looking at a land use and a water chemistry compared to that land use, presuming that water that lands on that piece of land is finding its way into that aquifer when in fact the recharge area may be somewhere else.

Chairman Shelton took great exception to Mr. Erickson's comment that the Planning Commission hearings were staged events at taxpayer expense. He reminded that GMA started out as a bottoms end up process which was to include as many people in the process as possible. He suggested perhaps Mr. Erickson was suffering from the fact that at many of the hearings he received very little support for his position.

Keith Dearborn acknowledged and thanked the two conservation districts who helped immensely working through the process and made suggestions for changes in the ordinance; the Planning Commission adopted all of the changes the Conservation districts recommended. He suggested that the Board consider scheduling a public hearing in January because of potential amendments to the ordinance that need to be made. The monitoring program information work will be available for public review the end of the first week in January. Jeff Tate will work with the Conservation Districts to refine the standard plan. The standard plan was an idea proposed by Commissioner McDowell as a way to make it easier for low intensity farm users to comply with the ordinance. There have been several suggestions on compliance time frames. The transmittal letter from the Planning Commission gives support for the Conservation Districts proposal for compliance time frames. There is also a proposal from WEAN for compliance time frames. The Planning Commission did not incorporate time frames into the ordinance but acknowledged time frames need to be addressed. Not only do compliance time frames need to be addressed, but the question of a compliance date, and when does questionnaire information need to be submitted. Phil Bakke is tasked in the proposal from the Planning Commission to prepare an implementation rule explaining how requirements will be implemented for the proposed legislation. Mr. Bakke will be working with the conservation districts on interlocal agreements and those need to be available for the Board to review, along with cost ----- to be able to implement the custom plan portion of the proposed ordinance. Some of those work items may lead to further suggestions for change in the ordinance and Mr. Dearborn believed another public hearing was necessary, and reminded of the January 30th deadline.

Mr. Dearborn noted that a SEPA determination would be made tomorrow on the Planning Commission recommendation, with the comment period he believed through January 4 and the appeal period through January 20. He recommended the Board hold a public hearing even if there is an appeal in order to continue to work on compliance. Should there be an appeal, he will at that time then have to recommend the Board not take action on the ordinance until the appeal has been completed, and advise the GMHB the County is unable to make the January 30 deadline.

Mr. Bakke agreed to assess quickly the number of people expected to attend the January 23rd hearing and may have to ask that the hearing be held in a larger venue than the Commissioners Hearing Room.

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By unanimous motion, the Board scheduled a public hearing on Ordinance #C-150-05 PLG-021-05 In the Matter of Updating Island County's GMA Critical Area Regulations Relating to Existing and Ongoing Agriculture, including Exhibits A, B, C and D, on January 23, 2006 at 3:00 p.m. at a location to be announced.

There being no further business to come before the Board, the meeting adjourned at 2:53 p.m. The next regular meeting of the Board will be held on January 9, 2006 at 9:30 a.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William J. Byrd, Member

ATTEST:

Elaine Marlow
Clerk of the Board