

**ISLAND COUNTY PLANNING COMMISSION
SUMMARY MINUTES
COMMISSIONERS HEARING ROOM, COUPEVILLE, WA
TUESDAY DECEMBER 13, 2007**

	<i>Members Present</i>	<i>Members Absent</i>
<i>District 1</i>	<i>Val Hillers</i>	
	<i>Ray Gabelein</i>	
	<i>Mike Joselyn</i>	
<i>District 2</i>	<i>Sheilah Crider</i>	
		<i>Bill Massey</i>
	<i>Alan Schell</i>	
<i>District 3</i>	<i>Wayne Havens</i>	
	<i>Deb Eidsness</i>	
	<i>Scott Yonkman</i>	

Deliberations on the draft wetland ordinance reconvened from the December 11th meeting.

Roll Call

Deb Eidsness on Camano, Alan Schell, Mike Joselyn, Ray Gabelein, Val Hillers, Sheilah Crider, Scott Yonkman, Wayne Havens

Chair Hillers stated the meeting would begin with the suggested amendments that had been tabled from the December 11, 2007 meeting.

**SUGGESTED AMENDMENTS
REVISED**

AMD	SUBJECT	REQUESTOR
4	Wetland Identification Guide	CTED/WSDOE, WEAN
5	New Agriculture	CTED/WSDOE
6	New Agriculture	CTED/WSDOE
7	Vegetated Buffers	CTED/WSDOE
13	Construction Activity Setbacks	Staff
14	Land Use Intensity	Staff

PROPOSED AMENDMENT

NO. 4	TYPE			
	Plan	17.02	17.03	17.02A
		X		X
<i>SPONSOR</i>	<i>Staff</i>			
<i>REQUESTED BY</i>	<i>CTED/WSDOE, WEAN</i>			
<i>ISSUE / SUBJECT</i>	<i>How the Wetland Identification Guide will be Used</i>			
<i>PROPOSAL DESCRIPTION</i>	<i>Clarify that County will make intensity and wetland classification determinations</i>			
<i>RATIONALE</i>	<i>The Wetland Identification Guide provides information used by County in CAO determinations. However, the County will make the final determinations</i>			
<i>STAFF RECOMMENDATION</i>	<i>Approve</i>			

C-15

Wetland Identification Guide. A document prepared by the County. The Guide contains a Field Indicators Worksheet; a Land Use Intensity Worksheet; and a Wetland Buffer Worksheet.

Keith Dearborn stated the issue was how the Wetland Identification Guide going to be used, trying to clarify so that it is clearly understood what type of decisions the County will making and what kind of decisions the property owners would be making.

This amendment adds the terms Field Indicators Worksheet; a Land Use Intensity Worksheet; and a Wetland Buffer Worksheet; which were changed from the previous version which had called it a Wetland Worksheet. It specifies when they will be required and what the County does with the information from those worksheets.

Commissioner Yonkman asked whether the appeal process was added in.

Mr. Dearborn replied all other codes provide for appeal. This was an oversight; the final version will include the wording that provides for appeal of administrative decision similar to what is included in all the other codes. Stated this should be a technical amendment and will be in the final version.

Commissioner Havens stated the terms Practicable and Reasonable are subjective and wants to be sure people have the option to appeal if they don't think it's reasonable.

Commissioner Gabelein asked what triggers a Wetland Report in reference to C-33, regarding the change to #1.

Mr. Dearborn responded, the single family property owner has two options, they can fill out a Field Indicator Worksheet or they can hire a specialist. If there is a buffer modification, it would require a Wetland Report.

Commissioner Crider wanted to be sure the language provides for subsequent evaluations for single family residences, accessory structures and existing buildings.

Mr. Dearborn suggested the language on C-33 be made clear that the worksheet or the Wetland Report is at the owners' option.

Commissioner Yonkman stated he was concerned about context on C-15 it says Wetland Report, a study prepared by the County or a wetlands professional. Other places it says shall be prepared by a wetland professional.

Mr. Dearborn suggested to strike the words the County or on C-15 in the definition of Wetland Report. A Wetland Report is a study prepared by a wetland professional.

Commissioner Gabelein stated it still leaves the question as to whether language needed to be added back to C-1 to clarify.

Mr. Dearborn stated he did believe C-1 should be clear that the submittal of the worksheet or the Wetland Report is at the option of the single family home owner/ applicant and not the County. He stated it should also be repeated in C-2.

C. Wetland Reports Identification

~~1. A Wetland Report shall be prepared for all Development Proposals that the County determines may Alter a Wetland or Wetland Buffer except for activities and uses addressed in ICC 17.02A.050 or ICC 17.02A.060. Wetland Reports shall also be prepared for Buffer Modification requests under ICC 17.02.090.G. If requested by an applicant for a Single Family Dwelling and/or Accessory Structure, the County shall complete a site evaluation to determine the Type and location of the Wetland as well as establish the Mitigation Plan for any proposed Alteration that is required for the Development Proposal. Otherwise a Wetland Report shall be prepared by a Wetland Professional.~~

1. The Department shall determine Wetland Type, location and Classification for any Development Proposal on a lot that contains or is affected by a Wetland or Wetland Buffer. This determination will use information provided to the County through the Field Indicators Worksheet contained in the Wetland Identification Guide or a Wetland Report. As provided herein, except for activities and uses addressed in ICC 17.02A.050 and ICC 17.02A.060, a Worksheet or Wetlands Report shall be required for all Development Proposals that the Department determines may Alter a Wetland or Wetland Buffer.

2. Wetland Identification Guide. The purpose of the County's Wetland Identification Guide is to assist an owner and/or an applicant in the identification of Wetlands. Either a Wetland Report or the Field Indicators Worksheet contained in the Guide shall be submitted with Development Proposals for Single Family Dwellings or Accessory Uses and Structures for Single Family

Dwellings.

- 3. Wetland Report. A Wetland Report shall be submitted with all Development Proposals that are not required to submit a Field Indicators Worksheet from the Wetland Identification Guide. A Wetland Report will also be required for any request to modify a required Wetland Buffer. Wetland Reports shall be prepared by a Wetland Professional.**

Chair Hillers asked if #'s 2 & 3 needed any changes in reference to the discussion.

Mr. Dearborn suggested #2 also have a reference to it being optional with the property owner whether they wish to submit a Field Indicator Worksheet or a Wetland Report.

It was decided to come back to this amendment allowing staff time to work on the wording.

Discussion moved to Amendment # 5

PROPOSED AMENDMENT

NO. 5	TYPE			
	Plan	17.02	17.03	17.02A
				X
SPONSOR	<i>Staff</i>			
REQUESTED BY	<i>CTED/WSDOE</i>			
ISSUE / SUBJECT	<i>New Agriculture</i>			
PROPOSAL DESCRIPTION	<i>Limit the use of BMPs for new Ag to the reestablishment of historic pastures for grazing of livestock or horticulture</i>			
RATIONALE	<i>The County Ag BMP Program protects Wetlands from the adverse impacts of agriculture</i>			
STAFF RECOMMENDATION	<i>Approve</i>			

Mr. Dearborn stated there are two issues:

- ✓ The definition of Agricultural Activities

Agricultural Activities: Existing and On-Going: These activities conducted on lands defined in RCW 84.34.020(2), and those activities involved in the production of crops or livestock. These activities include the operation and maintenance of farm and stock ponds or drainage ditches, operation and maintenance of ditches, irrigation systems including irrigation laterals, canals, or irrigation drainage ditches, changes between agricultural activities, and normal maintenance, repair, or operation of existing serviceable structures, facilities, or improved areas. Activities which bring

an area into agricultural use are not part of an on-going operation. An operation ceases to be on-going when the area on which it is conducted is converted to a nonagricultural use or has lain idle for more than five (5) years unless the idle land is registered in a federal or state soils conservation program, or unless the activity is maintenance of irrigation ditches, laterals, canals, or drainage ditches related to an existing and on-going agricultural activity. Forest practices are not included in this definition.

The term is a new GMA term that comes from 5248, the Senate Bill that requires deferment of new regulation on Ag until the Ruckelshaus Center completes its work.

The legislative definition is in the composite ordinance on B2; the recommendation was striking the definition of Existing and On-Going agriculture and replacing it with the new definition from the GMA. The new definition says “uses and practices currently existing or legally allowed”. Mr. Dearborn stated in his opinion legally allowed means not currently existing, potential uses, i.e. new. He stated when he asked those involved in the legislative process what they meant by legally allowed Dan Wood, the Executive Director of the Farm Bureau said it means new uses. Therefore the definition of Agricultural Activity from 5248 covers both. It says a county cannot adopt any new regulations that affect Agriculture Activities until Ruckelshaus Center has completed its work, reported to the Legislature and the Legislature has acted on their recommendations.

He stated as he reads the statute, 17.02 as it exists today is grandfathered in. For 17.02A, the new CAO we cannot do anything related to agriculture unless the property owner wants to voluntarily avail themselves of the new ordinance, both for existing agriculture or new agriculture.

Chair Hillers wanted to know why we are going back to the old definition.

Mr. Dearborn stated the existing code is in litigation and we are waiting for that decision. In order to not have litigation on 17.02 he suggested deleting the suggested amendment for 17.02 in order for 17.02 to be left alone. Therefore if there is litigation it would only involve 17.02A.

Commissioner Gabelein is concerned about making decisions based on litigation he feels will be resolved in the farmer and the County’s favor, based on how the courts have viewed it.

- ✓ Reestablishment of historic pastures for grazing of livestock or horticulture

F. Agricultural Activities

~~Agricultural Activities may intrude or continue to intrude in Critical Areas or Critical Area Buffers as follows:~~ Existing Agricultural Activities that are on lands that contain or are affected by Critical Areas or Critical Area Buffers may comply voluntarily with the requirements of this subsection. New Agricultural Activities that are allowed under the Zoning Code; Chapter 17.03 ICC, may also comply voluntarily with the requirements of this subsection when the Activity involves re-establishing grazing of livestock or horticultural on Farmed Wet Meadows. Otherwise, Agricultural Activities shall continue to comply with the Old Critical Areas Ordinance, Chapter 17.02 ICC.

Commissioner Gabelein stated in 17.02A dealing with C-24 # F Agricultural Activities he would suggest leaving the first sentence alone, in the second sentence strike the word New leaving Agricultural Activities that are allowed under the Zoning Code, Chapter 17.03 ICC, may also comply voluntarily with the requirements of this subsection when strike the rest of that sentence and add the Agricultural Activities take place on lands that have been historically used for such Agricultural Activities. He stated he felt this would meet the goals of the GMA and balancing those goals because those activities would have to abide by the BMP's.

Comm. Eidsness suggested it only say historically used for agriculture in order to have more flexibility and keep from implying it needs to be the same Ag activity.

Commissioner Crider wanted to caution these modifications. The first sentence deals with existing Ag activities and the second sentence deals with new Ag activities that are allowed under the code.

Mr. Dearborn stated he doesn't know how to defend clearing areas an eighty year old forest and returning it to pasture. The idea of treating new agriculture the same as existing agriculture is a very appealing concept, it is fair, it is logically and if the BMP's are defensible and doing the job of protecting critical areas then it shouldn't matter if it is new or existing. To carry it to a point where clearing would be allowed of areas that have re-grown and re-established themselves would not be considered reasonable.

Commissioner Gabelein stated he doesn't want to see that happen either, but he wanted to be sure alder and blackberries overtaking a former pasture do not qualify.

Mr. Dearborn stated they had suggested farmed wet meadows after a discussion with Dr. Adamus. It is a defined term, it is a place that was pastured, has progressed because of that from a traditional wet meadow wetland to an altered and modified one, it just hasn't been used for awhile so it doesn't qualify as existing under the Code.

Commissioner Eidsness is concerned the scope is too narrow in the definition of wet pasture, what about other agricultural activities.

Mr. Gabelein stated the buffer impact is his concern. If alders and blackberries have taken over a wet pasture, new Ag activities would not be allowed if the language is not changed to just agricultural activities.

Commissioner Crider wants to allow a viable Ag activity, stating if we want to maintain rural character we want to encourage anything that will enhance and expand that role.

Commissioner Havens stated his previous grazing pasture is now a Christmas tree farm as an example of agriculture changing over time.

Commissioner Crider asked to clarify one item for the record, on B-2 is it referring to commercial Ag or any Ag.

Mr. Dearborn stated it applies to any Ag.

Commissioner Gabelein stated his idea for striking the word new was so that Ag would be treated the same whether it was new or old. He said after the discussion he feels they should

keep the word new in, but would like to add language that does not narrow it down to grazing of livestock or horticulture of farmed wet meadows; he would like it to be open to take place on lands that have been historically used for such agricultural activities.

Under C-24 # F the second sentence would read: **New Agricultural Activities that are allowed under the Zoning Code, Chapter 17.03 ICC, may also comply voluntarily with the requirements of this subsection when the Agricultural Activities take place on lands that have been historically used for Agriculture.**

Commissioner Gabelein moved to accept amendment # 5 as presented with the new language, Commissioner Eidsness seconded, Commissioner Schell asked for clarification on the motion. Chair Hillers stated it also included continuing with the old definition of agricultural activity as presented on B-2. Chair Hillers opposed, motion carried.

Discussion moved back to Amendment #4 C-33

C. Wetland Reports Identification

- ~~1. A Wetland Report shall be prepared for all Development Proposals that the County determines may Alter a Wetland or Wetland Buffer except for activities and uses addressed in ICC 17.02A.050 or ICC 17.02A.060. Wetland Reports shall also be prepared for Buffer Modification requests under ICC 17.02.090.G. If requested by an applicant for a Single Family Dwelling and/or Accessory Structure, the County shall complete a site evaluation to determine the Type and location of the Wetland as well as establish the Mitigation Plan for any proposed Alteration that is required for the Development Proposal. Otherwise a Wetland Report shall be prepared by a Wetland Professional.~~
1. The Department shall determine Wetland Type, location and Classification for any Development Proposal on a lot that contains or is affected by a Wetland or Wetland Buffer. This determination will use information provided to the County through the Field Indicators Worksheet contained in the Wetland Identification Guide or a Wetland Report. As provided herein, except for activities and uses addressed in ICC 17.02A.050 and ICC 17.02A.060, a Worksheet or Wetlands Report shall be required for all Development Proposals that the Department determines may Alter a Wetland or Wetland Buffer.
2. Wetland Identification Guide. The purpose of the County's Wetland Identification Guide is to assist an owner and/or an applicant in the identification of Wetlands. Either a Wetland Report or the Field Indicators Worksheet contained in the Guide shall be submitted with Development Proposals for Single Family Dwellings or Accessory Uses and Structures for Single Family Dwellings.

Mr. Tate directed the Planning Commission to look at C.1

In the second sentence that ends with the word *report* he suggested adding the words **“for single family residences the owners/applicant shall have the option to submit a Wetland Report or the Field Indicators Worksheet, for other development proposals a Wetland Report shall be submitted.”**

In C.2

After the first sentence which ends with *Wetlands* he suggested adding a statement that says **“it shall be the owner/applicants’ choice to submit either a Wetland Report or the Field Indicators Worksheet.”**

Commissioner Schell moved to accept amendment # 4 with the stated modified changes to include changing the Department to Director, Commissioner Crider seconded, motion to amend carried unanimously.

Discussion moved to Amendment #6

PROPOSED AMENDMENT

NO. 6	TYPE			
	Plan	17.02	17.03	17.02A
				X
SPONSOR	<i>Staff</i>			
REQUESTED BY	<i>CTED/WSDOE</i>			
ISSUE / SUBJECT	<i>New Agriculture</i>			
PROPOSAL DESCRIPTION	<i>Clarify that conversion of ag land to non-ag uses must comply with CAO</i>			
RATIONALE	<i>Property owner should be required to comply with CAO requirements when land is converted to non-ag uses</i>			
STAFF RECOMMENDATION	<i>Approve</i>			

C-25

9. New Non-agricultural Uses on lands previously devoted to Agricultural Activities that conformed to the requirements of this subsection shall comply with the requirements of this Chapter that are applicable to such uses.

Commissioner Joselyn moved to accept amendment #6 as presented at this meeting today, Commissioner Crider seconded, motion carried unanimously.

Discussion moved to Amendment # 7

PROPOSED AMENDMENT

NO. 7	TYPE			
	Plan	17.02	17.03	17.02A
				X
SPONSOR	<i>Staff</i>			
REQUESTED BY	<i>CTED/WSDOE</i>			
ISSUE / SUBJECT	<i>Vegetated Buffers</i>			
PROPOSAL DESCRIPTION	<i>Clarify the character and function of vegetation located within a Wetland Buffer</i>			
RATIONALE	<i>Buffers are presumed to be well vegetated in a manner that is adequate for Buffer functions</i>			
STAFF RECOMMENDATION	<i>Approve</i>			

C-5

Mr. Dearborn explained under the definition of **Buffer**:

Undisturbed vegetation would be struck and replaced with the phrase “**Native and Non-Native Plant Species that are adequate to protect Wetland Functions.**” He stated this is slightly differently language than looked at on December 11, it picks up Dr. Adamus’ concern that it picks up Non-Native as well as Native plants, which are defined terms and instead of language as applicable, water quality or habitat, the phrase Wetland Functions is used, which is a defined term that accomplishes the same thing.

Buffer: The area adjacent to the outer boundary of a Critical Area, measured in feet, that protects the Critical Area from Alterations caused by a Development Proposal. Buffers for Wetlands will be established based on Land Use Intensity, the sensitivity of a Wetland to adverse impacts to Wetland Functions, and Wetland Type. Wetland Buffers are presumed to be well vegetated with ~~undisturbed vegetation~~ **Native and Non-Native Plant Species that are adequate to protect Wetland Functions.**

C-37

F. Wetland Buffers

In the second paragraph:

Buffer widths are presumed to be vegetated with Native or Non-Native Plants Species that are adequate to protect Wetland Functions. If Buffer vegetation is determined by the Director to be inadequate to protect Wetland Functions, then if Practical and Reasonable, Buffer vegetation shall be Re-established, Re-habilitated and and/or Enhanced so that it is

adequate to protect Wetland Functions. Otherwise, expansion of the Buffer may be required pursuant to ICC 17.02A.090.G.

Chair Hillers stated Non-Native *Plants* should be changed to **Plant**

Mr. Dearborn stated it should also say **Native and/or** in order to have a mix of Native and Non-Native in the same buffer.

Commissioner Crider stated on C-40 the change under Wetland Buffer Modification, G.5b, striking the word Creation would still be a part of this amendment as discussed December 11th.

Mr. Dearborn stated that was correct at the request of DOE who did not believe creation should be in the mix when it comes to buffer increases this change was also in proposed amendment #7.

Commissioner Gabelein stated he wants to be sure the language does not require an owner to replant a buffer with Native Plants in the section that says “Wetland Buffers are presumed to be well vegetated”.

*Commissioner Crider moved to adopt amendment # 7 as presented, with the grammatical changes on C-37 adding the **and** in front of the word or in the first sentence, striking the s in plants and removing the first **and** in the last sentence, Commissioner Yonkman seconded, Commissioner Gabelein and Commissioner Havens opposed.*

Discussion moved to amendment # 13

PROPOSED AMENDMENT

NO. 13	TYPE			
	Plan	17.02	17.03	17.02A
				X
SPONSOR	<i>Staff</i>			
REQUESTED BY	<i>Staff</i>			
ISSUE / SUBJECT	<i>Construction Activity Setbacks</i>			
PROPOSAL DESCRIPTION	<i>Establish a setback to avoid construction damage to Buffers</i>			
RATIONALE	<i>Construction activity close to Wetland Buffers needs to be controlled to avoid damage</i>			
STAFF RECOMMENDATION	<i>Approve</i>			

C-20

Jeff Tate explained in relation to Construction Activity Setback, there was more concern for disturbing the buffers in regards to clearing and grading than in the construction of the home so the following is proposed:

B. Critical Area Protection

- 4. Construction Activity Setback. For clearing and grading activities, all Wetland Buffers shall be marked when they are within one-hundred (100) feet of identified and approved clearing limits. For construction of new Structures, all Wetland Buffers shall be marked as required by the Director.**

Commissioner Schell suggested adding the word temporarily before each of the words marked and state something about for the duration of the project.

Jeff Tate stated a third sentence could be added: **temporary markings may be removed upon completion of the approved development proposal.**

Commissioner Crider moved to accept amendment #13 with discussed changes, Commissioner Joselyn seconded, motion carried unanimously.

Discussion moved to amendment # 14

PROPOSED AMENDMENT

NO. 14	TYPE			
	Plan	17.02	17.03	17.02A
				X
SPONSOR	<i>Staff</i>			
REQUESTED BY	<i>Staff</i>			
ISSUE / SUBJECT	<i>Land Use Intensity</i>			
PROPOSAL DESCRIPTION	<i>Establish specific standards for intensity determinations</i>			
RATIONALE	<i>Specific standards are needed</i>			
STAFF RECOMMENDATION	<i>Approve</i>			

C-10

Land Use Intensity: A determination by the Department for every Development Proposal regulated by this Chapter. Intensity shall be based on the type, character, density and location of the proposed Use or Structure, ~~as well as the Cleared Area~~ **and impervious surfaces (as defined in Chapter 17.03 ICC)** proposed by the Development Proposal and potential adverse impact that may be caused by the Development Proposal. Land Use Intensity is used to determine the size of a Wetland Buffer.

Mr. Tate explained the changes to the definition:

Adding **and impervious surfaces as defined in Chapter 17.03 ICC** and striking as well as the, are the same requested changes from the December 11th document.

C-35

5. Any new Use or Structure classified as medium or high intensity may be classified in a lower intensity classification by the Department if the Use or Structure is modified to reduce potential adverse impacts to Wetland Functions through the approval of a Rural Stewardship Plan.

a) A high intensity Use or Structure may be classified as a medium intensity Use or Structure upon approval of a tier 1 Rural Stewardship Plan.

b) A high intensity Use or Structure may be classified as a low intensity Use or Structure upon approval of a tier 2 Rural Stewardship Plan.

c) A medium intensity Use or Structure may be classified as a low intensity Use or Structure upon approval of a tier 1 Rural Stewardship Plan

Mr. Tate advised on the above Tier 1 and Tier 2 plans of the Rural Stewardship Plan, a change still needs to be made to match the Rural Stewardship Plan changes.

Commissioner Gabelein stated his concerns on protecting the area adjacent to the buffer, especially when dealing with the pet issue. He stated he didn't think they should be requiring people to try to manage their household pets, doesn't think it's enforceable, doesn't think it's reasonable and doesn't think it should be in an ordinance.

Commissioner Crider replied the coyote would manage the cats and dogs, and depending on which federally agencies manual you're using, manage is extermination. Your neighbor could assume he is going to manage your dogs or cat and remove them with a 22 and if looking at certain of these federally documents, he has managed the situation.

Dr. Adamus stated this is not an exact science, we have done the best possible in this proposal, some of the protection for the buffer compensates for some of the issues. They are still optional for the owner to reduce their intensity.

Commissioner Yonkman concerned about the word **shall** being used in: **Low intensity Uses and Structures shall adhere to the following standards:** he proposed replacing reasonable and practical.

Chair Hillers disagreed, if people want to be classified as low intensity, there are things that need to happen. If you can't keep your cat inside, then maybe you shouldn't qualify for low intensity.

Commission Eidsness asked to soften the language from shall to should be managed.

Commissioner Schell stated he is all for protecting the buffer, but is concerned about the enforceability. Concerned about a new owner who has a smaller buffer because pets are managed, then they bring in their own pet and don't manage it, yet they already have the small buffer from the previous owner.

Commissioner Havens would like to know what the definition of household pet is. Some dogs are outside hunting dogs only. Stated he would prefer it be replaced with domestic pets.

Commissioner Yonkman wanted to know if there were other options if they couldn't control their pets. Was there a check list that an owner could do something else?

Mr. Dearborn stated that checklist was the options available in the Rural Stewardship Plan.

Commissioner Gabelein questioned on **C-34**, item (v) in relation to treating storm water. He would like to see the word treated removed to only say *controlled*.

Dr. Adamus replied the quantity is more of a concern that the quality. If too much water goes into the buffer at one time, the buffer will not have adequate time to treat the water before it goes directly into the wetland.

Mr. Dearborn stated you could strike the word treated and just say storm water from impervious surfaces must be controlled.

Commissioner Crider asked to go back to page **C-34** and would like to know the definition of cleared area.

Dearborn provided the definition from the Master Ordinance on page **C-6**:

Cleared Area: The surface area on a Lot that is or will be Cleared or otherwise Altered by a Development Proposal. All areas that have been or are proposed to be Altered are considered Cleared Area including building site(s), drain fields, well site, lawns, landscaping, driveways and access roads. See, Land Use Intensity.

Chair Hillers regarding amendment #14, the questions have primarily been on storm water we changed to read storm water from impervious surfaces must be controlled before it reaches a wetland buffer. Commissioner Havens suggested replacing household pets with domestic animals. The management of household pets has been discussed to change from shall to should.

Mr. Dearborn stated the Commission has made a record in their discussion that would be sufficient to justify deleting that provision all together. The issues of control and management being one and enforcement being another; it is in the Rural Stewardship Plan and some people will want to use and will be able to implement it. Mr. Dearborn stated the points made about it being virtually un-enforceable and neighbors using it against each other and that wildlife can do as much damage. Then it is possible it should be deleted.

Commissioner Crider asks about deleting it on page 28 under the mandatory habitat practices in the Rural Stewardship Plan?

Mr. Tate suggested it be moved down to the Tier 1 – Tier 2 conditions as the extras people can pick between.

Chair Hillers went back over the items in amendment # 14, stating **C-10** the Commission is comfortable with **C-34** there was a question about cleared area that has been resolved and under 3.c we have resolved ii, iv and are removing number v. **C-35** requires clarification of the Tiers.

Discussion on Tiers 1 and 2, and which should be more rigorous. It was suggested to be consistent with other portions of the code.

Commissioner Schell moved to keep Tier 1 and 2 as it currently is, to accept # 14 with all the changes we have had on record. Commissioner Joselyn seconded (A change in # iv on C-34, storm water from impervious surfaces must be controlled before it reaches a wetland buffer.; removal of # v. changing household pets to domestic animals and moving this item to the Rural Stewardship Plan under a selective practice.) Motion carried unanimously.

Keith Dearborn

Findings will be reviewed on Tuesday. Before you leave today we want to go over Reasonable Use, review the Rural Steward Plan and the Wetland Id Guide and go through the issues on the public comment that were not addressed in amendments. For the remaining exhibits in the ordinance, all that remains are the technical changes to 16.19.

Public Comment

Dr. Adamus reviewed the public comments related to buffers and estuarine wetlands:

Buffers

Comment: Overwhelming majority of wetlands would receive buffers that do not do them any good. (Kenny)

Dr. Adamus strongly disagreed, it is the BAS, and there may be very some small cases in which this may be inadequate, but we don't know that, just because of the uncertainty in the science. He couldn't imagine many situations at all, certainly not an overwhelming majority where the buffers would be inadequate.

Comment: Only water quality and habitat are considered worthy of protection. All other functions are ignored. This is wrong. (Kenny, Audubon)

Dr. Adamus disagreed with this statement; there is a strong emphasis on protecting habitat and protecting water quality, but Island County is unique because there aren't rivers or streams;

therefore there are no concerns of flood damage. There are literally hundreds of wetland functions, many too esoteric to describe, we cannot be assured of protecting every single function because they are difficult to identify and a simple county classification that would address that full suite of function is literally impossible. Of the three basic functions of water quality, habitat and hydrology we are addressing two of those three and the third is of little relevance here in Island County.

Comment: Buffers are too small for small lots. (Schroeder)

Dr. Adamus: Not sure of the complete context of that comment, hopefully that person understands that even a on a small lot the buffer could be on an adjacent property. The lot line is not the limiting factor.

Comment: Remove last sentence in definition. (WEAN)

That one was taken care of.

Comment: Buffers should protect all species. (CARE)

Dr. Adamus: That is a policy decision not a science decision, if you used that logic in King County, the buffer would have to go from the edge of the wetland all the way up to the highest point in King County. To include all species you would have to include all the different ecological zones, all the different micro habitats the full realm of things. Even in a small county buffers cannot protect all species, you would need to protect entire landscapes in order to deal with that. Our focus has been to protect and qualify wetland species, which will sweep in protection for a lot of non-wetland species.

Comment: The buffer tables give a ridiculous number of combinations. (CARE)

Dr. Adamus: These are less complex than those of the state and it is BAS, one size fits all is not BAS you do need to tailor them to the specific situations around a wetland.

Comment: Native Plants wetland buffers are too small. (CARE)

Dr. Adamus: There is not much science that will tell you how wide a buffer needs to be to protect from invasive plant. It is a difficult chore due to the birds carrying seed into a wetland as do other animals. There is not much science on something as simple as windblown seeds.

Estuarine Wetlands

Comment: 30-foot buffer is too small. (SRSC)

Dr. Adamus: The buffers the County is proposing are 35 feet, 55 feet and 90 feet, depending on the land use intensity. The key thing to understand is the County is protecting its' Estuarine Wetlands by designating 99% of them as Coastal Lagoons. Coastal lagoons have much bigger buffers, 100, 150, 200 feet. Coastal Lagoons include some but not all Estuarine Wetlands. Coastal Lagoons can also include areas that have been closed off from the ocean; they no longer have a tide coming in and out. Coastal Lagoons deserve very wide buffers because there is very little circulation of water, whatever goes in doesn't come out very easily. An Estuarine Wetland is not closed, not even partially closed; it is a fringe of tidal marsh plants that are grown with exposure to the ocean, very little enclosure. In those situations there is a lot of flushing from the tide. The predominant influence, whether those wetlands get a lot of nutrients or not depends

mostly on the tides. It is reliant on Puget Sound for nutrients; the portion that is coming down from above is protected adequately by the buffers being suggested.

Commissioner Gabelein asked about the large buffers on **C-5** in the definitions of Anadromous Fish Stream Wetland and **C-13** Resident Salmonid Stream Wetland, stated he has a concern about the *or within 500 feet of a* (either a Resident Salmonid Stream or Anadromous Fish Stream) *in an uphill direction and within the same Watershed*. He stated he is concerned regarding the setbacks that will be required for the streams and then adding this 1,400 – 1,600 foot buffer corridor along that stream, said if the buffer is adequate to protect the stream or the wetland adjacent to it and the buffer/setback is adequate to protect that wetland that is in an uphill direction from that stream, those two buffers should stand on their own and not be tied together.

Dr. Adamus replied the width of the buffer would only change the width of the buffer 5 or 10 feet by pushing it from a category B to a category C.

Commissioner Gabelein stated his concern is with the **500** feet in the definition.

Dr. Adamus stated there was a need to identify wetlands that contribute to Anadromous Fish Streams. Wetlands serve as a temporary detention area and slowly release water into a stream. They tend to keep the Salmonid Streams flowing for longer during the year. Wetlands as far as 500 feet away through their influence on the ground water table can have that effect.

Commissioner Gabelein stated he envisions very large corridors and people will only be left with Reasonable Use. Feels people don't understand the impact of this.

Discussion moved to Reasonable Use.

Jeff Tate stated that in order to orient the Commission to where it's located in the Ordinance he would direct them to **C-22, 17.02A.050**, there is a section that talks about Single Family Lots Dwellings On Existing Lots and there is a section on Reasonable Use.

The first is a set of standards for a land owner to be able to take advantage of if they have to go into a wetland buffer and they have a relatively small footprint in terms of impact. In the Reasonable Use section, if you don't qualify for single family dwelling on existing lots it becomes a bit more in terms of process.

You go through a Type II decision that has more review and a different set of standards. Both of these sections first refer you to **C-16**, under Critical Area Review which walks the County staff and the landowner through a thinking process so that when a building permit is submitted we start looking at the site to determine where the building envelopes are. Sometimes you are not going to find a building envelope that is outside of a buffer or the wetland itself. There is very little option on that property but to start considering implementation of Reasonable Use and relaxation of buffer standards. Sometimes it is the desire of the property owner to build closer to the wetland, but there is area outside that you could build on. So Critical Area Review,

subsection A5 walks through the preference of avoiding the Critical Area so whatever application is being submitted, staff evaluates to see if there are options and the possibility to just avoid disturbing the critical area or the buffer. If that's not possible you move to reduction, regarding ways to reduce the size of the project if that's an option, trying to see if there are things that can be done to reduce the impact. Eventually you get down to a small house and a small lawn, narrow driveway, which pushes you into the next step which is restoration. Are there ways to impact a buffer and immediately restore, such as the installation of a septic transport line that needs to be put through a buffer. Perhaps you can dig a trench and lay a utility line, but then you can restore the area around it. Sometimes none of the three options are possible; then you move into mitigation. There are many forms of mitigation to offset the impact. There is a thorough process of evaluation in applying Reasonable Use.

Commissioner Schell asked regarding Reasonable Use, it is the intent not to deny any reasonable use? Some of the comments indicated they thought someone could put in a shopping mall or something else. He stated he felt it needs to be clarified that it is only for permitted uses.

Mr. Tate replied that is correct, the use must be consistent and comply with the underlying zoning regulation that establishes permitted uses.

Regarding Swantown comments:

Swantown Creek should be classified as a Category B wetland. (Beighton)

Swan Lake should be listed in lake definition. (Reece, Homola)

Jeff Tate stated in terms of the category B designation as it relates to the creek; there is a reference to a 2007 DFW letter from Doug Thompson, who is an Area Habitat Biologist. In the letter he refers to the ditch or creek and the terminus of that creek and cites that there are some critical area standards that those features are subject to.

First of all Doug is referring to the existing CAO. He states that Swantown Lake and Swantown Creek can be considered to be Type A and Type B wetlands affording them the highest level of protection. Mr. Tate wanted to make it clear he feels there is a confusion regarding what is A & B today and what is proposed in the draft regulations.

A Category B wetland is a wetland that has a predominance of Non-Native species, which would be a Category E under the draft rules. The other issue regarding the lake portion, the majority of the open water lake area is depicted in the draft regulations as a Coastal Lagoon, which is a Category A wetland. Just as a matter of clarification, DFW and the Habitat Biologist are responsible for regulating streams and ditches. The DFW regulations don't afford DFW with the authority to classify wetlands that is a County responsibility. To make that determination would require going out to that property and walking that feature and finding wetlands that may be attached to that feature that meet regulated minimum size thresholds.

The second point that Swan Lake should be listed as a lake; lakes are defined in the Washington Administrative Code under the Shoreline Management Act. There is a specific list of lakes by name and then those that aren't by name are listed by section, range and township.

Commissioner Eidsness asked if there wasn't something on record that what is being called Swantown Creek is in fact a manmade ditch and historical records will also back up that Swantown Lake is also man made and they have permits to clean that ditch.

Mr. Tate replied in 2003 the City of Oak Harbor, Fakkema, owners of a golf course in that area, the County, Fakkema & Kingma Engineers, & DFW were involved in several meetings held in Oak Harbor to discuss this issue. The feature in question is a bigger feature system than the lower wet area, the ditch. Above the ditch there is water than runs through a golf course, there is a marsh up there, a pond, there was a lot of discussion about how those features are regulated and the connecting water bodies between those features. The letter the Director of DFW wrote in 2003, was that the pond, the marsh and the water bodies minus the ditches are regulated features, but that the features that connect those water bodies are not regulated under DFW, they consider those to be man made features. The Director at the time wrote a letter in March of 2003 to the BOICC that outlined that.

Sheilah Crider stated that she attended some of those meetings and some of the items that were attested to and Mr. Loer, whose parents owned and operated a dairy farm on Loer's Farm, which is where Loer's Pond is now on Whidbey Golf and Country Club attested to the fact that their family did in fact dig Loer's Pond and the purpose for that was to provide water for their dairy cattle. Subsequently they dug a ditch onto another area of their land for a smaller overflow pond in the winter time. Subsequent to that the hand dug ditch extended out across the Fakkema Farm onto a Stock Pond on Fakkema Farm that they used and this was to preclude flooding of their pasture land and their farm lands during certain parts of the year somewhere around 1937.

Mr. Tate stated that Fakkema & Kingma provided the original construction plan and profile for the ditch excavation for Drainage District No.1 in August of 1918. They provided drawings of the original drawings that showed cross-sections and profiles of what the land area looked like at the time and how it would be changed. It was the historical information along with the testimony provided by Mr. Loer that caused the Director of DFW to make his determination.

Commissioner Yonkman asked if there was a time table for monitoring of the vegetation.

Mr. Tate stated it would begin monitoring in the first summer season after the ordinance is adopted.

Dr. Adamus replied that it takes four or five years to really tell if the changes are significant because of variation from year to year and the logistics of getting around to enough wetlands in the county with the staff that is available. This past summer the monitoring group did some testing to see where the difficulties might be, we tried out the procedures to make sure they would be repeatable. We wanted to be sure the process was tight enough to account for changes in staff. The data will be available in a month or two.

Keith Dearborn stated that CTED has advised us that Island County is the first county that has incorporated vegetation monitoring into its' critical areas ordinance. DOE doesn't consider it to be a particular important monitoring task. Their view has been that monitoring of compliance is much more important and both CTED and DOE have liked the Wetland Monitoring Report

section, the new section to the monitoring provision and have also told us that we are the only county that has proposed that.

Commissioner Crider asked if Spartina was going to be addressed.

Dr. Adamus stated the State had taken some measures to try to control Spartina which is a tidal marsh plant, an estuarine plant. Whatever moral support the county could give to that in the name of wetland protection would be a good thing. There are other invasive species as well.

Jeff Tate stated it is a daunting problem from a countywide prospective. There are multiple areas where it is an issue, but there have been a number of coordinated efforts countywide. Some of those led by community groups, others led by WSU to aide in the eradication. There are a lot of efforts going on to do so.

Commissioner Schell stated he had some questions regarding public comment regarding enforcement. Do we have the backing of the Commissioners that the Planning Department will be able to hire the people needed to do the work?

Mr. Tate replied as a start the Commissioners have authorized in the 2008 to add staff, specifically biologist staff to begin this process. Also in coordination with our resource enhancement group we have some additional staff coming on board on that end which will provide some additional help in water quality monitoring.

Commissioner Schell asked about mitigation and fee mitigation.

Mr. Dearborn replied a fee system in lieu of actual mitigation will be a regulation that the Planning Commission will be holding hearings on, it will be a GMA regulation with opportunities for public comment and appeal. There would be no fee mitigation until then. If you look at the mitigation section, fee mitigation is the last option that will only happen if an ordinance allows it. The idea that you can only mitigate onsite often leads to wasted effort. DOE is leading the charge and encouraging creating fee systems.

Commissioner Gabelein also had questions on C-42 regarding the mitigation ratios.

Mr. Dearborn replied, these wetland ratios are the same as other counties require, the ratios came from what DOE and the Corp of Engineers have on wetlands other than a Category A wetland.

Commissioner Gabelein discussed the public comment regarding firebreaks, thinks it is bad to not allow people to create firebreaks and remove danger trees. There is an area regarding emergency actions, keeping in mind we are creating wetlands where they weren't previously, most people would want to address it prior to a fire starting.

Dearborn replied the prior discussion on this subject with the Planning Commission was to leave the subject as it rests today and not try to enter into some regulatory system to deal with hazard trees.

Commissioner Gabelein asked regarding the origin of the tables for slope adjustment on C-39

Dr. Adamus replied that it generally similar to what DOE has proposed, with modification, he re-reviewed some of the studies used to create that and reached conclusions that reflects that.

Commissioner Gabelein stated he felt the 5% slope was very gentle and to start a slope adjustment with only 5% slope he felt was too low of a threshold.

Dr. Adamus stated the focus was on the ratios rather than the upper or lower limit, he stated there was no firm threshold for this sort of thing, but stated he would re-look at the issue.

Discussion moved to the Findings

Draft findings reviewed.

Majority of the Planning Commission felt this ordinance needed to be looked at as an entire packet. One piece will not work without the others; balance is attained with all the pieces working together.

It was decided a transmittal memo would need to be included along with this ordinance to affirm the feelings of the Planning & Commission

Rural Stewardship Plan discussed.

It was decided it should be made clearer that you do not have to have a wetland in order to take advantage of the Rural Stewardship Plan. There are many other resources listed in exhibit G that could be protected and better managed utilizing this plan. It was also determined that it should be made clear that just completing the RSP doesn't guarantee you will get a tax reduction.

Commissioner Schell asked for clarification regarding the percentage of tax reduction a property would be eligible for under the Public Benefit Rating System.

Mr. Tate explained the ordinance is relatively specific, page G-5 shows the breakdown. A person has to go above and beyond what the code requires in order to qualify. G-20 shows the eligibility standards. The Assessor assigns classification for each portion of a property depending on which classification it is in. A property could have 2 acres out of 20 that are a wetland with a buffer and gets x % reduction and another 5 acres are forested land and are in the Open Timber tax program and get x % reduction and the remaining 13 acres are not in a tax reduction program.

Mr. Dearborn stated it should be understood that it is the Board of Commissioners that makes the decision, not a staff person.

Commissioner Schell moved to accept the Rural Stewardship Plan with the changes to the tiers as discussed previously. Commissioner Crider seconded.

After further discussion the motion was withdrawn as was the second.

Discussion continued

Commissioner Yonkman asked for clarification on the ability of future landowners to modify participation after it has been entered into.

Mr. Dearborn replied that it is like an easement, covenant or any other kind of restriction on your property. If you want to modify it and the County agrees to the modification then it would replace the document that was previously recorded. It is not stated anywhere specifically in the RSP and maybe it should be made clear that amendments would have to be approved, but that they are possible.

Chair Hillers stated this was already in the ordinance.

Commissioner Crider stated she would like to make something clear for the record. On C-35, there was an item stricken from this document relating to low impact development. She stated many jurisdictions and our county is supporting low impact development and due to striking that two sentence, *item (f)* she wanted to make it clear for the record that LID was not applicable in this document and the striking of this from the document is not to be interpreted as not supporting LID. Island County still supports it, knows that it is important and encourages its use.

*Commissioner Crider moved to continue this meeting to December 18th at twelve noon.
Commissioner Yonkman seconded, motion carried unanimously.*

The meeting of December 13th concluded at 3:58 p.m. to continue on December 18, 2007.

Respectfully submitted

*Paula Bradshaw
Administrative Assistant*