

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

SPECIAL SESSION

The Board of Island County Commissioners met on June 2, 2008 in Special Session beginning at 9:00 a.m. in the office of the Planning Director, Annex Building, 1 N.E. 6th Street, Coupeville, Washington. John Dean, Chairman, Phillip Bakke, Member, and William L. McDowell, Member were present. Chairman Dean announced the purpose of the Special Session was so that the Board could meet in Executive Session as allowed under RCW 42.30.110(1)(i), to discuss with legal counsel litigation or potential litigation. He did not expect an announcement afterwards in open public session and anticipated the session to last approximately 45 minutes.

Executive Session concluded at 9:45 a.m.

The Board of Island County Commissioners met in Regular Session on June 2, 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.

PUBLIC INPUT OR COMMENTS

Marianne Edain wanted to be sure that the issue of the PSE Franchise noted on the agenda as item 38 is, in fact, a public hearing; she and others wanted an opportunity to speak. Chairman Dean confirmed that the public would be allowed to speak at the public hearing concerning the PSE Franchise scheduled to begin at approximately 10:20 a.m.

CONSENT AGENDA

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

ELECTRONIC FUND TRANSFERS, PAYROLL, VOUCHERS, PAYMENT OF BILLS

Vouchers (War) #s 288454-288905	\$857,292.77
Electronic Fund Transfers.....	\$ 2,421.49
Payroll dated	May 30, 2008

AUDITOR

Resolution C-58 -08 Authorizing and Increasing Certain Petty Cash, Change, and Revolving Funds within Island County. (*Resolution on file with the Clerk of the Board*)

EXTENSION

Interlocal Agreement with University of Washington for the Cornet Bay Restoration Project, Eelgrass Data Collection Survey. Amount: \$22,721.34 (*RM-EXT-08-084*)

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

GSA EMERGENCY MANAGEMENT

Contract with Terry A. Clark, doing business as Northwest Systems Services, for services provided relating to Island County Medical Reserves Corp (MRC). \$5000.00 (RM-DEM-08-030)

Amendment B to contract with Washington State Military Department for US Department of Homeland Security (DHS) grant; amendment extends the time that all original award funds must be expended prior to reimbursement. Contract No. E07-348. (RM-DEM-07-0113)

GSA MOTORPOOL

Transfer of Island Transit Surplus Van to Island County to provide for Community service programs.

HUMAN RESOURCES

Personnel Action Authorizations

<u>Department</u>	<u>PAA #</u>	<u>Description</u>	<u>Position #</u>	<u>Action</u>	<u>Eff. Date</u>
Facilities	098/08	Night Custodian	901.01	Replacement Position	07/01/08
G.S.A.	094/08	DES Homeland Security Senior Planner	1305.01	Replacement Position	09/02/08
Health	090/08	Environmental Health Director	2402.00	Correction to Salary Range on Posting	05/19/08
	092/08	Environmental Health Tech-Camano	2423.00	Personnel Action (Reduction in hours)	04/01/08
	093/08	Public Health Nurse II	2406.04	Personnel Action (Reduction in hours)	06/02/08
Parks-Planning	095/08	Parks Tech	1505.02	Replacement Position	06/23/08
Public Works	096/08	Laborer I-Bayview	2245.07	Replacement Position	06/02/08
WSU Extension	097/08	Climate Protection & Sustainability Project .5 fte	1207.05	New Position	06/09/08

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

PLANNING AND COMMUNITY DEVELOPMENT

Public Hearing Scheduled – June 23, 2008 – 2:15 p.m.

Resolution C-59-08 (PLG-008-08) In the Matter of Amending the Planning and Community Development Land Use Permit Fee Schedule as it Relates to Critical Areas. (*Resolution on file with the Clerk of the Board*) (GMA No. 9843)

PUBLIC HEALTH

Purchase Order No. 8951-Ikon Office Solutions. Purchase of one Canon 3035 copier and a 5-year maintenance contract. Amount: \$6,230.60 (*RM-HLTH-08-089*)

Contract with Department of Health – Consolidated Contract. Contract amendment adds \$8,500 to the Beach Program and \$175 to the WIC Farmer's Market Program. Contract No: C14949; Amendment No. 9; Contract Amount: \$1,424,356; Amendment Amount: \$8,676 (*RM-HLTH-06-0140*)

PUBLIC WORKS

County Roads

Resolution C-60-08/R-21-08 In the Matter of Amending the Annual Road Construction Program for the Year 2008. (*Resolution on file with the Clerk of the Board*)

Resolution C-61-08/R-22-08 In the Matter of Initiating a County Road Project Designated as Arrowhead Road Improvements Project, Sections 1 & 2; CRP 08-06, Work Order No. 190. (*Resolution on file with the Clerk of the Board*)

Bid Award to Pape Machinery, Inc. for one (1) 2008 Backhoe Loader. Amount: \$60,906.60 (incl WSST and trade-in)

Purchase Order No. 8292 to Pape Machinery, Inc. for 2008 John Deere Backhoe – Model No. 410J. Amount: \$60,906.60 (incl. WSST and trade-in). (*PW-0820-72*)

Bid Award to Motor Trucks, Inc. for one (1) 2008 Dump Truck. Amount; \$95,342.82 (incl WSST and trade-in)

Purchase Order No. 8291 to Motor Trucks, Inc. for 2008 International Dump Truck Model No. 7600. Amount: \$95,342.82 (incl WSST and trade-in). (*PW-0820-71*)

Purchase Order No. 8293 to North End Truck Equipment, Inc. for Dump Body – Style 10/12/ yard, per State Contract #12304. Amount: \$43,815.56 (incl. WSST). (*PW-0820-73*)

Supplemental Agreement No. 1 with Anchor Environmental, LLC. Completion Date revised to December 31, 2010; Maximum Amount Payable revised to \$350,000. (*PW-0620-53(A)*)

Petition for Vacation of a County Road to vacate a portion of unnamed County Road Right-of-Way located in Section 22, Township 29 North, Range 3 East; Petitioners Ray and Laurie Gabelein; Refer back to County Engineer for processing.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

Drainage

Easement with Horseshoe Bend LLC; Jones Road at Sunday Drive Outfall, Work Order No. 232; Parcel 296-2650; Sec 5, Twp 33N, R 2E

Public Works

Supplemental Agreement No. 4 with KMD Architects & Planners, PC. Completion Date revised to February 28, 2009; Maximum Amount Payable revised to \$627,400.63 (PW-0320-90(D))

Purchase Order No. 6697 with H.D. Fowler for HDPE Pipe 24” Diameter for Saratoga Road culvert project. Amount: \$11,196.55 (incl WSST & freight) (PW-0820-74)

Solid Waste

Supplemental Agreement No. 3 with SCS Engineers, Inc. Maximum Amount Payable revised to \$575,000. (SW-08-05 & RM-SW-05-0092)

Trails

Supplemental Agreement No. 2 with INCA Engineers, Inc. Completion Dated revised to August 15, 2008. (PW-0720-67(B))

Consultant Agreement with Lyter Photography/Design for Island County Bicycle Touring Enhancement – Touring Map Component. Expiration Date of November 5, 2008; Amount: \$20,013.16 (PW-0820-62)

Treasurer

Ratification of decision to award bid for title reports for 2008-2009 tax foreclosure (action taken at May 21, 2008 staff session)

Liquor License(s)

Application for Special Occasion Liquor License No. 092063 by the Forgotten Children’s Fund for a special occasion to be held June 28, 2008 from 10:00 a.m. to 10:00 p.m. at the M Bar C Ranch, 5264 Shore Meadow Rd., Freeland, WA

Application for Liquor License No. 087833-3F by RC4K, LLC, Christine M. Kellison and Roy L. Kellison, Tradename: White Cap Café, 12981 State Route 20, Coupeville, WA

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

REGULAR AGENDA

HOMELESS HOUSING

**RESOLUTION C-62-08 UPDATING THE ISLAND COUNTY 10-YEAR HOMELESS
HOUSING PLAN**

Steve Gulliford, Executive Director of Housing Authority of Island County provided an overview of the changes:

- Need for temporary and permanent housing for persons exiting institutions with support services;
- Development of five rental units of affordable housing as part of a 26-unit tax credit project on South Whidbey; and
- Continued emergency shelter case management services.

By unanimous motion the Board approved Resolution C-62-08 Updating the Island County 10-Year Homeless Housing Plan. *(Resolution on file with the Clerk of the Board)*

PLANNING AND COMMUNITY DEVELOPMENT

PLP 198/06 – FINAL LONG PLAT APPLICATION - RON AND SHELLEY MUZZALL

Jeff Tate, Director of Planning and Community Development, indicated staff's recommendation for approval of PLP 198/06, a Final Long Plat Application submitted by Ron and Shelley Muzzall consisting of 41 lots, Parcel No. R13222-218-3050. The Hearing Examiner approved preliminary approval; the appropriate County departments reviewed the application for conformance with code; and there is no objection to approval. Planning requests signature of the Board on the final Mylar.

By unanimous motion the Board approved signature of the Final Long Plat Application for PRD 198/06 by applicants Ron and Shelley Muzzall.

**ORDINANCE C-63-08 (PLG-09-08) IN THE MATTER OF ADOPTING TECHNICAL
CORRECTIONS TO THE ISLAND COUNTY WETLANDS ORDINANCE**

Mr. Tate requested Board approval to schedule a public hearing on Ordinance C-63-08 (PLG-09-08) In the Matter of Adopting Technical Corrections to the Wetlands Ordinance adopted March 17, 2008 as Ordinance C-02-08. He provided copies of Ordinance C-63-08 (PLG-09-08) and presented a brief overview.

Mr. Tate said the Prosecutor's office suggested that the seven amendments attached to Ordinance C-02-08 be formally incorporated into the ordinance so it is one compiled document. Additionally, there were technical corrections in the form of worksheets, attached as Exhibits H and I; that is, worksheets for the Wetland ID Guide (Wetland ID Guide Land Use Intensity Worksheet) and Rural Stewardship Plan. The amendments adopted as part of Ordinance C-02-08, specifically Amendment 4, were not incorporated into the worksheets so staff is updating the worksheets to reflect exactly what the ordinance says. Staff will describe in detail the technical corrections at the public hearing suggested to take place June 23, 2008.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

The Prosecutor's office is currently completing its review of the proposed ordinance which explains the lack of code reviser signature on the copy of the proposed ordinance before the Board. Mr. Tate said that staff moved forward by bringing the proposed ordinance to the Board sans signature hoping to schedule it for hearing so the hearing could take place prior to the July 1 implementation date. If the Prosecutor requests additional changes beyond what is before the Board today, staff will return a different version of the proposed ordinance, signed by the code reviser, to the Board next Monday (June 9); noticing timelines will be met and the proposed ordinance will be posted on Planning's web page.

By unanimous motion the Board scheduled Ordinance C-63-08 (PLG-09-08) In the Matter of Adopting Technical Corrections to the Island County Wetlands Ordinance for public hearing on June 23, 2008 at 2:20 p.m. (*GMA No. 9842*)

**DISCUSSION OF FISH AND WILDLIFE SCHEDULE FOR THE UPDATE TO THE
COMPREHENSIVE PLAN AND DEVELOPMENT REGULATIONS**

Keith Dearborn spoke of the contract with Adolfson to prepare a science review update for Fish and Wildlife. Adolfson was asked to address two specific issues: stream buffers and nearshore environment and to update the science that was developed for the first Fish and Wildlife regulations in 1998. He said Adolfson was also asked to use the format that Dr. Adamus developed in his report for Best Available Science which would enable the public to review the new report essentially using the same format as the prior one. The draft was expected to be ready for public review by the end of June and assuming a 30-60 day agency and public review process to look at the BAS report and its determination of what best science is as it applies to the County for stream buffers and the Puget Sound shoreline.

Mr. Dearborn said that Dr. Adamus began the work by identifying all the new literature that he could determine is in the public domain relating to those subjects and that was then provided to Adolfson. A review draft was expected sometime in June to be prepared for the public start and the plan was to move to the new regulations and public review of those in the fall. That was before the two new wetlands appeals were filed by CARE and WEAN. Since the plan was to build on the structure created for the wetlands program with the Fish and Wildlife update, in other words, using the Rural Stewardship Plan and developing another Identification Guide similar to what was done for wetlands for stream buffers and streams, and to also do that for the nearshore environment, it is Mr. Dearborn's recommendation that the public process be delayed on Fish and Wildlife until the wetlands appeals are finished. He is guessing there will be a decision from the Growth Board by the end of November on the wetlands appeals and at that time, following the decision, a determination on timing could be made for the start of the public process for Fish and Wildlife. Mr. Dearborn believes it imprudent for the County now to embark on a Fish and Wildlife update that connects the wetlands program when there is a possibility, based on a future Growth Board decision, modifications may need to be made to the wetlands program after starting the Fish and Wildlife public process. His suggestion is to delay the public process on any regulatory or policy updates, but not the BAS review, until essentially late November into December.

Chairman Dean asked Mr. Dearborn if the Best Available Science report by Adolfson would become public at that point.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

Mr. Dearborn said yes because that issue must be resolved no matter what is done in the way of an update. The plan was to continue the schedule discussed which was to begin public review of the BAS report in early July, provide the 45-60 day public comment period and agency comment period on the BAS report, then wait on the public process for regulatory or policy changes until after the Growth Board renders its decision on wetlands.

Commissioner Bakke believes there are benefits to be gleaned from taking a little more time on the BAS review to ensure that the agencies are a collaborative partner in its development, just as they were with the wetlands ordinance update.

Mr. Dearborn said it will also give the public a chance to provide staff with their views on whether there is science that staff is unaware of which should be included in the BAS report. This is not any different than what was done with wetlands: the BAS report was produced, there was a public and agency comment period on the BAS report, then moved on to the regulatory and policy changes thereafter. There were no comments on the BAS report that suggested staff had missed anything for wetlands but Mr. Dearborn continues to believe it would be wise for the County to allow the public a chance to indicate something was missed, if so.

Commissioner McDowell mentioned that 60 days is not much of a delay so he too agrees it wise to first receive the Growth Board decision.

Mr. Dearborn commented that state agencies are invested in the wetland program as is the County. He received a call from one of the agency staff people from DOE over the weekend advising him that they intend to intervene in the wetlands appeal in support of the county. He does not know in what form that intervention is going to take but they want to make sure that the program is clearly understood by the Growth Board from an agency standpoint to Best Available Science.

Chairman Dean agrees saying the suggested course is probably a good management tool, that there is no reason to rush through the process. If there remains a question or cloud over the wetlands ordinance then it is a good idea to have that resolved first then move forward.

Commissioner Bakke also agreed.

While there have been no informal concerns expressed, Mr. Dearborn said the next step should be notice to the agencies concerning any formal concerns. The proposal has already been discussed with Fish and Wildlife but there was no mention of what the Board's action would be.

Mr. Tate agreed to report back to the Board next Monday (June 9) if Fish and Wildlife expresses any concerns with the proposal.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

**SECOND STIPULATION AND AGREED ORDER GRANTING CONTINUANCE
AND/OR STAY
WEAN VS. WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS
BOARD ET AL, CAUSE NO. 06-2-02026-7**

Mr. Dearborn began by saying that the County prevailed at the Growth Board on the Ag program and WEAN thereafter challenged that decision to Superior Court. WEAN's attorneys, two years ago, asked the County to accept or be willing to delay the Superior Court case until the Supreme Court rendered its decision in Skagit case, *Swinomish Indian Community, et al. v. Western Washington Growth Management Hearings Board*. The Board agreed to the two-year delay and that delay has now expired because the Supreme Court has ruled. Mr. Dearborn initiated discussions with WEAN's attorneys about another delay in the case because Senate Bill 5248 established a process to consider changes to the GMA relating to agriculture and, particularly, existing agriculture. As it was adopted, the Bill gives the Ruckelshaus Center at the University of Washington until January of 2010 to present recommendations. State agencies have advanced the County's adopted program to the Ruckelshaus Center as the model it should be considering for any recommendations the Center provides. Mr. Dearborn was concerned that if changes had to be made in the program because of the Court's decision the County would effectively be barred from making those changes until the Ruckelshaus process was completed. That is the reason Mr. Dearborn initiated discussions with WEAN's attorneys about a stipulation.

Having received comments from Commissioner McDowell expressing concern about recently-added additional language to the stipulation, and in taking another careful look at that language, Mr. Dearborn determined that it is not clear in the way the stipulation has been modified. That determination led to further discussions and at this point, Mr. Dearborn believes the Board is having second thoughts about whether it wants to further delay the Superior Court case.

Chairman Dean expressed his concern that if there is a model ordinance then why is the Board backing away from it? Much of the work was created before his tenure as Commissioner but from his perspective, there is an ordinance in place that protects farming and his goal is to make sure that the Board is doing two things; protecting the environment and protecting farming. The Commissioner feels the ordinance is one the Board can move forward on, especially when it is considered a "model" ordinance and one that could help the Ruckelshaus process. He does not see a reason for the Board to back away from it at this point.

Commissioner McDowell has lost all desire to delay it. While the legislature may have the pleasure of continuing to delay issues it does not have to come face-to-face with people and answer questions regarding rules; he believes it imperative that the County be able to tell farmers what the rules are. He also believes the ordinance to be a model, the agencies agree, and the farmers are as well satisfied. The Commissioner suggests the County move ahead and tackle the issue now rather than delay it another period of time.

Commissioner Bakke agrees with both his colleagues. He said the ordinance came about as a result of massive public involvement, a collaborative approach with the agencies and the community with the Governor, Ecology, Fish and Wildlife, and CTED all supporting the ordinance. The Ruckelshaus Center contacted the Commissioner on a couple of occasions since the adoption of the ordinance and is working with the County on a presentation to the Center and Whatcom County; discussion will focus on, among other things, why the County made the decisions it did and the Center will evaluate both Island and Whatcom County's programs as

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

potential models for its approach in returning to the legislature. Commissioner Bakke believes the ordinance to be the right ordinance, it fits, and it will lead to greater environmental protection. From his perspective he would like to move forward and begin to get landowners on tract, giving them certainty for their business operations while at the same time enhancing environmental protection in the County. He believes the prolonged delays are leading to things falling through the cracks and without the same level of protection afforded if it were adopted.

The Chairman opened the floor to public comments.

Steve Erickson, Whidbey Environmental Action Network, reiterated that it was Mr. Dearborn who initially asked for the stay. WEAN was dubious at first but concluded the stay made sense. Ruckelshaus likely will settle some of the issues, potentially will not settle others, but it would certainly narrow things considerably. A stay of the issue is the Board's decision.

Chairman Dean closed the floor to further public comment.

Commissioner Bakke asked Mr. Dearborn if or when the County prevails in Superior Court, would the ordinance go into effect.

Mr. Dearborn said if the Superior Court determines that the County's program complies with the GMA, and no changes are necessary, the County would be free to implement the regulations; and implement the regulations because the ordinance was adopted before the Senate Bill was passed by the legislature. If the Court determines changes are required, then the County would be barred from making those changes until the Ruckelshaus process was completed. He said legislation is silent on that point but that is the way he and WEAN's attorneys read it. Obviously that was an error by the legislature because Mr. Dearborn does not believe the legislature would have ever thought it was passing legislation that barred the County from making changes in a program that were ruled by a court to be needed. If the County should reach that point he would recommend asking the legislative delegation to proceed with an amendment that would allow the County to make those changes so it can continue to implement the program. State agencies through the Governor's office are authorized to file amicus briefs in support of the program, the Farm Bureau is filing an amicus in support of the program, and from reading the Growth Board decision Mr. Dearborn believes that the Superior Court Judge will have never seen a decision more complimentary to a county and a county program. He is confident that the County will not get an order directing changes and it will be free to implement the ordinance. In terms of public cost now is the preparation of the brief, submittal to the court, and then two or three hour oral arguments before the Judge; and then a court decision. There is not a significant amount of work left to complete the case and the issues presented in the Superior Court case are essentially the same issues presented to the Growth Board. Mr. Dearborn said that the County's briefing has, for all practical purposes, been done so he does not see this to be a big burden for either the County or WEAN.

Commissioner Bakke asked if it is likely that if the Ruckelshaus Center makes recommendations that are adopted by the legislature to amend state law, that local jurisdictions in Washington will either have to comply with those changes under the review and update cycle or at a schedule to be determined, such as what was adopted along with the shoreline regulations.

Mr. Dearborn said that is the way the legislature has approached all changes it has made in the last 10 years if those changes are significant. He has been advised by some members of the

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

farming community that if the legislature were to adopt changes that made buffers mandatory in all cases for existing agriculture but did not require buffers for other existing uses that they would file a referendum and return to the people through the electoral process because the Ruckelshaus process was the compromise that resulted from the defeat of the property rights initiative; it was intended to reach a consensus between the farming community and the environmental community over how agricultural practices would be managed in the future to protect critical areas. Mr. Dearborn believes if that means mandatory buffers with no compensation to the farming community, a new burden for the farming community, it would return us to where it did with the property rights initiative. No progress will have been made and Mr. Dearborn would not expect the Ruckelshaus process to do much better than what has been done in the County's program.

Commissioner Bakke, in an effort to understand the appellant's position, asked how if the motive is environmental protection would another delay under the 1998 regulations garner greater environmental protection than the latest state of the art Best Available Science based approach to regulating agriculture.

Mr. Dearborn said in 1998 the County adopted a BMP program which was upheld by the court but the County was not allowed to apply it to predominant agriculture in the County, that being lifestyle farming not commercial farming, so it left everything in limbo until the County received the positive decision from the Growth Board. Technically lifestyle farming, that is Rural zone farming that is not commercial, is still required under the County's rules to comply with critical area regulations because of the Court of Appeals decision so some would argue there is on the books greater protection. The problem is that it is impossible to implement. The County had the largest hearings it has ever had when trying to implement that requirement and effectively it cannot be done; Mr. Dearborn believes everyone understands that. WEAN understood it also because with the stipulation it was agreeing to continue to let the entire issue slide and have no implementation other than to prevent new farming practices which the County was obligated to do anyway.

Mr. Dearborn said no formal motion of the Board is necessary on the stipulation, that he understands the Board to say that he has stepped ahead of the Board in a way the Board does not support and he will pass that on to the attorneys for WEAN. Since WEAN is in attendance today it is also aware of the Board's feelings.

**MEMORANDUM OF UNDERSTANDING WITH CITY OF OAK HARBOR
REGARDING ORDINANCE C-87-07 (NAS WHIDBEY ACCIDENT POTENTIAL ZONE)**

Commissioner McDowell mentioned that the County and City each stipulated, as set forth in the Memorandum of Understanding between the two, that each has its own jurisdiction and nothing has changed with the adoption of Ordinance C-87-07. Paragraph 5 of the Memorandum states that both County and City will work together to coordinate land use policies for the Oak Harbor Urban Growth Area for ultimate annexation of those lands into the City of Oak Harbor.

By unanimous motion the Board approved the Memorandum of Understanding with City of Oak Harbor regarding Ordinance C-87-07 (NAS Whidbey Accident Potential Zone) (*GMA No. 9844*)

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

PUBLIC HEARINGS

**HEARING HELD: CONSIDERATION OF AN OPEN SPACE TIMBER LAND
CURRENT USE PROGRAM APPLICATION – OPS 128/07 – JOHN AND
JANICE JOYNT**

Chairman Dean opened a public hearing for the purpose of considering Open Space Timber Land Current Use Program Application OPS 128/07 submitted by John & Janice Joynt. Mr. and Mrs. Joynt are requesting that five acres be classified into the Open Timber current use program from Parcels S8085-00-00005-1 and S8085-00-0A001-1 located on South Whidbey.

Mr. Tate said staff received application OPS 128/07 from the Joynts requesting that five acres of a parcel they own totaling 6.31 acres on South Whidbey be classified into the Open Timber Current Use classification. There are a couple of parcels involved but the acreage requirements have been met and that is the standard when it comes to lot size or area to be enrolled in the Open Timber Current Use classification; there must be five acres minimum and the standard is met. In addition, the Joynts provided a management plan for the property; staff reviewed the plan, found that it meets the statutory requirements, and recommends that five acres be enrolled into the Open Timber Current Use Program.

The Chairman asked if the conditions are standard for all such applications.

Mr. Tate indicated there are standard conditions, all for the most part referencing what the requirements are under the Forest Management Plan provided through statute. In addition, the Department of Revenue has information on what standards should be met as a matter of practice.

Chairman Dean opened the public comment portion of the hearing and there being none, public comment was closed.

By unanimous motion the Board authorized conditional approval of OPS 128/07 by John and Janice Joynt as presented and recommended.

**HEARING HELD: CONSIDERATION OF AN OPEN SPACE TIMBER LAND
CURRENT USE PROGRAM APPLICATION – OPS 471/07 – TODD AND
EVELYN BREHMER**

Mr. Tate then requested the Board consider Open Space Timber Land Current Use Program OPS 471/07 submitted by Todd and Evelyn Brehmer who are requesting that 7.43 acres of a 9.08 acre parcel be reclassified from Open Timber into the County's Public Benefit Rating System program. Staff received the Public Benefit Rating System application and applied the criteria in County Code (more of the County's standards for this type of request are set forth in County Code more so than state law). Property that has more "resources" provides more eligibility criteria for each of those resources; in other words, the more approved points accrued the greater tax benefit received. The tax agreement attached to the application spells out a 30% property tax reduction for the 7.43 acres.

The Chairman opened the public comment portion of the hearing and there being none public comment was closed.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

Commissioner Bakke remarked to Mr. Tate that it appears to him as though the Public Benefit Rating Application will reduce taxes because it has two categories of wetlands and fish and wildlife habitat and the applicants are enhancing voluntarily a 150 foot buffer.

Mr. Tate added the obligation within the code is that the landowner must go above and beyond what the minimum code requirement is so in essence, there is greater voluntary buffer protection.

By unanimous motion the Board authorized conditional approval of OPS 471/07 by Todd and Evelyn Brehmer as presented and recommended. Planning staff will correct the numbering discrepancy (formatting error) on pages 8 and 9 of the Summary of Application and Recommendation.

HEARING HELD: FRANCHISE RENEWAL #16(2)R - PUGET SOUND ENERGY

Chairman Dean opened a public hearing concerning Franchise Renewal #16(2)R of Puget Sound Energy for lines located in the County right-of-way on Whidbey.

Bill Oakes, Public Works Director, began the public hearing by saying the matter before the Board is a renewal of a franchise for Puget Sound Energy. Utility companies are required by state and local laws to enter into a franchise to construct, operate, and maintain utility facilities in the County's right-of-way. The franchise is primarily a contract between the County and the utility as to how it is going to construct, operate, and maintain utility facilities in the County's right-of-way and not interfere with the primary use of right-of-way for transportation. Mr. Oakes said there is also an Accommodation of Utilities and Right-of-Way Policy that is incorporated by reference into the franchises that cover the actual technical requirements for locating utilities in the right-of-way. Puget Sound Energy is regulated by the Washington Utilities and Transportation Commission and is controlled through that state process for rates and level of service. Mr. Oakes suggested that those types of questions concerning rates and level of service be directed to the UTC. Public Works has worked with PSE to establish the terms and conditions of the franchise and recommends approval.

Chairman Dean asked Mr. Oakes if the only basis for the Board to deny a franchise would be the public's safe use of the right-of-way, virtually the sole criterion for the franchises.

Mr. Oakes said the Board would need to make a finding that it is not in the public interest or safety to approve the franchise.

Commissioner Bakke said he understands the placing of conditions on a right-of-way to be those necessary to protect the health, safety, or welfare of the people using the County's right-of-way. Mr. Oakes agreed.

Chairman Dean opened the public comment portion of the hearing.

Steve Erickson, commenting on his own behalf said the first page on the County's website talks about PSE's tree trimming and how that trimming process will improve service. He suggests the page be removed and instead inform the community that PSE is asking for a 12% rate hike and is attempting to get approval to be sold to an Australian multi-national corporation. Also on the page should be noted the address and phone number of the Washington Utilities Commission. Mr. Erickson said that granting a franchise to PSE should be contingent on improvement of its

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

service; the rates are too high and service is abysmal on Whidbey the further south on the Island one travels. He said his power flickers even without a storm and believes PSE should use more tree wire; PSE responded “if we did it for you we would have to do it for everyone.” Mr. Erickson believes the County should not grant the franchise but instead use the franchise as leverage over the corporation until services improve.

David Metheny, 6273 Hinman Drive, Clinton said before the franchise is granted to PSE there first should be acknowledgment that there is a great deal of dissatisfaction with the poor service and high rates; he believes granting the franchise would instead show support. He hopes the County would begin to use its political leverage in an attempt to help the citizens receive better service and minimal rate increases. He also would like to see PSE’s service monitored with its past performance used as a yardstick for future performance. Mr. Metheny asked that the granting of the franchise occur only for a year’s length to encourage a better result from PSE and also because the political situation may change in the future if the PUD effort can get on the ballot in November.

Chairman Dean asked Mr. Metheny, as one working with the People for Yes on Whidbey PUD, the process for acquiring assets if Whidbey voters were successful.

Mr. Metheny said generally it is a two-year process; there needs to be an engineering study, valuation of the assets, and once that occurs then there are two ways in which the transfer of the assets can take place after a number has been reached. Transfer can be done through negotiation or it can be done through condemnation as provided by RCW 54.

In response the Chairman remarked that whether it is a one-year franchise or a twenty-year franchise at some point it becomes moot depending on the election result.

Ed Jenkins, 6319 Wilson Place, Clinton said he is appearing before the Board both as an individual and as Communications Director for People for Yes on Whidbey PUD. He also heads a loose coalition of people for local power, against the sale of PSE, which includes several groups in Skagit County. He urged the Board to take a very active role in the power on Whidbey. In his opinion this is a serious issue because financially it has been a big hit for businesses which have taken huge losses when the power has been out; it is a hardship on the citizens, particularly the elderly and those who depend on electricity for heat and medical devices; and, the rate increases are becoming a huge burden for everyone. The rates are the highest in the state other than Orcas Island and continue to increase; if the sale goes through there will be a constant round of 10-15% a year rate increases. Mr. Jenkins said it is understood that a certain amount of outages will occur but he believes there is much that can be done to alleviate that problem on Whidbey by having a Whidbey PUD. He also believes the franchise could be used as leverage against PSE if the sale goes through. He encouraged the Board to grant only a series of one-year franchises and require PSE to step up to the plate. It is almost a certainty that the PUD formation will be on the November ballot, people want local control over power. Mr. Jenkins said he has been asked why the Commissioners are not more active and there has not been a voice; he encouraged the Board to step up and become engaged in the process.

Chairman Dean said that one of the things the Board has been doing under the auspices of the Island County Council of Governments is receiving quarterly briefings from PSE, which started soon after the last storm, in an effort to keep PSE informed of the public’s concerns and also to keep abreast of PSE’s work to try to improve services. The Board has worked with PSE to

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

monitor and attempt to be aware of and encourage improvements. While the Commissioner may personally support the concept of a PUD proposal, he does not know whether it is proper for the Board, as a whole, to publicly support one or the other.

Marianne Edain, also speaking on her own behalf, said there are several different issues: the franchise; the formation of the PUD; the sale of PSE; and the issue of the rate increase. She believes that PSE has demonstrated since its takeover a greater concern for corporate profit than for delivering services to the public and she encourages underground power lines though PSE is saying undergrounding is an expensive venture and cannot be done on Whidbey. PSE promised it would use tree wire in particularly susceptible areas but she has not received any report on how much tree wire was promised and how much tree wire was actually strung. Ms. Edain does not believe that PSE is serving the public and at the moment there is no alternative; she believes the local PUD is essential because there needs to be local control of something as vital as power. She also believes that what PSE needs to give in exchange for the franchise, and the Board has the right to ask, is demonstrated improvement in service; indicate how many miles of tree wire have been strung; how many miles does it intend to string; and when will it report that it has done so.

Kit Maret has been a consulting engineer with PSE on Whidbey for 17 years. She first addressed tree wire and its application saying that it is a relatively new product and by that, PSE over the last ten years, has been experimenting with tree wire to get an idea of its effectiveness. It has limited application because its application is not viable in locations where there are large falling trees because it can damage poles. It is very effective, however, in areas that are plagued by limb-related outages. There is also a safety hazard concern if a tree wire goes down and becomes re-energized; PSE attempts to use tree wire only in locations where a safety hazard is not going to be created by its use. On Whidbey there are miles of tree wire including at the following roads: Cultus Bay, Deer Lake, French, Glendale, Maxwellton, Amble, East Harbor, Wall, Honeymoon Bay, Resort, Harrington Lagoon, Parker, Scenic Heights, Miller, Silverlake, and Henny. In 2008 projects are being constructed on Coral Sea Road into the seaplane base, Bayview Road, Brookshill Road, and Midvale Road to be completed in the summer. Ms. Maret said PSE also does convert areas to underground in outage-plagued areas that are tree related, where tree wire is not viable and there is a frequency of outages that warrant an underground conversion as a reliability improvement. Roads over the years where that has been done include French, Wilkinson, Possession, Maxwellton, Saratoga, and Swede Hill Road. Tree wire is not rated for high voltage transmission.

Commissioner Bakke said what he understood from the COG was that PSE has two different systems on Whidbey; one system that feeds with high voltage and the second feeding homes and businesses.

Ms. Maret said that understanding was correct. A high voltage transmission system exists and on the Island they are parallel, there are two lines, so if one is lost due to inclement weather the automatic switching switches it over; most one might see if that happens is the lights blinking as the switching takes place. The problem arises because the Island is long and narrow and when a storm blows through sometimes both lines are impacted simultaneously; PSE is very focused now on widening the corridors to protect the lines. Tree wire is not an option and undergrounding is very unusual; she said we will not see a PUD with underground transmission lines either because of the cost. The average cost for underground distribution, and it varies depending on whether it is a main feeder system or a single phase line, could be on average \$1 million a mile. Transmission is more in line with about \$10 million a mile. On Whidbey there are 329 miles of

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

overhead distribution system, 343 miles of underground distribution system, 125 miles of transmission lines that are actually located on Whidbey with another 13 miles that are on the Fidalgo Island side which feed to Whidbey.

Commissioner Bakke asked PSE's thoughts if the County, instead of approving a 20-year franchise, approved a one-year or something in between?

Dom Amor, Local Government and Community Relations Manager with PSE, is newly working with Island County. He has been with PSE for about 22 years and thanked County staff for its work with the franchise because he knows the effort has been ongoing for quite some time and there cannot be any accomplishments without cooperation. He said the intent of the franchise is to establish a long-term working relationship between both PSE and the County. Allowing the franchise for a short-term does not provide sufficient reaction time if something should happen because in many instances, during construction periods, there can be an issue or problem that cannot be immediately resolved. The advantage of long term is that it provides time for that reaction. Short term, especially one year, does not provide needed flexibility for the County because governments need time as well to react. Mr. Amor welcomes past performance as a yardstick. If one looks at past performance it is shown that when there was a problem it was addressed; it may not have been resolved immediately but it was addressed and it was addressed to the best of PSE's abilities. At the same time PSE also welcomes opportunities to discuss with the public issues of concern and solutions.

Commissioner Bakke asked Mr. Amor if the company has data on outages; that is, times of year, duration of outage, and does the company compare that data with previous years? Is that information something that can be provided to the Council of Governments and provided to the public with billing statements?

Mr. Amor said those are records that are reported to the Utilities Commission and are known as "duration and frequency interruptions." Those are standards that PSE attempts to improve upon and that is again, one of the reasons why PSE is increasing undergrounding when possible. PSE also addresses the issue of proper application of the right technology; tree wire is not the perfect solution for every application. He said in many instances it poses a greater danger to the public because of the fact it is so strong that it will actually bend down to a touchable location and could snap poles before it breaks. An interruption in the line can be detected and addressed and in many cases can be turned off. With tree wire the line can sag, it is still live, and PSE cannot detect the interruption; at that point it poses a safety hazard. With undergrounding it is not so much the cost, but again the application must be appropriate.

Commissioner Bakke asked Mr. Amor where the company is trending on frequency and time of outages.

Mr. Amor at this point turned the question over to Ms. Maret.

Ms. Maret encouraged everyone to view the WUTC website for the reliability report which is broken out by county, she then talked about the "system average interruption frequency index/system average duration index." As far as frequency company-wide, by county, and other utilities, PSE's performance frequency on outages has been fairly consistent and at a level below what the utilities and transportation commission dictates. Duration is over the last two years and PSE has been above the performance indicator established by the WUTC so PSE is not

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

performing to the standard in that area. County-by-county is also broken out and in prior years Island County, in the years without storms, performed better than the company average in other counties. There generally is a trend upward and that is of great concern all the way to the top of the company so duration is something PSE is very focused on, shortening the duration of the outages as a whole. It is better to look at a rolling average to obtain a better average statistically. There appears to be an upward trend but PSE is noticing that it is coming back down this year.

Mr. Jenkins spoke again saying the franchise must be in the public interest and that is something the Board can address since the Board serves the public. He again mentioned the need for a limited franchise because of the PUD effort. The effort puts the situation in a unique light that has not existed in past issues with franchise length. Mr. Jenkins said that in order to serve the public interest the Board must give the public the chance to voice their opinion and that is to vote in November on whether to form a PUD. He believes a longer franchise would only create another hurdle in that effort. It makes perfect sense to him to offer PSE a one-year window and to revisit the franchise again at the end of the year. It also gives PSE a chance to show what it can do and give the voting public a fair comparison about whether they do want a PUD. Granting a one year or two year franchise offers a different light where people have the opportunity to vote their choice in November and not just go on statistics and graphs.

Commissioner McDowell asked why the duration of the franchise would affect the PUD effort.

Mr. Jenkins said it will be one more item that must be overcome in a court case because the entity at the time will not easily give up the franchise in a condemnation action. It will be one less hurdle if the franchise is not long term.

Commissioner Bakke said he understands it to be an evaluation of the assets through condemnation and he therefore wonders if it would behoove all involved to have a long-term franchise in place that works for everyone; there would be the certainty of a franchise and the franchise could be inherited along with the assets contained within the county road right-of-way.

Mr. Jenkins said he understands the franchise belongs to PSE and will stay with PSE, the condemnation process only acquires the physical assets, Whidbey PUD would need to obtain a new franchise. Again, granting a shorter franchise would be one less hurdle for the new PUD to overcome. A shorter franchise also shows a concern by elected officials.

Commissioner Bakke remarked that the Board has been advised by the Prosecutor that when it applies conditions to a franchise it must be able to determine that those conditions are necessary to protect public health, safety, and welfare for the people using the right-of-way.

Mr. Jenkins does not believe the request relates to that concern in the slightest, the issue is simply the length of time of the franchise and there should be no detriment to anyone by granting such. PSE should go about its business as usual and when it comes time for the condemnation process then whatever projects are in place or ongoing, those will be assumed by the new PUD. The citizens are making a strong statement that it is not going to be business as usual any longer; that people want something in return and none of the laws as understood are being violated by granting a shorter franchise.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

Mr. Oakes said that the franchise under consideration would be granted to Puget Sound Energy. The franchise would be non-exclusive so it does not give that company or any franchisee the exclusive right to provide a given utility anywhere in Island County. The franchise can be transferred and, as it does often happen as companies change corporate entity, the franchise is transferred to the new entity. It would be an asset if it were an exclusive franchise, if the County were giving exclusive rights to someone to use the County's right-of-way for a given utility. Since the franchisees are non-exclusive a competing company would need to apply for a franchise to be able to operate in the County's right-of-way. Mr. Oakes said if a PUD were formed it could ask for its own franchise or transfer the existing franchise for the utilities it purchased if it approved the terms and conditions of the existing franchise. There is very limited value in a franchise.

Marianne Edain commented that the conditions imposed must be necessary to protect the health, safety, and welfare of the "motoring public." She said that more use of tree wire and undergrounding in appropriate locations would reduce risk to the motoring public in terms of fallen hot wires or power poles. She believes any conditions the Board chooses to impose could be based on that nexus.

Teresa Loop with PSE wanted to confirm the Board received an answer to questions concerning extending or shortening the time frame. Being one of the negotiators on the franchise she commented that PSE has operated without a franchise for six or seven years so that is indicative of just how long it takes to actually come to an agreement. Negotiation is a long process, involves much staff time, and that is why PSE typically asks for a much longer duration.

Dave Metheny asked PSE representatives if there is a service center on Whidbey; if PSE staff members and line crews live on the Island. If PSE is serious about improving service it would have a service center and employees on the Island to perform work within a relatively short period of time. He also asked:

- Would the franchise include terms that require PSE to develop any sort of renewable generating capacity for future energy needs;
- He wants to talk about the specifics of the service level for the Island;
- If the figures for undergrounding and transmission lines include the 10.8% return on equity that PSE will receive;
- Does that include the millions that will go to the 13 top executives for their salaries, bonuses, and stock options each year;
- Does that include the debt service with PSE's poor credit so the ratepayers are paying a higher percentage for the money they borrow on the ratepayer's behalf?

Mr. Metheny believes these questions should be answered and included in any electrical franchise agreement.

Public input having been closed, the Commissioners had the following comments.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

Commissioner McDowell talked about comments received at recent Council of Governments meetings and e-mails concerning the necessity to underground some amount of wire. He did some math for estimated costs based on what was provided, the number of miles of overhead, and the two different types of main transmission lines, arriving at some interesting numbers. If the County makes a condition of the franchise that some or all of the lines must be re-installed to underground, state law provides that the County general fund will pay between 40% and 100% of that re-installation cost. PSE suggested it would probably be around 60%. The Commissioner said if it were 100% underground the total would be about \$1.7 billion; if the County paid 60% the amount would be \$1.03 billion of County dollars from Current Expense and that amount of money does not exist in Current Expense. The annual budget for Current Expense is about \$25 million. Even at a County request of 10% underground, the amount would be \$100 million and there remains no way to come up with the money. He believes the public requests are out of range financially of local government unless people want to start paying more in taxes. Commissioner McDowell said Puget Power made it clear to him about the tree wire; it has its use and it is apparent that PSE has a program for such use and safety.

Concerning the duration of the franchise, Commissioner McDowell said the County does not hold itself to such a standard; the County has capital facility plans and those are implemented over 20 years. There is a reason for long-term capital facilities plans; there is a reason PSE must have the ability to plan long-term. If PSE were given a short franchise Commissioner McDowell believes there would not be much long-term commitment for capital expenditure because it would be unclear what would be required in the next short term franchise. Whether governments or large corporations, a longer horizon is necessary in terms of building capital facilities. He believes the Board cannot enter into the fray of the cost of power; it is completely out of the purview of the Board's authority.

As far as the forming of a PUD on Whidbey Island that is, in Commissioner McDowell's opinion, a political battle to be fought aside from the franchise request. He believes it illegal for the Board to make a decision to shorten the duration of the franchise to help influence the PUD decision. From a business standpoint it does not make sense to have a short franchise. Commissioner McDowell would not vote for a short duration on the franchise to help influence the PUD decision without first obtaining legal advice, if that is what the Board is intending.

If the County has gone for the last six or seven years without a PSE franchise Chairman Dean was curious if it would make sense to wait another year; a more neutral way of not becoming involved in the issue. He said the argument about a 20-year planning term is valid but if he were a PSE stockholder he would think not to invest too much in Whidbey Island until the outcome of the PUD effort is known. As far as the Board's influence, the Chairman believes that the Board does not have an influence either way so he wonders if a valid option would be to not take action until the result of the election is known; in other words, let the election decide.

Commissioner McDowell questions whether that is a justifiable reason to not take action and a question for the Prosecutor. Can the Board say it is not going to take action on something that is before it and negotiated by staff?

Commissioner Bakke commented that he lives in Freeland and last year PSE installed tree wire nearby his home which took the better part of a week to install for not all that long of a stretch. He believes that this year's service has certainly been better than it was last year although the weather did improve.

**BOARD OF ISLAND COUNTY COMMISSIONERS MINUTES OF MEETING
JUNE 2, 2008 – REGULAR SESSION**

He continued by saying that PSE is a regulated monopoly that is regulated exclusively by the WUTC and while he is sympathetic to the issues, in the end, granting a franchise to work in the County right-of-way has limited legal parameters. He suspects that if the Board decided not to grant the franchise or if it decided to wait until next year, PSE may in fact have some recourse against the County for failing to act in a timely manner. He also believes it a good idea to receive a legal opinion on that question as well. The Commissioner is unclear from a legal perspective whether granting the franchise for two years, five years, or twenty years makes any difference. It may sway some public opinion but from a practical perspective, he believes it would just be PSE continuing to implement its business plan just as Public Works implements a capital facilities plan for roads. He said if the Board wishes to continue the hearing in order to obtain a legal opinion he would agree to such a continuance.

Commissioner McDowell changed his opinion on one issue. If the people who commented today want to supplement their comments in writing between now and next Monday he would be more than happy to read and consider those.

By unanimous motion the Board continued the public hearing on Franchise Renewal #16(2)R-Puget Sound Energy to June 16, 2008 at 10:15 a.m. Additional written comments to the Board for consideration must be received by close of business on Thursday, June 12, 2008.

There being no further business to come before the Board the meeting adjourned at 12:01 p.m. The Board will meet next in Regular Session on June 16, 2008 beginning at 10:00 a.m.

BOARD OF COUNTY COMMISSIONERS
ISLAND COUNTY, WASHINGTON

John Dean, Chairman

Phillip Bakke, Member

Wm. L. McDowell, Member

ATTEST:

Elaine Marlow, Clerk of the Board