

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR FEBRUARY 19, 2003

- A. OPENING BUSINESS
- B. DISCUSSION OF SEAWATER INTRUSION ISSUE RELATING TO MARROWSTONE ISLAND AND HEARINGS BOARD 90-DAY COMPLIANCE ORDER
- C. DISCUSSION OF UDC AMENDMENTS RELATED TO SETTLEMENT AGREEMENT WITH WASHINGTON ENVIRONMENTAL COUNCIL REGARDING AGRICULTURAL EXEMPTIONS, MLA02-485
- D. ADJOURNMENT

**A. OPENING BUSINESS**

The regular meeting was called to order at the WSU Learning Center at 7:00 p.m. by Chair Tom McNerney. Planning Commission members present were Pat Rodgers, Phil Flynn, Jenny Davis, David Whipple, and Todd McGuire. Dwayne Wilcox, Edel Sokol, and Eileen Rogers were excused.

County staff present were Josh Peters, DCD, Dave Christensen, Natural Resources Specialist, and Cheryl Halvorson, secretary.

There were about eleven members of the public present. Those who signed the guest list were Barney Burke of the Leader, Dennis Schultz, Carrie Rice, Paul Heinzinger, Bob Barrett, John Gunning, Jerry Gorsline, Al Latham, and Pat Yarr.

The commissioners agreed to switch the agenda topics because one commission member needed to leave early.

There were no staff updates.

**B. DISCUSSION OF SEAWATER INTRUSION ISSUE RELATING TO MARROWSTONE ISLAND AND HEARINGS BOARD 90-DAY COMPLIANCE ORDER**

Tom McNerney explained that a committee of the Planning Commission had been appointed to make a recommendation to the whole commission on the seawater intrusion issue relating to Marrowstone Island.

Phil Flynn provided information on the committee work. He described the information the committee had reviewed. He reported that they had drafted a recommended course of action for the Planning Commission to consider and forward to the BOCC.

Tom McNerney opened the meeting to public comments, especially to comments on the seawater intrusion issue. There were no comments received.

The commissioners returned to the report by the Seawater Intrusion Committee on their work and proposed recommendation. Phil Flynn stated that the committee had drafted a recommendation which was presented to the commission at this meeting.

Tom McNerney invited comments from the commissioners, using a round robin format.

David Whipple commented that this was the first time he had seen the committee's recommendation. He was concerned that we had determined there was a problem and that we would be taking steps to address it, besides recommending a public water system. He asked for clarification of the committee's recommendation for monitoring 75 wells. He asked if the effort was to determine if there was in fact an issue with seawater intrusion. Phil Flynn replied that some of it was that. Mr. Flynn provided some statistical data on new construction with wells on Marrowstone from 1998 to 2002. There were 70 houses built with wells. He pointed out that some of those wells were probably drilled prior to house construction. There were 49 wells below 100 ppm, or 70%. There were 11 wells reading between 101 and 200 ppm, or 16%. The wells over 201 ppm were 14%. Mr. Flynn stated the opinion that it was not a colossal problem, although he was not saying there was no problem. He stated that the statistics may show a different mix if we went back

further in time, but we did not have those statistics. He stated that the cited statistics talked about the latest grouping of wells on the island. He stated that talk in the past, up to fifteen years, was the fear that every well would be intruded. That did not appear to be the case.

Phil Flynn stated that by monitoring more wells than had ever been sampled, and sampling every quarter, we would get a trend, if there was one, very quickly. He pointed out that one of the problems would be the authority to get those samples. He stated that the committee was recommending a 2-year span for monitoring but the commission could make it three years if the commission wished. Mr. Flynn stated that the committee suggested two years because the thought was that they would be undertaking a public water system in two years. He thought we could get a quick read using some of the wells described in the recommendation. He stated that one of the things they wanted to do would be to get a sample of the whole island. He reiterated that a big "if" was whether the county had the authority to get the samples. The other thing was that the county would immediately begin an education process for Marrowstone residents.

David Whipple stated that a big issue on the island appeared to be with a golf course and the water use and recharge issues. He asked if the 1,000 gallon storage requirement would apply to only residential or if it would apply to commercial or other uses. Phil Flynn responded that there was only a tiny spot of commercial on the island. He stated that if the golf course was going to be a commercial venture, it was not zoned as commercial, although commercial zoning may not be required for that use. Dave Christensen stated that the land use issue aside, a golf course would be required to get water rights to use ground water because it would be irrigating more than one half acre. Mr. Christensen reported that the golf course owner had applied to DOE for water rights. He offered the opinion that the chances of him getting those water rights were pretty small. Mr. Christensen stated that the committee's recommendations would apply mostly to exempt wells (residential wells). Josh Peters explained that a golf course was a conditional use in rural residential districts. Mr. Christensen stated that one of the conditions would be that it get water rights.

Tom McNerney referred to Mr. Whipple's question about the 1,000 gallon minimum storage, stating that it would be in conjunction with a variable speed pump. Phil Flynn stated that the requirement would be in conjunction with new construction. David Whipple asked what sort of flow per minute you would be looking at withdrawing. He stated that his well produced twelve gallons per minute. That would be 720 gallons per hour. Mr. Flynn stated that he did not think there were any wells on the island that could produce anywhere near that volume. He stated that under the recommendations, the volume withdrawn would be monitored quarterly. If chloride levels went up, one of the things that could be used was a multi-speed pump that could be controlled on the surface, so that the amount of draw could be adjusted accordingly. He stated that was why you needed storage. He thought that in some cases, 1,000 gallons may not be enough depending on the well production. He explained that the rationale for the storage was that the wells could not sustain a direct draw of any appreciable amount of water.

David Whipple stated that recharge was the other component of the equation. Phil Flynn agreed. He stated that if, through monitoring, things got tighter as far as chlorides rising, the committee was prepared to institute a limit on withdrawal of 1,000 gallons or 750 gallons per day. Also they would require flow meters on all the wells on Marrowstone. He pointed out that all

new construction would be required to join the monitoring program, so theoretically the 75 wells being monitored would be increased by the new construction. Mr. Flynn displayed two examples of flow meters. He stated that the county's challenge was to not have any further degradation of the aquifer. He stated that if we got into a position where we saw further degradation starting to occur, the next step would be to require flow meters on all wells on the island with a program for reading the meters.

Tom McNerney stated that the committee's recommendations were in a graduated format. It basically said we would start with monitoring 75 wells. If that testing indicated an increasing problem, then the other requirements would start to apply (flow meters, limitation on amount of gallons, etc.). Phil Flynn stated that if we put these restrictions on, the number of wells being monitored would go up each year, based upon the historical building permit data. Mr. McNerney stated that his point was that, if at the end of a year we found that the chloride levels were going up, there would be more compulsory restrictions applied.

Tom McNerney stated that the Daily News reporter had been present at the PUD meeting this evening. He asked if the reporter could provide information on the discussion at that meeting about a public outreach program. Keven Drews stated that they had discussed a public education program being conducted through the PUD. Mr. McNerney stated that one of the recommendations of the committee was that the county embark on a public education program on water conservation.

Tom McNerney summarized that the recommendation was to start a public education program and to start a monitoring program of a minimum of 75 wells in the various categories for a 2-year period. The purpose of monitoring would be to provide data for all seasons of the year and for annual variations. Phil Flynn stated that we would have an immediate result in the data because each selected well would be tested immediately. While that did not prove anything, it would provide a current baseline and would give relatively up to date information, as opposed to using a test that was fifteen years old. Mr. McNerney stated that we might find through an effective public education program that the chloride concentrations actually went down. That may relieve the need for compulsory metering, etc.

Todd McGuire commented that this was the first time he had seen the draft. He asked if the objective was to clear this recommendation at this meeting. Tom McNerney explained that was the intent because the BOCC must take action on February 24. Mr. McGuire asked, given that, why the commission was not seeing something more like a line-in/line-out proposal. Josh Peters explained that the BOCC actually did not charge the Planning Commission with this task. Because of the Hearings Board's 90-day deadline for the Marrowstone element, the BOCC planned to handle that task and give the Planning Commission the 180-day elements of the compliance order. However, the Planning Commission decided that it wanted to take on the issue. Mr. Peters explained that there was nothing drafted yet. That would occur after direction from the BOCC on February 24. Then a final decision would occur at the BOCC's following meeting in order to meet the Hearing Board's time line.

Todd McGuire referred to information the Planning Commission had seen some time earlier and there had been workshops on the issue. He asked about that material. Dave Christensen explained that the Hearings Board order had three main components. One addressed the need for clarity in some adaptive management issues we had included in our seawater intrusion ordinance.

Second was some specific language and discussion about the policy and whether that needed to be put into ordinance language or whether there was enough public process. Those two issues needed to be addressed within 180 days. The recommendation from the BOCC was to take those issues to the Planning Commission. He explained that the third issue was the 90-day issue on Marrowstone Island. He stated that, unfortunately, the timing of the order fell over the holidays when nothing was done. That left 60 days out of the 90 days. Staff met with the BOCC on the issue. Then when staff was briefing the Planning Commission on the overall issue, the commission decided it wanted to get more involved in the 90-day compliance issue. Mr. McGuire stated that he thought it was the standards he was thinking of; there were some preliminary suggestions put forward. Mr. Christensen stated that they were pretty much the same kinds of things that had been suggested before. Mr. McGuire stated that this recommendation seemed to be a new document, and he was having a hard time referencing back to the work that had already been done.

Todd McGuire stated that it appeared that the end recommendation was to request an extension of six months from the existing deadline. He wondered how realistic that was from a legal perspective. Dave Christensen replied that we could request anything. Mr. McGuire asked if there was another process outside of this recommendation, referring to the opponent group in the petition. Josh Peters responded that the process was only that we needed to do something by March 5. He reported that there was a compliance conference scheduled for early April. Mr. Christensen stated that the BOCC was basically responding to the petitioners demanding a moratorium in their briefs before the Hearings Board, which said that the county's regulations were not protective enough against seawater intrusion. Mr. Christensen stated that the petitioners asked for a moratorium in all of the seawater intrusion protection zones. The Hearings Board came back and said they thought Marrowstone Island warranted more protection or a moratorium. That was why it was focused on Marrowstone. He thought we could assume, based on their silence about the rest of the county, that the Hearings Board thought the county was pretty close elsewhere. He stated that staff would be talking to the Planning Commission about what should happen elsewhere after the Marrowstone issue was completed. Mr. McGuire asked if this proposal before the Planning Commission was only specific to Marrowstone. Staff and the other commissioners agreed that was the case.

Jenny Davis reported that the committee had found that the current map [with the red dots] was inaccurate. It was found that the red circles basically pinpointed the parcel rather than the well location. Some of those parcels were several acres. Consequently, the red circle took in the whole parcel. That was not very scientific. Josh Peters stated that some wells had GPS locations on them while for others, the center of the parcel became the location. Ms. Davis stated that we wanted to get more scientific data for Marrowstone rather than merely saying there was seawater intrusion and a moratorium should be implemented. She questioned how we knew that when we did not even know the exact locations of the wells. While there had been some baseline testing on some wells, the committee found that out of eighteen wells tested in 2002, only two tested above 200 ppm. She had been thinking that most of them would test high, whereas twelve of them had tested okay. She stated that out of 70 wells, only 14% were above the 200 ppm. She offered the opinion that it did not look like there was degradation going on, even from an unscientific review. Therefore, the committee recommended that we get some scientific data.

Todd McGuire commented that he thought the baseline had always been the biggest issue. He thought a lot of the recommendations addressed how to establish that. Tom McNerney stated that the problem was that the wells that had been tested were tested once and most had not been re-tested since then. So we didn't know whether the chloride levels were going up or down. Phil Flynn stated that there was no continuity in the testing that had been done in the past. He thought there may be some wells that were not constructed properly. Mr. Flynn stated that if Mr. McGuire thought six months was not enough time, or was too much, he was open to other suggestions. Mr. McGuire responded that his concern was how realistic it was to ask for more time.

Todd McGuire referred to Item 4, which addressed the hardware to accommodate the metering, etc. He asked if that came from some other source. He thought that some of the equipment could be very expensive. Phil Flynn replied that a variable speed pump with an ability to change volume from the surface was only 10% to 15% more expensive than a regular installation with a regular pump. Mr. McGuire asked for clarification about what the speed would be controlled to. Mr. Flynn replied that it would be tied to the chloride level, which would be part of the testing program. Mr. McGuire asked about the sizing of the storage tank. Mr. Flynn replied that it was arbitrary. He stated that it was based on his own 1,000 gallon tank, stating that he appeared to have no problem. He stated that you obviously needed storage if you had a chloride problem and you were trying to adjust to not overdraw, not cavitate, and not disturb that lens. Mr. McGuire thought the storage tank issue might need some fine tuning. He thought it should be tied to some kind of formula or a custom design.

Todd McGuire referred to Item 5 which addressed the testing recommendation. He asked if there was some kind of formal agreement between the county and PUD for monitoring. Dave Christensen replied that there was a memorandum of agreement between the county and PUD for a monitoring program up to their budgeted amount. Phil Flynn stated that the PUD was now monitoring fourteen wells through a volunteer program.

Todd McGuire referred to the recommendation that the county endorse a public water supply for the island. Tom McNerney stated that the recommendation merely supported a decision (resolution) the BOCC made at their last meeting. Dave Christensen reported that the resolution was based on several factors. One was that the initial survey of Marrowstone residents indicated there was support for public water. Because it was an island, there would be water supply problems in the long term. Therefore, in the long term, an off-island source for public water was going to be the safe, reliable source of water. He stated that the BOCC wanted to make a statement that they felt strongly that was the end solution. Mr. Christensen stated that the PUD was working on a public water supply.

Pat Rodgers referred to the storage tank proposal, stating that it was really just a mathematical issue depending on the capability of the well and amount of daily use. Mr. Rodgers stated that the recommendation in essence said that we needed to define the problem better and we needed a monitoring program in order to do that. In the meantime, we proposed taking steps to limit any potential degradation by requiring certain pumps, etc. Tom McNerney stated that the public education program was another major part of it. Jenny Davis stated that, in talking with island residents, she found that there was a lack of understanding about what was going on. She thought a public education program would alleviate that issue. Mr. Rodgers stated

that a moratorium, in his mind, would be the last thing we should do, not the first thing.

Jenny Davis referred to Mr. McGuire's comment about requesting a 6-month extension. She stated that the committee had discussed various time extensions but had settled on six months, thinking that it may be shortened.

David Whipple suggested that, if the goal was to make the regulations more restrictive to meet the Hearings Board order, the commission recommend flow meters on all wells on Marrowstone immediately, rather than waiting until, or if, there was a determination that there was an increase in intrusion. He stated that if the objective was to collect data, that would be a good source of data. Jenny Davis stated that the committee had discussed that idea. However, the committee did not have accurate cost information on flow meters and so decided it needed more time to figure out the costs to people. That was another reason for requesting a 6-month extension. Phil Flynn reported that the PUD had some used flow meters that they would provide fairly economically.

Tom McNerney stated that another reason for the time extension was to determine the county's authority to go onto people's property to see if they were adhering to the requirements. He stated that a seawater intrusion district had to be voted upon by the residents. Mr. McNerney stated that they were trying to come up with requirements, other than a moratorium on all new building, that new construction would be monitored to determine if it was causing any additional seawater intrusion. If they were, they would have to cut down on their usage. Also, we would get some data through the monitoring program to determine the extent of the problem and whether it was improving or getting worse. He stated that a public education program may result in an improvement in water quality. He stated that one resident had reported chloride levels of 600 ppm when she moved in, but it was now down to about 60 ppm. He thought that just public education and conservation may solve the problem in the long run.

David Whipple commented that there could be creative ways to sell installing flow meters. Mr. Whipple stated that there could be conditions on building permits to require recharge on the site. Dave Christensen stated that was already a condition for permits in coastal SIPZ. So recharge onsite was already a requirement. Mr. Whipple asked if the Hearings Board was aware of that. Mr. Christensen replied that they were. He stated that they were also aware of the data.

Phil Flynn asked staff if there was anything that could further bolster the recommendation to make it more acceptable to the Hearings Board. He suggested that the county reiterate the things it had already done. Jenny Davis asked staff's opinion about the suggestion for mandatory flow meters on all wells, whether that would be something the Hearings Board would consider favorably. Dave Christensen replied that he had given up trying to guess what the Hearings Board would do. He personally thought the Hearings Board had mis-read some of the technical and legal issues involved. He stated that we had an order, however, and whatever the Planning Commission wanted to recommend to the BOCC, the commission should feel comfortable providing it to them. Mr. Christensen stated that staff had brought forward what staff thought would comply, but the BOCC was looking for another alternative. He stated that flow meters was certainly one thing that would be a good recommendation. He stated that the PUD would be willing to give flow meters to anyone who wanted one. Josh Peters stated that flow meters were mandatory

in At Risk and High Risk SIPZ on new wells. Tom McNerney clarified that the commission was talking about flow meters on the monitor wells.

Todd McGuire stated that catchments were not addressed in the suggested recommendation at all. He asked about that possibility. Dave Christensen responded that there were some legal constraints on using catchments. The DOE required a water right for catchments because it was considered surface water. He stated that, while the county had permitted two catchment systems potentially in violation of that law, there was a concern that if catchments were going to be considered a solution on Marrowstone, there could be a liability to the county in that we would be requiring a violation of state law. Also there was an issue of public health and safety with a water catchment.

Todd McGuire asked about use of alternative gray water systems. Dave Christensen thought the state was behind a lot of the counties in what they allowed. It was something some counties had pushed - to allow some gray water systems. Mr. Christensen reported that right now the state said you could not permit gray water systems for public water. Jenny Davis commented that such a discussion could be held during a 6-month extension. Mr. McGuire thought it would be interesting if that recommendation went to the Hearings Board. Tom McNerney stated that, if the monitoring program found seawater intrusion increasing, the additional mandatory requirements would be implemented. Then perhaps the state and/or Hearings Board would be more accepting of alternative systems, if not for potable use, at least for irrigation and non-potable uses.

The commissioners and staff discussed catchment systems and storage sizes.

Todd McGuire suggested that the Planning Commission recommend some type of threshold for determining an increase in seawater intrusion. Phil Flynn stated that the committee had not felt qualified to set a threshold. Mr. Flynn commented that if the BOCC wanted to set a percentage of increase or some type of threshold based upon a staff recommendation, he could support it.

The commissioners discussed the authority issues referenced at the end of the committee's report. David Whipple suggested that the item be expanded to define the kind of authority issues that needed to be dealt with.

Todd McGuire and Jenny Davis discussed talking to the petitioners about what would satisfy them. Tom McNerney reported on a conversation he had with one of the petitioners who indicated that metering was one of their major choices for a solution. Ms. Davis pointed out that the Planning Commission committee had a very short time in which to make a recommendation. She stated that was another reason for asking for more time. Mr. McGuire commented that going to the Hearings Board with a unified approach (with the petitioners) should certainly help. Ms. Davis stated that the committee had discussed that. Mr. McNerney suggested that perhaps the BOCC would take the Planning Commission's recommendation and instruct staff to follow up with the petitioners. Mr. McGuire suggested that the Planning Commission make that part of the recommendation. Dave Christensen pointed out that one of the petitioners was now on the BOCC. He thought that direction could easily occur. He stated that staff was looking for specific comments from the petitioners on this recommendation.

Todd McGuire referred to the monitoring program for the 75 wells. He asked if such wells had been identified. Phil Flynn replied that they were. He stated that the Hearings Board was not saying that we should shut down those wells. They were saying that if the reading was 110 ppm, it should not get appreciably greater. That was the reason for the testing program. Mr. Flynn stated that the difficult part would be getting the property owners to allow the monitoring. He stated that one of the considerations was what could economically be put in place.

Phil Flynn moved that the Planning Commission accept what the committee submitted and forward it to the BOCC, knowing full well that the BOCC, with the petitioners, would reshape it to fit their opinion of what should go forward. Pat Rodgers seconded the motion.

David Whipple suggested an additional item that the county determine a way to encourage more people to install flow meters, outside of the 75 wells. Phil Flynn thought it was an excellent idea, especially since we now knew it was not going to be very expensive. Mr. Whipple suggested that one of the creative ways they could be encouraged to install one would be a credit toward a permit or a water hookup. Todd McGuire stated that the suggestion was to add a recommendation to explore creative ways to include more people in the monitoring program in order to expand the baseline information.

Todd McGuire asked if there was any other information we should be asking to have monitored besides chloride levels and the amount of use. Dave Christensen stated that it was a matter of cost. More thorough monitoring could help you determine whether high chloride levels were caused by seawater intrusion or by natural geologic conditions. He reported that the earlier DOE report on Marrowstone from around 1996 found that all of the high risk wells were influenced by seawater, rather than from other sources. Phil Flynn commented that, if we found anything that might suggest influence other than tidal action or seawater, we might want to add such tests later. Mr. McGuire thought it was something that could be expanded on the lab side if it was warranted later. Pat Rodgers commented that perhaps some random sampling could be done.

David Whipple offered a friendly amendment to add an Item 6 on Page 2 to encourage and develop creative mechanisms to expand the sample base, including flow meters and additional test wells, in order to increase our information bank. That could be economic, social, or other types of incentives. The purpose would be to explore and develop different ways to encourage people to get flow meters and become involved in the monitoring program. The friendly amendment was accepted.

The motion to forward the recommendation as amended carried with five in favor, none opposed, and one abstention.

Todd McGuire stated a concern that there was no specific language in the recommendation about involving the petitioners. While he understood that a petitioner was on the BOCC, so it was sort of implicit, he did want to get that verbiage into the recommendation. Phil Flynn stated that he had a problem with that because the petitioners would be providing their own input to the BOCC. They could use the Planning Commission's recommendation or not. Mr. McGuire stated that he thought it would be much more effective if the county and the petitioners went to the Hearings Board with an agreement. Tom McNerney asked if Mr. McGuire would want to make a motion on the issue. Mr. McNerney stated that he could support it because he also thought it would be

better if the BOCC could go to the Hearings Board with some agreement with the petitioners.

Todd McGuire stated that another issue he would have expanded upon was the authority issue. Phil Flynn responded that they had not wanted to get into the authority issue too far because they knew it was going to be a problem. He stated that they left it vague because they did not know exactly where we stood. He stated that he could verbally explain the issue and concern to the BOCC. It would be up to them to address the authority to get people to participate in a monitoring program and to accept more stringent requirements. Tom McNerney stated that it may be that the Deputy Prosecutor may have to research the authority.

Before taking a break, Josh Peters pointed out that there were maps displayed on the wall concerning the agriculture issue. He suggested the public review the maps during the break as staff would be discussing the maps.

Jenny Davis was excused from the remainder of the meeting.

**C. DISCUSSION OF UDC AMENDMENTS RELATED TO SETTLEMENT AGREEMENT WITH WASHINGTON ENVIRONMENTAL COUNCIL REGARDING AGRICULTURAL EXEMPTIONS, MLA02-485**

Josh Peters referred to the February 13 staff memo which was provided to the Planning Commission and was available to the public. He reviewed parts of the memo, some of which outlined the history on ag lands designations in the county. Mr. Peters explained the exemptions for existing and ongoing ag uses. He explained the open space tax program for agriculture uses. He explained the provisions of the settlement agreement. The greater part of it [habitat protection] would be addressed on a basin-by-basin voluntary planning effort.

Josh Peters stated that the original MLA proposal was flawed in that it only talked about the Agriculture Production District [GMA ag lands] rather than including Ag Lands of Local Significance. He explained that something happened between the adoption of the Comp Plan and the production of the land use map because the Ag Lands of Local Significance were not depicted on the land use map. He explained that the Comp Plan talked about a program whereby people could opt into the Ag Lands of Local Significance program. He thought that was something the commission and staff could take up during the next Comp Plan amendment cycle.

Josh Peters stated that staff heard the message at the public hearing that there were ag uses in the county where the land was not designated as GMA ag lands but that was being used for agricultural purposes and was in the open space tax program as ag lands. That indicated a commitment to agricultural use.

Josh Peters explained the reasoning for the county going to the settlement table with the petitioners. He thought the resulting settlement agreement was a good one because it allowed an opportunity to focus more intently on providing effective protections on the habitat areas, most specifically streams and wetlands, without going to a model that some other counties had used. That model is currently before the Hearings Boards and courts. He stated that this county was certainly in a different situation than Skagit County. The county's thinking was that we may be able to come up with a

solution in a settlement that would work for both habitat and local farmers, especially when the revised recommendation was implemented.

Josh Peters stated that staff reviewed those lands that were not in the GMA ag lands designation but were enrolled in the open space ag tax program, especially in relation to wetlands and streams in the database. Mr. Peters reviewed the standard buffers for streams and wetlands. He stated that the county's stream information was more precise, but the wetland information was not as good. He reviewed the regulations relating to wetland delineations and buffers.

Josh Peters stated that there were about 2,000 acres of land in agricultural use and in the open space ag tax status that were not in the GMA ag designation.

Josh Peters reviewed the revised staff recommendation, which was in two steps. The first was for UDC amendments regarding the agricultural exemptions. He reviewed those proposals.

Pat Rodgers asked about lands that were a new agricultural lands activity and not a pre-existing use, asking whether the exemptions would apply. Josh Peters replied that the exemption provisions were for "existing and ongoing" activities. Dave Christensen stated that the existing UDC now required that any new agricultural activities meet all of the setbacks. It was only existing agriculture that had an exemption. Mr. Peters stated that the UDC already said "pre-existing and ongoing agricultural activities on lands containing environmentally sensitive areas. For the purpose of this section, existing and ongoing means the activity has been conducted in the past five years." Mr. Rodgers stated that if someone could demonstrate that they had an existing and ongoing agricultural use, independent of whatever kind of tax status or designation they had, they would be exempt. Mr. Peters stated that the UDC indicated that as long as the activities were on lands that met the definition of farm and agricultural land, he was correct. Mr. Rodgers stated that no new agricultural use would be exempt. Mr. Peters stated that he was correct. Mr. Peters stated that, in the fish and wildlife habitat areas, there were ways that you could vary from a standard buffer. It may entail a habitat management plan. He stated that the objective was no net loss of function. Mr. Rodgers commented that it was the "nature of the beast" that most agricultural activities fell in the river and stream valleys.

Josh Peters stated that the result of the revised amendments would be that all lands either designated as GMA ag lands or enrolled in the open space tax program as ag lands would be exempt from the standard UDC stream and wetland buffers. The fish and wildlife habitat area and wetland protection would be accomplished through the basin-by-basin riparian management planning process pursuant to the settlement agreement.

Josh Peters reviewed the second step in the staff proposal, which would address some of the other more complicated factors and finish the ag planning process. It would involve a process in the next Comp Plan amendment cycle and would clarify the various ag lands designations and the process for opting into the Ag Lands of Local Significance program, among other things.

In answer to David Whipple's question, Josh Peters explained that Ag Lands of Long Term Commercial Significance included Ag Lands of Local Significance.

David Whipple asked, if an ag use was exempted, whether they needed to have a habitat management plan if they were tilling right up to the edge of a stream, for instance. Josh Peters replied that they would not at this point. Habitat protection would occur on a voluntary basis through the basin-by-basin planning effort that was happening in coordination with the county and Conservation District. Mr. Whipple asked why someone would be motivated to do that, outside of a general concern for the environment. Dave Christensen stated that WEC retained the right to appeal if the voluntary process did not lead to measurable improvement. He stated that it was a voluntary process where, in the end, the county would have to demonstrate that the voluntary efforts taken together were making an improvement. Mr. Christensen stated that Mr. Whipple's question was a good one and it was the risk of a voluntary process. He stated that it was clear from the public hearing that regulatory, standard buffers were not desirable because of the economic costs to farmers. He stated that the incentive to participate in a voluntary process was that if it did not do enough, there would be some regulation coming down from above in the future, probably from a Hearings Board order. Mr. Whipple asked if there were incentives to farmers to take streamside buffers out of production. Mr. Christensen replied that there were programs available.

Josh Peters stated that Al Latham of the Conservation District was present to answer questions. He stated that Mr. Latham had also discussed the revised recommendation with staff.

Tom McNerney asked Mr. Latham to address the incentive and voluntary programs. Al Latham stated that he thought one reason this option was even presented to the county was based on the voluntary efforts that had happened up to this point over the last ten to fifteen years. He stated that farmers had done a lot to improve fish and wildlife habitat, mostly fish habitat in the farmland. He reported on some of the programs available. He thought that if a mandatory buffer requirement had been "slapped on", it would have compromised a lot of the voluntary things that were occurring. Mr. Latham stated that another nice thing about the agreement was the planning process that will occur. It would allow the land owners to come up with some ideas on how they wanted to deal with some of the problems. He stated that the comment about someone not participating was valid, because that question had been asked. That was an issue that needed to be addressed. He thought that in some instances there would be enough happening everywhere else that some small portion would not have that much of a detrimental effect.

David Whipple asked how they would measure success in a given area. Al Latham stated that there were targets set by the state. One was water temperature and water quality. He stated that they were doing before and after monitoring. So there were scientific parameters they used. Mr. Whipple wondered if we could develop benchmarks to see if we were meeting the goals. If not, then we could ratchet up the pressure somehow. Mr. Latham stated that he thought they could come up with something like that. He stated that just using the standard water quality parameters for temperature, fecal coliform, dissolved oxygen, etc. may work. He stated that the criteria were basically set to good fish survival.

David Whipple asked for clarification about whether someone newly coming into the program would be able to opt out of the standard buffers. Dave Christensen replied that if they opted into the Ag Lands of Local Significance program, they would be opting into the voluntary program for habitat improvement with the Conservation District or they would have to meet

the standard buffer requirements. Pat Rodgers expressed confusion about who would be exempt and who would not. He thought property either in the Ag Lands of Long Term Commercial Significance designation in the Comp Plan or in the open space tax program as ag lands would be exempt. Josh Peters stated that was true. Al Latham stated that if someone converted timber lands to ag lands, for example, they would not be exempt.

Josh Peters stated that for someone whose land was neither GMA ag lands nor in the open space tax program, they would still have a couple of options. One would be to get enrolled in the program. Another would be to opt in for GMA ag lands only as Ag Lands of Local Significance. An audience member asked how one would opt in. Mr. Peters stated that there were two different things - one was zoning and the other was the tax program. Either of those options would be available to a person. He explained that the "opting in" was actually language from the Comp Plan about the Ag Lands of Local Significance program. He stated that if the county decided it wanted to go in that direction, and staff would encourage them to do so, we would set up a suggested amendment proposal as part of this year's Comp Plan amendment cycle. People who were in that category would be contacted through some kind of outreach to let them know it was their opportunity to petition for their land to be zoned in that way. If it met the criteria in the Comp Plan, it would be zoned. Mr. Peters stated that if the land was zoned that way, it would impact what uses were allowed on that property. Staff could help people analyze the impact to them.

Dave Christensen commented that it may be helpful if staff prepared a flowchart depicting the process for the next meeting.

Al Latham commented that the map of the GMA ag lands and the open space ag lands pretty much covered the existing agriculture in the county. He did not think there was too much that was left out. In response to Pat Rodgers' question, Josh Peters reviewed the various types of ag lands depicted on the map. Mr. Rodgers asked about ag lands in the West End. Mr. Peters replied that there were no GMA ag lands in that area but there were about 165 acres in the tax program. Mr. Latham stated that he knew of some parcels that were in timber tax open space but that actually had some farm land too. Those lands may not show up on the map. Mr. Peters explained that there were three different classifications in the county's open space tax program. There was timber land, ag land, and open space. He explained that the advantage for enrolling in those programs was that the land was taxed less.

Pat Rodgers asked if Mr. Latham had reviewed the new staff proposal. Al Latham replied that he had looked at it and had sent it to his supervisors but had not heard back from them. He stated that they had talked about the settlement agreement. They were currently involved in a process to set up a plan for the Chimaquum Creek watershed. Mr. Rodgers stated that the reason he asked was because the Planning Commission oftentimes asked people with a particular expertise to testify on an issue. Mr. Latham stated that there were different things going on in other counties, and we did not know what may come down on us from those situations. In the meantime, he thought we could develop a realistic plan for ourselves that would be very positive for both land owners and fish and wildlife, and not have to go through some of the things other jurisdictions were going through.

Todd McGuire asked about the difference between this new proposal from staff and the original. Dave Christensen replied that, simply, the original language only made reference to the Agricultural Production Districts as

applied to the watershed restoration voluntary plan and the exemptions. That clearly met with a lot of concern from the existing, commercial agricultural farms. He stated that the revised version attempted to capture what staff felt was a workable solution. Josh Peters summarized that the revised proposal would include more lands in the exemption and specify the exemption to stream and wetland buffers, rather than making a general exemption. He stated that the hope was that the changes would be made by March 26 as the ideal because that was the term of the settlement agreement. He stated that staff thought it was a good deal. Staff thought it would be a bad deal for farmers as well as the county to go before a Hearings Board on this issue. Mr. Peters stated that the fight in Skagit County, whose case was in the courts, was that the exemption was over existing ag, not new ag.

Tom McNerney asked if staff thought WEC would accept these new proposals. Dave Christensen stated that staff had been communicating with Mr. Gorsline. Josh Peters stated that Mr. Gorsline was just one member of the organization. He felt sure WEC would comment on the proposal when it went before the Planning Commission in another public hearing or when it went before the BOCC in a public hearing.

David Whipple suggested that we include some sort of benchmarks in the UDC language, at least in general terms, and leave the details to the plans. In that way, it would be fairly clear how the county was doing.

Josh Peters asked if the commission would wish to schedule another public hearing on this issue. If so, staff would want to make those arrangements. Tom McNerney suggested the commission take that up at the end of the meeting.

Tom McNerney opened the meeting to public comments.

Jerry Gorsline, WEC representative, stated that one concern WEC staff had was the definition of "existing and ongoing agriculture" conducted within the past five year period. He thought that seemed like a very loose definition. Questions regarding that were whether the use was conducted annually, or three out of five years, or what? He stated that their purpose was to see this exemption limited to commercial agricultural land. Mr. Gorsline stated that the language was new to WEC. While he had talked with staff about it, it had yet to come before his board of directors. He stated that from what he saw, with the one stated exception, he was fairly supportive.

Pat Yarr stated that he was an elected official for the Farm Service Agency on the Jefferson/Clallam Board. He stated that the CREP program, which was discussed earlier, had some real definition problems on it. There had been a question about the Dosewallips area. Mr. Yarr stated that it was all based on soil types. If you had a very good soil type, you would get more money. But if you had a poorer soil type, you would not get much. Mr. Yarr stated that Roger Short had applied for the CREP program. He stated that the reason he mentioned these examples was because the farmers were trying to cooperate with fish habitat the best they could. Mr. Yarr stated that Mr. Short's land did not qualify for the CREP program because they said it was too wet. He stated that he had tried to join a program and had been denied, but now the county was going to come along and require a buffer. Mr. Yarr stated that was some of the problems he saw happening. He stated that a Quilcene farmer had a soil type that was just barely above the minimum to qualify. Mr. Yarr stated that even though there were some government programs out there, not everyone would qualify for them. He wondered what the county would say then. He thought it was a dark cloud out there in the future for the farmers. Mr.

Yarr stated that, in his case, there were three streams on his farm. If the county imposed a 150-foot buffer on each of them, it would basically wipe out his farm. He stated that there had to be some vision on the issue and not just set a standard buffer of 150 feet. Concerning the Skagit County case, Mr. Yarr stated that the county set a standard 75-foot buffer. However, the tribes got it thrown out. He stated that he just hoped we would not just "put our feet in cement and say that was where we had to stay". He stated that the farmers were asked to give up more each time.

Dennis Schultz, N. Jacob Miller Rd., stated that the CREP program was based upon the soil type and the quality of the soil. He stated that his farm was on soil that would not qualify for the program. However, he was raising \$3,000 to \$4,000 per year in fruit on his land. That was a lot more than they would have given him in the CREP program if he had qualified, though he was not in a wetland area. He stated a concern that there were a lot of people in the county who were not identified who were practicing agriculture on their land. They had not put their land into the tax program and/or they were not along a salmon stream. He thought there were a lot of parcels like that which were not identified altogether. His concern was that this year the emphasis was streams and wetlands and salmon. Next year it might be migrating butterflies, which would be a whole new ballgame. They would all be unprotected. He thought the county needed some way to identify the ag lands of people involved in agriculture, and get them on the map, and get the maps updated.

Bill Curry, Nordland, asked if Step 2 was part of the proposal for the UDC. Josh Peters replied that it was not strictly a part of the amendment now before the Planning Commission. However, it was part of the overall program and staff would be proposing a suggested amendment for the next Comp Plan amendment cycle so that, for example, someone interested in having land zoned for agriculture could do so. Mr. Curry supported Step 2 as a very sensible follow-up step. He thought there could be several categories that would be worth investigating.

Will Butterfield, Dabob, asked a question of staff concerning his property. He stated that he raised beef cattle on his land. Part of it was designated as Ag Land of Long Term Commercial Significance and part of it was rural residential. He wanted to know if, in Step 2, anyone whose property was enrolled in the open space tax program would automatically roll the property over into an ag designation. Josh Peters replied that it would only occur if the property owner applied. He stated that staff was not proposing a process whereby the county would be choosing the area that would be designated ag. It would essentially be an outreach program for people who wanted to opt into the Ag Lands of Local Significance program to get the ag exemption for their property. Mr. Peters explained that, since Mr. Butterfield's property was in the open space tax program, under this revised UDC recommendation, his property would fall under the exemption. Mr. Butterfield stated that it was not something that would automatically roll peoples' ag lands over into an ag designation, but it would be an option for the land owners. He asked if staff envisioned the outreach program of Step 2 happening this year. Mr. Peters replied that it would. He explained that the annual Comp Plan amendment cycle for this year would begin on May 1. He stated that staff would need to come up with a proposal before May 1 if the Step 2 recommendation went forward. He stated that staff would conduct the outreach program within the next few months in order to meet the May 1 amendment cycle deadline. Mr. Butterfield expressed his thanks to staff for this new

recommendation, stating that he liked it. He added that more people needed to get the information.

There being no further public comments, the Chair closed the comment period.

The commissioners and staff discussed holding another public hearing on the new proposed amendment. Josh Peters stated that staff was working on a March 26 deadline from the settlement agreement. He stated that he also knew that Al Scalf had indicated to the Planning Commission that if it needed more time, it could be taken. Mr. Peters stated that was part of the reason staff had developed a two tier process whereby the commission could take a lot of time for Step 2 but not so much time for Step 1. He pointed out that the BOCC needed to make a final decision by March 26. Tom McNerney noted that staff had indicated they would prepare a flowchart for the next meeting. He expressed a desire for the Planning Commission to have more time for discussion before holding another hearing. Pat Rodgers expressed some continuing confusion about what lands would retain the exemption and what lands would not. He advocated for having some experts, perhaps from the Conservation District, present to provide their ideas and perspective. David Whipple commented that by having the second hearing at the third week in March, it would give WEC time to review the new proposal and respond, and it would allow people to present questions at the first meeting in March. The commissioners agreed to schedule another public hearing for the third week in March (March 19). That would give the commissioners and public the next meeting as an opportunity for further consideration so that we may have a better informed public and Planning Commission at the public hearing.

David Whipple suggested staff prepare a 2-page summary of the 14-page staff memo of February 13 for public information. While he thought the 14-page memo was an excellent product, he wondered whether the public would take the time to read it. He also liked the idea of a flowchart on the process.

#### **D. ADJOURNMENT**

The commissioners and staff discussed the agenda for the next meeting (March 5). It was agreed that the commission would further discuss the ag lands issue, continue addressing the seawater intrusion issue, and also discuss general Comp Plan amendment topics. Tom McNerney suggested that the Seawater Intrusion Committee continue meeting on the 180-day issue and develop something for the next meeting.

The meeting was adjourned at 9:55 p.m.

#### **E. APPROVAL OF MINUTES**

These minutes were approved this \_\_\_\_\_ day of March, 2003.

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Thomas McNerney, Chair

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Cheryl Halvorson, Secretary