

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Al Scalf, Director of Community Development

DATE: January 10, 2011

RE: Public Hearing on the Mystery Bay Mooring Buoy Moratorium

STATEMENT OF ISSUE:

The Board of County Commissioners established a moratorium on November 22, 2010 in regards to locating new mooring buoys in Mystery Bay. A moratorium is effective for up to six months. According to Shoreline Management Act RCW 90.58.590 a public hearing is required within 60 days of the enactment of this interim measure. The Shoreline Management Act limits the number of moratoria that may be instituted by a local government to the initial moratorium and two renewals. This is the final moratorium, which will remain in effect until the Washington State Department of Ecology approves our locally approved shoreline master program or the moratorium shall expire on May 22, 2011. A public notice of the public hearing was noticed in the December 29, 2010 edition of the Jefferson County/Port Townsend Leader.

ANALYSIS:

This moratorium was authorized by the Board of County Commissioners in view of the development of a management plan for Mystery Bay to maintain commercial shellfish operations as certified by the State Department of Health.

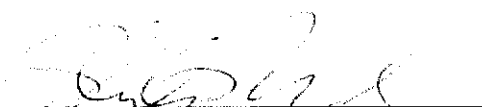
FISCAL IMPACT:

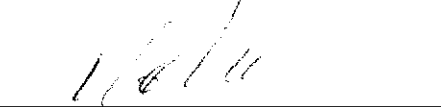
The staff work utilized in order to prepare the public notice, the cost of the public notice and the staff time spent administrating the moratorium are covered by the annual approved Department of Community Development budget.

RECOMMENDATION:

Staff recommends the Board conduct the public hearing. No further action is required.

REVIEWED BY:


Philip Morley, County Administrator


Date

cc: YA
Sheriff
DOJ } 11/29/10

STATE OF WASHINGTON
County of Jefferson

In the matter of a } Ordinance # 07-1122-10
Moratorium on new Mooring }
Buoy's in Mystery Bay }
}

The Jefferson County Board of County Commissioners enters the following findings of fact:

1. On November 23, 2009, the Board of County Commissioners placed a moratorium on submitting applications for new mooring buoys in Mystery Bay per ordinance #10-1123-09.
2. As provided for in State law a moratorium may be effective for up to six months if a detailed work plan is prepared for remedying the issues and circumstances necessitating the moratorium, and may be renewed for two six month periods.
3. The Mystery Bay Management Plan envisioned by tribal, state and local governments to address the concerns with commercial shellfish harvesting in Mystery Bay has been completed by the stakeholder group.
4. The Management Plan establishes objectives for Mystery Bay to:
 - maintain the approved classification of the Mystery Bay shellfish growing area.
 - implement permitting and enforcement measures to ensure the number of mooring boats remain below the marina threshold.
 - minimize or eliminate transient anchoring in Mystery Bay, outside of the Fort Flagler State Park.
 - establish a Voluntary "No Anchor Zone" in Mystery Bay, outside of the Fort Flagler State Park and direct transient boaters to the Fort Flagler State Park.
 - monitor mooring buoy usage and transient anchorage in Mystery Bay to determine if marina thresholds are exceeded.
 - provide immediate notification to the DOH when boat numbers exceed marina threshold levels.
5. On March 1, 2010, Jefferson County submitted a Locally Approved Shoreline Master Program to the Washington State Department of Ecology for review and approval consistent with legal guidelines.
6. The Locally Approved Shoreline Master Program provides new policies and regulations pertaining to the placement of mooring buoys throughout Jefferson County that are consistent with the National Shellfish Sanitation Standards.
7. On April 20, 2010, the Washington State Department of Ecology conducted a public hearing on the Jefferson County Locally Approved Shoreline Master Program. The

public comment period remained open for written comments regarding the Locally Approved Shoreline Master Program through May 11, 2010.

8. The Mystery Bay Management Plan provides various benchmarks to measure the effectiveness of the plan and provides for adaptive management techniques should the plan be unsuccessful.

9. The Washington State Department of Health reclassified part of the Mystery Bay commercial shellfish growing area from *Conditionally Approved* to *Approved* on March 25, 2010.

10. On May 17, 2010, the Jefferson County Marine Resource Committee was issued a Jefferson County shoreline substantial development permit exemption to install seven marker buoys to identify the voluntary "no anchor zone" and to manage transient vessel moorage called for in the management plan.

11. On May 24, 2010, the Board of County Commissioners renewed the Mystery Bay mooring buoy moratorium for an additional six months.

WHEREAS, Jefferson County continues to participate in the stakeholders' group of agencies, tribes and shellfish growers in order to prevent any commercial shellfish closures of Mystery Bay; and

WHEREAS, the Mystery Bay Management Plan is one element of the work plan for the stakeholders group; and

WHEREAS, the Mystery Bay Management Plan has weighted the competing interests for using Mystery Bay including the evaluation of mooring buoy placements; and

WHEREAS, permitting additional mooring buoys in Mystery Bay may exacerbate problems associated with over use of the bay and lead to potential shellfish closures pending adoption of a new Shoreline Management Master Program which incorporates the National Shellfish Sanitation Standards; and

WHEREAS, it is in the public interest to protect commercial shellfish harvesting in Mystery Bay;

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Jefferson County as follows:

SECTION 1. A moratorium is placed on submittals of shoreline permit applications to the Jefferson County Department of Community Development for placement of mooring buoys in Mystery Bay, except when: 1) the state Department of Health notifies the Jefferson County Shoreline Administrator that movement or placement of a mooring buoy would contribute to preventing or lifting a shellfish harvesting closure; or 2) the Jefferson County Shoreline Administrator determines that an application for the

movement or placement of a mooring buoy must be accepted and reviewed by Jefferson County in furtherance of an adopted Mystery Bay Management Plan.

SECTION 2. Pursuant to the provisions of ESHB 1379 which amends and adds sections to Ch. 90.58 RCW, the Shoreline Management Act, this moratorium does not affect any lawful mooring buoys in place at Mystery Bay on or before the date this Ordinance becomes effective.

SECTION 3. Severability.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

SECTION 4. The work plan is hereby incorporated by reference, see Attachment A.

SECTION 5. Effective date.

This ordinance shall take effect immediately after passage and shall remain effective for six months or until repealed by the BOCC.

APPROVED AND ADOPTED this 22nd day of November, 2010

SEAL:



JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS

David Sullivan, Chair

Phil Johnson, Member

John Austin, Member

ATTEST:

~~Raina Randall,~~
Deputy Clerk of the Board

APPROVED AS TO FORM:

David Alvarez
Deputy Prosecuting Attorney

Attachment A Workplan

Issue: The issue is the threat of closure of shellfish harvesting in Mystery Bay because of too many boats anchored or moored near shellfish beds.

Strategy: Continue collaborative efforts between tribal, federal, state and local governments, including the public that implements the objectives of the Mystery Bay Management Plan.

Calendar of events:

November 23, 2009	Six-month Moratorium on mooring buoys was placed by BOCC for a period of 6 months.
March 1, 2010	Jefferson County formally submitted the Locally Approved Shoreline Master Program (SMP) to Washington State Department of Ecology (DOE).
March 25, 2010	The State Department of Health reclassified the commercial shellfish growing areas in Mystery Bay from conditionally approved to approved.
April 20, 2010	Washington State Department of Ecology (DOE) conducted a public hearing on Locally Approved Shoreline Master Program at Fort Worden State Park.
May 11, 2010	DOE closes public comment period on the Jefferson County Locally Approved SMP.
May 23, 2010	Six-month Moratorium expired.
May 24, 2010	Second six-month Moratorium is approved by the BOCC for a period of 6 months.
May – November 2010	DOE and Jefferson County staff reviewing oral and written comments received during the public comment period on the locally approved SMP
November 30, 2010	Jefferson County to provide DOE with a summary response to issues identified during the public review process for the locally approved SMP
November 30, 2010	The quarterly meeting of the Mystery Bay Stakeholders group at the Point No Point Treaty Council meeting room
December 2010	Within thirty days after receipt of the local government written response, DOE shall make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020
January 2011	DOE shall either approve the locally approved SMP as submitted, recommend specific changes or deny the proposal
May 22, 2011	Either the moratorium is lifted with the DOE and Jefferson County adoption of the new SMP or the moratorium expires per the statutory limits.

The remedy of the issues and circumstances:

The moratorium is effective from November 22, 2010 through May 22, 2011 and/or to the date that Ecology approves the SMP. Once DOE approves the new SMP, the moratorium would be lifted and applications for mooring buoys would be processed under the new SMP to a decision point of approval or denial. The moratorium on mooring buoys in Mystery Bay cannot be extended beyond May 22, 2011 as provided for in RCW 90.58.