

JEFFERSON COUNTY PLANNING COMMISSION

MINUTES FOR APRIL 16, 2003

- A. OPENING BUSINESS
- B. DISCUSSION/RECOMMENDATION TO BOCC ON MLA02-485, UDC AMENDMENTS RELATED TO ESA's and AG LANDS EXEMPTIONS
- C. DISCUSSION OF HEARINGS BOARD COMPLIANCE ORDER REGARDING PROTECTION AGAINST SEAWATER INTRUSION
- D. PUBLIC COMMENT
- E. 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, Jenny Davis, Eileen Rogers, Robert Morgan, Phil Flynn, and Edel Sokol. David Whipple arrived at 7:14 p.m. Dennis Schultz was excused.

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

There were about six members of the public present. Those who signed the guest list were Bo Bricklemeyer, Chuck Monson, Rita Kepner, Carrie Rice, and Rex Harken.

The commissioners reviewed the minutes for March 5, 2003. The secretary noted a correction on Page 8 regarding Dennis Schultz' public comment. The minutes were approved as corrected.

Josh Peters introduced John Cambalik of the Puget Sound Action Team. Mr. Cambalik provided copies of a document titled "Natural Approaches to Stormwater Management". The document provided examples of low impact stormwater development. He provided a description of the Puget Sound Action Team's charge and explained their funding.

Josh Peters introduced new Planning Commissioner Robert Morgan. He was welcomed to the commission. Mr. Peters stated that Dennis Schultz had also been appointed to the commission but could not be present at this meeting.

Josh Peters reported that, after talking with the Chair, staff had prepared a public hearing notice for a Planning Commission hearing on April 30 concerning the seawater intrusion issue. Tom McNerney explained that due to the timeline for compliance with the Hearings Board order, he had asked staff to prepare the hearing notice because of the noticing requirements. Mr. McNerney stated that the intent would be for the Planning Commission to arrive at some decisions regarding seawater intrusion at this meeting. Then staff would translate those decisions into UDC language by April 18 for public review prior to the April 30 hearing. Edel Sokol recommended that the meeting begin at 6:30 p.m. instead of 7:00 p.m. Mr. Peters stated that he would see if the newspaper could make that change in the legal notice. It was agreed the commissioners would take up the suggestion for an extra meeting near the end of this meeting.

Josh Peters reported that staff had arranged for a BOCC agenda item for April 21 to brief the BOCC on the issue of the UDC amendments to implement the settlement agreement with WEC. He stated that he had spoken with a representative of the Assessor's Office about the Open Space tax program. Mr. Peters stated that he had also spoken with Al Latham of the Conservation District about Mr. Rodgers' issue concerning the clause about the 5-year period in agricultural activity.

The Chair invited public comments. Bo Bricklemeyer stated that he wished to comment on the seawater intrusion issue. Tom McNerney stated that there would be another comment period later in the meeting during which he could comment on that issue. There being no other public comments, the Chair moved the agenda forward.

**B. DISCUSSION/RECOMMENDATION TO BOCC ON MLA02-485, UDC AMENDMENTS  
RELATED TO ESA's and AG LANDS EXEMPTIONS**

Josh Peters reviewed the progress of the Planning Commission to date.

David Whipple reviewed the motion he had proposed at the earlier meeting (March 19), noting that the motion had been tabled. At the April 2 meeting he had handed out a suggested revised motion. No action was taken on that suggestion. He explained his reasoning for requiring an approved conservation program in order to qualify for the exemptions.

Jenny Davis asked if Mr. Whipple had discussed the proposal with the Conservation District. David Whipple reported that he had, stating that Al Latham was opposed to anything being mandatory, noting that the majority of the Conservation District's work to date had been in the Chimacum Valley. He stated that his conversation with Mr. Latham had led to the second version of his motion.

Tom McNerney reviewed the second version of the motion from Mr. Whipple. It would allow an exemption from the standard buffer requirements if the landowner developed and implemented a conservation program. Mr. McNerney stated that the Planning Commission had heard from the people that the voluntary program was working very well. He noted that the WEC had been working with the Conservation District and the county to draft a proposal, which he thought was one of the best of any county in the state. He thought the commission would do better to keep with the proposal that resulted from the agreement rather than starting with something else that modified it. Mr. McNerney thought that Mr. Whipple's second proposal in particular would cause the whole thing to be re-done.

David Whipple stated that there were two options suggested in his proposal. He stated that he had discussed the suggestion with WEC and they had indicated their support. He stated that one option would be to demonstrate that there was no degradation. In the other, they would not have to document anything. The landowner would have the choice. He stated that the proposal would not force anyone to do anything other than to document that they were not causing harm.

Phil Flynn stated that he would prefer to have the Conservation District discuss the proposal with the commission. He thought some of the proposal seemed to be logical. However, he was concerned that there were some pitfalls or problems that the Planning Commission was not seeing.

David Whipple withdrew his first motion and moved to substitute his second proposal. Jenny Davis seconded the motion.

Pat Rodgers stated that the staff proposal, in his opinion, represented the best thinking and efforts of the staff and the agriculture community. He thought the staff proposal was the better alternative, although he acknowledged that Mr. Whipple's proposal had some good points.

Edel Sokol referred to Mr. Whipple's comment that it would be a complaint driven process. She stated that she had a problem with such a process because it did not make for a harmonious community. She thought the Conservation District's outreach program in the community was the better process.

David Whipple stated that his proposal was actually only an addition to Section 3.6.9.v or 3.6.8 in the staff proposal. Concerning the complaint driven process, it would not mean that the county would go out and test everywhere. He

stated that he had tried to build in that it would be quickly resolved at minimal cost. The testing would only occur as a result of a complaint.

Eileen Rogers stated that she opposed the motion. She stated that the commission had heard from the people who were actually using the land that they were the best stewards of the land. She thought the presentation staff had provided lent itself to a much better solution.

There being no further discussion, the motion failed with one in favor, five opposed, and two abstentions.

The commissioners moved on to the revised proposal from staff. Josh Peters clarified that the February 28 revision only addressed the ag lands component. It did not make any changes to the other components concerning wetlands replacement ratios and the state agency comment period.

Eileen Rogers moved that the Planning Commission accept the February 28 revised staff proposal. Phil Flynn seconded the motion.

Pat Rodgers favored the motion although he had some concerns. He suggested amending 3.6.8(3) which addressed a definition of "existing and ongoing" in the last sentence. He stated that there was an ongoing means to define that, stating that it was done already through the designation criteria. He thought there was no need to be as specific as to actually have a 5-year period. He cited an example of a piece of agricultural land that had been farmed for many years but through some circumstance lay unused for a few years. That did not mean it was no longer agricultural land. Another concern was that if land became agricultural, then that was what it was. If it fit the definition in other portions of the county that defined agricultural land, then he saw no reason why we should treat one kind of ag land differently from another. His concern was with the 5-year period requirement specified.

Josh Peters explained that the basic phrase was already in the code, except for the "annually" part. He explained that the phrase was inserted based on a concern expressed by the petitioner at a public hearing, after discussing it with staff and the Conservation District. He stated that "annually" was inserted to ward off a potential problem where someone could turn over some dirt only once and have a legal, nonconforming use. He agreed that the situation Mr. Rodgers brought up was a potential problem. He agreed that it made no sense to have code language that would result in that kind of situation. Mr. Peters reported that in conversation with Al Latham, Mr. Latham had suggested striking the word "annually". He stated that staff had no problem with supporting that suggestion. Mr. Peters clarified that this proposal was not talking about not calling something agricultural land any longer. What we were doing was differentiating between a legal, nonconforming use and a use that did not qualify for that status. He explained that under the code, any other type of use that was discontinued for two years was no longer considered to be nonconforming. Therefore, in this case, an agriculture use was more liberal than the standard legal, nonconforming use definition in the code.

Pat Rodgers stated that we knew there were perhaps 1,000 acres in the West End that had been used for agriculture for generations. He thought it begged the question to take such land and call it nonconforming. He thought those folks would say it was conforming and what was not conforming was the way the Comp Plan was drawn up in the first place. Josh Peters responded that the Step 2 process would be used to see if there were any other lands whose owners were interested in having their lands redesignated as agriculture through the Comp Plan amendment process. He stated that people from the West End could certainly

participate in that process. Mr. Peters stated that the county had received some grant money to implement the settlement, and part of that money could be used for public outreach and advertising. He stated that the policy would not be put into action until the end of that window of opportunity, as was discussed in the draft administrative policy that was handed out at the last meeting.

Jenny Davis expressed a concern for those people who "slipped through the cracks" now and did not get their property redesignated either now or in the Step 2 process. Tom McNerney clarified that it would not stop someone from doing agriculture on the land; it would just stop them from having the exemption. Josh Peters responded that if someone applied later, the county would look to see if, at the time of adoption of this code language, there was existing and ongoing agriculture being practiced. If the answer was "Yes", the person would have the option of either getting enrolled in the Open Space program or getting their property zoned ag. Ms. Davis stated that they would have to pay for the rezoning under a Comp Plan amendment. Mr. Peters responded that may be, or the BOCC may decide to allow it under a reduced price or no cost at all. That was something that had not been discussed. He stated that it was still possible for someone to establish the fact that they were a legal, nonconforming use at the time of adoption of this code amendment. Mr. Peters clarified that we were not talking about the ability to practice agriculture, noting that there were right to practice agriculture provisions for anyone in the rural residential areas of RR 1:10 and above. At issue was the exemptions from buffers. The exemptions would be because the person was practicing agriculture at the time of code amendment adoption. He stated that for a future agriculture use, for land that was not a legal, nonconforming use at the time of adoption of the code amendments, the landowner could do a habitat management plan to reduce the buffers. Mr. Peters reported that staff's research had indicated that no other counties had exempted future agricultural use from the buffer requirements. Mr. Peters reported that there were negotiations going on at the state level for agricultural uses similar to the negotiations that resulted in the Timber, Fish and Wildlife agreement for timber practices. The results of those negotiations could impact the way agriculture was practiced in the county. In response to Phil Flynn's question, Mr. Peters provided information on the negotiations, citing as an example the reduced buffers that could be had through the CREP program.

Phil Flynn referred to Ms. Davis' concern about those people who might "slip through the cracks". He asked about any differences between streams and wetlands on land used for agriculture. Josh Peters replied that Page 10 and 11 of the February 13 memo discussed that issue.

Edel Sokol referred to the comments the commission received from a West End resident concerning how the Hoh River meandered. She asked if staff had discussed the buffers for such rivers. Josh Peters stated that it was not a question for this amendment per se, but it was one for the Administrator. He stated that the UDC discussed how to address the issue. He explained that for a house, for instance, it did not really matter if the buffer was moving, either in nature or through a regulatory action. A house would be a nonconforming use and the county would not be requiring people to remove the structure. He stated that a fish and wildlife habitat area was a fish and wildlife habitat area, and if a riparian area was moving, then that was where it was. He stated that it would be a decision for the Administrator as to how he would handle a situation like that in terms of implementing the code.

Pat Rodgers offered a friendly amendment to the motion to strike the word "annually" from Section 3.6.8(3) and 3.6.9. Eileen Rogers and Phil Flynn accepted the friendly amendment.

For the record, Pat Rodgers wished to be sure that it was understood that Agriculture Lands of Local Significance were included under the definition of Agriculture Lands of Long-term Commercial Significance. He was not entirely sure that the Comp Plan included that sub-set within the long-term ag lands designation.

There being no further discussion, the motion as amended carried with seven in favor and one opposed.

The commissioners moved on to the wetland replacement ratios proposed for Table 3-5 (in Exhibit B of MLA02-485 dated September 12, 2002). Josh Peters pointed out the footnote "Note 1" under the table which indicated that the replacement ratios were derived from DOE Publication No. 97-112, so that it was clear where they came from. Dave Christensen stated that the proposed ratios were those recommended by the state DOE. Mr. Peters stated that if the county wanted to use something other than the state recommended replacement ratios, the county would have to fund a scientific study to support that. Mr. Christensen explained that this county had adopted replacement ratios used by another county. That county had adopted their replacement ratios before the state guidelines came out. Mr. Christensen stated that the reason for the larger replacement ratios was because replacement wetlands tended to fail. Therefore, these ratios built in more allowance for failure without having a net loss of wetlands, because we were still under an overall no net loss of wetlands requirement.

Josh Peters stated that in the hierarchy of mitigations, preventing an impact was always preferred to creating an impact and trying to mitigate for it. He stated that he did not think this county had done any wetland replacements since adoption of the UDC. Dave Christensen agreed that it was very uncommon and was kind of a last resort, noting that it was very expensive.

Pat Rodgers offered the opinion that the practical effect was to make it so expensive that it simply could not be done. Dave Christensen agreed that it was expensive to restore ecosystems in general and wetlands especially. Mr. Rodgers stated that the other alternative was to assess each and every piece of property.

In answer to Tom McNerney's question, Dave Christensen described a Class I wetland and a Class IV wetland for comparison.

In answer to Jenny Davis' question, staff discussed and described enhancements of wetlands.

Tom McNerney asked if the change to the table resulted from the settlement agreement. Dave Christensen replied that it was. He pointed out that there had been no public testimony received on the replacement ratios at the public hearing; only comments on the ag lands exemptions had been received.

Jenny Davis moved that the Planning Commission accept the staff recommendation for UDC Section 3.6.9, Table 3-5 Required Replacement Ratios, and including the notes below. Eileen Rogers seconded the motion. There being no further discussion, the motion carried unanimously.

The commissioners moved on to Section 8.2.4.a, Referral and Review of Development Permit Applications. The amendment would change the timeline for state agency comment on an application from two weeks to 28 days. Josh Peters stated that there was a clause included stating that if the state indicated they

would not comment, staff would merely make a note in the permit file and move the permit forward without waiting the 28 days. Dave Christensen stated that the state agencies had been very cooperative in communicating with staff about permits.

Pat Rodgers moved to adopt Section 8.2.4.a, Referral and Review of Development Permit Applications, as submitted by staff. Phil Flynn seconded the motion. There being no further discussion, the motion carried unanimously.

That completed the Planning Commission's recommendations on the ag lands issue.

**C. DISCUSSION OF HEARINGS BOARD COMPLIANCE ORDER REGARDING  
PROTECTION AGAINST SEAWATER INTRUSION**

The Chair asked staff to provide an update on the county's actions to date. Josh Peters provided an update, describing the interim regulation the BOCC had adopted concerning Marrowstone Island which addressed the 90-day compliance requirements of the Hearings Board order. He reported that the BOCC would hold a public hearing on the interim ordinance as required by law on April 28. Since interim regulations only had a 6-month duration, he stated that they would be rolled into the broader seawater intrusion code amendments, so they would be considered again. Mr. Peters stated that there would be a public hearing before the Planning Commission on April 30 on the broader regulations and another hearing before the BOCC tentatively scheduled for May 27.

David Whipple stated that he would not be able to attend the hearing on April 30. Tom McNerney stated that the Planning Commission holding a public hearing on that date was contingent upon the commission passing some recommendations at this meeting for code and policy amendments. He clarified that the commission would address the hearing date issue near the end of the meeting.

Josh Peters stated that the BOCC had adopted all of the Planning Commission's recommendations, including the monitoring program for the 75 wells on Marrowstone, along with the code amendments. He reviewed the code amendments. One clause would designate the whole of Marrowstone Island as a High Risk SIPZ and a "Sea Salt Water Intrusion Area" per the WAC on December 31, 2004, or when public water was available on the island, whichever was sooner. He stated that the clause would effectively put a moratorium on new well drilling. Dave Christensen clarified that the state would stop allowing well drilling on Marrowstone Island.

Jenny Davis asked for clarification. Josh Peters responded that it would include any newly proposed use of water. Dave Christensen stated that the particular clause was linked to the actual well construction that was regulated by the state. Mr. Peters explained the state regulations involved.

Jenny Davis asked if, by December 31, 2004, there was no public water system on Marrowstone, it would mean that there would be no new well drilling allowed even if water conservation had shown to improve the seawater intrusion problem. Dave Christensen agreed that was true, assuming the DOE said that Jefferson County's designation of Marrowstone Island as a Sea Salt Water Intrusion Area was something they could enforce. Josh Peters stated that the other half of that equation was the High Risk SIPZ designation, stating that was a county policy. He stated that one would have to demonstrate through a hydro-geological assessment that there would be no further degradation. There would be the possibility for someone to drill a well, but it would be difficult to demonstrate that.

Staff and the commissioners discussed the testing of the 75 wells and what effect the testing might have if it showed that the seawater intrusion problem was improving instead of degrading.

Tom McNerney pointed out that the 2004 date was the last date that this particular BOCC could act on the issue. They could not put on an effective date that was beyond their term of office and encumber another BOCC.

Josh Peters reported that the Hearings Board had decided not to rule on the 90-day compliance (the interim ordinance). Instead they would wait and roll it in with the 180-day compliance package. Therefore, the county would not get a ruling about whether those 90-day compliance steps were sufficient.

Josh Peters reviewed the other provisions of the interim ordinance. He stated that there was now a moratorium on further subdivision on Marrowstone Island until public water became available. The commissioners asked how many parcels would be affected. Dave Christensen replied that it would prevent the creation of about 30 new parcels. He stated that staff would provide the information to the commission.

Josh Peters reviewed some other provisions. The last one was a limitation of 1,000 gallons per day from individual exempt wells, both new and existing. He thought it was a legal question that was more restrictive than the state standard of 5,000 gallons per day. He stated that the county's position was that the GMA kind of "trumped out" the state water code. Jenny Davis asked if any other counties had instituted such a restriction. Mr. Peters replied that he did not think so. Tom McNerney raised the issue of the county's ability under state law to be more strict than the state standard in some instances. Dave Christensen stated that there were some places in state law that gave the counties the authority, or there was a delegation of authority, to adopt more strict standards. He cited public health as an example. Mr. Christensen stated that this issue was unclear because there was no delegation to the counties for water rights, except for this Hearings Board ruling.

Phil Flynn reviewed the Seawater Intrusion Committee's recommendations to the Planning Commission. There were eight recommendations. Copies were handed out at the meeting.

Concerning the first recommendation, which directed the update of the Marrowstone Island SIPZ map, Eileen Rogers stated that the committee found that there was not an accurate base line, which resulted in an inaccurate map. She stated that they had found that we had not identified all of the high risk areas while some of the identified areas were not really high risk. Ms. Rogers stated that the committee thought it was imperative that we start with an accurate baseline. Jenny Davis stated that the committee had also found that there were some wells on Marrowstone that had only been tested once in twenty years. Another finding was that some wells had been tested twice, with one high and one low reading, but the map only reflected the high test result. The concern was that the mapping was not statistically accurate.

The second recommendation was to change the water use restriction on Marrowstone from 1,000 gallons per day to 700 gallons per day. Phil Flynn stated that, as a Marrowstone resident, he did not think 1,000 was a realistic figure. He stated that he did not know of anyone, other than the golf course, who used that much per day. He thought that averaging would take care of some higher use days. Therefore, the committee thought 700 gallons per day was more realistic and was more in tune with actual usage on the island. Jenny Davis stated that the thing that was hard for her was the authority and the enforcement of such a

restriction. She stated that there were two issues. We were trying to solve a problem and we were also trying to satisfy the Hearings Board. Mr. Flynn stated that anything less than the state figure of 5,000 gallons per day raised the authority question. Therefore, whether it was 1,000 gallons or 700 gallons made no difference from the authority standpoint.

Edel Sokol asked if the committee had public input on the water use figure. Eileen Rogers replied that it was generally agreed by the public the committee did hear from that 1,000 gallons per day was too much.

David Whipple asked how the 1,000 gallons or 700 gallons per day would be monitored and enforced and whether it would be an average. Phil Flynn replied that it would be an average. He stated that adaptive management practices would be encouraged. The commissioners discussed whether the usage monitoring would be voluntary or mandatory. Josh Peters stated that the recommendation would apply to all wells on Marrowstone, not just the 75 test wells. Concerning the enforcement issue, Tom McNerney stated that it would be done the same way the state enforced the 5,000 gallon limit, which was that they did not. Dave Christensen stated that the 1,000 gallon figure was selected by the BOCC. He stated that the Planning Commission could recommend eliminating it as unenforceable or changing the figure to something else. Mr. Whipple suggested trying to use a "carrot" approach rather than a restrictive, regulatory approach. Mr. McNerney stated that there was a recommendation for a conservation program. He explained that part of that program was to encourage an all voluntary approach.

David Whipple moved that Recommendation #2 be amended to change "restriction" to "reduction of standard". Eileen Rogers seconded the motion. Mr. Whipple stated that averaging needed to be inserted into the recommendation as well.

Josh Peters stated that, as a code writer, to change "restriction" to something else would take it off the code "plate" and make it something else, a recommendation similar to Recommendation #1. He stated that he could write code language for a restriction, but he could not for something else, such as a voluntary program. Jenny Davis stated that what Mr. Peters was talking about was that the whole #5 in the interim ordinance would be deleted. The commissioners and staff discussed whether the 700 gallons per day should be substituted for the 1,000 gallons per day in #5 of the interim ordinance.

Eileen Rogers offered a friendly amendment to the motion that the wording be "Recommend that the initial water use standard for domestic wells on Marrowstone Island be 700 gallons per day ..." David Whipple accepted the friendly amendment.

The amended motion carried unanimously.

Dave Christensen asked for clarification of Recommendation #1 concerning updating the map. Phil Flynn stated that the intent was to generate a new map using updated information.

The commissioners discussed Recommendation #3, which addressed the well testing and possible further reduction in water usage. The commissioners agreed to change the recommendation to clarify that it applied to the 75 test wells and to change "water use restriction" to "water use standard".

Pat Rodgers moved that the Planning Commission adopt Recommendation #3 as amended. Eileen Rogers seconded the motion which carried unanimously.

The commissioners reviewed Recommendation #4 which addressed voluntary conservation measures. Phil Flynn reported on the public education forum that would be held on Marrowstone Island to address conservation measures. Tom McNerney stated that it should be clear that the public education program would be administered by staff; it was not a function of the Planning Commission. Pat Rodgers made the point that it was very important that the program be voluntary, stating that there were some areas in the county where there were high positive hydrologic areas where it would be nearly impossible to draw the water down.

Eileen Rogers moved that the Planning Commission accept Recommendation #4. Robert Morgan seconded the motion which carried unanimously.

The commissioners discussed Recommendation #5 concerning statistical tests for determining degradation. Dave Christensen read the description for the program Sanitas produced by Intelligent Decision Corporation. He described the way the statistical information would work. It took into account the variability. He stated that such statistical testing was used in landfill monitoring; it was not totally applicable to seawater intrusion. However, it was groundwater statistics and was the best, most defensible method for looking at seawater intrusion. Mr. Christensen stated that the Hearings Board wanted a percentage of change to define degradation, but he thought that was the wrong thing to look at. He thought what we should look at was whether there was a threshold. Mr. Christensen explained that if a well changed in chloride concentration from 5 to 10, we would not want to impose restrictions because those readings may be within background readings. David Whipple asked about a well that started at 250 mg/l and stayed flat. Mr. Christensen stated that would not be a degrading well, even though it may not be a healthy well. He explained that what the Hearings Board wanted for our adaptive management program was that, if our regulations were preventing further degradation, we were okay. If they were still allowing further degradation to occur, then we needed to "ramp up" the adaptive management program. Mr. Christensen stated that the definition of degradation was an increase over background; it was not a high number.

Dave Christensen stated that the commission could recommend that a well must cross a concentration threshold instead of focusing on a percentage. That concentration threshold may be an increase of 50 mg/l or 100 mg/l. Josh Peters stated that some of the wells on Marrowstone Island jumped up to 600 and back down to 50. He stated that you might not have degradation of that well because there was such variability; it was just the nature of that particular well.

The commissioners and staff discussed how the statistics might be used. Dave Christensen pointed out that it would only work for wells in the same aquifer in the same area. He stated that an issue for the Planning Commission was how far beyond an affected well the commission wanted those restrictions to apply. Tom McNerney wondered whether there was something in the statistical testing that could establish a trend for the whole island. Mr. Christensen replied that there was not. He stated that the Hearings Board said to define the area where the adaptive management program would apply. Mr. McNerney asked how the county could get information for the whole island. Josh Peters stated that it would take groundwater mapping or to get enough data so that we could surmise a trend. Mr. McNerney stated that one way would be to meter everything. Mr. Christensen stated that it was beyond that; it would be Doug Kelly's work in Island County. He stated that you would really have to know how all the wells were connected.

Dave Christensen stated that the committee's comment about a percentage prompted him to say that the real issue was some threshold value beyond which we would start looking at a well.

Tom McNerney stated that the program would only apply to individual wells. He stated that the Hearings Board said to come up with a program that would prevent further degradation on the whole island. Jenny Davis stated that one of the recommendations (#3) was to get those 75 test wells so that we could get an idea of what was happening across the entire island so that we could apply adaptive management to the entire island and not to a particular well. She thought what Mr. Christensen was saying was that we could not really do that because it was not accurate. Pat Rodgers wondered whether that was true. He wondered if we had 75 test wells and if we saw a general value among those wells whether we could conclude that there was a general trend. Dave Christensen asked what would happen if we did not have that and had differing readings. Mr. Rodgers responded that we could conclude that those wells were in different aquifers. Ms. Davis asked when the adaptive management program would apply then. She wondered whether Recommendation #3 should be clarified. Mr. Christensen stated that Mr. Rodgers' comment was correct. He stated that if all 75 wells were increasing, then we could say it was an island-wide problem. If there was one well increasing, then the question was how wide an area there should be. Mr. Rodgers stated that he would suggest testing the well right next to it. Mr. McNerney commented that often the well next to it would not have a problem. Mr. Rodgers stated that would solve the problem then.

Dave Christensen stated that the adaptive management program would say that, if someone had a degrading well, we would go to the wells next to it to see how extensive the problem was and define the area of concern in that way, unless we saw an island-wide trend. Jenny Davis stated that the problem we had was that we were asking the 75 well owners to volunteer, but they would be the only ones to suffer the consequences of regulation. Pat Rodgers stated that if he had a well there, he would want to know.

Pat Rodgers suggested that instead of naming the software program specifically, the regulations say "like" that program. In that way, if a better program came along, the county could use it. Dave Christensen responded that he could accept that suggestion.

Eileen Rogers asked what other governmental agencies were using this software program. Dave Christensen stated that the company went to the DOE and said they would give all the regulators free copies of the software and train them in how to use it. He stated that, to his knowledge, all the health departments were requiring their landfills to use this software.

Dave Christensen recommended that Recommendation #5 be changed to delete the percentage of degradation criterion. He suggested changing it to say that wells under 100 mg/l would not be subject to the degradation label. Tom McNerney clarified that Mr. Christensen suggested only considering wells over 100 mg/l.

Phil Flynn asked who the county could consult with on this issue. Dave Christensen replied that Doug Kelly from Island County could be consulted. However, he was concerned that we had gone through a process and he did not want to run the Planning Commission's recommendations past a consultant. Mr. Flynn stated that in fine tuning the provision, he thought it made sense to get someone with expertise to review it. Pat Rodgers thought this was a significant improvement over a percentage change. He stated that he had experience with statistics. Mr. Rodgers stated that it would tell you statistically, within a high level of confidence, whether or not there was degradation. It would provide the variability and the background of a well. He stated that another question was the impact to health and wondered whether the 100 mg/l was appropriate. Mr. Flynn stated that 250 mg/l was the health standard. Mr. Rodgers thought the county could set the number higher.

Eileen Rogers stated that was the dilemma the committee had. She asked about the 100 mg/l number. Dave Christensen stated that it was a defensible number in that above 100 mg/l there was a lot of literature that said it was an indicator of seawater intrusion. He stated that the question was to define "indicator".

Phil Flynn stated that staff would have to make the recommendations work. He suggested that it could raise the level of confidence if the county could have some expert review. Tom McNerney stated that the commission could make a recommendation to the BOCC that between now and adoption the BOCC solicit an expert review. Dave Christensen stated that the DOE, although they did not want to give the county this specific thing, had said they would comment, so that would provide some level of expert review.

The commissioners debated background level numbers and whether it could indicate a trend.

Robert Morgan moved that Recommendation #5 stop after "as presented by staff" and delete the rest of the paragraph. Eileen Rogers seconded the motion which carried unanimously.

Phil Flynn added that the commission would ask staff to at least arrive at the beginning of a number when making their presentation to the BOCC.

David Whipple stated that he needed to be excused and wished to make some comments. He stated that, while he thought these were nice steps, he did not think they would be in compliance with the Hearings Board order. He did not think the recommendations went far enough. He did not think there would be buy-in from the petitioners. He stated that he would have liked to see some participation by the PUD. He also would like to see a recommendation for funding and enforcement of the provisions. He did not think it would meet the standards set by the Hearings Board. Mr. Whipple stated the opinion that the enforcement issue was really big. He did not think this county had the will to do the necessary enforcement. He was then excused from the remainder of the meeting.

The commissioners moved on to Recommendation #6 which addressed reducing water use in High Risk SIPZ to 1,000 gallons per day.

Eileen Rogers moved that the Planning Commission accept Recommendation #6 as written. Jenny Davis seconded the motion which carried unanimously.

The commissioners reviewed Recommendation #7 which addressed testing High Risk wells outside of Marrowstone Island.

Pat Rodgers moved that the Planning Commission accept Recommendation #7 as written. Eileen Rogers seconded the motion which carried unanimously.

The commissioners reviewed Recommendation #8 which addressed developing a spreadsheet for the data collected.

Eileen Rogers moved that the Planning Commission accept Recommendation #8 as written. Phil Flynn seconded the motion which carried unanimously.

The commissioners returned to Recommendation #1 which addressed updating the map and which had not been formally acted upon.

Phil Flynn moved that the Planning Commission accept Recommendation #1. Eileen Rogers seconded the motion which carried unanimously.

#### **D. PUBLIC COMMENT**

The Chair opened the meeting to public comments.

Bo Bricklemeyer stated that he worked in water resource management in other areas of the world. He stated that he had bought a house in Port Townsend and had become interested in local issues. He stated that what we were seeing was a wake-up call about water, which was happening all over the world, no matter whether we thought we had plenty or not. He described problems in other places. He stated that a conservation program made sense, but it should be for the whole county rather than just for Marrowstone or identified salt water intrusion areas. He stated that he commended the Planning Commission for going as far as it was going and encouraged the commission to go as far as it could. He stated that on Marrowstone specifically, we had to meet the charge given to us by the state. But at the same time, the commission had not done what Mr. Flynn suggested doing about the modeling of the statistical question that was raised and seek the proper expertise. He stated that the county should have long since gotten a legal opinion about whether the county could regulate water when the state regulated water. He stated that the commission was making a recommendation and hoping that the BOCC would accept it, but they would not accept it if it was clearly flaunting the state law. He thought the commission should have sought out that advice. He thought it was a very strange situation to tell people they could only use 700 gallons per day or 500 gallons per day when they were not metered. He questioned how many people knew how much water they used per day. He thought Marrowstone people were more cognizant of conservation, but he doubted they knew how much they used. He thought the commission was on very thin ice to exempt commercial activities and to only apply the restrictions to domestic wells. He stated that if you were trying to do water conservation, then you were trying to do just that. That did not seem to him to make a difference whether you had a commercial activity or a domestic household. He thought we needed to establish criteria, best management practices, or other criteria that would say that a trailer park with twenty spaces could use more than 700 gallons per day. He thought that should apply to both current and future commercial operations on Marrowstone, recognizing that there were only a few now. He reported that one of those commercial owners had told him that he would be happy to abide by whatever conservation measures the county passed. He stated that his understanding of the explanation of the suggested software program was that it would not justify reducing the amount of daily water usage by all domestic wells on the island if only a few wells showed degradation. He stated that when the Planning Commission took comment from the public, it provided an opportunity that someone from the public would have something positive to contribute. He stated that if the commission only took comment after it had already finished its work, it was not much incentive for the public to stay.

Tom McNerney explained that the commission wanted to pass the recommendations now so that there could be a public hearing in two weeks. He stated that after the hearing, the commission would reconsider the recommendations.

Bo Bricklemeyer stated that, while that was good, the opportunity for someone from the public to contribute to the commission, that may make the commission's recommendation better, was lost in the process the commission practiced. He stated that Recommendation #3 would reduce the water use on Marrowstone Island from 700 gallons per day to 500 gallons. He stated that his question was

answered that there was no scientific justification based upon that particular program to do that.

Carrie Rice stated that she lived on Marrowstone and was very concerned. She stated that she was not sure what the Planning Commission was considering was the way to go. She stated that water conservation should be emphasized more, along with alternative water collection systems. Tom McNerney stated that a conservation program was being addressed.

Rex Rice stated that Jenny Davis was hesitant about thinking or speaking for people on Marrowstone by saying that they probably would not want to volunteer. He did not think that was true. He stated that, personally, he thought it was a good idea. He thought everyone would like to know the condition of their well. He thought that if there was salt water intrusion, it was logical to cut down the consumption. He thought people would be willing to volunteer.

**E. ADJOURNMENT**

Tom McNerney asked if it was acceptable to the commissioners to hold a public hearing on April 30. The commissioners agreed by consensus but changed the start time to 6:30 p.m. instead of 7:00 p.m. Josh Peters stated that, on the chance that it was too late to change the public hearing notice, the hearing could not start until 7:00 p.m., but the commissioners could talk about other things.

The meeting was adjourned at 10:17 p.m.

**F. APPROVAL OF MINUTES**

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

\_\_\_\_\_  
Thomas McNerney, Chair

\_\_\_\_\_  
Cheryl Halvorson, Secretary