

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
MARCH 17, 2008 – REGULAR SESSION**

The Board of Island County Commissioners met in Regular Session on March 17, 2008 beginning at 10:00 a.m. in the Board of County Commissioners Hearing Room (Room # 102B), Annex Building, 1 N.E. 6th Street, Coupeville, Washington. John Dean, Chairman, Phillip Bakke, Member, and William L. McDowell, Member were present. The meeting began with the Pledge of Allegiance.

MONTHLY FINANCIAL REPORTS

Auditor

Anne LaCour, Chief Deputy Auditor, submitted the Auditor’s written financial report for the period ending February 29, 2008. She reported that the revenues are not quite at the average but are in relation to prior years at this time, mostly due to the lag in the grant billings that begin the first of the year. Expenditures on current expense are in line but the other funds are at 8% and that is because road expenditures are less at this point.

District court revenues down 5% from prior average because the Oak Harbor cost sharing has not been received yet for 2008.

Treasurer

Linda Riffe submitted the Treasurer’s written financial report for the period ending February 29, 2008 adding the following comments:

- *Payment in Lieu of Taxes.* Pro-rata payment for federally-owned entitlement land has not been received from the Department of Interior/Bureau of Land Management. Payment is dependent on federally-shared revenues.
- *Excise Taxes.* Payments are made quarterly.
- *Franchise Tax.* Revenue is a once-a-year payment. Full amount received for 2008.
- *Allocated Transfers In and Out.* Figures reflect double the amount normally reported as the January figure is included with the February figure.

Elaine Marlow, Budget Director, confirmed that the Board will soon be approving a resolution that will establish a separate fund for the purpose of tracking the 1/10th of 1% mental health tax income.

CONSENT AGENDA

By unanimous motion the Board approved the Consent Agenda as follows:

ELECTRONIC FUND TRANSFERS, PAYROLL, VOUCHERS, PAYMENT OF BILLS

Vouchers (War) #s 283060-283419.....	\$531,009.98
Electronic Fund Transfers.....	\$222,206.84
Payroll dated.....	March 14, 2008

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BUDGET

Hearing Rescheduled – April 7, 2008 – 10:15 a.m.

Resolution C-18-08 Amending the 2007 Island County Budget; suggested date/time

Hearing Rescheduled – April 7, 2008 – 10:15 a.m.

Resolution C-19-08 Amending the 2008 Island County Budget

GSA

Property Management

Resolution C-26-08 In the matter of establishing rental fees for the Camano Multipurpose Building. (*Resolution on file with the Clerk of the Board*)

HUMAN RESOURCES

<u>Department</u>	<u>PAA #</u>	<u>Description</u>	<u>Position #</u>	<u>Action</u>	<u>Eff. Date</u>
Planning & Community Development	046/08	Watershed Project Manager	2266.01	Replacement Position	04/01/08
Auditor	049/08	Accountant Deputy Auditor-Temp	202.03	New Position	03/17/08

PLANNING AND COMMUNITY DEVELOPMENT

Project Grant Agreement: Smith Prairie Farmland – Ebey’s Reserve, RCO #06-1996A, proposal to acquire an agricultural conservation easement on a 66.5 acre conifer seed farm. Amount: \$390,850 with 50% match (*RM-PLAN-08-043*)

Project Grant Agreement: Ebey’s Reserve Farmland, RCO #6-1997A, to protect 150 acres of farmland inside Ebey’s Landing National Historical Reserve. Amount: \$750,000 with a 50% match. (*RM-PLAN-08-042*)

LIQUOR LICENSES

Special Occasion Liquor License No. 091224 by the Camano Island Yacht Club for a special occasion to be held on April 19, 2008 from 5:30 p.m. to 9:00 p.m. at the Camano Island Yacht Club, 129 N. Sunset Dr., Camano Island, WA

Special Occasion Liquor License No. 092151 by the Camano Senior Center for special occasions to be held on April 12, 2008, May 17, 2008 and June 14, 2008 from 7:00 p.m. to 10:00 p.m. and May 31, 2008 from 3:00 p.m. to 7:30 p.m. at the Camano Senior Center, 606 Arrowhead Rd., Camano Island, WA

New Application for Liquor License No. 078419-3C by applicants Gilbert Landin Villarreal and Suzanne Patricia Villarreal, Concorde DP, LLC, Tradename: Concorde DP Market, 40928 SR 20, Oak Harbor, WA

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REGULAR AGENDA

By unanimous motion the Board denied in its entirety Veterans Assistance Fund Claim #V8-2 in the amount of \$1,000 as recommended by the Veterans Assistance Review Committee [*emergency financial assistance to eligible veterans; names and specific circumstances are confidential*].

The Board by unanimous motion approved a technical correction to correct a typographical error in Ordinance C-87-07 in the Matter of Amending Chapter 17.02 and 17.03 ICC, the Island County Critical Areas and Zoning Ordinances and the Island County Comprehensive Plan to Address Land Use Compatibility Surrounding Naval Air Station Whidbey Island. Correction reflects “Map C” in place of “Map C.1” at subsection 17.03.180.Z.4, Designation Criteria.

PUBLIC HEARINGS

**HEARING HELD: ORDINANCE C-02-08/PLG-011-07 UPDATING ISLAND COUNTY’S
COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS RELATING TO
WETLANDS**

*[Presentation of Planning Commission’s Recommendation January 7, 2008 -
Public Hearing Scheduled on Amendments 1-3]*

[Public Meeting – Transmittal Amendment 4 - January 14, 2008]

[Public Hearing to consider Amendments 1-4 - January 28, 2008]

[Public Meeting to discuss Amendment 4; Transmittal Amendments 5 & 6 - February 4, 2008]

[Public Meeting – Transmittal Amendment 7 - February 25, 2008]

At 10:20 a.m. as advertised and scheduled a public hearing was held to consider Ordinance C-02-08/PLG-011-07 Updating Island County’s Comprehensive Plan and Development Regulations Relating to Wetlands and four proposed amendments [*Amendments 1-3 accepted January 28, 2008*]:

- Amendment 4 – Land use intensity
- Amendment 5 – Prohibiting creation of new lots composed of wetlands
- Amendment 6 – Deleting reference to new agriculture in the new CAO
- Amendment 7 – Additional Findings of Fact

The assembly included approximately 3 members of the public and press as well as County staff, Keith Dearborn, and Dr. Paul Adamus.

Jeff Tate, Director of Planning and Community Development, provided background information for the purpose of the public hearing. He began by making sure the Board had in hand all the materials that would be referred to throughout the discussion:

- Packet of amendments dated January 28, 2008 which includes Amendments 1-4 (*GMA No. 9793*)

With respect to Amendment 4 two memoranda were provided to the Board by staff. First, a memorandum dated January 14, 2008 (*GMA No. 9794*) describing the alternative proposal itself, merely a description of Amendment 4. The second memorandum is dated February 25, 2008

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(GMA No. 9797) and is an additional description of Amendment 4 based on prior public comments. It also describes another modification that had been presented in one of the state agency letters.

- Packet dated February 4, 2008 with Amendments 5-6 (GMA No. 9795)
- Packet dated February 25, 2008 with Amendment 7 (GMA No. 9796)
- The County received on March 14, 2008 a letter from CTED dated the same (GMA No. 9792)

Mr. Tate said on December 18, 2007 the Planning Commission recommended approval of a wetland ordinance and presented it to the Board of Commissioners on January 7, 2008. The Board, at that time, accepted the Planning Commission's recommendation and also considered the first four amendments to possibly be scheduled for public hearing on January 28. The Board accepted Amendments 1-3 without change but asked staff to revisit Amendment 4 and evaluate the state agencies' and public comments received; those being, WEAN (GMA No. 9767), and Jeanne Hunsinger (GMA No. 9698). The Board asked staff to return to the February 4 meeting and report back on those comments. About the same time, state agencies provided a second letter dated January 25 (GMA No. 9705) raising new issues:

- New lot creation
- New agriculture on lands historically used for agriculture

The state agencies in the January 25 letter suggested that the Board consider modifications to the two issues which brought about Amendments 5 and 6.

During the February 4 meeting the Board agreed to schedule a public hearing for March 17 to fully consider Amendment 4 [*land use intensity*], Amendment 5 [*new lot creation*], and Amendment 6 [*new agriculture on lands historically used for agriculture*]. On February 25 the Board added for hearing Amendment 7 [*update to Findings of Fact*]. The public hearing today is solely on Amendments 4, 5, 6, and 7.

Following background information Mr. Tate then talked about the individual amendments.

Amendment 4

Amendment 4 [*land use intensity*] came about as a result of the Board asking staff to attempt to arrive at a different proposal than the Planning Commission recommendation, with respect to making sure that the clearing limits established that help define whether a land use intensity is high, medium, or low are equitable and make sense across the range of parcel sizes. The Planning Commission's recommendation, which was a staff recommendation, created only two category breaks for parcel size, meaning that where there was a category break there were some oddities that surfaced about a parcel that was just under that break and a parcel that was just over creating an inequity on how much land could be cleared and be placed in the different categories of high, medium, or low. Staff reviewed the clearing trends analyses prepared over the last seven to eight years and returned to the Board with a different proposal to spread those parcel breaks out. Instead of having to break it out into a number of categories, in this case the current proposal is five categories, arrive at different cleared area percentages for each category.

When Amendment 4 was presented to the Board public comment was received from CTED (letter written on behalf of other agencies as well, a collaborative effort on the part of CTED, Ecology,

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and Fish and Wildlife). Comment was also received from WEAN and Jeanne Hunsinger, all with suggestions on how to modify further Amendment 4. The Board asked staff to consider those comments, one being a comment received from CTED outlined in the February 25 staff memorandum. Highlighted in the memorandum is one additional change that would supplement Amendment 4. CTED pointed out that when the charts were recreated with the cleared area percentages staff focused on Residential uses, but in another section of the ordinance there are similar lot size thresholds for Non-Residential uses. CTED's suggestion was those parcel breaks should be the same. Example would be in Residential, the parcel break was at 4.99 acres and for Non-Residential uses it was at 4.5. The memorandum of February 25 synchronizes those Non-Residential and Residential use category size breaks.

Mentioned in the February 25 memorandum is staff's belief that the aforementioned is the only necessary additional change to Amendment 4. The rationale for using cleared area as a standard in determining land use intensity is based on historical trends and was an effort to attempt to take advantage of a positive trend observed by staff through the analysis, which showed that the average amount of cleared area was steadily declining for parcel size during the eight-year period, 1999-2006. When staff reviewed again the cleared area trends noticed in the different parcel size categories, it is not exact or perfect, but is close to what staff recognized as the trends. The goal was to endeavor to provide people an incentive to clear less and be placed in the low intensity category. Staff therefore believes the percentages outlined in Amendment 4, the cleared area percentages, would accomplish that goal. What is seen in the percentages is something close to the average so if more than the average is done, will be closer to a high intensity land use category with a bigger buffer. If less than the average will be getting to a low intensity land use category and a smaller buffer with the average in between. Staff believes Amendment 4 correlates well.

Amendment 5

Amendment 5 is an amendment that CTED also suggested the Board consider having to do with creating a prohibition for the creation of new lots comprised of wetlands. This is a standard that currently exists in the wetlands ordinance and staff believes it was an oversight to leave it out of the current draft ordinance.

Amendment 6

Amendment 6 is another suggestion from state agencies to address the issue of new agriculture on land historically used for agriculture and delete a reference in the draft ordinance, the Planning Commission's recommendation relating back to the issue of Senate Bill 5248 that established a moratorium on changes in critical area regulations that affect agriculture.

Amendment 7

Amendment 7, Findings of Fact, reflects feedback received from the Board.

In conclusion, Mr. Tate called attention to the fact that the purpose of the public hearing is to only consider Amendments 4, 5, 6, and 7. Staff will listen to the Board conversation and public comments and gently remind the assembly to stay within that discussion if necessary.

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Keith Dearborn spoke of the two exhibits in the packet of recommendations from the Planning Commission: the Wetland Identification Guide and the Rural Stewardship Plan, Exhibits H and I respectively. He said the exhibits are not part of the code so therefore are not code reviser documents. As such, the exhibits were not reviewed by the code reviser after the Planning Commission had completed its recommendation.

The Planning Commission forwarded the documents in total to the Board with a recommendation to adopt in its entirety. As staff has continued to work on the exhibits they realized there are more refinements necessary to the wording. Mr. Dearborn said staff would like to make those changes but would prefer to not return to the Board with a new ordinance amendment for every word change to the text of the documents. The portions of the exhibits to be used, which staff believes are appropriate for adoption, are the worksheets found at the back of the Wetland Identification Guide: (1) Land Use Intensity Worksheet, and (2) Wetland Buffer Worksheet. At the back of the Rural Stewardship Plan document there is an application form containing standards. Mr. Dearborn suggested that the Board make it clear in the cover ordinance that it is adopting the worksheets and application, but not the entire text of the documents. By doing so will give staff some flexibility during the implementation period to further refine the documents, change pictures, bring pictures current, and avoid the adoption process of amendments. He and staff do not believe this to be a substantive change as the portions of the documents used for regulation are the worksheets and the application and those are the ones that, if changes are made in the future, the Board should be looking at as a regulatory change. Mr. Dearborn presented a proposed cover page amendment to the ordinance reflecting the suggestion.

To Mr. Dearborn's surprise after spending three years working on the documents, the aforementioned is the only change he can offer the Board. Everything has been said and there is a record that, in Mr. Dearborn's judgment, supports fully what the Planning Commission has requested with the amendments.

Dr. Paul Adamus, who worked alongside Mr. Dearborn and staff for the three-year period, discussed the updating of his statistical correlations (*Statistical Correlations Pertaining to the Habitat Part of the WDOE Method Used to Score Wetlands in Island County, February 2008*) (GMA No. 9790) that compared the County's system with Ecology's. He spoke about the Wetland Buffer Checklist saying the Washington Department of Ecology has a method for assessing habitat and the County originally ran that method on the County's wetlands and decided to make modifications with input from Ecology and other agencies. Some additional factors were added, some factors in DOE's method the County decided not to use and modified wording on others. The question was then, if modifications are made in a method are the methods still similar, do they give similar results? Dr. Adamus believed that an approach to that question is to analyze it statistically which he did for the Board, explaining the procedures termed "Pearson's Correlation" and "Spearman Rank Correlation" and how those are used with such data to determine if one set of scores tracks the other. In this case the question was when taking the same 76 wetlands, do the scores received from using the DOE method track with the scores received from using the modified Island County method. Dr. Adamus explained the data and concluded that he and those involved are comfortable in saying that the methods track well and Ecology has indicated its satisfaction.

Dr. Adamus said he has enjoyed working with the County on the project and that it has been an educational process for him as well as for everyone involved. He is grateful to serve the public and to serve Island County and hopes to help in the future as the Board feels appropriate.

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Mr. Dearborn said the statistical analysis was first done in May of 2007 and was included with the workshop documents so the new document is simply an update with some expansion from a text standpoint.

Chairman Dean opened public comment with a reminder that the Board is considering only Amendments 4-7 and accepting testimony solely on those.

Steve Erickson, Whidbey Environmental Action Network, spoke of concerns with the proposed amendments.

Amendment 4

He talked of percentages for impervious surface and how those are based on an evaluation of historical clearing trends mentioned in the February 25 memorandum. Mr. Erickson claims it is unclear in the memorandum whether those are equated with impervious surfaces. However, in the amendment itself, the classification threshold used for impervious surface is 10% and 5%; if over 10% it is considered high intensity. Basing impervious surface limits on what are the historical trends first of all is not science based and secondly, he believes actual standards are needed that minimize creation of impervious surface. He realizes that could be difficult in RAIDs, UGAs, and smaller lots. For larger lots though actual limits on impervious surface are not just something that makes a wetland buffer larger because it is a cumulative impact that happens over time. All science points to if have more than 10% of a watershed in impervious surface it is being seriously degraded. One can measure the effects much lower; in fact, there is no threshold where cannot measure the impacts of impervious surface. Non-Residential development should be included in the limits especially outside the UGAs and Non-Residential RAIDs. Those are generally conditional uses and they need to be subject to the same limits, especially concerning impervious surface and clearing. Reducing the land use intensity by one level based on the Rural Stewardship Plan does not always make sense for several reasons, the most obvious to him is that some of the actions needed to get a Rural Stewardship Plan do not necessarily reduce on-site intensity. They include, for instance, putting up nesting structures which will never replace natural habitat. Also included is the allowing of salvage of native plants, including for off-site uses. Salvaging native plants from site and taking them somewhere else does nothing to reduce land use intensity.

Amendment 5

Mr. Erickson said he had no comment.

Amendment 6

Mr. Erickson is disappointed with the Board that it backed down from including the allowance for new agriculture in wetlands because it is illegal, not because it is damaging. Potentially the amendment would have allowed new agriculture in wetlands, perhaps 5,000 acres of wetlands. The damage that would have occurred should have come first and he does not believe the Planning Commission served the Board well in forwarding the amendment.

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Amendment 7

Regarding Finding 21 which states: “The Board intends that wetlands be protected so that wetland functions are not lost while ensuring that property rights are protected. Some advocates claim that these two objectives are mutually exclusive.” Mr. Erickson said that has never been WEAN’s position. There are situations where there may be a pre-existing lot where wetland impacts are unavoidable for development and if prohibiting development totally, that potentially will allow a takings. The way the County has done this to date is with the “reasonable use clause” which applies to existing lots before the date of adoption of the ordinance. The way the ordinance is written every possible use in the zoning ordinance is classified as a reasonable use. The ordinance states that no reasonable use will ever be denied based on impacts to wetlands. He believes that is not protecting property rights, instead it is creating a giant loophole for future interpretation and it should be corrected. The ordinance must be explicit that development proposals can be denied based on impacts to critical areas. Protecting property rights does not indicate that anything goes.

The Chairman closed the public comment portion of the hearing.

Chairman Dean, on behalf of the Board, thanked those involved in the lengthy process. He said he was impressed as a new Commissioner to see the extent to which the County was going in attempting to hit middle ground and he believes that objective was achieved.

The Chairman suggested a proposed language change to Amendment 7, additional Findings of Fact, to address Mr. Erickson’s comment about Finding 21. He proposed the following:

The New CAO states at ICC 17.02A.010.B that it is to be administered flexibly so that no lot will be made unusable. The Board intends that wetlands be protected so that wetland functions are not lost while ensuring that property rights are protected. ~~Some advocates claim that these two objectives are mutually exclusive.~~ The Board ~~does not agree~~ believes these two objectives are not mutually exclusive and intends that the New CAO be administered to balance in a fair and equitable manner the protection of wetland functions and property rights.

The Chairman also suggested a language change to Finding 25 as follows:

Mitigation is the last ~~priority~~ option in the new decision making process established by the New CAO. The Comprehensive Plan amendments establish priorities for mitigation and the New CAO implements these priorities. Similar to the framework for decisions regarding the alteration of a wetland or wetland buffer, the appropriate decision regarding mitigation will be judged based on what can practically and reasonably replace wetland functions that may be lost if an alteration is permitted. For any decision, mitigation will always be the last preferred option and a fee in lieu of mitigation will be used as the last mitigation option and only after the Board adopts a fee system.

Chairman Dean moved that the aforementioned language changes to Amendment 7, Findings 21 and 25, be accepted, seconded by Commissioner Bakke, unanimously carried.

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Commissioner Bakke requested that Mr. Dearborn or Mr. Tate address the comment concerning reasonable use and clear-cutting a steep slope because the comment is not how the Commissioner reads the ordinance.

Mr. Tate indicated he also does not read the code in that way and how it would be implemented. He believes the statement most likely is generated from the language “strict application of the critical area regulations contained in this chapter shall not cause the denial of uses allowed under chapter 17.03,” and continuing. If that were the only standard in the code or the comprehensive plan, and not reading anything else, perhaps it could be interpreted in that way. The reality is, however, the definition of reasonable use itself requires that when making that evaluation, when staff is reviewing reasonable use, that part of the consideration given is to consider the size of the lot, the type of use or structure proposed in similar existing or allowed uses, and structures in the general vicinity of the lot. If someone wanted to propose a use on property that is unlike any other use around, the County is not likely to grant reasonable use. A similar standard applies to variances; that is, other applications the County reviews operate under the same principles of evaluating communities.

Commissioner Bakke asked Mr. Tate how different does he believe that is in practice from what has been occurring under the current code because with the example given, the claim is made that it opens the door to allow clear cutting on steep slopes.

Mr. Tate replied that the standards themselves are another set of the critical area regulations but the County does not allow it nor permit it. He believes that the other piece that must be looked at when considering reasonable use is the fact that reasonable use still must go through the requirements within 17.02A.040.A.5 which is the critical area review section that speaks to avoidance, reduction, restoration, and compensation; must walk through the process. Mr. Tate does not see how it is “opening the door” because it is actually building discipline and predictability more into the system than it is doing anything else.

Commissioner Bakke likened the reasonable use process to a set of very steep stairs, where each step has a platform and each time another step is taken it is a bigger, harder step to make. It is the stair step approach where, in his experience, there would be very few cases when someone will make it to the top step.

Mr. Tate agreed saying it is an evaluative process and every situation will be evaluated through the process that is now built into the code along with a community standard, all factors to consider.

Commissioner McDowell remarked that if the comment was remotely correct the County would not have received the joint letter from CTED giving a glowing report. He does not believe the comment stemmed from a valid reading and is a non-issue.

Mr. Dearborn said if one looked at the findings he believes the issue is addressed there as well. The Planning Commission made it clear through the review process that it wanted decisions under the critical areas ordinance to make common sense. In other words not illogical, not unreasonable, not impractical; decisions that the public, while they may not agree, can understand. That is what the ordinance is attempting to do in all the places where the term “practical” or “reasonable” is found. In looking at Finding 24 which addresses squarely the issue that Mr. Erickson has raised, there may be circumstances where a project is denied. Mr.

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Dearborn suspects those would be rare because it is rare across the state to see a project denied. In the County's case, however, denial would occur if the impacts could be avoided and the applicant chooses not to, and the measures to avoid are deemed to be reasonable and practical by the County. Those terms are given common sense and every day definitions in the ordinance. Mr. Dearborn suspects they will change over time because what is reasonable today with technology and value changes may not be the same 10 years from now. But the community reference point will be the reference point used in those cases. If it cannot be avoided completely then it must be minimized. If it cannot be minimized because one does not want to minimize it and yet it is reasonable and practical to do so, then it will be denied. If it cannot be minimized then it must be restored. If it is not restored or there are those who are not willing to restore the intrusion, it is denied. If the issue is a Category A wetland, the highest ranked wetland, the wetland itself under the ordinance cannot be intruded upon under any circumstance except reasonable use and that then takes it to mitigation which can only be done if it cannot be avoided, minimized, or restored.

Mr. Dearborn believes the ordinance has all the necessary protections that would be appropriate. As a last point he mentioned this is not a Best Available Science issue, there is no science directing one in this regard. Dr. Adamus gave no recommendations on reasonable use; it is simply making a policy judgment as to what the Board believes appropriate for the County in terms of how decisions are managed. The Planning Commission made its recommendation after much consideration and public review and the opposition or concern about reasonable use came from a small minority. The County received no agency comments of concern and very few public comments of concern on this point. Most agreed it made sense.

Mr. Dearborn confirmed that procedurally for purposes of the hearing the Board will take action on the four amendments and then will take action to approve the program. Amendments 1, 2, and 3 are already accepted; action today will be taken on Amendments 4, 5, 6, and 7. The Board will then take action on the Planning Commission recommendation as amended by the seven amendments. As a final step, he said he will introduce his proposed language change for the cover ordinance.

Commissioner McDowell moved to accept Amendments 4, 5, 6 and, as amended, Amendment 7, seconded by Commissioner Bakke, unanimously carried.

Mr. Dearborn clarified that the change he is suggesting to the cover ordinance is indicated by the bold and underlining on the page he provided the Board. In the "It is Hereby Ordained" clause on page 1 he added after "Exhibit G;" the words "the Land Use Intensity and the Wetland Buffer Worksheets contained in..." and after "Exhibit H;" the words are added "the application form contained in..."

Commissioner McDowell moved to revise the cover page to Ordinance C-02-08/PLG-011-07 in the Matter of Updating Island County's Comprehensive Plan and Development Regulations Relating to Wetlands as recommended and detailed by Mr. Dearborn, seconded by Commissioner Bakke, unanimously carried.

Commissioner McDowell moved to adopt Ordinance C-02-08/PLG-011-07 in the Matter of Updating Island County's Comprehensive Plan and Development Regulations Relating to Wetlands with the revised cover sheet and as amended by the seven amendments, seconded by Commissioner Bakke, with comments.

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Board Comments

Commissioner Bakke began by saying that it was about three years ago when the County began down the path of updating the critical area regulations for the County. Mr. Tate and he as Planning Director at the time decided they would brainstorm what the perfect situation may look like; who would be included in the perfect team to create the update and how the update could be done in a way that would “blow the socks off” agency partners and members of the community in creating an ordinance that was the model of Best Available Science with policies that protected the environment and respected property rights. Slowly a team began to form with the addition of Keith Dearborn and ultimately the addition of Dr. Adamus. When Dr. Adamus’ name was first mentioned Commissioner Bakke was the one who questioned why someone of his reputation would want to have anything to do with Island County. Dr. Adamus is an internationally known wetland biologist with credentials that include pages of references, studies, and scientific work.

Ultimately the Commissioner, Mr. Dearborn, and staff met with Dr. Adamus who impressed everyone as being a very interested and caring individual about not only the environment but also the process, and that has been proven over the last several years. Commissioner Bakke is not sure the County would be at this stage had it not been for Dr. Adamus and he expressed his heartfelt thanks and appreciation for what he has done in the process.

Dr. Adamus thanked Commissioner Bakke for his steady commitment to environmental protection and wetlands.

Commissioner Bakke continued to say it was decided to assemble a peer review group. The peer review group included people from around the country who may not have been interested in the work had it not been for Dr. Adamus and the reputation he brought with him and lended to the County through this effort. The peer reviewers put the County to task and worked for the community in developing a good plan.

When the Commissioner and Mr. Tate first met the discussion was they did not want to have happen in Island County what happened in King County. The King County program was wrapping up and what developed was a huge divide between the urban rural community and King County with a feeling that particularly, the rural members of the King County community had not been heard and had not been able to meaningfully participate in the process in updating King County’s regulations. There were then, and continue to be today, major misgivings and hard feelings even as the ordinance is finalized. Island County tended to look more toward Pierce County who seemed to have taken a different tact. From that example Island County arrived at its own program which led to 26 newspaper articles up to the point that the Planning Commission made its recommendation, five radio broadcasts, two comprehensive County-wide mailers describing the update process; what it entailed, what are the County’s wetlands, and how are they protected. There were presentations from staff to 16 citizen groups in Island County and a total of nine wetland workshops. Anyone who had been tasked with running a workshop, particularly a workshop on such a sensitive issue, was no small task. The workshops were heavily attended with forums to gather information and as Dr. Adamus pointed out, the information gathered helped to change the ordinance. The process also included involving from the start County partners: Department of Natural Resources, Department of Fish and Wildlife, Community, Trade and Economic Development, and the Department of Ecology. Many jurisdictions in the state delay communicating with partners at the state level about code changes until the GMA-mandated 90-day review period. The County drew the partners in at the beginning and included

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them as the update team from the start. The Commissioner believes that helped to contribute to the caliber of the ordinance before the Board.

In response to public comment received the Commissioner mentioned a couple of policy points from the Comprehensive Plan, Exhibit A:

- 2. To the fullest extent possible, the protection of critical areas should be accomplished through the voluntary cooperation of land owners and should minimize the burdens imposed on land owners.
- 3. To the fullest extent possible, any regulation adopted to protect critical areas should be based on and adapted to the local circumstances unique to Island County.

Commissioner Bakke believes that those two policies stemmed from the County's guiding principles and voluntary cooperation was at the center of many of the thoughts and considerations given to the ordinance. Progress was made by communicating to the public the reasons for the regulations, the reasons to protect the environment, and asking for voluntary compliance. The experience has been over the years in the Planning Department that when people are provided with information and good reasons they will follow suit and do the right thing. He said we live in a great, dynamic, forward-thinking community, the same community he would venture to guess that made it possible for the Board of County Commissioners back in the early 80s to adopt the state's very first County wetland protection ordinance. Irrespective of individual beliefs or politics, overall everyone believes that protecting the environment is paramount to protecting the County's rural character.

Basing the regulations on local circumstances meant, in his opinion, creating an ordinance that perhaps is a little more rigorous and complicated than what some jurisdictions might have. That is so because it provides property owners with options and does not necessarily regulate to the "bad apple," the one out of a thousand people. It instead regulates to what the experience has been over the years as was demonstrated by the wetland report when looking at 100 plus wetlands in Island County. That review was done with the avid enthusiasm and permission of property owners and was an effort the Commissioner hopes the Department will continue to work on and update as the County moves forward in following years.

Section 17.02A.080 ICC sets forth basically an expansion of the Surface Water Quality Monitoring Program which the Commissioner is happy to be hearing about from colleagues at the state level and other people in the scientific community. It is being viewed as the model Surface Water Quality Program in the state. The program is proposed to be expanded to a multi-year science-based monitoring program to be maintained to measure water quality in the County's wetlands. In addition to measuring water quality, the County will also monitor changes in wetland vegetation. Together, water quality and wetland vegetation will be used to track changes in the health of wetlands located in Island County and the data will be used to periodically update the 2006 Wetlands of Island County Washington Profile Characteristics and Functions by Dr. Adamus published in August. Commissioner Bakke believes for him the most unique thing is that Island County is the only jurisdiction, that he is aware of, that has first taken the step to not only do such wetland monitoring, but also to actually write into its ordinance what is going to happen as a result.

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What follows is adaptive management, section 17.02A.080.F. The adaptive actions that may be triggered as a result of that monitoring could be used to make the County's regulations more stringent, less stringent, or leave them unchanged. All of those outcomes are possible and that section lists four steps toward that end:

- Step 1 – Compliance Assessment/Source Identification
- Step 2 – Education
- Step 3 – Enforcement
- Step 4 – Modification of Critical Area Regulations

Concerning enforcement, important changes were suggested as indicated in 17.03.260.D.4, Exhibit D, which allows the Planning Director in such situations to be able to “suspend review of any pending permit applications and refuse to process any permit applications applied for” subject to the requirements of the chapter in the event there is a violation.

The restoration section was re-written in such a way that it responds to the historic issues the County has had when going through the wetland enforcement actions. All of the language developed as a result of recommendations from the County's enforcement staff in working with the Department. The land division standards continue to require wetland review and identification on maps. The ordinance further expands the Public Benefit Rating System (PBRs) to increase the availability of points to be granted to landowners who have various types of wetlands that can then be translated into reduction of property value.

Of no small significance, the Commissioner believes the Wetland Identification Guide and Rural Stewardship Plan demonstrate that the County wants to educate the community and draw people into the process. The documents were prepared specifically for community engagement and involvement and he completely supports the idea of removing the education section from the documents and maintain the regulatory element. He considers it vital because since the documents are not perfect, it then creates the ability to make the modifications easier as the County moves forward.

In conclusion Commissioner Bakke said for him, one of the unique pieces of the ordinance is that in his years with the Regional Planning Director's Association there has always been a certain admiration given to whoever the Planning Director is from Island County because of the community and caliber of staff. That is in no small part to Anthony Boscolo, Justin Craven, Brandon Sweeza, Ginger Burgess, Andrew Hicks, Chris Luerkens, Pam Dill, Paula Bradshaw, Edie Elerick, Chris Wilson, Janielle Marcell, Matt Kukuk, Kirsten Harman, Jeff Tate, Jan Smith, and others integrally involved in the process. Those people sat around a room with a projector running for many days' worth of grueling work reviewing every provision in the ordinance and gathering input for how each person around the table thought it should be implemented. The definition section was a day-and-a-half worth of bantering and arguing and pounding out some agreement for what the terms meant. That has never before happened in Island County and the Commissioner said that probably has never happened in any other county in Washington before, setting the framework to hopefully have an ordinance that would be well implemented because staff is very much vested into the project. He also extended his thanks to Commissioners Byrd and Shelton who both participated in the beginning and who helped to take the initial step with Mr. Tate and him as they moved forward with the update team. Commissioner Bakke also mentioned Ellen Meyer, Jan Ford, and Donna Benson who stood by and helped to make it all possible. It has been a great process and the Commissioner looks forward to continuing through

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the Fish and Wildlife update and keeping the team together. The public demands good things and he believes the community is getting something very good from this that protects the environment and property rights and provides landowners with options.

Commissioner McDowell thanked Dr. Adamus saying when they first met, the Commissioner appreciated that Dr. Adamus made the conversation very understandable and in such a way that was not talking down to anyone. He appreciates that ability as a scientist, the ability to talk to non-scientists. He also thanked Mr. Dearborn saying he appreciates all the work he has done again now and in the past with the 1984 ordinance. The recent effort continues the good work and that is well shown by the letters received. It goes without saying the leadership shown by Commissioner Bakke, in his former position as Planning Director, and by Mr. Tate has been magnificent. Together with Mr. Dearborn and Dr. Adamus, they and staff have developed some real science that he knows everyone is proud of as they should be. A job well done.

As background there was a study that determined the County's wetlands were not in that bad of shape since the wetlands documents were first adopted back in 1984. The real damage to wetlands occurred in the mid-1900s when the County lost many wetlands but subsequent to the 1984 regulations, and the public's understanding of the importance and benefits of wetlands, certainly the loss of wetlands has slowed down as shown by the reports.

The ordinance is based on Best Available Science and Commissioner McDowell thanked Dr. Adamus for his support and leadership throughout the process. What is important about the documents, in his opinion, is that they relate to local circumstance and latest Best Available Science. Also of importance is the fact they are understandable to the public and differ from the state model ordinance in that they are specific to Island County. The public can read the documents and arrive at a recommendation for an answer that is understandable and obvious. He remarked that Mr. Tate's public outreach was excellent, the "roads shows" were fantastic, and the public received well the "road show" information. Based on public feedback staff again reviewed the documents and made changes where appropriate.

From the agency review letter dated March 14, 2008 from CTED, also representing Department of Ecology and Fish and Wildlife, Commissioner McDowell cited the following paragraph:

As we stated in our comment letter of January 25, it is our judgment that the county has used a science-based approach in developing these regulations and that overall, the county new CAO should be effective at protecting wetland functions from adverse effects of development. As we noted in our letter of January 25, with these changes we offer our full support to Island County's proposal. We look forward to continuing collaborative efforts on the CAO as you develop the Fish and Wildlife Habitat Conservation Areas portion of the ordinance.

Relevance to Amendments 5 and 6

Commissioner McDowell said everyone worked well with the agencies and he believes that interaction was beneficial in obtaining a better ordinance that the agencies are supportive of and as well the public. Peer review was a good idea as it pointed out some early suggestions and changes were made based on that review. It again further strengthened the Best Available Science approach. Monitoring of surface water is something new in Island County and the

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Commissioner believes it will be very supportive of the County's work in protecting the environment. In many ways he said, as Mr. Tate mentioned, it does reward property owners for doing things the correct way but does not punish them for their neighbors' actions. From the County's and public's perspective, it should be handled administratively from the permit center.

Lastly, Commissioner McDowell understood the significance of the statistical correlations prepared by Dr. Adamus and how important it is that the results are the same or nearly the same as state models. It is something one should take notice of because the state model is the gold standard or at least the acceptable standard and the County is in a close match.

In closing he again thanked everyone for a job well done.

Chairman Dean underscored the Board's appreciation for the good work that everyone has done and continue to do. In many ways the course of action made him a believer of the Department and the entire planning process because as an outsider in the beginning, there was some cynicism about a bias. He now believes the process went right down the middle arriving at something that is fair to everyone and he appreciated that effort. Concerning the belief by some that no development permit can ever be denied, he emphasized that in the Board's findings it is specifically stated that if an applicant elects not to make practical or reasonable changes to a development permit then the Board will expect the development proposal to be denied.

He again is very appreciative of the work done.

It was moved and seconded to adopt Ordinance C-02-08/PLG-011-07 in the Matter of Updating Island County's Comprehensive Plan and Development Regulations Relating to Wetlands with the revised cover sheet and as amended by Amendments 1-7, unanimously carried. (*GMA No. 9820*)

There being no further business to come before the Board the meeting adjourned at 11:36 a.m. The Board will meet next in Regular Session at 11:00 a.m. on March 24, 2008 for Roundtable followed by agenda items at 2:00 p.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

Phillip Bakke, Member

William L. McDowell, Member

ATTEST:

Elaine Marlow, Clerk of the Board