

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING- APRIL 24, 2006

The Board of Island County Commissioners convened in Regular Session at 11:00 a.m. on April 24, 2006 for a roundtable with Elected Officials and Appointed Department Heads, held in the Board of County Commissioners Hearing Room (Room #102B), Annex Building, 1 NE 6th Street, Coupeville, Wa. Other topics for the regular session followed at 1:30 p.m. as outlined on the agenda. Wm. L. McDowell, Chairman, William J. Byrd, Member, and Mike Shelton, Member, were Present.

ROUNDTABLE WITH ISLAND COUNTY ELECTED OFFICIALS AND APPOINTED DEPARTMENT HEADS

Elected Officials and Appointed Department Heads Attending:

Bill Byrd	Cathy Caryl	Sharon Franzen	Betty Kemp	Elaine Marlow
Don Meehan	Mac McDowell	Mike Merringer	Linda Riffe	Mike Shelton
Dan Sherk	Suzanne Sinclair	Dick Toft/Larry Larson		

Other Attendees: Dr. Roger Case; Kerry McDonald; Dave Hollett; Mike Simmons; Diane Kendy; Rick Wood

Roundtable

Auditor. An election will be held on May 16 for the Oak Harbor School District issue. This will be the first opportunity to use the new voting system.

Central Services. Received one RFP for document imaging and plan to bring that to the Board at the next Staff Session. Antenna installed for wireless connection to ICOM; waiting for letter of permission from Comcast to use their tower to make initial connection. Continuing to work on intra-net for internal use [no external URL] and will send to departments in the next few weeks to critique, followed by review with the Board at a Staff Session. Working with Administrative Office of the Courts to replace all desktops and printers in District Court and the Clerk's Office. Nextel agreed to provide repeaters for three County buildings; one building at no charge. Will look into a grant through Emergency Services to fund a repeater for the second building, and then try to identify a source of funds for the third building repeater [approximately \$6,000].

Clerk. Vacant part time position filled; second part time position open and in process of filling in a few days. RFP for document imaging is moving forward; excited to get started.

Facilities. Camano Annex remodel moving forward; bids due no later than May 10.

Human Resources. Everyone welcomed the new Human Resources Director, Larry Larson. Noted opinion issued recently by the Washington State Bar Association Ethics Advisory Committee with regard to non-disclosure of leave donators to individuals who work in the District and Superior courts. Human Resources will send out a memorandum this week to all Elected Officials and Appointed Department Heads explaining the policy to ensure that the identity of non-court personnel who donate leave to court personnel should not be disclosed.

Juvenile Court Services. The new Juvenile Detention Facility has been open for a week now and has a current population of 11 juveniles.

Treasurer. Busy season for the Treasurer's Office with first half taxes due the end of the month. Over \$100,000 in tax payments were received from taxpayers using the new on-line system.

Health Presentation: Avian Flu Update

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Dr. Roger Case, Island County Health Officer, addressed Department Heads and Elected Officials on the issue of avian flu, and decisions that will need to be made by them if a medical emergency is declared in the United States. The virus does not travel by itself, transmitted from person to person primarily via droplets when infected persons cough or sneeze. There is no guarantee that antibiotics will work and there is no vaccine for at least 6 months to a year. County officials and department heads need to be thinking about how that will impact their departments and what can be done as far as sanitation measures, and developing a plan on how to deal with:

- perhaps a third of a department's employees who will not come in to work:
- employees who are ill and have no sick leave left but want to come to work because they need to earn an income;
- protection of employees from exposure to those who may have the flu

A mask is a barrier that works well; washing hands will stop 45-46% of communicable diseases. Effective disposable masks range in cost from 68 cents to \$4.00 each. Cloth masks are also effective and can be washed and reused.

Roundtable adjourned 11:40 a.m.; next Roundtable 5/22/06 at 11:00 a.m.

The Board of Island County Commissioners (including Diking Improvement District #4) met at 1:30 p.m. considering regular agenda items, the meeting began with the Pledge of Allegiance. By unanimous motion, the Board approved the minutes of previous meeting April 17, 2006.

VOUCHERS AND PAYMENT OF BILLS

By unanimous motion, the Board approved the Combined Excise Tax return for March 2006, and the following vouchers/warrants for payment:

Vouchers/warrants: #236884-237208 (including VARC Claim)\$515,414.39.

Veterans Assistance Fund. Claim #V6-5 was approved in the amount of \$625.18 by unanimous motion of the Board, as recommended by the Veterans Assistance Review Committee [*emergency financial assistance to eligible veterans; names and specific circumstances are confidential*].

HIRING REQUESTS & PERSONNEL ACTIONS

As presented by Dick Toft, Human Resources Director, the Board by unanimous motion approved the following personnel action authorizations:

Department	PAA #	Description/Position No.	Action	Eff. Date
Health	053/06	Env'l Health Spec. III 2403.03	Replacement	5/1/06
Pub. Works	055/06	Solid Waste Tech I 2256.03	Replacement	4/24/06
Prosecutor	057/06	Chief Crim. Deputy 1802.00	Replacement @ base pay rate	4/24/06

RESOLUTION #C-35-06 CONTINUING WELLNESS INCENTIVE PROGRAM/PLAN FOR ISLAND COUNTY EMPLOYEES

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As presented by Dick Toft, the Board by unanimous motion approved Resolution #C-35-06 Continuing the Wellness Incentive Program/Plan for Island County Employees. [*Resolution #C-35-06 on file with the Clerk of the Board*]

STAFF SESSION AGENDA APPROVED FOR MAY, 2006

The Board by unanimous motion approved the Staff session agenda for May, 2006. Two regular staff sessions are scheduled: May 3 and May 17, both beginning at 9:00 a.m. However, the May 3rd staff session will be completed at Noon and there will be no afternoon session.

**MEMORANDUM OF AGREEMENT BETWEEN WASHINGTON STATE UNIVERSITY
COOPERATIVE EXTENSION AND ISLAND COUNTY**

As forwarded from Don Meehan, Director, WSU Extension Island County, under cover memorandum dated April 21, 2006, the Board by unanimous motion approved Memorandum of Agreement between Washington State University Cooperative Extension and Island County, Appendix A, the annual agreement (RM-WSU-06-0035).

**RESOLUTION #C-36-06 - ESTABLISHMENT OF HANDLING FEE FOR
DISHONORED CHECKS RECEIVED BY ISLAND COUNTY**

As provided under cover memorandum dated April 17, 2006 from Linda Riffe, Island County Treasurer, the Board by unanimous motion approved Resolution #C-36-06 Establishment of Handling Fee for Dishonored Checks Received by Island. [*Resolution #C-36-06 on file with the Clerk of the Board*]

**DESIGNATED MENTAL HEALTH PROFESSIONALS & DESIGNATED CRISIS
RESPONDERS**

As forwarded from Jackie Henderson, Island County Human Services Director, Island County Health Department, the Board approved the following as Designated Mental Health Professionals and/or Designated Crisis Responders having met requirements of RCW 71.24, 70.96B and WAC 275-57:

**Designated Mental Health Professionals
and Designated Crisis Responders**

Rebecca Griswold, MA
Michael Rattray, Ph.D
Timothy Davis, Lic. SW
B. H. Solberg, MSW
Bruce Bardwell, MS
James Shreffler, Psy.D
Norman Johnson, MS
Pamela Reff, MSW
Marion Paradis, MSW, MHP
Robbie McManus, MA
Janet Cunniffe, MSW
Timothy Clark, MA

Designated Crisis Responders

Troy Husband, MS
Robert Adams, MSW
Jennifer Elias, MSW
Billie Risa-Draves, MSW

**CERTIFICATION OF ROAD FUND EXPENDITURES FOR TRAFFIC LAW
ENFORCEMENT**

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The Board by unanimous motion approved the Certification of Road Fund Expenditures for Traffic Law Enforcement.

WAIVER OF COMPETITIVE SOLICITATION - PROPERTY DISPOSITION SERVICES AND APPROVAL OF PROPERTY DISPOSITION SERVICES AGREEMENT FOR DISPOSAL AND SALE OF UNCLAIMED PROPERTY BY SHERIFF'S OFFICE

By unanimous motion, the Board approved Waiver of Competitive Solicitation as allowed under ICC 2.29.030(B)(12). for property disposition services for the Sheriff's Office, and approved the Property Disposition Services Agreement with PropertyRoom.com for disposal and sale of unclaimed property by the Sheriff's Office (RM-Sheriff's-06-0012).

CONTRACT WITH DSHS/DIVISION OF DEVELOPMENTAL DISABILITIES

As recommended by Tim L. McDonald, Health Services Director, in a memorandum dated April 19, 2006, the Board by unanimous motion approved Contract #0563-93589 (RM-HLTH-06-0030) with DSHS/Division of Developmental Disabilities to provide funding for Community Services Family Support in Island County, in the amount of \$28,590.

HEARING SCHEDULED TO RECEIVE COMMENTS ON SUCCESS OF SOUTH WHIDBEY SCHOOLS BOTTLED WATER PROGRAM

By unanimous motion, the Board scheduled a Public Hearing on May 15, 2006 at 9:55 a.m., to provide citizens an opportunity to comment on the success of the South Whidbey Schools Bottled Water Program funded by the Community Development Block Grant (CDBG), administered by the Island County Health Department under subcontract with South Whidbey School District (HD-09-06).

LIQUOR LICENSE APPLICATIONS

New Application for Liquor License #086245-3C - Lams Golf Links

Time extension to April 30, 2006 was granted to the County by the Washington State Liquor Control Board within which to consider Liquor License Application #086245-3C, Lams Golf Links, 597 Ducken Road, Oak Harbor, Wa, by Deception Pass Enterprises, Inc., Jason Michael Gentry. At this time, conditions required by the Island County Planning & Community Development Department have not yet been satisfied. Based upon the recommendation of the Planning & Community Development Department the Board opted to request another extension from the Washington State Liquor Control Board to give Mr. Gentry further time to complete the building permit and inspection process and obtain a certificate of occupancy.

New application for Liquor License #400010-6E - Domestic Winery by Fishtalk Vineyards, LLC,

Having received recommendations of approval from the appropriate reviewing departments, the Board by unanimous motion approved Liquor License #400010-6E for a domestic winery by Fishtalk Vineyards, LLC, Bruce E. Hosford and Carol C. Hosford, d/b/a Fishtalk Vineyards, located at 5071 S. Bercot Road, Freeland, WA

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SUBMITTAL OF APPLICATIONS FOR FARMLAND PROTECTION FUNDS THROUGH IAC AUTHORIZED

Pat Powell, Whidbey-Camano Land Trust, appeared before the Board to request authorization to submit two applications on behalf of Island County for Farmland Protection funds from IAC to purchase conservation easements, initial application due May 4:

1. Crown Pacific Tree Farm/seed orchard, Tax parcel number is R13101-168-1700, located adjacent to OLF, in Ebey's Reserve
2. Ebey's Reserve Farmland/Anderson Farm

If the grant is approved, funds would pay up to 50% of the market value of the conservation easements. Ms. Powell will come back with a more formal complete application by July 1st and the Board of Island County Commissioners must submit a resolution to IAC by July 21st.

By unanimous motion, the Board authorized the applications as presented by Ms. Powell on behalf of Whidbey-Camano Land Trust.

RESOLUTION #C-37-06/R-11-06 – CLOSURE OF OLD CORNET BAY ROAD AT ITS INTERSECTION WITH SR 20

Resolution #C-37-06/R-11-06 In the Matter of Closure of Old Cornet Bay Road at its Intersection with SR 20 in Section 35, Township 34 North, Range 1 E., W.M. was approved by unanimous motion of the Board, as recommended by Randy Brackett, Assistant County Engineer. [*Resolution #C-37-06/R-11-06 on file with the Clerk of the Board*]

RESOLUTIONS APPROVING SPECIFICATIONS AND AUTHORIZING CALL FOR BIDS

The Board by unanimous motion approved the following Resolutions approving Specifications and Authorization to call for bids as presented:

- Resolution #C-38-06/R-12-06 – In the Matter of Approving Specifications and Authorizing Call for Bids for 2006 Culvert Supplies.
- Resolution #C-39-06/R-13-06 – In the Matter of Approving Specifications and Calling for Bids for One (1) New 2006 Dump Truck Cab & Chassis without Hoist & Dump Box.

[Resolution #C-38-06/R-12-06 and Resolution #C-39-06/R-13-06 on file with the Clerk of the Board]

BID AWARDS APPROVED

The following bid awards were approved by unanimous motion of the Board as recommended:

1. 2006 Asphalt Concrete Materials, May/2006 to May/2007, awarded to Lakeside Industries
2. 2006 Liquid Asphalt Materials, May/2006 to May/2007, awarded to McAsphalt Industries, Ltd.

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3. Four (4) New 2006 Tractor Mowers awarded to Sahlberg Equipment for a total cost of \$233,695.04 (incl. trade-in and WSST).

**RESOLUTION #C-40-06/R-14-06 - SALE OR DISPOSAL OF ADDITIONAL
SURPLUS COUNTY PROPERTY**

The Board by unanimous motion adopted Resolution #C-40-06/R-14-06 In the Matter of the Sale or Disposal of Additional Surplus County Property (Annual Surplus Sale). [*Resolution #C-40-06/R-14-06 on file with the Clerk of the Board*]

PUBLIC HEARING HELD

Ordinance #C-22-06 (PLG-003-06) Establishing a Surface Water Quality Monitoring Program for Non-Tidal Waters (*continued from 04/03/06*)

Ordinance #C-150-05 (PLG-021-05) Updating Island County's GMA Comprehensive Plan and Critical Area Regulations relating to Existing and Ongoing Agriculture (The record for public testimony is closed with the exception of Amendment No. 5 around the issue of distances between confinement areas and critical areas where the slope exceeds 8% and the recommendations by the State Department of Ecology.) (*continued from 01/23/06, 02/27/06 & 04/03/06*)

Attendance: Public, Press, Staff: [*Attendance Sheet including members of the public attending via video-conference provided at the Camano Island County Annex [GMA #8720]*]

Presentation by: Phil Bakke, Island County Planning & Community Development Director
Keith Dearborn, Consultant, Dearborn & Moss, PLLC

**Ordinance #C-22 -06 (PLG-003-06) In the matter of Establishing a
Surface Water Quality Monitoring Program for Non-Tidal Waters**

Ordinance #C-22-06 In the matter of Establishing a Surface Water Quality Monitoring Program for Non-Tidal Waters, introduced on March 13, 2006, heard at public hearing on April 3, 2006 and continued to this date and time, came on for hearing at 10:30 a.m. In addition, workshops were held in January and February. After the April 3rd hearing, staff reviewed written and verbal testimony received from a number of individuals and agencies to identify potential amendments to the ordinance.

Mr. Dearborn handed out a compiled ordinance including amendments shown in bold and underlined in Exhibit A [copies e-mailed and made available on the County's web site two weeks' ago] [*GMA #8721*]. The amendments are self-explanatory and Mr. Dearborn did not consider any to be substantive, rather clarified intent. If after public testimony today and the public comment portion of the hearing is closed, the Board could take action on the Ordinance or continue the hearing. If the Board takes action, staff will come back to the Board on May 1, 2006 at 10:30 a.m. with Findings on Ordinance #C-22-06, and also present the organizational side of the implementation.

PUBLIC TESTIMONY

Steve Erickson, Whidbey Environmental Action Network (WEAN), Langley, had the following questions and comments:

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- 1) Under "Guiding Principles", page A-2 #2, the term "adversely affecting critical areas"; what does that mean since there is no standard as to what that means or a mechanism for how that will be determined.
- 2) What constitutes a violation. Violating State water quality standards does not constitute a violation of Island County Code; therefore code enforcement provisions will never be triggered. The only actual violation would be a failure to implement previous or future custom farm plans or meet the minimum conservation practice standards. The problems with that are:
 - Existing plans, and presumably future plans, do not meet minimum standards for stream protection;
 - Farm plans will be secret after July 1st and since the County relies on citizen complaints to initiate enforcement, if the plans are secret nobody will know what they require or if they are in fact being implemented;
 - Conservation practice standards do not provide adequate protection, and reduce the existing protection in the ordinance which requires an undisturbed 25' buffer.
- 3) Unclear how cumulative impacts will be addressed i.e. situations where numerous individual impacts do not violate or exceed standards in isolation and a near impossibility to attribute the impact to any one specific property. Examples include: lack of shading on creeks; the problem in Maxwelton with bacterial pollution from livestock having access to wetlands.
4. Pleased to see the County no longer exempts "wetland busting" he believed occurred previous to 1998, but was not sure about enforcement since no provisions are included to review statements people send in.
5. What constitutes "reasonable"; it is a very vague standard such that he did not think there ever would be enforcement. Example given was the Mead property in Maxwelton when in 2002 Mr. Erickson contends that over 900' of Maxwelton Creek was illegally dredged. Island County assured that it would enforce critical area regulations, and issued an order requiring fencing and a 25' buffer and the buffer to be planted. The buffer was planted once, the planting died and was never replanted. WEAN reported numerous occasions of cows directly in or on the creek. Mr. Erickson handed out a packet under cover memorandum dated April 23, 2006 regarding 98-2-0023c compliance, and included photos taken yesterday of that situation [GMA #8722]. He received an e-mail today saying that is supposed to be a crossing; if so he suggested it does not meet the standards NRCS has for crossings.
6. What is meant by the language on Page A-7 under d) sub ii "Any action to initiate site or area specific modification of AG BMP s will be based on recommendations from Conservation Districts, NRCS and/or a certified farm planner.". He hoped that meant the actions need to be based on those recommendations, otherwise what it says is that the County will not take any action unless recommended by a Conservation District, NRCS or farm planner.
7. What kind of on the ground monitoring will occur and what constitutes a violation. Under the code's enforcement provisions the Planning Director can enter on to a property or take action to gain access to a property when a violation has occurred or believes is going to occur. Simply because State water quality standards are exceeded the way the language is constructed it is not a violation that could be used to gain access for monitoring.

Christine Goodwin, Freeland, President Friends of Holmes Harbor (FOHH) and speaking for that group, commented that the Draft Water Quality Data Synthesis and Recommendations for a Surface Freshwater Monitoring Program dated January 18, 2006 by Dr. Paul Adamus [in the GMA record under #8631] under Purpose on page 6 states that:

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"The County's primary concern is the potential for pollution of surface and ground waters as a result of nonpoint-sourced contaminants from activities in rural areas. There is also concern about pollution potentially originating in urban and military areas (e.g., stormwater, waste treatment plant overflows). However, those issues are mostly beyond the County's jurisdiction and so will be addressed (except in very few areas such as Freeland) as a secondary priority by this Plan."

That statement did not address the necessity to include the west basin especially since overflows from Nichols Brothers stormwater system have been reported to DOE. Data in the 2006 shoreline survey of Holmes Harbor for the shellfish growing (provided by Mr. Malzone at the last hearing [GMA #8699]) indicated that the two outfalls in the west basin reached levels 240 times the state limit and 120 times the standard in the proposed ordinance (Table I). The Adamus study states on page 44 under Nitrates section 6.1 that:

- *Importance: Nitrate is the contaminant of perhaps the greatest concern to human health in Island County.*
- *Potential Sources: Fertilizers, livestock, pets, ineffective septic systems, malfunctioning wastewater treatment plants, woodlands and thickets dominated by alder trees and shrubs, eroding soils, road and parking lot runoff.*

The west basin should be included because of the nitrate potential from Nichols Brothers wastewater treatment system, and the Nichols septic system supports over 200 employees which Ms. Goodwin stated had been installed without the proper permitting process, representing usage of a minimum 75 to 100 households in a very concentrated area. For the record, she turned in a copy of all of the 2005 Nichols reported basin-involved overflows [GMA #8723]. The west basin also appears to include the mobile home park on Freeland Avenue, Trinity Lutheran Church, Island Athletic Club and some agricultural uses. FOHH believes that exclusion of the west basin would be detrimental to the overall quality of Island County's water quality and particularly Holmes Harbor's surface waters, and that a trip to the beach should not require a trip to the doctor's office.

Mr. Goodwin provided questions regarding some of the verbiage in the ordinance:

Guiding Principles (A-2. #2). Environmental regulations should not be frozen in time for existing uses, and counter-productive to protecting or improving water quality by allowing existing uses to fall under old regulations.

Adaptive Actions. (A-7 #6) It seems counter-productive for the County to make something less stringent, i.e. language stating "adaptive actions that may be triggered could be to make to make county regulations and BMPs more stringent, less stringent or leave them unchanged."

Deb Eidness, Camano Island, read her written comments which had been e-mailed earlier this date [full text included in the GMA record under #8724], in summary:

- Island County officials were correct, as stated in the [Stanwood-Camano News](#) article last week that Island County is not responsible for enforcement, that the purpose of the WQMP was to accurately and scientifically gather data utilized by the DOE, EPA, NRCS and other regulatory agencies for evaluation. Dr. Adamus and his team of competent technicians will provide the county with the necessary information to assemble an accurate data bank pertinent to water quality.
- Goals of the program should be to protect the environment, quality of life and personal property

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rights, and maintain a policy of not entering private property without prior consent of the property owner.

- Insertion requested by the State Department of Fish & Wildlife concerning animal confinement areas on a slope greater than 8% with the potential to drain into surface waters is a valid concern that needs to be addressed. There are management techniques and managed filter/buffer strips that can be implemented to uptake nutrient runoff. Education and use of conservation districts can address most of these issues, and suggest voluntary and cooperative efforts.
- Continuing disputes have resulted in the sale and platting of AG properties by valued members of the farming community, large and small, forced to make the choice of quitting because of the uncertainty.

Sheila Robbins, Camano Island, commented on the State Department of Fish & Wildlife recommendation about animal confinement areas on a slope greater than 8%. She noted that if a confinement area on a slope has quite a bit of grass pasture on the down side, that should be an adequate buffer. Also, the definition of wet meadows should be "farmed wet meadows". As far as the water quality monitoring program, she was strongly opposed to someone coming to her property or knocking on her door without first at least calling, and as a private property owner, have the right to say yes or no.

Marinane Edain, WEAN, Langley, commented on Exhibit C Findings, the item concerning the exemption from public disclosure of the farm plans, stating that much of what this entire construct of critical area protection and allowance for BMPs was predicated on those farm plans. Since those farm plans are no longer available and the County will no longer be requiring them, she wondered what substitute would happen.

Ms. Eidness made the point that farm plans were developed by the conservation districts in a private treaty with the private land owner to implement BMPs and protect the environment; disclosure had been an absolute violation of private property rights and trust between the districts and private landowners, prepared in confidence and good faith in trying to protect the environment and be good stewards of the land.

Steve Erickson contended that farm plans were not personal property. He made note that WEAN had analyzed 115 farm plans, all the plans produced by Whidbey Conservation District since 2000, and found that some of the plans provided no buffers on streams at all. Maxwellton Creek got a seasonal buffer in one of those plans; 70% reported water courses or streams had buffers of 25' or less or non-existent. If the County does not have the plans and cannot obtain those plans, how will the County know if the plans are being followed? He thought the problem was exacerbated by the County's reliance on citizen complaints for enforcement.

Chris Carlson, Camano Island, expressed his biggest concern was from folks outside government telling him what he can and cannot do with his land -- from someone with a specific ax to grind is a misuse of power and not in anyone's best interest as far as enforcement.

With no others indicating a desire to provide comments, the Chairman closed the public comment portion of the hearing pertaining to Ordinance #C-22-06.

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Keith Dearborn noted that for this ordinance, there were comments from Steve Erickson and Christine Goodwin, to which he responded:

The County is not adopting a water quality enforcement program; the State is responsible for enforcing water quality standards and a clarification has been proposed to make that clear. The County's responsibility is to enforce county code and as a part of the county code, AG BMPs specifically. Nothing in the Water Quality Monitoring Program will broaden the County's authority to do enforcement, nor is there anything that will narrow it.

Questions of cumulative affect and what constitutes a violation. When a sample is taken from a stream for water quality purposes there is no judgment on where that water has come from or where that quality issue is emanating; that is a process to go through subsequent to identifying that there is an exceedence in State water quality standards. Existing data will be used where possible when scientists determine that existing data is reliable and collected in a manner that can be replicated.

Adverse affect is a term that has been in use for 30+ years as part of the State Environmental Policy Act; Island County is not proposing anything different than what has been the standard over time, tested through the courts.

A-7 under d) sub ii. If the Planning Director determines there needs to be a modification in AG BMPs for a specific property or specific area because of exceedences, this section says that the Planning Director will take that action based upon recommendations from experts on how those BMPs should be modified. It is reasonable to look to experts as to how to modify BMPs to address an exceedence, and that should be of some protection and comfort to a property owner.

As to why the Holmes Harbor/west basin is not included, this ordinance is not adopting a specific basin listing in the Plan. The Plan will need to be updated as a result of the ordinance, updated by staff assigned this work as one of their first orders of business. The Board will be making the determination to establish the monitoring of specific basins, presumably as a part of a public process.

With regard to Adaptive Actions (A-7 #6), concern about the potential to make something less stringent, the County should provide for both the option of making regulation less stringent as well as the option of making regulation more stringent. It is appropriate that the Board have both options; and the Board would not make regulation less stringent unless there is strong scientific foundation for it and guidance from science advisers, and after public hearing.

The Board, by unanimous motion, adopted Ordinance #C-22 -06 (PLG-003-06) In the matter of Establishing a Surface Water Quality Monitoring Program for Non-Tidal Waters. [Ordinance #C-22-06 on file with the Clerk of the Board, *GMA # 8725*].

Ordinance #C-150-05 (PLG-021-05) Updating Island County's GMA Comprehensive Plan and Critical Area Regulations relating to Existing and Ongoing Agriculture

The Public Hearing on Ordinance #C-150-05 (PLG-021-05) Updating Island County's GMA Comprehensive Plan and Critical Area Regulations relating to Existing and Ongoing Agriculture was held immediately following action on Ordinance #C-22 -06 (PLG-003-06), continued from 01/23/06, 02/27/06 & 04/03/06.

As Mr. Dearborn explained, Ordinance #C-150-05 is the ordinance including the amendments approved at the April 3rd hearing. There are only two issues continued for public testimony today,

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contained in proposed Amendment No. 8 and proposed Amendment No. 9. Amendment No. 8 is the 8% slope amendment requested by the Department of Ecology, and Amendment No. 9 prepared as a result of testimony on April 3rd from WEAN raising questions and asking for clarification. After the hearing is completed the Board will need to decide whether Amendments 8 and 9 should be included in the ordinance, and then take action on the ordinance as amended in composite. In addition, draft Findings are available [GMA #8726] and the Board can take testimony on those today. Ms. Edain already made one comment on those Findings; the Board can take public testimony on May 1 on the Findings as well.

The ordinance, with these amendments, is supported by the Department of Ecology, Community, Trade and Economic Development, Department of Fish & Wildlife, Department of Natural Resources, and the Department of Agriculture; supported by NRCS and by the Whidbey Conservation District and the Snohomish Conservation District (serving Camano Island).

From a public standpoint, Mr. Dearborn acknowledged some support, but some who still are not Supportive; staff has done the best job possible to address those concerns. He reminded that the circumstance was not of the County's choice; rather, an issue brought before the County as a result of litigation from WEAN. The County is working with a Court order and a Growth Board order directing its work be completed by the first week in May. There was no question in Mr. Dearborn's mind that this ordinance would improve environmental quality when implemented, and no question from any staff point of view that the ordinance will be much more easily implemented than the existing regulatory system. On May 1st the Board will also see implementation actions related to the AG program, if adopted today, which will give the public confidence that the County is serious about ensuring critical areas are being protected from the impacts of agriculture.

Any new agriculture has to comply with critical area regulations. This system is one that will provide for property owners who have been conducting farming activities in some cases for generations to modify practices for the good of the environment, for which it takes a partnership to do.

Mr. Dearborn recalled that during the hearing process people said over and over " ... tell me what to do and we will figure out a way to do that". Senator Mary Margaret Haugen proposed legislation as a GMA amendment encouraging voluntary programs, and Mr. Dearborn understood that the Governor is making that legislation a priority for the next legislative session. If the County can achieve voluntary implementation of AG BMPs, everyone is a winner, including the environment.

PUBLIC TESTIMONY - AMENDMENT NO. 8 AND AMENDMENT NO. 9

Steve Erickson, WEAN, Langley, addressed Amendment No. 9. He interpreted the wording on page 12 to mean that in any watershed where there is occupied salmon stream that any surface waters that flow into that are going to get the requisite buffer. He thought it an improvement. He was glad to see the clarification of the applicability of wetland or stream buffers when there is a stream flowing through a farmed wet meadow or a wetland or stream adjacent to a farmed wet meadow. He mentioned a problem with the wording in that it created a whole new classification of wetlands, farmed wet meadow, which is not scientifically based and does not meet GMA BAS criteria. The wording in "F" seems to imply that a farmed wet meadow is not a wetland and suggested clarification by adding: "adjacent to a different category wetland".

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With no others indicating a desire to provide comments, the Chairman closed the public comment portion of the hearing pertaining to Ordinance #C-150-05 amendments 8 and 9.

Mr. Dearborn commented that the phrase on page 12 (d) Amendment No. 9 "or that are tributary to streams that support salmon habitat" seems to make it clear. The comment with regard to farmed wet meadow, Mr. Dearborn confirmed was a defined term (page 10) and that term had been in the ordinance system since 1999, and the whole system that relates to farmed wet meadows was approved by the Growth Board for Commercial and Rural AG zoned lands, upheld by Superior Court and the Court of Appeals. This is a standard checklist; guidance that a low intensity farmer will be using to implement BMPs, a person who has less than one animal unit per grazed acre. The checklist is intended to be self-effectuating, based in part on the premise that people are going to do the right thing if they know what that is. Owners of property in Island County who have horticulture or livestock are dedicated to good husbandry. There is nothing in the record that would suggest a widespread lack of regard for those values. The WQMP will provide the indicator of whether agricultural practices are working or not.

For the custom farm plan, the exemption under the Public Disclosure Act was adopted unanimously by the House and Senate, signed by the Governor, with one opponent, Steve Erickson. Mr. Erickson and Ms. Edain requested under public disclosure farm plans from Whidbey Island Conservation District. In doing so, the Conservation District advised that had shut down for them any contact they had ongoing with farmers on Whidbey Island. Mr. Erickson made the same request to the Snohomish Conservation District for all of the plans on Camano and the Snohomish Conservation District advised that that shut down their planning activity for the farmers as well. Island County desires a strong relationship between the Conservation Districts and farmers, which is the way to protect the environment. Based on the AG Review Committee recommendations, the proposal was that the Board would act on and adopt the record of decision for farm plans. The State law required that be changed because the Districts advised the County in writing they would no longer be able to provide the County with the record of decision, and it was that legislation required the County to modify the ordinance.

Mr. Dearborn pointed out the two safeguards built into the ordinance to ensure that plans are being implemented through the Conservation Districts:

- (1) Conservation Districts will provide the County with a report by the deadline when farm plans are to be completed as to who has completed a custom plan.
- (2) Conservation Districts will provide the County with a report when the custom plan deadline for implementation has been reached, and BMPs committed to as part of a custom plan have been implemented.

All of the resource agencies believe that NRCS BMPs are sufficient to protect the environment from the impact of existing agriculture. There has been no testimony from anyone as to what more the County could do in order to do the job appropriately and allow the Conservation District to do theirs. This relates to people who have been practicing farming in Island County in some cases generations who for the most part are the reason Island County has rural character, clearly a character people prize and want to see stay in place.

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Phil Bakke acknowledged that today and at the last hearing, testimony was received from WEAN regarding the Joe Mead property and perceived lack of County enforcement action. Island County began an enforcement program with a full time employee in 1997. Since 1997, the Planning Commission and the Board have made enforcement a priority as a part of annual review dockets, updating the code and making it what Mr. Bakke believes is the most flexible and empowering code. The approach in the program has been unwavering: first effort in all cases is education.

The AG Review Committee was formed with meetings held last summer. One of the most resounding issues from that Committee was the expressed need for education - to become partners with the County to work through the programs, make the code successful and protect the environment. Mr. Bakke suggested it is through that partnership that compliance is found. From 1997 to date, Mr. Bakke thought the greatest success had been in those cases where the Island County was able to compel voluntary actions; educated people, worked with them in partnership to come into compliance. Joe Mead is no exception and from Planning's perspective, Mr. Mead to a certain degree is a victim of circumstances. Due to the litigation, lawsuits and appeals over the historical development of the agricultural provisions there has been an uncertainty as to what the standard is that needs to be complied with. Mr. Mead has learned about some poor judgments made and committed to not repeat those in the future, and is working with the County. Planning's enforcement manager does not have an adversarial role with Mr. Mead; it is more of a partnership role.

Since receiving a complaint from Mr. Erickson just before the last public hearing, Mr. Bakke confirmed that Planning staff and a farm planner from the Conservation District met with Mr. Mead on two occasions. Mr. Mead is interested in complying; what he asks from the County is some certainty. The Conservation District has addressed fencing with Mr. Mead; staff discussed setbacks and Mr. Mead is committed to taking those actions. The idea there is an ongoing regularly-occurring intrusion into Maxwellton Creek is not correct nor founded in the record. The Planning Department does considerable enforcement in critical areas, in fact, their highest priority; claims there is no enforcement are unfounded. There are almost no repeat violations in Island County which Mr. Bakke thought a "big deal". When there are repeat violations, appropriate punitive actions are taken.

Commissioner Shelton moved approval of Amendment No. 8 and Amendment No. 9 to Ordinance #C-150-05. Motion, seconded by Commissioner Byrd, carried unanimously. [*Amendment No. 8 - GMA #8727 and Amendment No. 9 GMA #8728*]

Commissioner Shelton observed that while some people believe this ordinance around agriculture is not restrictive enough, many people in the agricultural community believe this goes too far and makes agriculture very tentative in Island County and that perhaps this ordinance coming into to compliance with GMA actually will be detrimental to the agricultural community. One of the things often times overlooked is the fact that there is no way to maintain agriculture without maintaining farmers; when farmers come to a point where they recognize is no longer economically viable, at that point they quit farming and other uses are found for the property, which is a path Commissioner Shelton would like to see delayed as long as possible.

Commissioner Byrd recalled seldom coming to a hearing such as this when testimony was not heard about impositions on farmers and property rights having gone too far. He believed all sides want to protect the environment. He did not like the fact of setting dates and sideboards on when those farmed wet meadows can actually be used. One possibility he thought was that folks could go to the

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Conservation Districts for options depending on the type of year, for example, a dry year, and be able to get in sooner, or farm later.

Chairman McDowell had some concern in light of being aware of only 3 counties out of 39 that even have to address this issue: Skagit, Clallam and Island. He thought it unfortunate that farmers in this County are faced with this when other than those three counties, everyone else recognizes farming is no different than any other business: existing uses are grandfathered.

By unanimous motion, the Board approved Ordinance #C-150-05/PLG-021-05 in the matter of updating Island County's GMA Comprehensive Plan and Critical Area Regulations relating to existing and on-going agriculture as amended. [GMA #8729]

ORDINANCE #C-41-06 (PLG-024-05) AMENDING THE COMPREHENSIVE PLAN, THE CRITICAL AREAS ORDINANCE (CHAPTER 17.02 ICC), THE CLEARING AND GRADING ORDINANCE (CHAPTER 11.02 ICC), AND THE STORMWATER ORDINANCE (CHAPTER 11.03 ICC), IN CONJUNCTION WITH THE REVIEW AND UPDATE OF THE CRITICAL AREA REGULATIONS PERTAINING TO GEOLOGICALLY HAZARDOUS AREAS

Mr. Bakke presented Ordinance #C-41-06 (PLG-024-05) Amending the Comprehensive Plan, the Critical Areas Ordinance (Chapter 17.02 ICC), the Clearing and Grading Ordinance (Chapter 11.02 ICC), and the Stormwater Ordinance (Chapter 11.03 ICC), in conjunction with the review and update of the Critical Area Regulations pertaining to Geologically Hazardous Areas. These Track 2b materials came from the Island County Planning Commission, and include Planning Commission Findings of Fact for the Board's approval as well. The Planning Commission held public hearings in September, on Camano Island on September 13, 2005, and in Coupeville on September 27, 2005, weighed public comments received and on October 18, 2005 at a public meeting, voted unanimously to forward the matter to the Board for action. Under the Growth Management Act and the Planning Enabling Act, the Board has three options:

1. Remand the matter back to the Planning Commission for further review and recommendations;
2. Hold a public hearing to consider public input and changes to the ordinance;
3. Accept the Planning Commission recommendation.

By unanimous motion, the Board adopted Ordinance #C-41-06/PLG-024-05 Amending the Comprehensive Plan, the Critical Areas Ordinance (Chapter 17.02 ICC), the Clearing and Grading Ordinance (Chapter 11.02 ICC), and the Stormwater Ordinance (Chapter 11.03 ICC), in conjunction with the review and update of the Critical Area Regulations pertaining to Geologically Hazardous Areas, Including adoption of the Planning Commission Findings of Fact as presented. [Ordinance #C-41-06/PLG-024-05 on file with the Clerk of the Board, GMA #8730]

AMENDMENT NO. 1 TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN ADOLFSON ASSOCIATES, INC. AND DEARBORN & MOSS PLLC

Mr. Dearborn had contracts with three consultants who assist with peer review for the critical area updates: Adolfson & Associates \$5,000; Teresa Lewis \$5,000; and Parametrix, \$5,000. The staff person for Parametrix moved to Adolfson; therefore, the Parametrix contract was terminated. The Amendment reflects the desire to increase the Adolfson contract to account for the fact there are now two people at Adolfson instead of one and adding \$5,000 to the contract to reflect that. Reviewing

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current status and expenditures to date projected through completion of the wetlands, Mr. Dearborn proposes as well Amendment no. 1 include an additional \$5,000, for a total of \$15,000 for the Adolfson contract, of which almost \$5,000 has been spent.

Execution of Amendment No. 1 to the Agreement for Professional Services between Adolfson Associates, Inc., and Dearborn & Moss PLLC, was consented to and authorized by unanimous motion of the Board, as presented.

There being no further business to come before the Board at this time, the meeting adjourned at 4:00 p.m. The next regular meeting of the Board will be held on May 1, 2006 beginning at 9:30 a.m.

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

Wm. L. McDowell, Chairman

William J. Byrd, Member

Mike Shelton, Member

ATTEST:

Elaine Marlow, Clerk of the Board