

ISLAND COUNTY COMMISSIONERS - MINUTES OF MEETING

REGULAR & SPECIAL SESSIONS - NOVEMBER 1, 1999

SPECIAL SESSION

The Board met in Special Session, Monday, November 1, 1999, beginning at 8:00 a.m., prior to the Regular Board meeting beginning at 9:30 a.m. The Special Session was called to allow the Board to meet in Executive Session with special legal counsel to discuss pending and/or potential litigation, as allowed under R.C.W. 42.30.110 (1)(i). The Executive Session was held in the Hearing Room, Courthouse Annex, Coupeville. The special session adjourned at 9:25 a.m. No announcement was made on conclusion of the session.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: _____

Margaret Rosenkranz, Clerk of the Board

REGULAR SESSION

The Board of Island County Commissioners (including Diking Improvement District #4) met in Regular Session on November 1, 1999, at 9:30 a.m., in the Island County Courthouse Annex, Hearing Room, Coupeville, Wa., with Mike Shelton, Chairman, Wm. L. McDowell, Member, and Wm. F. Thorn, Member, present. Minutes from previous meetings were approved and signed as follows: Regular and Special Session October 11, 1999; and Special Session October 18, 1999.

VOUCHERS AND PAYMENT OF BILLS

The following vouchers/warrants were approved for payment by unanimous motion of the Board: **Voucher (War.) # 61275 – 61457..... \$158,659.70.**

Presentation: Northwest Council of Climate Change on Regional Impacts and Implications to Cities and Counties

The Board received a presentation from Blair Henry, from the Northwest Council of Climate Change. He described himself as a business attorney in Seattle, interested and aware of the issue, and is the Founder and President of the Council. The presentation is funded by the Environmental Protection Agency. This is a big issue and there is not a lot of good news. Looking at extreme storm related events and property damages from extreme storms, there is a clear trend upward over the last 10 years. If hurricane Andrew in 1992 had gone 30 miles north and hit downtown Miami it would have bankrupted the industry.

The controversy on this is not in the scientific circles but in the policy circles because the biggest source of global warming is from burning of fossil fuels: coal is the worst; second is oil, and then natural gas third. East of the Mississippi river most electricity comes from coal; 60% of the United States electricity comes from the burning of coal. All the industries using that electricity does not want the cost of electricity to increase. Burning fossil fuel increases carbon dioxide in the atmosphere; the atmosphere heats up, the ocean begins to heat up and turns into "weird weather". As the atmosphere gets hotter the weather systems get skewed. Fossil fuel burning use in this country has risen 800% since 1990. Carbon dioxide has increased 30% in 200 years. As the carbon dioxide goes up temperatures go up. Temperatures have gone up 1.5 degrees in 120 years'; sea level is up about 10 inches, and there has been "weird weather": hottest year in 1,000; hurricanes on magnitudes that has not been seen before, etc. To stabilize the atmosphere will require significant replacement – knowing it cannot be filled by wood or hydro, the only other choices so far right now are the renewable energies. We will be at a level of 2X within 50 years; all the scientific studies indicate.

Best scientific information (70%) shows that the average temperature in the State of Washington is expected to go up 4-1/2 degrees in the next 50 years, in addition to the 3-1/2 it has already come up = a 6 degree warming. Predicted is a lot more precipitation in the winter but not in the form of snow; snow levels will be rising quite a bit higher because of the heat. This means a lot more flooding and landslides, and this sets up warning flags on mental health issues. In the summer, there will be drought conditions. Predict in the Columbia River a 20 to 30% increase in river flow, translating in a decrease in electrical production, irrigation and river traffic. The Canadian model predicts that by the year 2070 or 2080 no more snow in the Cascade Mountains forever. [U.S. models are a little more conservative]

Short Term Impacts to the Northwest

1. forest sector [weather pattern and effect Douglas Fir – which could be eliminated in the State of Washington in 50 to 100 years]
2. fisheries - adds a whole new factor on salmon already endangered [habitats impacted in the mountains; rivers moving slower and warmer; warm water predators]
3. agricultural concerns – new pests and weeds coming in as a result of warmer environment
4. summer pollution issues
5. public health issues [northerly migration of diseases, insects and people].
6. Sea levels will rise in different parts of the State about another 19". Expect parts of downtown Everett to be flooded; much of downtown Olympia will be gone, Aberdeen, etc. In this area of the Sound, the water will come up about 8 to 12" [19 to 21" south Sound].

Going to 4X level is expected in about 150 years. The difference between 2X and 4X:

East Coast in summer: average summer temperature in Washington D.C. and Philadelphia is now about 85 degrees at night. Under the 2X scenario that will be 95 degrees and under 4X 110 degrees at night. The numbers between 2X and 4X are important to know because we have the wherewithal to get moving to hold global warming at level 2X. Fuel systems have to be turned around.

To stabilize the planet at a level of 2X there is a 40 year window to turn it all around and do a 90% reduction in carbon fuels. This is a world wide effort but the U.S. leading can help others make it happen. So far the U.S. has not been leading. The issue has been stopped in the federal government; the U.N. and some other countries are trying to move. The Council proposes that on a regional level, Washington, Oregon, B.C. bypass the federal government and start working on the international scene to move it along—show a domestic model that works, and bring California in.

There are other alternatives than nuclear power, mainly in the renewable fuels: solar, wind, bio-mass, fuel cells; there are a number of technologies coming down the road. The Council proposes that taxpayers stop subsidizing the fossil

fuel industry [about \$20 to \$25 billion dollars a year] and put that towards renewable fuels, those alternatives would begin to really take off. Of real interest is that the Siemens Company has the largest solar panel facility in the world in Vancouver, Wa., because of the cheap hydro power. Silicon is what they make for the solar panels. You can make 70 times as much silicon for the same unit of electricity as for one unit of aluminum. Only one country in the world is expanding their nuclear base, which is Romania.

Chairman Shelton was aware of a vast environmental movement to remove dams and destroy hydro power; perhaps in the overall scheme of things salmon might be better off with the fish ladders in the dams than with the global warming that an alternative type of electricity might create.

Mr. Henry agreed that was quite possible. Scientists say with regard to the fisheries issue if any of those dams are left on the Columbia and Snake, those salmon will not make it; they say the prudent way and least expensive would be to build the habitat in the North Cascades, Olympics, and other areas and preserve those runs, but could pretty much write off the Columbia and Snake unless those dams are taken out. He left a hand-out sheet, and where more information could be obtained: www.nwclimate.org.

Hiring Requests & Personnel Actions

After presentation and summary by Dick Toft, Human Resource Director, the Board by unanimous motion approved the following two personnel action authorizations:

PAA # Description/Position # Action Effective Date

111/99 Env. Health Spec.II #2403.06 Reclassification 11/1/99

113/99 Planning Director #1700.00 Replacement 11/1/99

The Board, in conjunction with PAA #113/99, by unanimous motion, appointed Phil Bakke as Planning Director effective 11/1/99.

MARINE RESOURCE COMMITTEE – APPOINTMENTS/TERMS CONFIRMED

Those individuals appointed to the Marine Resource Committee were restated and by unanimous motion, the following terms confirmed:

Members Representing Term Begins Term Ends

Don Meehan Education [WSU] [*no term specified*]

Jan Holmes Marine Biologist 8/23/99 12/31/01

Jeff Tate Local Government 10/18/99 12/31/02

Mike Gallion Sports Fishing 8/23/99 12/31/03

Chuck Crider Munic. Planner 8/31/99 12/31/01

Matt Klope Scientist/Marine 8/31/99 12/31/02

Gary Wood BeachWatcher 8/23/99 12/31/01

George Lundgren Commercial User 8/23/99 12/31/02

Tom Campbell Recreational User 8/23/99 12/31/03

Tom Shaughnessy EDC/Port of

Coupeville 8/23/99 12/31/01

Tom Roehl Port of So. Whidbey 8/23/99 12/31/02

Linda Schoenharl Vineyard Owner 8/23/99 12/31/03

Resolution #C-140-99 Cancellation of Outstanding Warrants 1999

As is customary at this time of year, the Board took the matter under consideration, as provided by the Auditor's Office, of canceling outstanding warrants for the year 1999, as allowed under RCW 39.56.040 when said warrants have not been presented within one year of the date of issue.

By unanimous motion, the Board approved Resolution #C-140-99 in the matter of cancellation of outstanding warrants for the year 1999 as provided in the list attached as Exhibit A.

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

IN THE MATTER OF)

CANCELLATION OF WARRANTS) RESOLUTION C-140-99

_____)

WHEREAS, RCW 39.56.040, provides for the cancellation of warrants not presented within one year of the issue date, and

WHEREAS, the warrants listed in Exhibit A have not been presented for payment and have been outstanding for more than one year, or the issuing fund or department has requested the cancellation, and

WHEREAS, effort to contact the recipients have not resulted in presentation of the warrants, or an affidavit to request issuance of replacement warrants, and, **NOW THEREFORE**

BE IT RESOLVED, that the warrants listed in Exhibit A are canceled. The County Auditor and County Treasurer, by copy of this resolution, are directed to take action to transfer all records of such warrants so as to leave the funds as if such warrants had never been drawn.

ADOPTED this 1st day of November, 1999.

Board of County Commissioners

Island County, Washington

Mike Shelton, Chairman

Wm L. "Mac" McDowell, Member

Attest: William F. Thorn, Member

Margaret Rosenkranz, Clerk of the Board

BICC 99-612

Resolution #C-141-99 Declaring Legal Holidays for the Year 2000

The Board by unanimous motion, approved Resolution #C-141-99 which declares Legal Holidays for the Year 2000, as outlined in RCW 1.16., noting for the record that the New Year's Day holiday is observed on Friday, December 31, 1999, inasmuch as January 1st falls on a Saturday.

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

IN THE MATTER OF DECLARING LEGAL)

HOLIDAYS FOR THE YEAR 2000) RESOLUTION NO. C-141-99

WHEREAS, Washington State holidays are outlined in the Revised Code of Washington, Chapter 1.16; and

WHEREAS, it is the policy of Island County to observe state holidays, **NOW, THEREFORE**,

BE IT HEREBY RESOLVED that the following be observed as legal holidays for the year 2000:

December 31, 1999 Friday New Year's Day

January 17 Monday Martin Luther King Jr. Birthday

February 21 Monday President's Day

May 29 Monday Memorial Day

July 4 Tuesday Independence Day

September 4 Monday Labor Day

November 10 Friday Veteran's Day

November 23 Thursday Thanksgiving Day

November 24 Friday Day After Thanksgiving

December 25 Monday Christmas Day

ADOPTED this 1st day of November, 1999.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton Chairman

Wm. L. "Mac" McDowell, Member

William F. Thorn, Member

ATTEST:

Margaret Rosenkranz, Clerk of the Board

BICC 99-613

Intergovernmental Agreement: I-COM

By unanimous motion, the Board approved Intergovernmental Agreement between Island County and Island County Emergency Services Communications Center (I-COM), Risk Management #RM BOICC 99 0078, the funding in this particular case coming through Washington State Military Department Contract #EM019042 in the amount of \$272,499 for expenses necessary to operate E911 county-wide.

Intergovernmental Agreement: WA. State Military Department

The Board, by unanimous motion, approved Intergovernmental Agreement between Island County and the Washington State Military Department #EM019072, Risk Management #RM BOICC 99-081, in the amount of \$553,097.00 to assist and facilitate enhanced 911 implementation.

Claim for Damages, R99-031CD, Estate of Jeremy Unger

Betty Kemp, Director, GSA/Risk Management, summarized from her written report under memorandum dated October 27, 1999, with regard to Claim for Damages, R99-031CD, by the Estate for Jeremy Unger. One-car fatal collision took place 31 December 1996 on Camano Hill Road, with Claim actually filed on 16 August 1999. Additional information is being provided to the Risk Pool and Ms. Kemp stated for the record her recommendation to close the claim at the County level and refer the matter to the Risk Pool for further investigation and assistance with a recommendation.

By unanimous motion, the Board referred Claim for Damages #R99-031CD by the Estate of Jeremy Unger to the Risk Pool to assist in the recommendations.

Claim for Damages, R99-033CD, Chad A. Bridgman

Mrs. Kemp summarized from her written report under memorandum dated October 27, 1999, with regard to Claim for Damages, R99-033CD, Chad A. Bridgman. The claim was filed for the amount of \$600,000.00 alleging that the County Sheriff and Jail Commander did not provide medical attention when needed. She recommended that the claim and file contents be submitted to the Risk Pool to assist the County in the disposition of the claim.

By unanimous motion, the Board referred Claim for Damages R99-033CD by Chad A. Bridgman to the Risk Pool to provide assistance to the County in the disposition of the claim.

DRAINAGE AGREEMENT/Covenants & Drainage and Access

Easement – Lawrence J. Gogenola

Larry Kwarsick, Public Works/Community Development Director, presented a proposed Drainage Agreement/Covenants along with a Drainage and Access Easement from Lawrence J. Gogenola, Lots 44-47, Plat of Pebble Beach, West Camano Drive, proposed in satisfaction of an old out-standing drainage problem and some litigation.

By unanimous motion, the Board approved and signed the Drainage Agreement & Covenants #RM PW9920.16, along with the Drainage & Access Easement and Covenant #RM PW9920.16A, with Lawrence J. Gogenola.

Petition for Vacation of abandoned portion of Humphrey Rd right of way crossing Assessor's Parcel 019.456

The Board adopted a unanimous motion referring a Petition for Vacation of an abandoned portion of Humphrey Road right-of-way crossing Assessor's Parcel 019.456, located in SE, SE, Section 36-T29N-R3E; Petitioner D. Davie P. Sonnichsen, et.ux., to the County Engineer for report and recommendation back to the Board.

Memo of Understanding associated with SR 532 Camano

Island Park & Ride Lot

Mr. Kwarsick presented for the Board's approval, a Memorandum of Understanding between the County and the Washington State Department of Transportation in implementation of the proposal to evaluate the suitability of a portion of Terry's Corner property on Camano Island as a proposed Park & Ride Lot, financed and funded by WSDOT to acquire land; the MOU provides that Island County Act as Lead for WSDOT. This also involves some agreement with Island Transit. Mr. Kwarsick recommended approval of the Agreement, and was comfortable with the percentage allowed for administrative overhead for the Public Works Department to act as Lead Agency, with both Lew Legat and Mike Morton on review of other agreements with WSDOT showing that 5% was fairly consistently used in terms of overhead.

Commissioner McDowell recognized that the percentage for overhead is similar to what has been used on other projects, but for one of this magnitude questioned if the administrative percent overhead enough to do the job. Mr. Kwarsick confirmed that all direct costs are paid by WSDOT, and will cover all of Island County's costs.

Mike Morton advised that although the Agreement was not signed by the Director of Island Transit, the Director actually approved the MOU, and after this meeting he will take the MOU to the Director for either her signature or presentation to the Transit Board if she had not already been given that authority. Island Transit and DOT negotiated exactly who would be responsible for what and both sides are comfortable with the language as it exists.

By unanimous motion, the Board approved and signed the MOU signed by Bob Josephson, WSDOT, dated October 26, 1999.

**Resolution #C-139-99 In the Matter of Amending the
Island County Facilities Master Plan**

Next, Mr. Kwarsick presented proposed Resolution #C-139-99 to amend the Island County Facilities Master Plan phasing schedule as originally approved by the County and the Town of Coupeville. In the original Coupeville Courthouse Master Plan the Juvenile Detention Facility was shown as a Phase II construction project. As a result when Island County and the Town of

Coupeville jointly addressed environmental impacts of the Master Plan, the detention facility expansion was not included. Subsequent to the Board's action to approve this amendment to the Facilities Plan, the document will be referred to the Town of Coupeville to take the same action, subject to environmental review. He thought that this action would accelerate the environmental review by as much as 6 to 8 months and help facilitate the development of the project.

By unanimous motion, the Board approved Resolution #C-139-99 in the matter of amending the Island County Facilities Master Plan.

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

IN THE MATTER OF AMENDING THE)
ISLAND COUNTY FACILITIES MASTER) RESOLUTION C- 139-99
PLAN)

WHEREAS, the Board of Island County Commissioners conducted a Coupeville Courthouse needs assessment and facilities analysis in association with the preparation and adoption of the Island County Facilities Plan in 1995; and

WHEREAS, the Island County Facilities Plan identified proposed capital projects and scheduled them in

two construction expansion phases, and

WHEREAS, the expansion of the County detention facility was identified in the adopted Island County Facilities Plan as a Phase 2, Long Term Expansion project; and

WHEREAS, RCW 13.04.135 requires Counties containing more than fifty thousand inhabitants provide and maintain a juvenile detention facility; and

WHEREAS, in November of 1998 the voters, pursuant to RCW 82.14.350, approved an additional sales and use tax for juvenile detention facilities. Moneys received are to be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities .

WHEREAS, it is imperative that the construction schedule for the juvenile detention facility be identified in the Island County Facilities Plan as a Phase 1 project and that the construction of the juvenile detention facility be accelerated to fulfill the mandates of RCW 13.04.135 and the electorate of Island County.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board of Island County Commissioners adopts the proposed amendment to the Island County Facilities Plan, attached hereto as Exhibit A, and further requests that the Town of Coupeville amend their previous actions and approve the amendment to the Island County Facilities Plan. Material underlined is added and material lined through is deleted.

Reviewed and approved this 1st day of November, 1999.

Board of County Commissioners

Island County, Washington

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

Attest: Margaret Rosenkranz

Clerk of the Board

BICC 99-609

[copy of Exhibit A placed on file with the Clerk of the Board]

HEARING SCHEDULED: ORDINANCE #C-138-99 (PLG-047-99)

By unanimous motion, the Board scheduled Ordinance #C-138-99 (PLG-047-99) Amending Island County Zoning Ordinance Chapter 17.03 ICC and Land Use Review Process Chapter 16.19 ICC to Implement the Adopted Langley Interlocal Agreement and to make Technical Amendments to Chapter 16.19 ICC for public hearing on **November 22, 1999 at 2:15 p.m.** *[GMA doc. #5024]*

Correction of Ordinance #C-133-99 (PLG-040-99)

The Board considered the recommendation to correct Ordinance #C-133-99 (PLG-040-99) in the matter of amending the Comp Plan and Development Regulations to comply with the order of the WWGMHB relating to the Rural Forest Zone, Exhibit B-2, as recommended by the Prosecuting Attorney's review as Code Reviser in Memorandum dated October 22, 1999 *[GMA doc. #4998]*.

Commissioner McDowell recalled that the Board at its last meeting considered correction of this Ordinance as recommended by David L. Jamieson, Jr., Chief Civil Deputy Prosecuting Attorney, and made all corrections as recommended, except for this particular change, not having understood that the recommendation here was to insert the words "Commercial Agriculture " and then cross it out.

By unanimous motion, the Board made the correction as suggested on Exhibit B-2, under the "Note:" to read:

Uses denoted with an asterisk may be allowed in the RA, RF or CA Zones upon approval of a ~~Commercial Agriculture Farm~~ or Forest Management Plan. See ICC 17.03.180. [*Exhibit B-2 Correction GMA #4995*]

GMA HEARINGS HELD - 10:45 A.M.

Ordinance #C-122-99 (PLG-044-99) continued from 10/25/99) Amending the Island

County Comprehensive Plan Land Use Element and Chapter 17.03 Island County

Zoning Code regarding the new zoning classifications for the Oak Harbor UGA

Ordinance #C-119-99 (PLG-032-99) [continued from 10/19/99 and 10/25/99] Amending

Chapter 17.03 ICC to comply with the Order of the Western Washington Growth

Management Hearings Board relating to Freeland and Clinton

Attendance

Staff/Consultant: Keith Dearborn; Phil Bakke

Audience: Charlie Spromberg [*Attendance Sheet: GMA #4957*]

ORDINANCE #C-122-99

Phil Bakke recalled that the Board continued Ordinance #C-122-99 to allow for additional input on staff proposed Amendment #1 submitted on 10/25/99 to correct an error when interpreting the Oak Harbor land use map and a Highway Service Commercial Zone was developed in an area that actually called for Community Commercial. Amendment #1 would replace Exhibit "B", Section 17.03.083, OH-HSC, with Community Commercial (OH-CC) and modify proposed Findings and Legislative Intent to reflect the change.

Mr. Bakke consulted with Tom Burdett, Oak Harbor Planning Director, on this issue and Mr.

Burdett explained that the City Planning Commission reviewed the packet as proposed prior to Amendment No. 1, and had reviewed the Oak Harbor Highway Service Commercial proposed zoning and was unwilling to review the Oak Harbor Community Commercial Zone as proposed in Amendment #1, because it was a last-minute addition, and because the Oak Harbor Planning Commission and City Planning Staff believe that the Highway Service Commercial Zone previously adopted was in fact appropriate for the area shown on the Oak Harbor Comp Plan Map as Community Commercial. Also, the City will very shortly review all of the zones as they apply from the City's perspective, and Mr. Burdett pointed out that the City's code for these areas is somewhat outdated and had not projected thoughts through to applying a zone such as Community Commercial to that area, and that the adding Highway Service Commercial would satisfy their comments with respect to that (Amendment No. 2).

Based on that information, , Mr. Bakke proposed to withdraw Amendment No. 1 in its entirety and apply the Highway Service Commercial zone to those areas zoned Highway Service Commercial and also as shown in the packet designated as Oak Harbor Community Commercial. Assessor's Map #237 needs to be modified: the small area at the top of the map labeled as OH-CC is to be changed to reflect OH-HSC; and all maps need to be changed to delete "UGA Potential Zoning" and "*For UGA potential zoning classifications, consult the City of Oak Harbor Planning Department".

Other changes to be made are as noted in a Memorandum dated 10/29/99 from David L. Jamieson, Jr., Chief Civil Deputy Prosecuting Attorney. [GMA doc. #5023]

Public Input: No one in the audience expressed a desire to comment either for or against the proposed Ordinance.

Board Action:

Commissioner Thorn moved approval of amendments to Ordinance #C-122-99 (PLG-044-99), including withdrawal of Amendment No. 1, and approval of Amendment No. 2 with regard to applying the Highway Service Commercial zone to those areas zoned Highway Service Commercial and also as shown in the packet designated as Oak Harbor Community Commercial, and with the following changes:

Correction of the Zoning Atlas Maps to remove all reference to "UGA Potential Zoning" and "*For UGA potential zoning classifications, consult the city of Oak Harbor Planning Department".

Modify Assessor's Map #237 at the top of the map labeled as OH-CC to be changed to reflect OH-HSC;

Editing Corrections as recommended by the Code Reviser in Memorandum 10/29/99, specifically:

Ordinance Page 1, last paragraph, first line, insert "Commissioners" between Island County and adopt

Exhibit "B" Zoning Classifications

84. Oak Harbor – Planned Business Park (OH-PBP) Zone

First line, add the word "to" at the end so the first line reads:

"The purpose and intent of the Planned Business Park is to:"

85. re-labeled 17.03.086, the first line corrected to read: "The purpose and intent of the OH PIP is to:". The Section beginning "A Conditional Uses" is to be underlined. Section now noted at "H" is changed to "G".

Motion, seconded by Commissioner McDowell, carried unanimously.

By unanimous motion, the Board adopted Ordinance #C-122-99 (PLG-044-99) as amended this date. [GMA doc.#5022]

BEFORE THE BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

IN THE MATTER OF AMENDING THE ISLAND)

COUNTY COMPREHENSIVE PLAN LAND USE) ORDINANCE C-122-99

ELEMENT AND CHAPTER 17.03 ISLAND) PLG-044-99

COUNTY ZONING CODE REGARDING NEW)

ZONING CLASSIFICATIONS FOR THE OAK)

HARBOR UGA)

WHEREAS, the Island County Comprehensive Plan designates non-residential uses for certain properties within the Goldie Road subarea of the unincorporated portion of the Oak Harbor UGA; and

WHEREAS, these land use classifications were established based on Oak Harbor's Comprehensive Plan; and

WHEREAS, these properties are zoned Rural which is not consistent with the Comprehensive Plan; and

WHEREAS, during the Annual Plan Review process, the Planning Commission has considered and received public testimony supporting zoning these non-residential properties consistent with the land use classifications and made such a recommendation; and

WHEREAS, there is also a need to establish a residential zone for the unincorporated portion of the Oak Harbor UGA that is consistent with the Oak Harbor residential land use classifications; and

WHEREAS, modified landscape standards and new rules regarding retention of significant trees are needed to ensure consistency of land development; and

WHEREAS, the new zones and amendments have been reviewed by Oak Harbor administrative staff; and

WHEREAS, pursuant to WAC 197-11-600, the County SEPA Official has determined that the proposed changes to the Comprehensive Plan Land Use Element and Chapter 17.03 ICC relating to the Oak Harbor UGA Industrial Zones are not likely to have significant adverse environmental impacts that were not considered in the environmental documents prepared for the Comprehensive Plan and Development Regulations; **NOW, THEREFORE**,

IT IS HEREBY ORDAINED that the Board of Island County Commissioners adopt the amendments to the Comprehensive Plan attached hereto as Exhibit "A", new zoning classifications, Oak Harbor Residential (OH-R), Industrial (OH-I), Highway Service Commercial (OH-HSC), Planned Business Park (OH-PBP), and Planned Industrial Park (OH-PIP) and new land use standards all as amendments to Chapter 17.03 ICC attached hereto as Exhibit "B"; and Zoning Atlas amendments to carry out these new zones attached as Exhibit "C". Material stricken through is deleted and material underlined is added. The Board also adopts the Findings of Fact and Legislative Intent attached hereto as Exhibit "D" to support the changes to the Comprehensive Plan and Development Regulations.

Reviewed this 4th day of October, 1999 and set for public hearing at 2:45 p.m. on the 25th day of October, 1999.

BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

BICC 99-562

APPROVED AND ADOPTED this 1st day of November, 1999, as specified in the October 29, 1999 memorandum from the County's Code Reviser.

BOARD OF COUNTY COMMISSIONERS

OF ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST:

Margaret Rosenkranz

Clerk of the Board

APPROVED AS TO FORM:

DAVID L. JAMIESON, Jr.

Deputy Prosecuting Attorney

& Island County Code Reviser

[Exhibits A, B, C and D are on file with the Clerk of the Board.]

Ordinance #C-119-99

Phil Bakke submitted a Memorandum dated 11/1/99 to the Board, regarding Compliance relating to Clinton and Freeland PLG-032-99 [GMA doc. #4959]. He asked that discussion of the logical outer boundary for the Clinton and Freeland RAIDS be postponed to next week inasmuch as Jeff Tate had a family emergency and is unable to present the information. Based on the last hearing that leaves the issue of density requirement for maximum density allowable for multifamily housing in those RAIDS. At the last hearing an example was provided, Freeland Convalescent Center which was in operation prior to t 1990 and suggested staff go back and look at other developments that occurred in that area also prior to 1990. Staff research found:

On the corner of Layton Road and Topaz Court an apartment complex of 7 units with a density of 14 units per acre

On Freeland Avenue – existing mobile home park with 19 units with a density of approximately 10 units per acre

He confirmed that the Planning Department recommends setting the maximum number of units in the Freeland and Clinton RAIDS at 12 units per acre for multi-family housing.

Mr. Dearborn commented that a delay in the review of the logical outer boundaries work by Mr. Tate is not to finish the work, rather in order for him to present that work at the hearing. The work was completed and determination made there is no need to modify the logical outer boundaries in Freeland and Clinton. On the question of density, he said the numbers were effectively meaningless in that no one can achieve the numbers in either location. It is purely being

done to comply with the Growth Board requirement to create a cap. Health, storm water, parking and open space restrictions all create limitations that have a practical effect of capping density.

PUBLIC INPUT

Charlie , Chair, Citizens Growth Management Coalition, entered into the record:

- Two-page Memorandum dated 10/25/99 to the Board on the boundaries of the Freeland & Clinton RAIDs in response to the GMHB Order [GMA doc. #4960]
- Attachments to 10/25/99 two-page Memorandum - Air Photos of Freeland & Clinton flown September, 1997 taken from the County Web site [GMA #4961]
- 11/1/99 Half page memo from Charlie , Chair, GMC, to BOCC on the boundaries of the Freeland & Clinton RAIDs, in response to the GMHB Order [GMA doc. #4962]

He was concerned when the County amends things like density and looking at maximums rather than what makes sense. He looked at the zoning ordinance in place in 1990 and the existing zoning map at that time and asked that those be entered for the record To say that under the "R" zoning that a person could not do anything more than 3.5 dwelling units per acre, single units, duplexes and tri-plexes, the only other zoning active was the non-residential which indicates not apartment residential kinds of uses. He is bothered that densities are being created that were not useable densities even at the time of 1990. He suggested common sense rather than going to the extreme.

Two weeks' ago the Coalition reminded the Board of Commissioners that the Hearings Board found the current boundaries of Freeland and Clinton RAIDs were too large and uses and densities too great, the quote from the Growth Board order included in his Memorandum dated 10/25/99. He stated that commercial and residential RAID boundaries go beyond the intense development from 1990 and also today. The County has said that the total population figure for a Freeland UGA could be 4000 people, up from 700 people now. Clinton has a very large increase as well. A 5.7 times or 570% increase for Freeland would place a large strain on urban services required to keep the infrastructure from breaking down. A feasibility and financial study would be done in the current unincorporated UGA planning process. The County is creating an urban town without the incorporation step. Water quality is critical for the three RAIDs in "Metro-Freeland": Mutiny Sands, Menlo and Freeland RAIDs, as well as the Mutiny Bay Condos probably are using the same aquifers. With that large an increase in population he had concern that smaller water systems might run dry or suffer salt water intrusion. One suggestion he thought might be to extend the Freeland Water District to serve all three RAIDs.

Mr. suggested that sewer feasibility was probably based on concentrated densities of multi-family and commercial uses, and if development occurs now on septic systems or at very low densities, the financial feasibility could be lost. The Board chose to use 4 dwelling units per acre as an interim target for residential development. To justify the economics of sewer systems the level could be in the 10 +/- range but that has not been figured out yet. He mentioned there is a Freeland earthquake fault that appears to go from Mutiny Bay through downtown Freeland which should be considered in the placement of development, especially high density development. Storm drainage is a key service with higher densities. The unfunded Storm Water Plan needs to be updated even at current densities. A major increase in densities will put greater demands on these facilities. An alternate solution he suggested was to place a moratorium on new development until the UGA study is complete and the provisions implemented.

Mr. Stromberg called Jeff Tate on October 21 and 22 to learn how he was analyzing the Freeland and Clinton RAID boundaries, and to obtain copies of the maps and materials, and was advised by Mr. Bakke that Mr. Tate was out of town and would not be able to attend the November 1st hearing.

He asked that the Island County Zoning Ordinance Chapter 17.02 dated 12/21/92, as received by him 3/1/95 from Vince Moore, be entered into the record, along with the existing zoning map of the South Whidbey Planning Region, figure 3.20, from the Nov. 1996 Proposed IC Comp Plan. *[secretary's note: Mr. Stromberg did not provide those documents; rather indicated he was referencing them for the record and noted that those documents were available at the County]*

Mr. Stromberg commented that proposed Amendment No. 2 by the Planning Department, the Freeland densities of 17 units per acre for Multi Family uses were not possible in 1990 in the R District. The Zoning Map showed the two 4-plexes in Freeland mentioned in the October 25th hearing to be zoned R and the two 4-plexes are each on ½ acre lots which equals 8 DU/acre.

In response to Commissioner McDowell about the Coalition's recommendation concerning a moratorium, Mr. Spromberg clarified that was up to the Board as an alternative, noting he thought the way the Board was handling the current ordinance was in a radical way and disturbed him. He is saying if the Board does not want to follow the guidance of the Growth Board and reduce the boundaries of the RAIDs back to where RAID boundaries should be and that a moratorium might handle that without allowing things to get out of bounds. He understands there is a gasoline station proposal at Fish Road and Highway 525: are those things going to get the uses out of shape and effect any new idea coming out of the planning committee. Mr. Spromberg stated he was not making a moratorium recommendation, only that it is an alternative.

Answering Commissioner Thorn's question whether the Coalition was making a specific recommendation on density, Mr. Stromberg said he was not making a specific recommendation for density. He thought that the Board should do things that are not errors.

No others in the audience indicated a desire to speak for or against the proposed Ordinance; public input closed.

Mr. Dearborn recalled that the rationale for the 4 units to the acre was described two hearings' ago, which was that that is the dwelling unit number the Central Puget Sound Growth Board said is the minimum urban density for an area like Freeland. It is not necessarily what is expected, but that was the cut-off bottom line minimum density that would justify an urban designation for a UGA.

Commissioner McDowell has always given the Coalition and others lots of thought process. Talking about the density in general, he noted that any density is always theoretical until there is an application. Other than going parcel by parcel, there has to be some kind of density not knowing what any one parcel or combination of parcels could support. He found it strange that the Coalition would have no concerns about the massive down zone that has been done within the County, then object to the use of the concept allowed by law, RAIDs that calls for greater density than the old residential zone. He agreed with the comment about doing a good process on Clinton and Freeland forums and hearings. With regard to water quality he noted that any project is reviewed by he thought was one of the premier Health Departments in this State as far as hydrological water analysis since the County has a Hydrogeologist with some great professional standing in this State. As far as earthquake areas, UBC recognizes different zones in the State and building to earthquake codes required and taken care of in any county. The issue of storm water drainage, anyone developing property, particularly in Freeland since it is a critical drainage area, has to deal with that issue. Also, the Convalescent Care Center he did not think addressed an apartment type situation, but on the other hand, the example of the mobile home park would not necessarily address the apartment situation because a mobile home is not as dense development from the occupying of space as is an apartment.

Chairman Shelton stated that if there were ideal perc situation there is the possibility if the units are one bedroom units they might be able to come close to a density such as being discussed.

Commissioner Thorn's concern is the affordable housing and he did not think 14 was unreasonable in that instance in an urban setting, and noted whether it was achievable or not was problematic.

ACTION:

Commissioner Thorn moved approval of Amendment No. 2 modified as follows:

Appendix A, page 2, paragraph #7 under Freeland, Multi-family uses, change 17

units per acre to 14;

Findings and Legislative Intent, Finding #33, the date 5/1/99 is changed to

5/1/2000

Findings and Legislative Intent, Finding #34.C change 17 units per acre in Freeland

to 14

Findings and Legislative Intent, Finding #36, second line, again the number 17 units

per acre be changed to 14.

Motion, seconded by Commissioner McDowell, carried unanimously. [GMA doc. #5031]

The Board, by unanimous motion, continued the hearing on Ordinance #C-119-99 to November [Notice of continuance GMA doc. #4983]

8, 1999 at 10:45 a.m.

Mr. Tate will present at that time a review of the boundaries of Freeland and Clinton and why staff is recommending the boundaries not be changed.

GMA HEARINGS HELD - 1:30 p.m.

Ordinance C-130-99 (PLG-033-99) Amending Chapter 17.02 ICC to comply with the Order of the Western Washington Growth Management Hearings Board relating to certain provisions of the County's Critical Area Regulations

Ordinance C-97-99 (PLG-019-99) Amending Chapter 17.02 ICC to comply with the Order of the Western Washington Growth Management Hearings Board relating to certain provisions of the County's Critical Area Regulations (continued from 10/11/99)

Ordinance C-131-99 (PLG-045-99) Adopting Findings of Fact regarding Type 5 Stream Buffers and certain provisions of the County's Critical Areas Regulations.

Ordinance C-128-99 (CD-03-99) Adopting Best Management Practices for Exemptions to the Island County Critical Area Ordinance, Chapter 17.02 ICC, and to reaffirm the Adoption of the Best Management Provisions to Implement the Clearing and Grading and Stormwater and Surface Water Ordinances, Chapters 11.02 and 11.03, ICC, respectively.

Staff/Consultant: Keith Dearborn; Phil Bakke; Larry Kwarsick

Audience: Approximately 30+ Attended [Attendance Sheet: GMA #4958]

Commercial Ag and Rural AG – Consensus Reached

Keith Dearborn advised of a compliance hearing on Wednesday before the Growth Management Hearings Board Commercial Ag and Rural AG and the consensus reached by the Coalition, farmers and other property owners in the County the Board, with some amendments, adopted. WEAN contested that decision to the Growth Board. Mr. Dearborn discussed this with WEAN at length and Steve Erickson on behalf of WEAN advised him just before this hearing that they are willing to withdraw their challenge to compliance for Commercial AG and Rural AG if the County is willing to stipulate as to how the reasonable use exception can and cannot be used. Larry Kwarsick, Public Works/Community Development Director, was prepared to explain on record how the reasonable use exemption can and will be used in the future based upon the Code, and based on that Mr. Dearborn understand that WEAN then will advise the County they are withdrawing their motion to the Growth Board.

Mr. Kwarsick explained that the County in attempting to balance many of the goals and objectives of the Growth

Management Act tried to ensure protection of individual property rights. One of the big issues deals with the impact of critical areas to the development or use of an individuals property, and the Board provided in the Critical Areas Ordinance some reasonable use provisions and guidance given in terms of how to achieve reasonable use.

There are some perimeters established in the Code under which someone could obtain reasonable use of their property without having to go through an expensive scientific evaluation or prolonged public hearings. If someone has a pre-existing lot and then a regulation were developed after that, the County's intent is to apply reasonable use to that piece of property. If someone created, without knowledge of the County, a lot through an unregulated division of land and then made application for reasonable use does not fit the provisions of the reasonable use statute, which states:

"If the application of this section would deny reasonable use of an existing parcel development may be allowed which is consistent with the general purposes of this section, the public interest and the following standards:"

One of the standards is: (Island County Code 17.02.170.G, Reasonable Use Exceptions).

"The inability of the applicant to derive reasonable economic use of the property is not the result of the actions by the applicant in subdividing the property or adjusting a boundary line thereby creating the undevelopable condition."

Again, if someone created the problem for themselves, the reasonable use exception does not apply to that property; under the statute governing growth management and local ordinance those individuals could only pursue development of that property through a critical area alteration, a fairly significant process. The only divisions the County would have approved since 1984 would be if a division occurred where a conservation easement or parcel specifically identified to be conserved and protected were established, with a specific purpose. The unregulated division of property constitutes those who are segregating property into parcels of 10 acres or larger in size.

Steve Erickson believed Mr. Kwarsick basically got it right. WEAN's concern was that a lot could be created under provision 17.03.090.h that would allow creation of a parcel composed of entirely critical areas or buffers and the person then apply for reasonable use. As long as it is clear that is not the intent that removes the body of WEAN's concerns.

Mr. Dearborn confirmed that was the way the County interprets the Code both for boundary line adjustments and for unregulated tax segregation's.

Commissioner Thorn was delighted to have reached this point and complimented WEAN for working with the County.

Commissioner McDowell agreed that was the correct interpretation of what the Board adopted.

The important thing to remember, as stated by Chairman Shelton, was that in terms of creating

through the unregulated segregation of property or BLAs that it is not reasonable to create a new parcel that is entirely covered with wetlands or buffers then use the reasonable use section of the code to somehow bring the exemption into it. There are some dates involved in the regulation and if a parcel pre-dates those dates the person is entitled to the reasonable use exception. He agreed with the interpretation as stated by Mr. Dearborn and Mr. Kwarsick.

The Board confirmed that Mr. Dearborn send a letter on behalf of Island County tomorrow advising them of this stipulation and interpretation of the Code, understanding Mr. Erickson will follow by withdrawing WEAN's opposition to the County's motion. This will mean for Commercial AG and Rural AG consensus has been reached in Island County and Mr. Dearborn termed this as a good faith step by WEAN to try to resolve the remaining critical areas issues.

Submittals Into the Record:

Department of Ecology Submittal: letter submitted by Susan Meyer: Comments on proposed amendments to the Island County Critical Areas Ordinance prepared for the November 1, 1999 hearing with the Board of County Commissioners GMA #4946

10/30/99 5-page memo from Steve Erickson, WEAN, to BOCC re proposed BMP Manual

GMA #4927

10/30/99 2-page memo from Steve Erickson, WEAN, to BOCC Findings for proposed reduction of Functionally isolated buffers GMA #4928

11/1/99 1-page memo from Steve Erickson, WEAN, to BOCC, re Findings for proposed reduction of shoreline setbacks from marine fish and wildlife habitat conservation areas

GMA #4929

11/1/99 4-page memo from Steve Erickson, WEAN, to BOCC RE Findings for Type 5 Stream Buffers GMA #4930

10/30/99 2-page memo from Steve Erickson, WEAN, to BOCC, RE Designation of Species and Habitats of Local Importance [GMA doc #4931]

10/30/99 2-page memo from Steve Erickson, WEAN, to BOCC, re Designation of Washington Natural Heritage System inventoried high-quality terrestrial and wetland ecosystems

GMA #4932

11/1/99 6-page memo from Steve Erickson, WEAN, to BOCC, re Castelle's Memos

GMA #4933

10/30/99 4-page memo from Steve Erickson, WEAN, to BOCC, re adequacy of regulations to protect wildlife functions in Island County GMA #4934

11/1/99 from Steve Erickson, WEAN: Literature Cited [3 pages] GMA #4935

Article from Journal of Hydrology 214 (1999) 111-129 "Modeling hydrology and sediment transport in vegetative filter strips" [6 pages] by Rafael Munoz-Carpena, John E. Parsons, J. Wendell Gilliam GMA #4936

Article from BioScience Vol. 33 No. 11 - "A Regional Landscape Approach to Maintain Diversity" by Reed F. Noss [7 pages] GMA #4937

Article from Biological Conservation 54 (1990) 239-249 "The Influence of Land Use on the Genetic Structure of Populations of the Common Frog *Rana temporaria*" [11 pages] GMA #4938

Article from Ecology 78(6) 1997 pp 1914-1932 "Are Boreal Birds Resilient to Forest Fragmentation? An Experimental Study of Short-Term Community Responses"

[18 pages] GMA #4939

Article from Conservation Biology Volume 1 No. 1 May 1987 "Consequences and Costs of Conservation Corridors" [9 pages] GMA #4940

Article from Ecology 75 (5) 1994 pp 1357-1367 "Distribution and Extinction Patterns within a Northern Metapopulation of the Pool Frog, *Rana lessonae*" [7 pages] GMA #4941

Contributed Papers. Reconstructed Dynamics of Rapid Extinction's Chaparral-Requiring Birds in Urban Habitat Islands [13 pages] GMA #4942

Ecological Applications 8 (4) 1998 pp 1144-1155 "Demographic and Behavioral Responses of Southern Flying Squirrels to Experimental Logging in Arkansas" [9 pages] GMA #4943

Journal of Applied Ecology 1996.33 200-209 Essay Review - Species loss in fragments of tropical rain forest: a review of the evidence. 1996 British Ecological Society. [10 pages]

GMA #4944

Control of Residential Stormwater by Natural by Woodard and Rock [9 pages] GMA #4945

ORDINANCE C-130-99

Hand-Outs:

Ordinance #C-130-99 (PLG-033-99) Introduced and set for hearing 10-11-99

(GMA doc #4868)

Proposed Amendment #1 to Ordinance C-130-99 (PLG-033-99) - Natural Heritage Program with map J attached as prepared 10-11-99 (GMA doc. # 4947)

Mr. Dearborn explained that Ordinance #C-130-99 covered the last two issues to be addressed as a result of the Western Washington Growth Management Hearings Board remand of the County's critical areas regulations. One of the subjects is an exemption that the County had for many years for agriculture in the County to be able to continue to farm and cultivate fields or wetlands, but that exemption deleted by the Growth Board and the County told it could allow it only for those lands classified in Commercial Agriculture. All other agricultural lands in the County could not have that exemption and would have to comply with the critical area regulations which includes wetlands, wetland buffers, streams and stream buffers. Therefore, the Board of County Commissioners adopted an interim regulation deleting the reference to the Code for this exemption to everyone but those zoned Commercial Agriculture.

Many farmers told the County that if it did not allow that farming activity to continue in the Rural zone and Rural Agriculture zone would kill an activity continuing in this County and did not understand why that was being done. Farmers asked the Board of Commissioners to propose an ordinance reinstating the exemption. Ordinance #C-130-99 would re-instate that exemption for Rural zones and Rural Agricultural zones. He pointed out that even if the Board of Commissioners adopts the re-instatement of that exemption, it would not go into effect until the Growth Board agrees to its reinstatement. He was aware the Growth Board ruled in Skagit County the exemption was only available for the Commercial Agriculture zone. The Board of Commissioners decided to appeal that decision to Superior Court, but to hold that appeal in abeyance while figuring out a way to resolve the issue.

First, the purpose of the Ordinance would be to reinstate that exemption for those people who have been conducting farming activity historically. Second, the Ordinance would respond to another issue raised in the appeal and the County required to address, which is identification and designation of certain areas in the County that were determined by the Department of Natural Resources to be a part of a natural heritage program, which involves about 30 areas in the County [refer to Amendment #1 with map attached of those areas]. Of those areas, two are in private ownership; all the rest owned by public agencies. One area on the map is located at the south end of Camano Island, a long stretch of very old large maple trees identified as having a natural heritage concern. The other locations are on Whidbey Island, and include Grasser's Hill and an area of West Beach with white taught aster and golden Indian paintbrush, both on the State Protected list.

PUBLIC COMMENT

Joyce Fosseck, Langley, inquired about how the County regulations with regard to critical lands and agriculture dealt with the State's open space program, and how would that affect the use of their wetlands, i.e. grazing cattle on an area now considered a critical area. She supported the County in its effort to address the problem through the Ordinance.

Mr. Dearborn explained that the State's program comes first; the County does not and cannot change the tax program. None of the actions regarding zoning would change the tax program, or the owner's ability to stay in that program, and this action would not prevent wetland areas from staying in the tax program. Because someone is in a tax program would not exempt them from the critical areas ordinances. Today in Island County cattle cannot be grazed in a critical area unless in the Commercial Ag zone, by order of the Growth Board.

Ms. Fosseck commented that when a farmer is told he/she cannot use the field for this or that, and has to build a fence around it, the property is lost to that farmer and she considered it a matter close to a "taking" issue and thought that taxes should be taken off all those critical lands.

With regard to assessment practices, Mr. Dearborn pointed out that the Board of Commissioners adopted provisions requiring that the Assessor's Office consider Critical Area Ordinance requirements in assessing property, both the buffer requirement and the designation of the critical area itself by County Ordinance shall be used to determine fair market value for purposes of assessment.

Mark Arnold, Maxwelton Road, Clinton, asked if this proposal would include the 1984 regulations for land segregation's, whether the reinstatement would stop the segregation's of land done after 1984. He has 160 acres, most comprised of 40's; a year ago split into 20's, some of those lands take in streams, some wetlands and sensitive areas: are those under the new regulation be voided.

The Chair explained that Mr. Arnold could continue to segregate property; if done through an unregulated segregation or boundary line adjustment and ends up with a piece totally composed of wetlands and buffers, the regulations would apply.

Commissioner McDowell added to note that those segregation's would not be voided ; if the person creates a lot and is, for example, 100% wetlands and buffers, the person could not come to the County and request building a house under the reasonable use exemption.

Mr. Dearborn made the point that Mr. Arnold would not be prohibited from building a house on that 20 acre parcel, rather, this speaks to the way that person would get to build a house; the reasonable use exception is basically a very big hoop. The concern is whether the person can build the house without interfering with the wetland buffer; as long as he can keep the house outside the buffer the house can be built. Even if the person had no buildable area and cannot use the reasonable use exception, there is also the alteration process which entails at least three or four very major hoops, but that process is available.

Mr. Arnold commented that he and many people in the room bought their land because it did have streams, wetlands, uplands and an existing farm. He used an example of the concern: one 40 acre parcel always zoned residential; the prior property owner paid taxes on that for 50 years as residential property; Mr. Arnold bought the property and paid taxes on residential zoned land for 4 years – that is no longer the case, it is now rural residential in 5 acre lots, some wetlands which reduces it down even more. This impacted his property values. He bought the land because he wants cows; he loves the cows, he likes haying, and it is a real emotional thing. Many of the people have farmed for generations, a way of life. Mr. Arnold is all for the environment, but felt it must be balanced.

John Graham, Citizens Growth Management Coalition, in no way disrespected the legitimate needs of farmers, but did oppose the part of Ordinance #C-130-99 to reinstate the critical regulation exemption for RA lands because he thought it was not necessary, and that enacting it would be at a huge risk and expense, and almost certain the Growth Board would again reject the County's application, therefore the issue is almost certain to go forward into Superior Court with all of the costs that entails. The ordinance is not necessary because at the moment if someone is farming land not in Commercial AG there are two choices if the person has wetlands on their property: opt in to Commercial AG status which would allow the exemption that already exists there; or with passage of farm agreement, opt down to R land if it can be proved the land is not farmable because of critical area regulations. The Commissioners are charged with the

delicate balancing of values, which includes property rights, economics and environmental values, and he believed in this case the balance would say not to adopt this ordinance.

Steve Erickson, WEAN, thought it needed to be clear what is proposed is not totally an exemption and requires compliance with best management practices. He observed that some things would change for some people. GMA has a number of goals, some that compete: one of the goals is to conserve and enhance resource industries, which includes agriculture; another goal is to protect critical areas. In Skagit County the GMHB found that that County's allowance of an exemption for AG in all zones was not a balanced way of going about it. The GMHB in Island County's case said the exemption could be allowed from the critical area regulation for AG but it must be limited to those areas that are trying to be conserved and enhance AG in a serious way. He urged that the Board not adopt the ordinance, feeling it would be a declaration of war on the concept that people will find balance between continuing in AG and protecting critical areas. He held up the BMP Manual and pointed out to those in attendance that the AG best management practices only represented about 5 pages out of the entire Manual.

With regard to comments on the Natural Heritage designations, he thought wording needed to be changed so that the listing would be updated annually. He saw some language problems with the way the document was worded, the protection standards tend to refer to a location being inventoried as a significant plant community and then states that the plant community consists of an individual species and within one of his submittals for the record today, suggests clear wording. He pointed out that the proposal did not correctly count Seattle Pacific University land north of Fort Casey as privately owned land which is the case. He would like to see designation of those locations that are publicly owned by other entities, which would encourage those agencies to manage those lands keeping in mind the natural heritage value and encourages the County act in concert with that. Protection standards for the big leaf maple community on south Camano need to be considerably tightened in the sense that there needs to be a review in consultation with the appropriate agency, in this case, the

Washington Natural Heritage Program.

Al Luhn, Clinton, described himself as a native son of Whidbey Island and considered himself a farmer. He felt that Mr. Graham as a member of the Coalition was responsible for the loss of the grandfathered rights of the farmer, and suggested the Commissioners fight this as much as possible. He did not think there was any indication particularly with limited farming going on now of any wholesale environmental damage being done. Farmers are responsible for a lot of storm water in the County and some areas are specially taxed to take care of that and he would hate to see the marshes turn out to be useless places not even good for a duck. To let the Maxwelton Valley go the way the proposed he thought would end in there being no place for a widgeon to find to eat grass and would be devastating to the beach properties to no longer have any one look after all of the back water that exists, pay for the drainage of that and to keep those lands up. Those folks in the Open Space Tax classification are required to farm in order to continue to be in that tax class, and it is a matter verified. He also stated that farming is tough as it is, and he has a soft spot in his heart for a farmer.

Roy Hagglund, Clinton, appreciated the Board's effort in trying to get the reasonable use exemption reinstated and wanted them to continue to do so. He farmed too, just so he could pay his taxes. He was born right where he lives now. He observed that everyone seems to want to keep the Island rural, and cautioned that getting rid of the little farms would only mean properties would go back to blackberries. An example in his case was that if he did not run cattle and maintain the ditch, soon it would be running over five acres of flat ground. When the ditch fills up with silt, how can the fish swim through that much water running through the grass; fish can bypass a few obstacles but when the stream gets plugged full of grass, etc., someone has to take charge and clean it. Beaver plugged up the creek and the creek backed up and made it about 60' or 70' wide; if the neighbor does not want to take out the beaver dam what's to be done; do the taxpayers have to help pay for that. Beavers have Maxwelton Creek dammed up and he was not sure whether a beaver could make it up there.

Bill Bone, Clinton, talked about his property that has two streams, a definite wetland area and a pond he built some 20 or 30 years' ago, and was interested in finding out whether he would be

required to fence those or continue to run cattle. The property is about 50 acres that is open space AG and in order to

maintain that status, is required to make a certain amount of money from agriculture. If he has to fence and move agriculture practices back further and further he questioned how he and other farmers would be able to qualify for the Open Space AG tax classification.

The Chairman explained the issue was where there is a wetland and stream and folks want to continue agriculture practices. As remanded back to the County from the Hearings Board, it appears there has to be some way to keep agricultural practices from occurring in the wetland or its buffers, streams or their buffers, and a fence would be the first option that would come to mind.

Doug Wirth, N. Boon Road, Oak Harbor, spoke in favor of the Board trying to get the reasonable use exemption reinstated. To those who did not think that necessary, he said that with a little bit of effort at farming a person finds out very quickly the tax issue is real. If these farmers are closed down, and if he is closed down to the point he feels squeezed, he will develop the property, and thought others would be forced to do so as well. He stressed the fact that he could not spend all his time taking care of property and being a good steward when everything was falling apart around him cost far too much. He is a dentist and works his tail off at the dentist's office, then comes home and works his tail off to farm. He is zoned 1 in 20 and he made sure it was broken up in a way he could sell it off for development. He came into farming with an effort to restore this piece of property and poured energy money, and family into the process. Backing farmers in a corner will result in losing what the County is after. He is running an organic certified farm and was interested too in who decided on changes to BMPs.

Commissioner McDowell advised that the Board of Commissioners through recommendations by staff came up with a manual for best management practices, and assumed the Board would have the ability to change those.

Marianne Edain, WEAN, disagreed a little with what John Graham stated about the potential for rezoning, believing he misunderstood slightly. Although WEAN would not be thrilled it would be satisfied if the AG exemption to the critical areas ordinance were limited to the Commercial AG zone and the Rural AG zone. WEAN believes those who are practicing AG in the rural zone do in fact have the ability to rezone into either Rural AG or Commercial AG. There is now in the County an open space Public Benefit Rating System (PBRs). Those who feel they have a problem because of the reduced commercial value of the land have the opportunity to go through the PBRs and reduce their taxes. As far as fencing, although she noted she was a member of the Whidbey Island Conservation District but was not speaking on behalf of the District, did know it was the business of the District to help people cost share for such practices as fencing, manure management and other means of maintaining clean water. She believed strongly that going back to the Hearings Board without a reasonable response to their Order would be a red flag and unnecessary because she thought the issues could be reasonably addressed. In the interest of maintaining peace she asked that the County limit the AG exemption to Commercial AG and Rural AG.

Fred Frei, Jr., Langley, thanked the Commissioners for what he thought they were trying to do in getting the reasonable use exemption reinstated.

With no further people indicating a desire to speak on issues related

to Ordinance #C-130-99, the public input portion was closed.

Commissioner McDowell recalled the comments made from a tax standpoint that if less and less land is available to people for farming and farmers are not able to show they are making a certain amount of money from AG; he wondered if that in itself would take the property out of the tax program.

Mr. Dearborn believed it would, noting there was a direct relationship between the amount of money made and the size of the parcel. The PBRs Ms. Edain mentioned is a separate program. However, if the landowner loses the eligibility for the AG tax program even if qualify for the Open Space Tax Program, the Assessor will require payment of back taxes before shifting to the new tax program. There have been a number of unsuccessful attempts to change State law in this regard.

Commissioner Thorn agreed with the suggestion that the reasonable use exemption be limited to CA and RA only and

not include the R zone and supported that approach. Exhibit A-5, item #5 talking about the natural heritage program there was a suggestion made by WEAN to note that the map prepared by Island County dated 10/11/99 will go out of date at some point and should have language included to the effect "and as updated from time to time" to reflect there be a process to keep it up to date and the reference is to the current edition of that map. Exhibit A-5, item 6.d), the language stating "All other inventoried areas are in public ownership." he asked for Mr. Dearborn's interpretation of that.

The means, as described by Mr. Dearborn, was this would not propose specific regulations that are different for those properties from what would be applied to private property. The reference to public ownership could be stricken. He believed Mr. Erickson was correct that Seattle Pacific University does own some of those areas and a correction would be appropriate.

Commissioner McDowell noted the fact that the Board received just today at the time of the hearing 10+ different pieces of correspondence/documents from WEAN that he and the other Board members had not had an opportunity to read or review. Therefore, he felt that the hearing should be continued in order to allow review of that material, along with other submittals and all verbal comments made today. Taking a moment now he responded to some of the verbal comments made today. He mentioned Mr. Arnold's comments that he originally had property zoned 3-1/2 units per acre, gone down to 1 for 5 or possibly 1 for 10, and the proposal now felt his right to farm would be taken away on a portion of that. The Commissioner felt that was so onerous, now to say that on that property he cannot even farm on that portion went way overboard. About the County standing and fighting in court over this, he did feel that there is a point where the line has to be drawn and confirm basic beliefs mean something. He has a problem with existing on-going uses suddenly being told they cannot do it any longer. He reminded that the exemption has to be obtained before even having the opportunity to comply with BMP's and then have to fence property; no one obviously has unlimited freedom. At the State or Federal level he wondered if this exemption requirement had ever been based on zoning or had it always based on use.

Mr. Dearborn understood that DOE when it developed its model ordinance for wetlands protection included an exemption for agriculture generally, and he understood the Corps of Engineers treats agriculture as an on-going activity that can continue in wetlands. DOE guidance as experts has been used by a number of jurisdictions. To his knowledge, Skagit County is the only county, and Island would be the second county, that would not permit all agriculture to be exempt if it complied with best management practices.

Commissioner McDowell was aware that Mr. Wirth, out of a love several years' ago began converting some property into AG use; he believed him when he said if his ability to farm is taken away by regulations, now after putting work and money into it he will develop it; everyone has to protect their own financial interests. The Board needs to listen very carefully to those comments. He has to believe even cows walking through the water would be better than houses built up as close as possible to the buffer. With regard to the Natural Heritage Program, inasmuch as the map attached to the proposed amendment is very very small, he asked to be shown on the larger map posted [dated 10-11-99] for display where the area is that is called "West Beach". He disagreed with Commissioner Thorn's comment that there be automatic updates in that it impacts the use of property and he would not want some non-elected board change a map requiring it be followed by Island county property owners. The date of the map to be used should be specified in the ordinance, and any changes reviewed and approved, for example, on an annual basis, by the Board of County Commissioners.

A larger version Natural Heritage Map was posted on the wall, and Mr. Dearborn pointed the area "West Beach" out on that map, due west of the southern part of Crescent Harbor.

Chairman Shelton pointed out what seems to be the universal goal which is to maintain the County's rural character. When there are farms and people willing to grow trees, those are the people who primarily historically been responsible for maintaining that rural character. Adopting regulations that would not be to the advantage of those folks to continue seems to push people away from what they have historically done to some form of development. He recalled hearing from Mr. Graham and the Coalition that the future of agriculture in Island County evolves around small farms. On the record there is testimony to the fact that 10 or 15 years' ago there were at least a dozen operating dairies in the County and now there are only 3 or 4. The large commercial farms seem to be going by the wayside.

Island County is already a very densely populated county and those areas at this point that do not have development seem to be worth more to people who live in Island County than those who live in other counties that with lots of such areas. Those who have maintained open space need to be offered every opportunity in order to encourage them to continue doing what they have been doing. Even though an alfalfa field generally may not be considered wildlife habitat, he knew that in driving at dusk down a country road on Whidbey or Camano passing a nice alfalfa field it is very apparent that it feeds the deer population and that it does provide a habitat. He truly hoped to be able to resolve some of the issues outside of court. There is quite a bit of additional information and he is very willing to look at that.

HEARING CONTINUED:

By unanimous motion, the Board continued the public hearing on Ordinance #C-130-99 (PLG-033-99) to November 15, 1999 at 1:30 p.m., public input limited to the Amendment and amendments drafted based on public input and any amendments proposed as the result of the Board's review of submittals for the record today, the record held open for additional written input to November 10, 1999 at 4:30 p.m. [hand-delivery, mail, fax, or e-mail]. *[Notice of Continuance: GMA Doc. #5000]*

ORDINANCE #C-128-99

Hand-Outs:

- Ordinance #C-128-99 (CD-03-99) Adopting BMPs for Exemptions to Island County Critical Area Ordinance and Reaffirm Adoption of BMPs to Implement the Clearing and Grading and Stormwater and Surface Water Ordinances, as introduced 10/11/99 and set for hearing this date and time [GMA doc. #4869] *[note: the entire BMP Manual is in the record as GMA doc. #4923]*
- Appendix E, Agricultural BMP's – re Ordinance C-128-99 (CD-03-99) [GMA #4949]
- List of exemptions that currently exist in the Island County Critical Area Ordinance [GMA doc. #5003]

Responding to questions from audience members about who must comply with BMPs, Mr. Dearborn stated that those who wish to use the exemption in the critical areas regulation would have to comply. Ordinance #C-130-99, the topic of the prior hearing, relates to one of those exemptions, Agriculture. Exemptions are all for different uses and different situations; all those uses must comply with BMPs to continue to have the exemption. The BMP Manual covers a variety of activities. If the exemption as proposed and discussed were expanded to Rural AG or Rural lands, in order to use it and have it available would require compliance with the BMP requirements.

Larry Kwarsick explained that an exemption is only if the business, activity or development is conducted in accordance with standards. In this case, all exemptions are required to restore any disturbed critical area or buffer. Exemptions 1, 3, 4, 5 and 7 all require BMPs and the Hearings Board stated that without benefit of having those BMPs to review they could not determine whether or not the County's Critical Area Ordinance (CAO) complied with GMA or not.

About 99.9% of the Manual deals with traditional public works activities, construction and maintenance activities. Exemption #3 is an exemption for the maintenance and reconstruction of existing public roadways, and the Public Works Department has an interest in maintaining that exemption. Exemption #4 addresses maintaining and repairing drainage systems; and utility activities are addressed in exemption #5. The Department has a fundamental interest in maintaining 3, 4 and 5 from a governmental activity standpoint. Brown & Caldwell was hired to prepare the BMP Manual specifically with the intent to cover Public Works activities. The Board subsequently asked that the Department include in the manual the other remaining exemptions tied to BMPs: Agricultural, Site Investigative BMP and BMP dealing with development along shoreline areas adjacent to critical habitat areas, and are contained in the appendix of the Manual. Appendix D deals with reasonable best management practices in terms of site investigative work in critical areas, i.e. evaluation of sites suitable for wells or on-site sewage disposal systems.

Appendix F are BMPs dealing primarily with shoreline residential development – lands adjacent to recreational and commercial shellfish, kelp and eelgrass, and herring and smelt spawning areas, which are critical habitat areas under

Island County's Critical Area Regulations.

BMPs dealing with AG are included in Appendix E. When wetland regulations were first developed by the County in the mid Eighties, it considered and adopted an AG exemption, not zoned based, but functional. Over the years the whole concept of what types of agricultural activities can maintain that use by an exemption is evolving. The BMPs are going to apply to whatever lands are provided that AG exemption. BMPs provide that if someone is involved in a federal, state or local program now with BMPs intended to preserve and protect critical areas, those property owners could use that program to comply with the BMPs. If not, the property owner has a choice: develop a farm best management plan [5 years' from the date of adoption to develop and submit to the County for approval]; or comply with a standard list of BMPs. He provided an example: if someone were dealing with a category A wetland there could be a 100' buffer around a Category A wetland. Under these criteria, those buffers are far less than 100' and could go down to 25'. Streams, depending on class, start out with 100' buffers and go down for a Type 5 stream to a 25' buffer; there are some significant buffer reductions associated with the BMPs.

PUBLIC INPUT

Doug Wirth, Oak Harbor, mentioned the problem he encountered with competing agencies for

determining wetlands; most farmers look to the NRCS (National Resources Conservation Service) in determining wetlands, but there is nothing to say who gets the "first call". Most BMPs deal with livestock and there are different ways going about livestock management, for example, a group in New Mexico that does holistic grazing programs that this State funds through WSU and has been trying to get most farms to go to, and he thought the BMPs flew in the face of how that is used, even from the standpoint of buffering. D.4 indicates grazing areas within 200': since he does mostly crop farming, is he to interpret that his seed production or winter wheat if he plows within 200' of a designated area would be in violation, or only worried about cows.

He referred to D.5 noting a person can be within the buffer zone for noxious weed removal as long as chemicals or mechanical methods are not used that could damage the buffer. He pointed out that weeds grow year around; to mow requires a piece of equipment; bottom line is the buffer will be disturbed. If the method is by a long-arm sprayer it will use chemicals. He could not see how this section could work; the result will be noxious weeds the farmer is forced to deal with in the form of weed blow into his property in another way. There is already a system in place for reviewing farms and giving assistance, FSA. One of the things he thought everyone should consider was the farmers, their relatives and others who may be coming on behind them; there are so many pressures. He said that looking at the age of most people in the room it seemed to be a done deal in light of this type regulation that these are the last folks active in farming; he is one example at age 45; this practice will not transfer on this Island. County regulations are yet another layer.

Mr. Dearborn clarified that the landowner complying with a program with another government agency would not have to do anything "unless the Director determines the alternative BMPs to be ineffective at reducing the discharge or contaminant".

Roy Hagglund, Clinton, wanted to know if he would still be able to obtain a permit to clean a stream when needed, and questioned if his water right on Maxwelton Creek was still valid.

Mr. Kwarsick explained that under the proposal there are an array of ideas and concepts that a landowner could use to enable them to clean a ditch, whether a stream or not, without a permit, using care and caution in the BMPs . And Mr. Dearborn confirmed nothing the County was doing would affect Mr. Hagglund's water right.

Fred Frei, Jr., Langley, was of the opinion that in some cases, BMPs result in something that was unreasonably restrictive and unduly oppressive. At the top of Page E-3 grazing and pasture management "Existing grazing areas shall maintain a 50' buffer from all Category A wetlands" he pointed out their farm, showing a photograph taken about WW II; the lower part of the photo shows what were wetlands, more than 100' x 100' or more than ¼ acre and what is there is predominance of native vegetation [photograph shown to each Commissioner and was, as requested, returned to the owner]. A 50' buffer around the wetland would take their lower pasture where they run 2 cows. If they run the cows in the little upper pasture, that supports the cows only about 4 months of the year, requiring they feed the cows

the rest of the year, which they cannot justify. The property is in the Open AG tax classification and they have to continue in AG use on that property to maintain that tax classification; if not, the property comes out of the AG tax class and they have to pay back taxes. This property is over ¼ mile from Puget Sound and there is what the DNR calls on water typing map, a Type 4 water, but there is no defined channel. His grandfather dug culverts through there. Some of the best growing fertile agriculture land on South Whidbey are the lowlands, the very reason why those who came at the turn of the century farmed those lands. His family's land has been down zoned extensively, but the issue at hand touches his heart even more.

Fencing to require establishing and maintaining buffers is something he thinks would be difficult for him to "sell" to his children and have them want to continue on with the farm, as he, his parents and grandparents have done. If the law requires this he believed that law was a violation of their rights, unduly restrictive and oppressive in that he does not see what is being accomplished: what are his two cows doing to the Bay; he thinks, nothing.

Commissioner McDowell asked Mr. Frei if there was some buffer width from his personal circumstance acceptable from a financial standpoint that would allow him to continue what he currently does.

Mr. Frei expressed his belief that a law should accomplish something, should have a purpose and in this case he just felt this law was detrimental to the public, and answered "no" there was no buffer width he would find acceptable.

Mark Arnold, Clinton, agreed with much of what Mr. Frei stated. In his case, he has 18 cows,

and one of his best grazing fields is a 40 acre wetland, pointing out that the nutritional value for those cows comes from the low drained wetland areas. His fields are beautiful; there are hawks that feed, as well as eagles, geese, ducks and other birds. He has lived here 30+ years. A requirement for him to have a setback buffer from a Category A wetland would mean the whole 40 acres was gone: he could not put his cows on it and could not cultivate it. He has three parcels; his north pasture consists of almost 100% wetlands, and if he cannot even keep his cows on it, the streams will get clogged up, the salmon cannot go up through there, and he will have to let it go – the whole thing – or sell it. When that happens, he is selling something that has been managed well; the cows help manage that land.

Steve Erickson, WEAN, recalled that he had discussed some of the issues associated with the BMP Manual with Lew Legat, Island County Engineer and would not go into that in any great detail.

Larry Kwarsick confirmed that a summary of those remarks from the discussion between Steve Erickson and Lew Legat were being transcribed and would be entered for the record. [*note*: Memo from Lew Legat to Larry Kwarsick, regarding WEAN review of BMP Manual was provided and entered as GMA doc. #4926]

Mr. Erickson advised that aside from agriculture, the GMHB said the County could have the

exemptions and rely on BMPs but that it needed to be done in a way so as to protect wetlands, enforce requirements for using BMPs and a back up contingency. He did not see how that could be accomplished without some form of pre-notification for some activities. Those activities not requiring a permit need some kind of pre notification scheme. Not all critical areas are obvious to lay people and it is not just wetlands, there are other kinds of critical areas. For some activities it may be necessary to actually delineate the wetland; those will be situations where the concern is heavy equipment in a critical area and it is in those situations

where accurate delineation needs to be done. He suggested that a prior program where a County critical area planner made a wetland delineation could be revived, with a fee attached. The monitoring schedule seems to rely on a county utility inspector but limited basically to county crews and county contractors, and the Growth Board said the County must monitor the BMPs. A restoration plan is required [see two examples in material submitted for today's record] and for active restoration in a critical area if the area is predominated by native vegetation already there needs to be a specification to use appropriate native plants.

He observed a lot of problems with AG BMPs proposed at this point, i.e. buffers inadequate in many cases to protect water quality or biological function and virtually no protection to Type 5 streams or protection for Category B wetlands, such as simple timing restrictions on grazing. For exemptions in Exemption Section A, there is no

monitoring and need to make sure someone actually has a MPDS permit regarding the MPDS permit those typically only deal with point source pollution and generally the only situation where that would occur typically would be with a dairy, but an operation could be doing that and also have other activities going on which should be subject to BMPs that are not covered by MPDS permit [permit under clean water act administered by DOE] and that needs to be corrected – that those activities that would require BMPs that are not covered by MPDS permit be covered elsewhere.

Section B the exemption of existing buildings is somewhat confusing and seems to contradict requirements elsewhere relating to existing structures and is probably not a good idea. There seems to be no limitation on the placement of new structures in relation to critical areas and he was unclear whether that would be addressed in BMPS or a new activity covered generally under the Critical Areas Ordinance [i.e. concern would be someone putting in a new barn]. Five years are allowed to implement a farm management plan or comply with other possibly options and while he thought that would be quite reasonable for some activities he had concern that Conservation Districts do not have resources to fulfill the potential demand on their services. For other on-going problems it really should not take that long to fix the problem. Stockpiling manure near wetlands and streams should not take five years to fix, rather should be quite rapid to correct.

Section C-1 which requires buffers on type 1, 2, 3 or 4 streams or Category A wetlands "generally seek to achieve" is rather loose wording and he was not sure what that meant. Allowing stock piling manure within 10' of Type 5 streams he thought was absurd and 10' an inadequate distance to provide any sort of filtration. Type 5 streams need some sort of buffering if only in timing restrictions. The provision allowing someone to continue what they are doing if water testing from water entering and leaving their property shows it is not in violation of Federal or State law is not a good standard and really should be "non degradation" (C-4).

Section D.1.b refers to a crossing or watering point plan but there is no other information required in the plan such as who it is submitted to or how many points are allowed for access or any kind of detail. There is an allowance to build bridges to provide livestock crossing points which may be a very good idea but exempted totally from County review as currently written and he also thought those structures would not quality for review by the Department of Wildlife and concern is with no agency reviewing what happens when someone does not quite know what they are doing and does not allow enough room for winter flood waters. He expressed concern too about dates for grazing. He noted a loophole in D-4 grazing areas within 200' of a Type 1-4 stream or Category A wetland should not be plowed during the rainy season; the concern there is what if those areas are being tilled for row crop agriculture you probably have an even higher potential for erosion off that land at that time. It is always a fine balancing act to get it seeded and have something up and growing before or as the rains hit. but think that seasonal restriction should probably be moved back to September 15th .

The threshold for what constitutes an animal confinement area seemed sloppy to him and would allow anything less than 80% of bare ground to not be considered a confinement area 80%; that is too much bare ground and that threshold needs to be severely reduced to something like 25%. Buffers are not adequate for protecting streams and wetlands from concentrated manure runoff from confinement areas; manure is what is really of concern both from surface and subsurface runoff. He expressed concern too about language in D.5 [noted there are two D-5's, a typo] regarding damaging vegetation in the buffer when controlling weeds. He was thinking about situations where somebody is trying to improve the buffer by converting it to native vegetation and suggested some wording here such as: when non-native vegetation is to be converted to native species it shall be done so as not to cause erosion". The

Growth Board directed there be monitoring and he thought the County would have to bite the bullet on that one or contract with the Conservation District to do that. It could be as simple he thought as making a farm visit with the plan.

In closing, Mr. Erickson believed that with some fine-tuning he thought the BMPs probably could do the job of protecting critical areas. He clarified when he talked about pre-notification that it was not generally an agricultural issue, rather referred to site investigative work, mostly construction or exploratory activities and land conversion activities.

Susan Meyer, Department of Ecology, commented beginning with Appendix F of the BMP manual dealing with

commercial/recreational shellfish beds, kelp and eelgrass beds and herring and smelt spawning areas. In reviewing the Manual she tried to be solution-oriented with respect to nearshore habitat issues. DOE does not think the BMPs to protect water quality will adequately protect the nearshore marine habitat, but if there are residences or existing buildings within 200' of the proposed building site in these areas where there is a bowling alley affect, the applicant should go through a variance process with Type 3 decision where there could be some public input in the Hearing Examiner's decision.

The BMPs suggested primarily would be there no bulkheading allowed on the property. A key BMP would be that a geotechnical report be submitted as part of the variance application to describe erosion hazards of the property and provide recommendations as to how far back the building could be set to allow the reasonable life of the building, i.e. if the building was set back 50' would it survive for 50 or 75 years before the shoreline eroded and a bulkhead or other shoreline armoring be necessary. Another BMP recommended as a result of a variance would be that all surface and subsurface drainage be directed away from any geologically unstable bluff edge present on the property or specifically controlled in a manner recommended in the geotechnical report. A minimum of 25' from the ordinary high water mark would be kept in native vegetation; and if native vegetation was not growing there currently native vegetation could be planted, knowing native vegetation does not have to be tall shrubs and trees, it can be low growing vegetation to permit a view. Septic tanks and drainfields must be located landward of the proposed building and walkways to the shoreline must not exceed a reasonable width such as 5 to 10 feet.

Mr. Shelton commented that in terms of armoring what about those situations of an unbuilt lot and the adjoining lots have already armored; in spite of that you still hold firm on single lot would not be able to armor?

She confirmed her opinion in situations of an unbuilt lot and the adjoining lots having already been armored, in spite of that it would be the geotechnical person who would make the call to say if a bulkhead or armoring [hard armoring] were placed on this property that even 75' would not be adequate, then DOE would have to look at other methods. There is also soft armoring – planting of vegetation that helps to reduce erosion of the shoreline areas and also nourishment because it's important not to continue the armoring along the shoreline.

Chairman Shelton thought when beach areas had been substantially armored the person who is left there to deal with one lot on a stretch that does not have a bulkhead has a difficult time understanding why on both sides he has neighbors with well manicured lawns out to the edge of a bulkhead and he is asked to do without. He had some empathy for those folks.

Commissioner Thorn generally agreed with the Chairman, and noted a good example to his own house. In March there was a big storm that blew out a bulkhead and now armored on either side. In the course of that storm and several subsequent storms the neighbor has now lost about 25 to 30', threatening the lane that serves as access to the houses. Further down there are some stand alone bulkheads that probably should never have been put in. The evidence of what armoring does to adjacent property is crystal clear because the toe of the cliff is now being undercut in the immediate adjacent area and therefore common sense has to be applied and he questioned whether or not everything put forth by DOE included that.

Ms. Meyer said that if there are bulkheads on either side of a very narrow lot and it is obvious that lot is eroding, it may be possible that that is an undevelopable lot. So to the person who owns the waterfront property worth considerable dollars there is a reasonable use issue involved. If the lot is longer it is not a taking because building could be set back further. The nearshore is a critical habitat, note that salmon are listed and it needs to be dealt with in a balanced manner.

Commissioner McDowell made the point that County staff/Planning Director had the ability to read a geotech report and make those same decisions as Hearing Examiner.

Ms. Meyer noted thought it is a controversial issue and being set back or forward may have an impact on neighboring properties, therefore she thought it would be worthwhile having public input. Because Island County has such a social and economic tie to the recreational and shellfish industry, that was her suggestion. As far as making a difference if the reason the area has been designated is because of kelp 200' off shore as opposed to surf smelt that spawn on the beach, she stated that the different would be in how BMPs were implemented because the bulkhead or lack thereof would

have an influence on how the sediment moves in the near shore habitat. So if there is a smelt spawning habitat near there it would be very important to know and to protect that without armoring. If there is a kelp bed 200' offshore, a geotechnical report is important because if it were an eroding shoreline, if armoring were placed, there is a potential for the kelp beds to be filled with sediment. From a professional standpoint as to some distance beyond which this is not an issue, such as for eelgrass, she thought probably, but noted there were other influences, such as boats backing up and going back and forth and the depth of the water so there are other influences when further out that that property should have no concerns with. She agreed that a kelp bed 200; out should not materially impact what someone does on their property if that is the only sensitive materials, but noted it was also a water quality problem. As the resource gets further away from the shoreline then there is less potential problems with water quality. She really did not know what the exact distance should be but would look through the literature to find out. [Mr. Dearborn to call her next week on this issue].

Commissioner Thorn thought there may be a natural shoreline setback because, for example, in front of his house there is a very shallow beach and the eelgrass beds a good 200' out from his bulkhead, and a very strong littoral current that moves along the shoreline that constantly moves sand; eelgrass could not survive there. He realized there were other cases where it probably is not quite like that but he saw a need to craft something to allow for those differences and where there is a natural native setback preexisting and the rocky beach intervening between the resource and where a person wants to build or armor that, there needs to be some allowance for that.

Ms. Meyer next addressed the AG BMPs, Appendix E, and referred to the DOE hand-out already entered into today's record. DOE believes the Agriculture BMPs affords little protection to Type 5 streams and Category B wetlands and that at the very least the buffers should correspond to what they are in the critical areas ordinance which is 25'. One thing she heard today was that streams and ditches fill up with sediment and people have to maintain them; but she said that if there were buffers on the streams there would be less sediment going in and maintenance much less. That was not to say there had to be trees and shrubs but some kind of a filter before the runoff reaches the stream channel. She realizes that type 5 streams may not even look like streams and may not usually act like streams but once it starts running all those nutrients and sediments goes into the channel and conveyed downstream into type 4 waters and eventually where fish hang out. She has just been through Skagit County's Critical Area Ordinance and was aware there is funding available to pay for fencing and acquire land [the 25' for example buffer] but was unprepared to say where that funding came from but it was part of Skagit County's plan. There are conservation easements that can be placed on wetlands that will almost eradicate the taxes on that particular conservation easement which would include critical area and its buffer.

She found the BMP Manual generally quite good. The construction BMPs and preconstruction and post construction seem to be very detailed, but one concern is who would monitor the BMPs and see they are completed or if at all; is the County considering adding more staff in order to do so. There are some portions of the CAO in the BMP manual that are old versions of the CAO, such as the wetland categorization does not mention estuarine wetlands, and wanted to make sure those are changed prior to final adoption.

John Graham, Clinton, representing the Coalition, thought it would be wise to explain the linkage, probably in Section C, between the farm best management plans and a farm management plan in that the two may overlap. In terms of the rest of the Agricultural BMPs, he echoed the remarks of Mr. Erickson's remarks. The Coalition supports the ongoing talks between WEAN and the County to fine tune the BMPs, and see a linkage between the BMPs and Ordinance #C-130-99 about the applicability of CAO and the outcome of the County's talks with WEAN will have an affect on the Coalition's position on that ordinance.

Scott Fowler, Burlington, Dalhman Pump and Well Drilling, was interested in the subject at hand as it pertains to the well drilling business. Currently well drillers in Island County can approve well sites, and he asked for verification that under the regulations being considered that they could still approve those well sites. He asked who would train them on critical areas. He could see going out on site on a summer day and drill the well, only to have someone come along after the fact and say that the well is within a wetland and told to take the well out of the ground and abandon it at his cost.

Mr. Kwarsick stated that there was no change. BMPs did not require a well driller or a licensed designer/installer to be

totally familiar with land identification, but expected there would be some indicators within the BMPs themselves that wetlands exist and asked that those individuals make a reconnaissance of the property before starting the process of investigating and delineating, [not a technical scientific sense but in terms of delineating and flagging areas that are likely to be critical areas. The county is also talking about providing educational opportunities for licensed designers/installers. There is no reason why the well drillers could not be invited to the same training program offered to septic designers/installers.

Mr. Fowler asked why a well could not be placed within a buffer zone since once the well is installed it has no negative impact on a buffer – that is a was a waste of 100' circle. He was concerned believing he was the only driller and septic system that received notice of this hearing that lives outside of Island County.

In this case, Mr. Kwarsick did not read any requirement that wells are not allowed in buffers; going back to reasonable use and other criteria, this does even say there cannot be an on site sewage disposal system in the buffer, only taking due care and caution when evaluation is done.

Mr. Dearborn confirmed that notice had been sent to all licensed system designers, well drillers, and professional engineers Health Department knew of who were working in Island County.

Al Luhn, Clinton, was among a group of people who almost 40 years' ago got together to try to re-establish the run of salmon in Maxwelton Creek; he and hundreds of others have been involved in that effort which included dumping millions of fish in that creek and until a couple of years' ago he always had hope there would be. His opinion was that a buffer required on the creek would be the final thing that would permanently establish no salmon in that creek. The creek used to be very clean and did not need much maintenance. The creek was hand-made and he has talked to the people who originally dug those ditches by hand. There was a very active agricultural community and the creek loaded with salmon. He owns a homestead on the creek and the talk of the old timers who used to come and visit was about the salmon in the creek. Now the vegetation in the creek put so much material in the creek that the water that flows in that creek is a cesspool. If salmon boxes are put in, they have to have air and must blow the mud out every day there or there is no possibility of those eggs hatching. He has one small area of the creek he thinks salmon could spawn in but if they did the lower reaches of the creek fill up with rotted vegetation and takes all the oxygen out of the water, fills up and baby salmon that are planted flood out to the field. Sedimentation comes from the vegetation not from runoff from streets or someone plowing a field or having a cow in the pasture, and he maintained you could not even find the creek anymore. In the 40's he leased a lake at the front of the creek for duck hunting and he could walk up to that creek any place and look 200' either direction, absolutely clean and clear and loaded with salmon; now he could take a shovel in the creek, dig a little hole, come back six hours later and it is full of mud from the vegetation.

Doug Wirth observed that a conservation easement did not take care of the mortgage and is therefore still as far as he is concerned, a taking. He understood the point Ms. Meyer was making but thought the bottom line was that if a farmer is starting up an operation, giving a conservation easement puts in question whether or not that 20 acre parcel could be built on if he chose to sell it. All of these things are aimed in the right direction, he thought, but there were just too many layers to have to work through. His background is in biology, specifically water quality testing, and he understands what everyone is trying to get to but he maintains this is not the right way. Plowing dates are based on conditions of the local area, a limited window, and based on rainfall. His "walk-away" as he and his wife consider what they are going to do with the farm following their daughter's death, he thought was something he could be making a decision about today, but agreed to wait and see how the regulations are adopted. Providing money for fencing may be great, but his question was who paid the farmer to do the fencing, noting that fencing acres and acres takes quite of bit of time and it takes the farmer away from other operations. As far as a particular plowing date being more appropriate, he could not say specifically because farm soils differ at different locations on the Island, for example, the soil on the Prairie is different than the property on his farm, in fact, he pointed out that he has three different types of soil on his property.

Steve Erickson was curious about what NRCS had to say about plowing dates. He is still of the opinion, after having heard the exchange with the well driller, of the need for pre-notification. Anyone doing site specific work should phone the county and the county can look on CAO maps. As far as shoreline BMPs and setback, he thought there a need to differentiate between the location of a house and where the septic tank goes—the septic tank should still be as

far away from the shore as it can be. The whole question about armoring that last lot in the middle to some extent becomes a question of which property owner gets hit because if there is a situation of two bulkheads which don't quite connect yet and cause an erosive force that is ending up eroding that center lot still, if armored that erosive force will go elsewhere. He constantly sees situations where the property owner who is first in line are the ones who get that kind of public space yet they are affecting other property owners.

Marianne Edain, WEAN, stated her main concern with BMPs was monitoring and enforcement. The manual provides for a utility inspector but a bird in the bush does not translate very well to a person to do the job of monitoring. Although not speaking on behalf of the Conservation District, she did report that at the meeting last week there was a great deal of concern expressed that the relationship between the Conservation District and the land owner is a voluntary one and the District does not want to become a cop. Therefore the monitoring required by the Hearings Board falls on the shoulders of the County and must be very clearly defined. She noted that a letter was forthcoming from the Conservation District.

Public Input portion closed.

Commissioner McDowell agreed Mr. Wirth was correct in that Federal EPA does and can have the authority to ticket. As Mr. Frei and others pointed out, it is important to remember that a 50' buffer or 25' buffer, anything greater than zero will absolutely impact that farmer's ability to continue farming. Everyone needs to be mindful of the fact that people here have worked the land for more than one generation who say those buffer widths are very difficult to deal with. He was glad to hear that the DOE will research in an effort to provide a figure of the distance they recommend from kelp or eelgrass beds. He agreed October 1st of September 15th is too early – October here not typically the rainy season. As far as who provides money for fencing was mentioned by Mr. Wirth, but he also pointed out that when you start fencing huge acreage's of land that is a different issue and not all covered by that funding. Monitoring and enforcement is a very difficult issue.

With the extensive amount of testimony, consensus of the Board was time was necessary in order to take all testimony under advisement.

By unanimous motion, the Board continued the public hearing on Ordinance #C-128-99 (CD-03-99) to November 15, 1999 at 1:30 p.m. [Notice of Continuance GMA doc. #4999]

ORDINANCE #C-97-99

The Hearing on Ordinance #C-97-99 was continued from October 11, 1999 to deal with two amendments: one relating to the nomination of designation criteria for species and habitat of local importance; the second, to address the change relating to buffer modifications to rely on best management standards

Hand-out: Proposed Amendment #9 dated 11/1/99 [combining amendments 3, 4 & 5] to Ordinance #C-97-99 (PLG-019-99) GMA #4948

Mr. Dearborn reviewed the subject matter from October 11th. The Board received public testimony that day on eight amendments, and adopted Amendment #1, #2, #7 and #8 but continued others to this date. The Board asked staff to consolidate amendments 3, 4 and 5 into one, Amendment #9, which has been provided today. Mr. Dearborn explained that he had proposed to include within Amendment #9 suggestions requested by a number of people; however, that has not been done at this point. He confirmed that Tuesday staff would provide that and send e-mail to the two parties who have had an interest in this as with the first set of amendments sent to everyone who testified on the Ordinance.

Amendment #6 from October 11, 1999, converts the code setback buffer reduction language, eliminates it and refers to best management practices. This gives people a choice: either comply with the 75' requirement or deal with best management practices. This is clarification language to make it clear instead of referring to subsection 2, this specifies what the 75' buffer is being done for, really a "belts and suspenders" amendment.

By unanimous motion, the Board adopted Amendment #6 to Ordinance #C-97-99.

The Board, again by unanimous motion, continued the public hearing on Ordinance #C-97-99 to November 15, 1999 at 1:30 p.m., with public testimony at that time to be on Amendment #9, all that remains with Ordinance C-97-99. [Notice of Continuance, GMA doc. #5002]

ORDINANCE #C-131-99

With regard to Ordinance #C-131-99 dealing with the adoption of Findings, Commissioner Thorn was unwilling to bring forward inasmuch as he does not subscribe to the Findings.

Commissioner McDowell moved that the Board continue the public hearing on Ordinance #C-131-99 until November 15, 1999 at 1:30 p.m. Motion, seconded by Commissioner Shelton, carried by majority vote; Commissioner Thorn opposed. [Notice of Continuance, GMA doc. #5001]

There being no further business to come before the Board at this time, the meeting adjourned at 6:05 p.m. The Board is scheduled to meet next in Special Session at 8:00 a.m. on November 8, 1999, and in Regular Session that date beginning at 9:30 a.m.

BOARD OF COUNTY COMMISSIONERS

ISLAND COUNTY, WASHINGTON

Mike Shelton, Chairman

Wm. L. McDowell, Member

William F. Thorn, Member

ATTEST: _____

Margaret Rosenkranz, Clerk of the Board