

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

**JOINT MEETING - BOARD OF COUNTY COMMISSIONERS & ISLAND COUNTY
PLANNING COMMISSION TO RECEIVE AND REVIEW 2005 AGRICULTURE REVIEW
COMMITTEE RECOMMENDATIONS**

The Board of Island County Commissioners, along with members of the Island County Planning Commission, met as a part of the regular session October 10, 2005, beginning at 4:00 p.m. for the purpose of conducting a joint Meeting of the Board of County Commissioners and Island County Planning Commission to receive and review 2005 Agriculture Review Committee recommendation. The meeting was held in the Island County Courthouse Annex, Hearing Room, 1 N. E. 6th Street, Coupeville, Wa.

Members Present:

County Commissioners: Mike Shelton, Chairman, Wm. L. McDowell, Member, and William J. Byrd, Member

Planning Commission: Mike Joselyn	Ray Gabelein
Val Hillers	Bill Massey
Scott Yonkman	Wayne Havens

Handouts:

Comparison – ARC Recommendations – Existing County Regulations – Growth Management Record #8428

Report and Recommendations of the Agricultural Review Committee – Growth Management Record #8452

AG uses in R, RF RR zones – A Summary Report – Growth Management Record #8327

Chairman Shelton noted that the Agricultural Review Committee (ARC) met on four occasions to review and discuss agriculture and agricultural practices in Island County; this afternoon's meeting was to receive and review their recommendations.

Keith Dearborn, the County's Growth Management consultant, explained that at the request of the Planning Commission, compliance with the Growth Management Hearings Board decision has been combined with the critical area update. The remand from the Growth Board requires the County look at the question of agriculture in the rural area, what has been typically called non-commercial agriculture. The update relates to CA and RA zoned properties, use of Best Management Practices (BMPs) and whether the system the County currently has is workable from a Best Available Science (BSA) standpoint or whether modifications need to be made. ARC recommends changes in the County's existing system; some are summarized in the one-page comparison table (Record #8428). While the ARC recommendations were often reached by consensus, the report (Record #8452) also describes different points of view. The Summary Report (Record #8327) is a study the County began in late spring-early summer, the first phase of work that the Growth Board called out as needed, also

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

called out as something that was missing from the County's record by the Court of Appeals. The Summary focuses on agriculture in the Rural, Rural Residential, and Rural Forest zones and is the County's best estimate of how much agricultural activity is going on in those rural zones. A map, included in the summary, is an illustrative description of where staff found existing agriculture activities in Island County. The next step is to determine how many of these existing agricultural activities are farming in designated critical areas. That work should be ready to provide to the Planning Commission by the end of the month. In the meantime staff has displayed on the walls some preliminary maps.

Jeff Tate, Planning and Community Development Assistant Director, noted that at the beginning of this summer, staff endeavored to quantify the amount, type and nature of agriculture in the rural areas of the County and where those are located with respect to critical areas, primarily wetlands and streams. The summary provides conclusions and a methodology describing the type of work staff conducted in the office and in the field, and the limitations faced in acquiring the information. That information is in a database with some 1800+ parcels. Once the agricultural operations were mapped, the parcels were overlain with the County's critical area maps. An analysis was conducted to show how many parcels exist where critical areas and agricultural activities overlap. He pointed out that the maps displayed on the wall show agricultural activities in the Rural, Rural Residential and Rural Forest zones as they relate to critical areas, primarily wetlands and streams. Staff determined that approximately 75% of the parcels identified overlap with a critical area. Additional maps were provided to show agricultural activities with respect to very specific critical areas, such as watershed boundaries, Habitats of Local Importance, wetlands and streams. There are four watersheds highlighted with known anadromous fisheries, two on Camano Island and two on South Whidbey. The largest one on South Whidbey is Maxwellton Creek. The maps displayed on the wall in the far corner showed Habitats of Local Importance; all nine areas in the County are located on Whidbey Island. In 1998-99 the Whidbey Audubon Society requested that the County map Habitats of Local Importance.

Mr. Dearborn noted that staff would be conducting workshops during the remainder of this week in Coupeville, Camano, North Whidbey and South Whidbey. Staff will take these maps to the workshops, and hopefully be able to ground-truth those with members of the public to try and get as accurate a picture as possible of the agricultural activities in the rural areas, which ones are intruding in which type of critical area, if any. The maps show a lot of rural agricultural uses spatially scattered throughout the County. The pattern seems to confirm the ARC's recommendation that rural agriculture is an essential component of rural character. The ARC also agreed that critical areas need to be protected and that it was not a question of having to either protect farming or protect critical areas, rather it was a question of how do you allow farming to continue in Island County in a way that provides some measure of protection to the critical areas from the adverse impacts of that farming operation. Consensus of the committee was that the NRCS BMPs are the best way to provide that degree of protection when they are applied either by an individual owner or through farm planning done by the Conservation District.

Ray Gabelein, commenting as a member of the Agriculture Review Committee, could not support a proposal that required low intensity farm use to prepare a Farm Management Plan when the uses intrude into or are adjacent to high value wetlands, salmon streams or streams that are tributary to salmon streams.

Bill Massey suggested perhaps a better recommendation would be to continue to allow the RA & CA farmers to use BMPs and require a farm plan for the small gentlemen farm operations.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Chairman Shelton thought Mr. Gabelein's concern was that under the current plan if you farmed in the RA zone you could use BMPs or develop a farm plan. In the RA zone under the new proposal the only choice is to develop a farm plan.

Commissioner McDowell thought Mr. Gabelein was concerned about low intensity users having to develop a farm plan, but more importantly the concern of having to be part of a lawsuit in Superior Court if someone appealed the farm plan. He wondered if it would be possible for the County to develop some generic farm plans for the different types of critical areas. The appeal process would happen when the generic farm plan is first developed so that individual farmers would not have to deal with appeals.

Mr. Dearborn believed a generic farm plan could be constructed, noting that Whatcom County is currently developing model farm plans. The idea would be to create what people call a "safe harbor".

Mr. Gabelein pointed out that the RA and CA zones are basically a settled issue and should be left alone. He commented that the Hearings Board did not require going back into the RA and CA zones and do things differently, rather said that the County does not have the record to support BMPs in the Rural zone.

Mr. Dearborn explained that the Planning Commission voted to include in the critical area update all agricultural activities in the Rural, Rural AG and Commercial AG zones.

Mr. Gabelein asked if the County had evidence to support going back into those zones and require more of those farmers.

Mr. Dearborn replied that there was no evidence to support not doing that.

Eric Schuh, Snohomish Conservation District, agreed that a generic farm plan, such as the approach Whatcom County is taking, could be beneficial to both the property owner and the Conservation District.

Don Meehan, WSU Cooperative Extension, said the idea of property owners filling out farm plans if they are simply cutting hay or grazing did not make a lot of sense and places too much of a burden on the property owner. He believed that people want to do the right thing and if they know that it is against the law to have animals in the streams then they will not have animals in the streams; and if they do, the County should have an enforcement system to take care of that.

Chairman Shelton said the fact of the matter was whether the property owner chooses to use BMPs or develop a farm plan; either way they will have to comply and the responsibility for that compliance will be with Island County.

Mr. Gabelein recalled having mentioned in his email to the committee one key piece that is needed in

order for this to work is water quality monitoring. If there are water quality problems found that can be source traced than whatever or whoever is causing the problem should be required to change what they are doing.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Chairman Shelton thought the County probably was in a better position financially in terms of funding a water quality monitoring program than back in 2001 and 2002, but still have the issue of getting permission from the property owner to monitor that stream. A grant was recently approved for the Public Works Department to do some water quality monitoring; when doing DNA testing on water quality monitoring it gets very expensive very quickly.

Mr. Gabelein's thought was that DNA testing would not be needed unless large problems were found and he did not believe that to be the case. He suggested that without water quality monitoring the County may be punishing the innocent and causing farms to shut down and be sold for home sites while the guilty ones continued practices unaware what they are doing is harmful to the environment. Mr. Gabelein thought that most of the county and state roads cross these streams multiple times so that access would not be that big of a problem.

Mr. Dearborn commented that King County does not require BMPs on existing farm operations unless there is a known water quality problem. However that county does spend about 2 ½ million a year just in water quality monitoring, and have been doing so for the past 15 years.

Deb Eidness, ARC member, was in favor of water quality monitoring. She was tired of farmers always taking the blame. Nobody wants to talk about septic systems, road pollution, or homeowner fertilizer, because they are non-point sources.

Bill Massey said if the Planning Commission recommended the Board adopt a program that allowed existing CA and RA operators to continue to operate under existing BMPs and the small operators develop a farm plan would be supportable.

Mr. Dearborn indicated information would need to be in the record showing that BMPs are being used by those CA and RA property owners to protect critical areas and that they are effective.

Mr. Massey inquired if there was any indication that the current system was not working.

Mr. Dearborn responded there was no indication that it is not working; currently working with both the Health Department and Public Works to gather more information on that very question. It should be understood that the County is operating under a BAS system where you have to accept the worse outcome unless you have enough information to tell you something else is the correct conclusion. Until the County can definitely say agriculture is not the problem, that the problem is from septic tanks, road runoff or wild animals, it has to be assumed that agriculture activities are part of the problem for purposes of BAS.

John Luechauer, ARC member, thought the concept of being guilty until proven innocent seemed wrong and for us to have angst towards Island County regarding this issue was nonsense and should be with the state and GMA. He mentioned that it is hard to prove innocence because

when collecting data, by the time that data is analyzed the BAS will have advanced and the information presented out of date or no longer relevant. There is no way for agriculture to survive unless the state goes back and reexamines the basis and the logic of having the GMA in the first place. The stated goal of the GMA is to preserve rural character and yet certain entities are abusing the court system to enforce their own personal opinions.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Mr. Dearborn said part of science is devising ways to narrow the uncertainty. In this case the way to do that is through monitoring, focused enforcement actions and feedback that allows for modification of standards based upon what has been learned. Island County has an excellent enforcement program, but unfortunately did not finish that third component.

Chairman Shelton noted that the last five years had been difficult for local governments; to have instituted a water quality monitoring program would have meant having to cut other County services and the County simply was unable to generate funds to institute new programs. However, the County is in a better position now to institute a water quality monitoring program.

Mr. Gabelein believed what needed to be instituted now is BMPs in all zones if you are a low intensity user and farm plans for medium and high intensity users. If as a result of the water quality monitoring program problems are identified with the use of BMPs then farm plans would be required.

Val Hillers provided an overview of the ARC recommendations.

Deb Eidsness asked how the County planned to fund the Conservation District farm planners.

Chairman Shelton acknowledged that had yet to be arranged, but were working that out with either Snohomish or Whidbey Island Conservation Districts. An interlocal agreement between the County and the Districts has been discussed. The County understands that they have some responsibility to enable the Conservation District to do what needs to be done in order to make farmers compliant with the regulations.

Mr. Dearborn pointed out that Mr. Tate had asked the State Department of Agriculture, Fish and Wildlife, the Department of Community Trade and Economic Development, as well as the Department of Ecology to advise the County on the NRCS BMPs and whether they are aware of any information that would indicate some component of those BMPS may not represent BAS. A response is expected in early November and that obviously is key to deliberations because if they in fact agree that they are BAS or they identify portions of them that require in their mind more stringent regulations that becomes a very important factual baseline for our work. All of the other counties in the state use NRCS BMPs but the question of whether they are BAS has never been asked and answered so it is particularly important for Island County, as well as for all of those other counties.

The Board modified the Paul Adamus contract to help the County develop a more comprehensive water quality monitoring program statistically defensible yet affordable. A meeting has been set for next week with the tribes, agencies and peer review panels and the consultants to fashion a proposal to forward to the Board for consideration. It is hoped that it is something the County can afford; if not, have to go back and figure out a way to modify it. Staff has asked the Health Department and Public

Works Department to look at the portions of the critical area regulations they work with and advise staff what they know about farming practices. The Health Department has been asked to look at high susceptible aquifer recharge areas to see whether there are any agricultural practices of concern that cannot be managed by the implementation of NRCS BMPs. The same has been asked of Public Works with regard to fish basins.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Mr. Gabelein asked if staff had information from Whatcom County on why they chose to go with BMPs for low intensity uses, making the point that he was still struggling with requiring farm plans when County BMPs, if implemented properly, have been working since 1997.

Mr. Dearborn commented that there had been no decisions made, rather looking at options. What is being implemented in Whatcom County may be totally different from what Island County will be able to do. Whatcom County did not have any environmental groups objecting on that issue, they in fact supported Whatcom County's proposal. An analogy might be the fact that San Juan County does not allow guest houses; that County was appealed and invalidated under the GMA. Island County allows for guest houses because the environmental community supported a compromise that was authored by the Board.

Mr. Gabelein stated that the one difference was when the farmer leaves the land and there are homes built on it and paved over, that farm is gone. He understood that in the rural zone, but talk is also about the RA and CA zones.

Chairman Shelton said the issue then becomes at what point does the County say it wants to preserve farms through something that can get through the Hearings Board; or, does the County want to do something it is not sure can get through and end up being invalidated. The motion before the Growth Management Hearings Board is to invalidate BMP's in all zones.

Mr. Massey noted that John Graham's comments on the committee's draft states that adequate monitoring and enforcement must be an integral part of the package or the Growth Management Hearings Board would not buy into it. In the final draft the Committee acknowledges that while a committed monitoring program is important, the Committee makes no specific recommendations other than the County commit to implement monitoring. He assumed that as they go through this process that the Planning Commission or staff will make recommendations and ultimately build on that before it gets to the Board and the Board will come out with a document that includes a monitoring element or some justification for the way we are handling it.

Mr. Dearborn said both staff and legal counsel feel the County has to have a monitoring program; the Board feels the County can afford to finance a reasonable monitoring program. However, there will have to be a dedicated financial commitment that will not disappear next year or the year after.

Ms. Eidsness pointed out that a farm plan is an evolutionary piece of work, just as a farm is evolutionary. The same farm plan could possibly not work for that farm even four years down the line. She did not believe that anyone, besides the farmer and Conservation District, had a right to look at that plan.

Chairman Shelton, however, pointed out it would then become a question of public disclosure.

Mr. Dearborn has talked with the State Attorney General on the issue, who has already advised the Conservation District that farm plans are discloseable under the Public Disclosure Act. The County does not feel that they need a copy of the farm plan. The Record of Decision, which is included as Exhibit I in the ARC report, provides a record of the key commitments and that is what the County should be concerned about.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Commissioner McDowell did not see a huge amount of difference between complying with the BMPs and complying with a farm plan, besides the fact that the farmer has to sign off on the farm plan.

Mr. Gabelein's concern was that the farmer would still have to protect his interest even if the County goes to court on his behalf.

Commissioner McDowell said the suggestion would only allow for one appeal of the model farm plans when they are first developed by the County. The County would provide various model farm plans depending on each situation, for example, one for low intensity agricultural uses near wetlands, one for medium intensity uses and one for high intensity uses. For someone not liking the plan, an appeal can be made on that basic plan when model farm plan is assigned.

Mr. Gabelein thought the whole idea of a farm plan was to model it after that particular farm; now talk is about standardized plans. It is his opinion that they need to get to a place where the low intensity users can follow the BMPs. He asked when the model farm plans would be available.

Mr. Dearborn noted that Whatcom County adopted their program based on a checklist system for low intensity uses and the checklist system is still not developed. He doubted that it would be available before they took action on it.

Eric Schuh suggested organizing the low intensity model plans so that they address the resource concern.

Mr. Dearborn clarified that low intensity is livestock operations with an animal unit density of less than 1 per acre or seasonal hay operations on wet pastures. He believed it would be possible for the Conservation District to prepare a one or two page model plan for low intensity livestock operations adjacent to streams or on wet pastures. The reason for targeting salmon streams is to help focus where monitoring should be done first, and the entire County does not have to be monitored. There is no evidence of severe damage occurring from farming but must be able to at least identify the places they need to go first. The second place to look at would be e Habitats of Local Importance. If nothing else they become ways to organize the monitoring and enforcement and places for the Conservation District to target for farm management plans.

Mr. Gabelein asked if there was any information on how many salmon have returned to the Maxwellton watershed. He felt that the Hearings Board had been led to believe that Island County has a huge amount of salmon streams when that was not the reality.

Keith Dearborn stated he could make the finding right now based on the Salmon Recovery Plan, which

is in draft form, that Island County's basins play no role on a state wide basis in terms of salmon. The shorelines of Island County play a significant role in juvenile salmon but the basins themselves have an inconsequential contribution to salmon. That does not necessarily mean you would not look at salmon potential basins and give them a special focus in the work, but are not suggesting doing it to protect a huge run of salmon, it is a totally different kind of inquiry.

**JOINT BOARD OF COUNTY COMMISSIONERS AND PLANNING COMMISSION MEETING HELD
ON OCTOBER 10, 2005**

Mr. Massey noted that another recommendation of the ARC is for the County to commit to and finance a significant program to teach farm owners the benefits that can be achieved from use of BMPs.

Chairman Shelton said that a significant amount was already being done, but did not mean that more cannot be done. The County is committing to some kind of arrangement with the Conservation District, a monitoring and enforcement program, and defending model farm plans if need be. At some point there has to be a cap, but did not mean that the County would not consider additional educational programs.

Commissioner McDowell pointed out that there are grants available for studies, training and education outreach.

There being no further business to come before the Board at this time, the meeting adjourned at 5:55 p.m.

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

Mike Shelton, Chairman

Wm. L. McDowell, Member

William J. Byrd, Member

ATTEST:

Elaine Marlow
Clerk of the Board