BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
APRIL 3, 2006

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on April 3, 2006 at 9:30 a.m. in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6th Street, Coupeville, Wa. Wm. L. McDowell, Chairman; William J. Byrd, Member, and Mike Shelton, Member, were present. The meeting began with the Pledge of Allegiance. By unanimous motion, the Board approved the minutes from previous meetings of March 27, 2006 Regular Session and March 30, 2006 Special Session.

VOUCHERS AND PAYMENT OF BILLS

By unanimous motion, the Board approved the payroll dated March 31, 2006, and the following vouchers/warrants: Voucher (War.) #235352-235570 …….…..$413,415.45.

HIRING REQUESTS & PERSONNEL ACTIONS

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

Dept.	PAA #	Description	Position #	Action	Eff. Date
WSU	041/06	Program Coord/Marketing .70 fte	1215.00	New Position	4/3/06
WSU	042/06	Tech. Support Coord. .75 fte	1214.00	Reduce Hours	4/3/06
WSU	048/06	Dept. Asst. .50 fte	1209.00	Replacement	4/3/06
Planning	043/06	Sr. Planner-Shoreline	1709.02	Replacement	6/12/06
Public Works	044/06	Civil Engineer I	2221.03	Replacement	4/3/06
GSA	045/06	Seasonal Parks, Temp	1506.02	Decrease	4/3/06
GSA	046/06	Seasonal Parks, Temp, Camano	1505.04	New Position	4/3/06
GSA	047/06	Seasonal Parks, Temp	1505.05	New Position	4/3/06

BID AWARD FOR OFFICIAL COUNTY LEGAL NEWSPAPER

In accordance with RCW 36.72.075, letting a contract to a legal newspaper qualified to serve as the official county newspaper for a one year term beginning July 1st, one bid was received as verified by Anne LaCour, Chief Deputy Auditor:

Whidbey Newspaper Group, a division of Sound Publishing
Whidbey News Times and South Whidbey Record
Rate: $10.40 per inch per insertion, a 4% increase over last year's rate.

By unanimous motion, the Board awarded bid for Official County Legal Newspaper to Whidbey News Times at the rate of $10.40 per inch per insertion.

APPOINTMENT TO DIKING DISTRICT NO. 3

In accordance with provisions of RCW 85.38.070 (5), and on recommendation of Commissioner Byrd, the Board by unanimous motion appointed Bob Lang, Oak Harbor, to fill the remaining vacancy on Diking District No. 3 Board of Commissioners, Position No. 3.

PROPERTY MANAGEMENT PRE-CLOSING DOCUMENTS APPROVED

As presented and recommended for approval by Don Mason, General Services Administration, the Board by unanimous motion approved Pre-closing documents for 31 W. Henni Road, Oak Harbor, and Pre-closing documents for 4185 Hollydale Lane, Oak Harbor.

LIQUOR LICENSE APPLICATION - LAMS GOLF LINKS

Application for Liquor License #086245-3C by Jason Michael Gentry, d/b/a Deception Pass Enterprises, Inc., for Lams Golf Links located at 597 Ducken Road, Oak Harbor, was reviewed by the appropriate County departments, with recommendations of approval from the Island County Sheriff and Island County Health Department. Having received comment from the Island County Planning & Community Development Department with respect to unresolved issues related to a building permit, the Board agreed to allow an opportunity for the applicant to resolve/clarify those issues and rescheduled consideration of the application until April 10, 2006.

QUIT CLAIM DEED - MONROE LANDING ROAD PROJECT

As presented and recommended by Bill Oakes, Public Works Director, the Board by unanimous motion approved a Quit Claim Deed between Island County and Daniel J. and Dona M. Rientjes in the amount of $2,000.00 ($700.00/land, $1,300.00/administrative settlement), Parcel 215-0660, Sec. 22, Twp 2N, R 1E. associated with Monroe Landing Road Project under CRP 02-03, Work Order 356.

ADOPT-A-ROAD LITTER CONTROL PROGRAM AGREEMENT

By unanimous motion, the Board approved an Adopt-A-Road Litter Control Program agreement between Island County and Beachwood Community Association for Wilkinson Road from 100' north of Herring Street to Witter Road.

AMENDMENT NO. 1 – PW-0620-08 - DIKING DISTRICT NO. 1 AND USELESS BAY GOLF AND COUNTRY CLUB, INC.

By unanimous motion, the Board approved Amendment No. 1 (PW-0620-08) between Island County and Diking District No. 1 and Useless Bay Golf and Country Club, Inc., revising design goals.

PUBLIC HEARINGS HELD: ORDINANCE #C-22-06 (PLG-003-06) ESTABLISHING A SURFACE WATER QUALITY MONITORING PROGRAM FOR NON-TIDAL WATERS AND ORDINANCE #C-150-05 (PLG-021-05) UPDATING ISLAND COUNTY'S GMA COMPREHENSIVE PLAN AND CRITICAL AREA REGULATIONS RELATING TO EXISTING AND ONGOING AGRICULTURE

A Public Hearing was held beginning at 10:30 a.m. on two ordinances:

> Ordinance #C-22 -06 (PLG-003-06) In the matter of Establishing a Surface Water Quality Monitoring Program for Non-Tidal Waters, introduced on March 13, 2006 and scheduled for hearing this date and time
>
> 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 Ongoing Agriculture. The hearing was continued from January 23, 2006 and February 27, 2006.

BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
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Attendance

Staff: Phil Bakke; Jeff Tate; Joe Burcar; Kirsten Harma**;** Anthony Boscolo

Consultants: Dr. Paul Adamus; Keith Dearborn

Audience: Public and Press [*Attendance Sheet GMA Record # 8706*]
Additionally 3 members of the public attended via video-conference provided at the Camano Island County Annex

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

The Ordinance was introduced on March 13, 2006 and scheduled for hearing this date and time (*GMA #8667*). Board Workshops were held on this subject on January 18, 2006; February 6, 2006 and March 6, 2006.

Presentation: Abbreviated power point presentation given by Keith Dearborn, Dr. Paul Adamus and Kirsten Harma on Water Quality Data Synthesis and Recommendations for a Surface Freshwater Monitoring program [*GMA #8700*], a summarization from the presentation given at two Board of County Commissioners workshops held on the topic [*GMA #8631*].

Maps posted during the hearing were identified as figures located the back of the Draft Water Quality Data Synthesis and Recommendations for a Surface Freshwater Monitoring Program [*GMA #8631*]:

Watershed Priorities for Baseline Monitoring	Figure #4
Watershed Priorities for Source Identification Sampling	Figure #5
Watersheds Ranked by Pollution Risk	Figure #6
Watersheds Ranked by Resource Value	Figure #7
Watersheds Ranked by Extent of Data Gaps	Figure #8
Watersheds Ranked by Exceedences of Standards Based on Exhibit Data	Figure #9
Island County Baseline Monitoring Watersheds: Years 1-5	Figure #10
Island County Watersheds Prioritized for Source Identification: Years 2 and 3	Figure #11

Mr. Dearborn noted two letters received: One from the Fish & Wildlife Department [dated 2/23/06 and already entered into the *GMA Record #8644*] and a letter from the State Department of Ecology [dated 3/17/06, *GMA # 8701*]. The letters raise a number of questions, which after the hearing, need to be addressed in the way of amendments. He therefore suggested that at the end of the hearing today that he Board continue the hearing on this ordinance to April 24, 2006 at 2:30 p.m., and reserve the date of May 1, 2006 at 10:30 a.m. if the hearing needs to be continued further.

Mr. Dearborn clarified the question about who enforces water quality violations. The County is not by this ordinance entering into a role of enforcing State water quality standards. The County is looking at exceedences, not violations, in order to get a better idea of the quality of the water in the County and be able to move into the second phase, adaptive management. Monitoring for County purposes is to identify whether County regulations or BMPs need to be changed related to agriculture; the only existing use addressed at present through water quality monitoring is agriculture.

Dr. Adamus outlined the three Program components: Baseline Monitoring; Source Identification; and Adaptive Management. Baseline monitoring is a 5-year program sampling streams, wetlands and lakes throughout the County, identify background conditions and trends and use some of that information as well as information from other sources to move into source identification to find out what is causing exceedences of surface water quality standards. Adaptive management falls into the category of how to deal with that information. This is a surface water program, limited to fresh water; the State already has a large role in marine waters. The County legally has responsibility for the exceedences and how they affect critical areas in the County. Dr. Adamus indicated that the monitoring plan proposes some preliminary thresholds, the primary threshold based on State standards. In addition to the thresholds trends will be studied. Even if an area is not having a problem exceeding State standards, should there be a negative trend, although it does not mean there is a violation, it could raise a red flag for some source identification and/or compliance checks.

Basic reasons to focus on surface waters:

- Connection to ground water and aquifers are important for drinking water
- Issues such as Salmon & ESA
- Puget Sound pollution
- Impacts on critical areas
- General public concern about the appearance of the water

Potential pollution sources in Island County include: septic systems, road runoff, agriculture, natural sources and pollution transported from elsewhere.

Important key terms reviewed:

Exceedence: any incident, however brief, in which a threshold for water quality is exceeded.
Violation: an exceedence that meets specific legal criteria for consistency (duration, frequency), causation, and/or other factors, and thus is a potential basis for enforcement

Thresholds - what the County could use to set thresholds

- Existing legal standards (EPS and the State of Washington have published standards for the different substances).
- Non -adopted criteria if Best Available Science (BAS)
- Reference values from Island County.
- Multi-year trend.
- Documented damage to surface water uses.

Surface Water Quality Parameters. The County because of finances and resources cannot monitor everything, and must focus its monitoring. Things like metals and hydrocarbons, although a potential threat, the County does not have the resources to monitor. To be monitored are: fecal coliform, phosphorus, nitrate, dissolved oxygen, temperature, turbidity, ph. For critical areas Dr. Adamus believed the most important things to monitor would be nitrate, phosphorus, dissolved oxygen, temperature, turbidity and ph.; - things that could be very harmful to wetlands or salmon in streams. Conductivity and hardness are not listed but will be monitored to provide essential background information needed to interpret the numbers from other substances monitored. Also proposed in the monitoring plan is wetland vegetation because it is sometimes a much more sensitive refined indicator than measuring turbidity and dissolved oxygen, etc.

Kirsten Harma reviewed some of the work Planning staff has done and some of the details associated with how to go about implementing the program. Monitoring will not be done on federal, state and municipal lands. Choosing watersheds to monitor will include compiling existing data, and ranking according to attributes (risk). Watersheds are divided up into geomorphic groups to gain an idea of baseline conditions over a five year period. In order to understand what is going on it is necessary to go out and monitor streams - correlate what is going on with the different types of conditions. The County needs to look at known areas where there have been problems in the past. Reconnaissance will begin the first year looking for what is out there, seeing if there are any new problems not previously picked up. In determining how to go about that, staff looked at some risks, such as roads, development, agriculture, etc. i.e. different kinds of things on the landscape that could be causing a water quality problem. Values for an area need to be reviewed, i.e. what is the desire to protect in a certain watershed, what should be protected and what will be lost there is some water quality problem. Source identification - during second year, and looking at some exceedences.

Timeline for Monitoring:

2006:	21 Reconnaissance Sites 8 Baseline-Natural 8 Baseline - Developed 8 Baseline - Agriculture
2007:	9 Source Identification Watersheds 8 Baseline-Natural 8 Baseline - Developed 8 Baseline - Agriculture
2008-1010:	Same baseline sites, 9 new source watersheds each year

Ms. Harma noted that other counties with surface water programs are doing baseline monitoring as a high priority, with the outcome to gather data and the goal of identifying and correcting the problem. There is no county doing an exact adaptive management such as Island County is proposing, the two closest counties are Skagit and Kitsap.

Keith Dearborn observed that Adaptive Management is just common sense: if something is not working, change it. For Island County adaptive management will be triggered by an exceedence from adopted State Water Quality Standards. He made clear that an exceedence is not a violation. Violations are dealt with by the State; Island County will deal with exceedences. The ordinance lays out a multi-step process for adaptive management. Three potential outcomes of adaptive management: reducing regulation - may over time back off on regulation if regulations is more stringent than it needs to be; modify AG BMPs as they apply to a particular property; modify AG BMPs as they apply to a group of properties. This allows the Planning Director, after determining an exceedence has occurred, identifying the source, and that the exceedence is causing damage, to ask a property owner to modify BMPS. If it is a County wide problem, the ordinance calls for the Board of County Commissioners through review and amendment process modify BMPs. This ordinance focuses only Agriculture.

With regard to the issues raised by WEAN, Mr. Dearborn commented as follows:

1. *WEAN's claim that the Board of County Commissioners are abdicating police power authority by limiting the ordinance to AG and not other existing uses.*

Mr. Dearborn disagreed. There is no GMA requirement that the Board address other uses. This is focused on agriculture and critical area issues. There may be in the future other existing uses that the Board may want to add to adaptive management over time.

2. Issue about access to private property.

Mr. Dearborn pointed out that the County cannot access private property without an owners permission or court order. To the extent that becomes a limitation on water quality monitoring staff is confident about obtaining data from other properties or other locations [public land, public access points, etc.] to be able to do a reasonable job of monitoring. He knew of no county or city that allows a staff person access to private property without a property owner's permission or a court order.

Public Comments.

Steve Erickson, WEAN. handed in hard copies of the documents sent to the County Commissioners late Friday afternoon, March 31, 2006 via e-mail, including (*GMA Record #8680*):

- (#1) Letter - Proposed Compliance Ordinance and CAO Review in 98-2-0023c
- (#2) Copy of Letter From Office of the Governor April 30, 2002 Agriculture/Fish/Water-State Caucus Clarification of Riparian Buffer Options
- #3) Copy of page 85 of 94 Skagit County Ordinance #020030020
- (#4) Copy of Letter dated 3/31/03 to Dave Hughes of Skagit County Planning Commission from Department of Fish and Wildlife RE: Skagit County CAO
- (#5) Page 45 from Guidelines for Northwest Washington Conservation Plans, Review Draft -June 21, 2002 for AFW Executive Committee Review
- (#6) Copy of Letter dated 10/29/1999 from Department of Ecology to Skagit County Board of Commissioners RE Ordinance No. 17596 and Revisions to Sections 14.06.095 and 14.06.096
- (#7) Copy of Letter 10/29/1999 from Department of Fish and Wildlife to Skagit County Dept. of Planning and Development RE Critical Areas Ordinances 14.06.095 and 14.06.096
- (#8) Series of e-mails June -August 2005 between WEAN and Matt Kukuk, RE More cows and another Violation
- (#9) E-mail from WEAN to Matt Kukuk RE: Complaints: Cows in Maxwelton Creek with photographs documenting most recent violation

Mr. Erickson entered into the GMA record a bottle of water taken from Kristoferson Creek which he said after 15 tests showed fecal coliform at 75 times the State standard for skin contact [*GMA Record #8698*]. It is an existing problem, does not need five years' of monitoring. He added that 8 of 10 creeks on Camano Island tested exceeded State standards.

He expressed concern with ordinance language "access to private property to conduct baseline monitoring and source identification shall only occur if the property owner voluntarily consents in writing to access", which to him means in many cases there never will be source identification. He was not aware of any other potential threat to the public health, welfare and environment where the County renounced its power in this manner. He did not believe what is termed adaptive actions in the ordinance really was, referring to page A3, e, If there is non-point source pollution occurring detected, the County will tighten up the regulations for new uses which makes no sense to him. Page A3 f

indicates that the Director may order modification of BMPs if pollution is occurring, but Mr. Erickson claimed from experience the County would not take action if there is any discretion at all and suggested the word "may" be replaced with "shall". Page A3 h. the language "adversely affecting designated critical areas" seems to be confusion about what that means; the first division court of appeals in this case ruled that protection means all functions and values. Nothing in the ordinance indicates how "are adversely affecting designated critical areas" will be determined and who will do that. At 75, 10 or 5 times over State standards, functions of those streams would be impaired, and he noted that some of those functions include someone being able to go wading.

Mr. Erickson did not think too many people in Island County would expect that streams function as sewers for livestock or leaking septic tanks, essentially what he says they are functioning at now. Other functions in water quality that must be protected include riparian vegetation. As far as reducing regulations yet more if necessary, he did not think that possible. Existing BMPs require 25' undisturbed buffer and this scheme relies on farm plans and conservation practice standards from Conservation Districts. WEAN analyzed 115 farm plans finding that about 70% or more had stream buffers zero or considerably less than 50'. The court of appeals upheld the GMHB ruling that type 5 streams needed at least 50' buffers.

With regard to Step 3-enforcement (page A6) "If reasonable efforts to achieve voluntary compliance are not successful …" Mr. Erickson provided an example of what apparently the County considered reasonable efforts: illegal dredging of Maxwelton creek in 2002; 900' of salmon bearing creek dredged without permits. The State Wildlife department backed off from enforcement because the County said it would enforce it's critical area regulations. That enforcement by the County required implementation of BMPs in 2003 and to replant the buffer; it has not been replanted, and numerous times every year cows are in the creek. Last week he took photos of the cows in the creek again.

Lou Malzone, speaking on behalf of himself and his wife Emlye, Freeland, limited his comments to Freeland. He did not believe the ordinances were good public policy and hoped it was not the County's intent to create conflict between protecting and preserving Puget Sound, in particular Holmes Harbor, and identifying and correcting sources of pollution. He believed that the ordinances not only allow a property owner to refuse access to private property by the County to identify and mitigate potential sources of pollution, but suggested intent to rewrite the critical areas ordinance to accommodate sources of pollution that fall under the category of new uses. He suggested the Board was abrogating its authority to protect and preserve Puget Sound.

Mr. Malzone referenced an Island County Health Department study showing unacceptable levels of fecal coliform in Holmes Harbor from the drainage basin that collectively outfalls at Freeland Park. The study identifies two monitoring points that indicate the sources of pollution on private property. These ordinances would make it difficult to impossible for the County to correct the situation if the property owner refused access to private property. One source is most likely a wildlife habitat on private property but the determination that wildlife is the pollution source may be made impossible by these ordinances. The State Department of Health, Office of Food Safety and Shellfish, issued earlier this year a Shoreline Survey of Holmes Harbor Shellfish Growing Area, stating that no direct or indirect impacts were identified that could be attributed by the developed parcels evaluated along Holmes Harbor. Of 165 parcels evaluated, 81 were determined to have a potential to impact the growing area, 81 determined to have no impact and 3 not surveyed because owners refused access. The ordinances

would make it difficult to impossible for the county to further study the properties determined to have potential to impact the growing area and correct the situation if the property owner refused access to the property. The entire southern end of Holmes Harbor is closed to shellfish harvesting including the beach in front of Nichols Brothers Boats, due to unknown contribution and/or persistence of pollutants discharged to the beach from Nichols Brothers Boats and the elevated fecal coliform levels in discharge pipes on the beach. From the report he quoted: "the reclassification of the public beach at Freeland County Park from open to closed to recreational shellfish harvest will constitute a down grade under the Revised Code of Washington 90.72. Mr. Malzone believed the RCW placed the entire Freeland drainage basin under SEPA review, not just the shoreline, and that the proposed ordinances would make it difficult to impossible for the County to effectively implement SEPA review for development if the property owner refused access. Evidence strongly suggests that the Board should table the ordinances until the Freeland area pollution sources are identified and corrected. For the record, Mr. Malzone submitted on CD a copy of the Washington State Department of Health study and the Island County Health Department study [*GMA #8699*].

Marianne Edain, WEAN, addressed the following:

- Page A2 item b "The identification of the source or sources of contamination shall generally follow after commencing monitoring to assess the baseline water quality condition of a watershed" - seems to be confusing and does not seem to address existing problems.

- Page A3 item h "Enhancement or restoration projects initiated by the County to address water quality contamination from Existing Uses that is adversely affecting designated critical areas…". Does this mean the taxpayers of Island County are going to do restoration work as a subsidy to the people who are causing pollution?

- Ignoring previous data allows damage to continue for a minimum of five years. Previous information needs to be incorporated in spite in the differences in methodology. Where there is no violation there is no enforcement.

- For heavily developed watersheds it is necessary to test for heavy metals and hydrocarbons, for example, Holmes Harbor, the area around Oak Harbor and the Navy Base.

Deb Eidsness, Camano Island, did not support accepting data previously collected from creeks and streams because of inconsistencies; absolutely unacceptable to accept random data.

Consultants/Staff Additional Comments/Responses

Keith Dearborn mentioned that the Planning Staff looked at the Holmes Harbor issue, specifically the question of agriculture as a contributor to fecal levels identified. Staff identified the number of farms surveyed over the summer and the number of animals and their relationship to the total size of those two basins.

Jeff Tate pointed to a map posted "AG Parcels in the Freeland Area 12/21/05" [*GMA #8708*], explaining that the map shows two basins that drain into the south end of Holmes Harbor. The green squares represent parcels with some form of agriculture occurring, based on the survey taken last summer on lands zoned Rural, Rural Residential, and Rural Forest; there are no lands in those two basins zoned

Commercial AG or Rural AG. Last week for those two basins staff conducted another windshield survey to look at the parcels from last year to observe any other parcels with agriculture occurring. The two basins in combination total about 850 acres and 590 parcels. The green squares account for 14 parcels out of 590 and about 68 acres. Those are parcels and acres that include both horticulture and livestock [cannot look at the map and say wherever there is a green square there is an animal on that piece of property]. Last summer and this year staff took notes on the number of livestock on the 14 parcels: 5 parcels have some form of livestock, counting about 14 horses, 3 goats and a couple of chickens. Two of the 14 horses are located relatively close to Holmes Harbor, the remaining 12 located at least 3/4 a mile from Holmes Harbor.

Mr. Dearborn drew attention to Page A2, item 2, guiding principles, explaining these to be the ground rules, guidance directing staff in exercising the discretion in the decisions made once the program is implemented. He then commented with regard to the testimony received:

1. Access to private property. There is not nor will there be a recommendation that staff have the authority to enter private property without the property owner's consent when the subject is monitoring. The County has the authority to enter private property in an enforcement situation through a court order.

2. Source identification. There is no confusion in that statement.

3. The claim made by WEAN that the County will not be doing any source identification for 5 years is not true. There are specific reconnaissance phases derived from existing data that show exceedences, and there is specific source identification; it is not a five year delay. Existing data on exceedences was used to prioritize basins for use in this program. Experts consistently said data is insufficient; DOE could not and the County could not conduct an enforcement proceeding with current data. The County could not make a determination of a particular property that would need to modify BMPs based upon current data; that data has not been developed in a manner and with a consistency that would allow for an enforcement action by the State.

4. Question of damage and how damage would be defined; difference between violations and exceedences. Island County does not have the authority and it is not proposed to assume the authority to enforce water quality standards. State adopted water quality standards are enforced by the State Department of Ecology. Enforcing AG BMPs which have as one purpose water quality, the County does have the authority and is not abdicating that authority, and in fact, will implement the program to help in enforcement of AG BMPs. The bottle of water from Kristoferson Creek with the claim about high fecal content, is a State issue for water quality standards. For the County, it is a question of whether AG BMPs have been implemented, whether agriculture is the source of the problem, and then if BMPs not implemented what can the farmer do to deal with it. If after going through education, compliance assessment, enforcement, there is still a problem attributable to agriculture damaging the resource, the County has two approaches to deal with that:

   -Kristopherson Creek specific through action by the Planning Director
   -Change regulations County wide.

5. Monitoring for heavy metals and hydrocarbons. Excluded intentionally because it would mean an astronomical increase in cost on an annual basis. Also, the County does not have that many

developed watersheds, not at the urban densities cities have and this is not an issue that needs to be addressed related to AG and AG BMPs.

Dr. Adamus added to note that there is a potential for problems with heavy metals in some watersheds but is monitoring for those is not proposed for this program. Staff sees that primarily that likely would be from industrial or municipal sources, the responsibility of DOE and/or if there are problems of that nature, the County could apply for a special grant to study that as in the case of Freeland. The County has already used existing data to prioritize watersheds and will continue to use the existing water quality data to focus where monitoring efforts go, and source identification. The County is not using existing data to identify violations because there is not enough of that data of sufficient quality control to use it in the violation sense, and the County is not getting into enforcement of water quality standards. With regard to WEAN's comment about riparian vegetation, quite a bit of riparian vegetation falls under the category of wetlands; wetlands are critical areas in the County and included in this plan are wetlands. That is not to say all riparian areas are wetlands; there may be some riparian areas that are not and therefore would not be covered by this plan. A large number of riparian areas would be monitored.

Board Comments and Action:

Commissioner Shelton recalled that the County to date had not had a WQMP with the consistency now believed needed, and hired consultants, together with staff, to put together a WQMP to meet the needs of Island County. To assume that the County would ignore exceedences that will ultimately result in violations issued by a State agency is not the way the County intends or ever would operate. If there are exceedence figures consistently moving up the County will act in accordance with those exceedences in an attempt to avoid the violation. It disturbed him to hear comments made by WEAN implying that somehow the County was going to institute the program only until getting past the Hearings Board and then not continue on; he refuted that as pure unadulterated speculation on the part of WEAN, and certainly not the intention of this County. Island County is in the water quality monitoring mode for the long term. This County has some financial limitations but has committed resources to ensure this water quality program will continue and ultimately see improvement in water quality in streams, wetlands and critical areas. As long as he is a County Commissioner he will not vote in favor of giving up the sanctity of private property and authorize government or others to trespass. If there is a violation the County has the ability to obtain a court order to go on the property. To assume the County could at random walk on private property without knowledge of the owner is not something he would ever support.

Commissioner Byrd referenced some grants under which some data had been obtained with regard to water quality; unfortunately, some of the data suspect because of inadequate procedures or proper protocol in collecting that data; the County needs very hard and fast protocol established. The water sample submitted by WEAN from a Camano creek cannot be assured was taken under proper procedure and protocol. He did recall about a year ago when folks were going out and collecting samples, one Carp Lake where a septic system was a problem, and the Health Department pursued to correct the situation. Another situation was where beavers making dams raised the water level and caused a septic system to be flooded out, and that had to be cleaned out twice.

Chairman McDowell added to Commissioner Shelton's comments about County commitment, the County having committed at least $200,000 a year to this water quality program. As far as the program stopping after the GMHB, he assured Mr. Erickson that that was absolutely not the case. And

he did not believe the plan was designed for failure. He agreed with Ms. Eidsness that the County should not include old data inasmuch as there will be a much stricter, repeatable type protocol when collecting new water data.

By unanimous motion, the Board continued Ordinance #C-22-06, PLG-003-06 in the matter of establishing a surface water quality monitoring program for non-tidal waters to April 24, 2006 at 2:30 p.m. [*Notice of Continuance: GMA #8702*]

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 hearing was continued from January 23, 2006 and February 27, 2006.

Mr. Dearborn introduced the hearing topic, noting that the Board's process began December 20, 2005 at a special session to receive and discuss the recommendation of the Island County Planning Commission on Agriculture Best Management Practices (AG BMPs). The Board held a public hearing on January 23, 2006, which was continued to February 27, 2006, and subsequently continued to today. During that time period, staff discovered an inadvertent error in the compilation of the Planning Commission recommendation; some existing language related to penalties and enforcement was dropped out of the ordinance making it appear like it was an amendment, but it is not. The Planning Director identified that error during a Board meeting March 13, 2006. During a regularly-scheduled Board staff session with the Planning Department March 15, 2006, the Planning Director presented the compiled ordinance that was corrected, along with Amendments 1-7 [*GMA #8669*]. Mr. Dearborn clarified today's hearing was not on the ordinance itself (that public testimony having been taken and concluded), rather, on 7 proposed amendments (copies available to attendees); 6 of the amendments available for more than a month; amendment #7 is new as a result of State legislative action to create an exemption from public disclosure for farm plans that are prepared by conservation districts. Whidbey Island Conservation District by letter dated March 13, 2006 [*GMA #8703*] asked the County to consider an additional amendment to the ordinance [represented in amendment #7]. The County received specific review of the standard plan (amendment #5) from State agencies: 4/1/06 from Susan Meyer, Wetland Specialist, Washington Department of Ecology [*GMA #8704*] and 3/31/06 from State Department of Community, Trade and Economic Development with comments attached from the Washington Department of Fish and Wildlife [*GMA #8679*] addressing minor corrections and clarifications of a standard plan, along with one more substantive change.

Jeff Tate, using a screen for viewing by the audience, reviewed proposed corrections and suggestions to Amendment No. 5, hand-written notes reflecting four suggestions [*GMA #8705*]:

1. Page 17. DF&W suggests on item #3, in the far right hand column to add in parenthesis after the words "fencing/use exclusion" the term "(preferred use).
2. Page 18 . DF&W suggests on item #8, in the far right hand column after the word "fencing" add in parenthesis "preferred option".
3. Page 23. DF&W suggests under item #13, the definition for low intensity agricultural activity, the second paragraph begin with the word "For". Also, to include the phrase "at a minimum" in the second line after the word "would" to read "…the owner/operator would, at a minimum, implement the standard farm management practices…".
4. Page 26. Comment from DOE, that under item #3 at the very top of the page, for standard practices for heavy use areas (confinement areas or sacrifice areas). Okay with the language proposed but

felt that if there is an area where there is greater than 8% slope that there should be consultation with the conservation district. See page 17, questions 3 and 4.

The issue is if more than 200' away from a CA but have an 8% or greater slope DOE would like to have the conservation district come out and consult to identify additional BMPs that may be required (soil dependent); there may be very few of these circumstances, if at all, in Island County. Exact proposed language has not yet been developed; he will review and sketch out appropriate language for consideration, which will include some language that talks about "… typically 8% across the property" not just in one location.

With regard to this proposed change to Amendment No. 5, Mr. Dearborn commented that should there be testimony at this hearing requesting a continuance in order to consider the amendment, is a matter the Board appropriately should consider at the end of the hearing. He did not consider the amendment to be significant in terms of the subject, and the proposed changes from Fish & Wildlife essentially are more grammatical than substantive.

Mr. Dearborn pointed out two corrections to the amendments:

> Amendment No. 2 on page 6, top of the page, 17.02.050 Overlay zones, D., delete the last two sentences reading "The Director is authorized to develop and adopt a rule that specifies how the requirements relating to Existing and On-going Agricultural Activities will be implemented. The rule shall be made available for public review and comment and shall be presented to the Board of Commissioners on or before March 1, 2006.". This recommendation came from the Planning Commission. At the time, the Planning Commissioner wanted to make sure there were implementation rules related to existing and on-going agriculture; with the Water Quality Ordinance, Mr. Bakke believes the rules are established and therefore no need for this rule.
>
> Amendment No. 7 page 31, inadvertently left out a reference to the County under K.5 Insert "the County" after "lessee".

Public Comments

Steve Erickson, WEAN, clarified with respect to the water sample from Kristopherson Creek submitted during the hearing on Ordinance #C-22-06, that the test had been done by a consultant under contract with the Public Works Department. It was hard for Mr. Erickson to comment on proposed language from DOE and DF&W because he had not seen those comments at this point. Not clear whether or not the slope issue referred to all confinement areas in general or only those outside 200' - whether referring to that s a trigger generally or whether that needed to be looked at further.

With respect to clarifications, the County received a letter from Mr. Erickson dated 3/29/06 regarding Unanswered Questions 98-2-0023c (GMA #8676). In addition, he noted the following:

- Conservation practice standards refer to streams that do not support salmon habitat and to salmon bearing streams. Are these streams that do not support salmon habitat; streams that have no salmon; streams that do not flow into salmon bearing streams?
- What is meant by "adversely impacting critical areas" and how that will be determined in the water quality monitoring ordinance?

- The issue of minimum stream buffers, the court of appeals ruled that buffers less than 50' are not adequate. For designated AG lands WEAN understands balancing AG and critical areas protection and accepted the AG BMPs which specified a minimum buffer of 25' undisturbed. Proposed here basically removes that requirement entirely. The conservation practice standards theoretically have some buffers, depending on interpretation, but those buffers can be moved, thus no ability to develop riparian vegetation.
- WEAN reviewed 115 farm plans showing about 32% reported steams or water courses on property; 11% recommended no buffer; 11% recommended a buffer without a specified width [example fencing right on the edge of a stream]; 49% recommended buffers of 25' or less; another 24% ranged from 25.1' to 50'. By and large farm plans do not require anything and do not recommend buffers that have been accepted by the scientific community as necessary for protection and that Best Available Science [BAS] indicates are necessary; BAS is not just putting a stamp on NRCS BMPS. Seem to have totally ignored DOE work on this subject. He sees this as another attempt to reduce stream buffers.

Marianne Edain, WEAN, had the following comments and questions:

- Given the complexity of the questionnaires, many people would be hard put to answer some of the questions. What staff review and verification will there be of the accuracy of those answers?

- What constitutes damage to critical areas; for example on page 9 "… exceedence in adopted water quality standards that is damaging critical areas"? WEAN believes damage is on-going and is not being addressed.

- Slope between animal confinement areas and a surface water. A fair number of the 115 farm plans had situations in which the landowner or conservation district staff reported animal confinement areas at the top of a slope sliding down into a critical area -- whether within 200' or less was not noted. A consistent 8% slope of 200' does not happen. A slope going from an animal confinement area down to even a flat area of 20, 30 or 50' will lead the nutrients down toward the wetland. Needs to be interpreted broadly rather than narrowly.

Deb Eidsness, Camano Island, commented on page 15, item #3 where the question asks: "Are there any wetlands, streams, wet pastures, or drainage ditches…". She and several others suggest eliminating "wet pastures" and use the term "farmed wet meadows" or the term "seasonally sub-irrigated pasture". There is an actual definition of farmed wet meadows on page 23.

Roger Nelson, Camano Island, thought "sub-irrigated pasture was more positive instead of wet pasture. Sub-irrigated where the root zone can tap into some of the moisture below is what farmers sought after in the 1900's in order not to have to irrigate; avoiding irrigation is a good thing. As far as input from DF&W and DOE he thought to some degree those were significant changes. In terms of his position in general, he believed that for BMP implementation funding assistance was inadequate, for example, some farmer could be stuck with $40,000 worth of fencing requirements. If really supporting agriculture and complying with GMA, legislation should be not promoted that does away with farms. Farmers will have to go away because of not being able to afford continual requirements and changes. There needs to be a benefit for the large land holders to continue that type of farm, and not just increased regulation.

Page 9, paragraph #4, Mr. Nelson commented on the language stating: "exceedence in water quality standards be modified or terminated". As an agriculture type person, there is no security in that statement and it bothers him a lot. Farm plans across the board are wrong and unnecessary; the larger land owners need to follow NRCS guidelines but not be subject to the farm plans, a huge intrusion.

Steve Erickson referred to Page 15 item #3, suggesting that the wording regarding wet pastures to be consistent, substitute "farmed wet meadows". Page 9, item #D4. "When monitoring, required by this Chapter, shows an exceedence in adopted water quality standards, that is damaging Critical Areas and is attributable to Existing … the planning Director shall promptly order". This would seem to provide the authority to do more detailed monitoring on a particular piece of private property even if the landowner denies access. Statements made during the hearing on the WQMP Ordinance [guidelines section] seems to renounce that authority.

Mr. Tate reworked some language focusing on Page 17 and 26, Amendment No. 5, under item #3, fourth column: "if more than 200' where the typical slope between the confinement area and surface water exceeds 8%, refer to conservation practice No. 3 on page 11". And modify the last paragraph to say something like "if more than 200' where the typical slope between the confinement area and the surface water is less than 8%".

With language still being developed for that particular proposal for Amendment No. 5, Mr. Dearborn's suggested action today was that for the amendments the Board is prepared to take action on to do so; if this amendment is not ready, consider continuing the hearing for that particular issue only until April 24, which will allow staff time to prepare Findings during that interim period for everything else in the ordinance except this particular issue.

Board Action

Commissioner Shelton moved approval of the following amendments to Ordinance #C-150-05 PLG-021-05:

Approval of Amendment No. 1 unaltered

Approval of Amendment No. 2 with correction to on Page 6 under 17.02.050 Overlay zones, D., by deleting the last two sentences reading "The Director is authorized to develop and adopt a rule that specifies how the requirements relating to Existing and On-going Agricultural Activities will be implemented. The rule shall be made available for public review and comment and shall be presented to the Board of Commissioners on or before March 1, 2006.".

Approval of Amendment No. 3 unaltered

Approval of Amendment No. 4 unaltered

Approval of Amendment No. 5 with changes:

Page 15 item #3, far left hand side, first line change "wet pastures" to read "farmed wet meadows".

Page 23 under item #13. Second paragraph under #13, insert the word "For" at the beginning of that paragraph to read: "For Low Intensity Agricultural Activities located within…". The second paragraph after the word "would" in the second sentence, insert the words "at a minimum".

Hold off on other suggested changes discussed at the hearing under Amendment No. 5 pages 17 and 26 regarding if more than 200' of the slope between the confinement area and surface waters exceed 8%; and pages 17-18 regarding insertion of "preferred option".

Amendment No. 6 approval without correction

Amendment No. 7 Approve with the following change: Page 31 under K.5, second line from the bottom of the paragraph, insert "the County" after lessee.

Motion, seconded by Commissioner Byrd, carried unanimously.

By unanimous motion, the Board continued the Public Hearing Commissioner Shelton moved to continue the public hearing on Ordinance #C-150-05 (PLG-021-05) and Technical Amendments In the Matter of Updating Island County's GMA Comprehensive Plan and Critical Area Regulations relating to Existing and Ongoing Agriculture to April 24, 2006 at 2:30 p.m., the record for public testimony 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 recommendation by the State Department of Ecology. Motion, seconded by Commissioner Byrd, carried unanimously. (Notice of Continuance *GMA #8707*).

Mr. Dearborn confirmed that specific language would be ready and posted on the website April 10 in order to give people two weeks' before the next hearing on April 24th. Staff also would work to have the Water Quality ordinance amendments on the website, along with findings related to AG BMPs.

There being no further business to come before the Board at this time, the meeting adjourned at 12:50 p.m., the next regularly-scheduled meeting to be held on April 10, 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