



District No. 1 Commissioner: Phil Johnson
District No. 2 Commissioner: David W. Sullivan
District No. 3 Commissioner: John Austin

County Administrator: Philip Morley
Clerk of the Board: Lorna Delaney

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MINUTES
Week of March 14, 2011

Chairman John Austin called the meeting to order at the appointed time in the presence of Commissioner David Sullivan and Commissioner Phil Johnson.

PUBLIC COMMENT PERIOD: The following comments were made by citizens in attendance at the meeting and reflect their personal opinions:

- What impact could the disaster in Japan and the nuclear fuel rods melting in 3 reactors have on the people of Jefferson County? What is the County doing in the hotel business (Brinnon)? Paradise Bay Seafood provided jobs for people when the net pens were operating. There is a tremendous amount of flooding in the Discovery Bay area.
- There is concern that the Board will not separate shellfish aquaculture from net pen aquaculture in the provisions of the LASMP.
- Appreciation was expressed for the Board allowing all of the changes to the LASMP to be the subject of a public hearing. A comparison was made between the 2011 budget and the 2004 budget. The 2011 budget is twice as much. The Port Townsend School District may be out of money by the end of the year and if they write checks they will draw down the County reserves.
- There is a bill to allow private corporations to build infrastructure in areas where local government doesn't have the money to do it; in the future this area will have the same type of disaster as Japan and it is imperative to get the UGA underway to broaden our economic base in case of a tragedy.

APPROVAL AND ADOPTION OF CONSENT AGENDA: Commissioner Johnson moved to approval all of the items as presented. Commissioner Sullivan seconded the motion. The Chair called for a vote on the motion. The motion carried by a unanimous vote.

1. **AGREEMENT NO. C14950, Amendment No. 29:** 2007-2011 Consolidated Contract; Additional Amount of \$6,366 for a Total of \$2,796,563; Jefferson County Public Health; Washington State Department of Health
2. **AGREEMENT NO. N18867:** Joint Plan of Responsibilities for Regulation of Water Systems in Jefferson County; In the Amount of \$6,000; Jefferson County Public Health; Washington State Department of Health
3. **AGREEMENT NO. 0963-67987-02, Amendment No. 2:** Developmental Disabilities Services; Reduction In the Amount of \$15,315 for a Total of \$645,925; Jefferson County Public Health; Washington State Department of Social and Health Services (DSHS)
4. **AGREEMENT, Interagency:** On-Line Food Worker Training, Testing and Card Issuance; In the Amount of \$7.00 per card; Jefferson County Public Health; Tacoma-Pierce County Health Department
5. **AGREEMENT:** Development of an On-Site Septic Loan Program; In the Amount of \$534,770; Jefferson County Public Health; Clallam County Environmental Health Department

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6. **AGREEMENT NO. CR1873:** Public Outreach Services for Paradise Bay Road, Phase II; In the Amount of \$20,838.35; Jefferson County Public Works; Triangle Associates, Inc.
7. **Advisory Board Resignations (2);** Climate Action Committee; James Fritz and Tim Behrenfeld
8. **Payment of Jefferson County Payroll Warrants Dated March 3, 2011 Totaling \$757,681.47 and A/P Warrants Done by Payroll Dated March 7, 2011 Totaling \$606,676.38**

COMMISSIONERS BRIEFING SESSION: The Commissioners each provided updates on the following items:

Commissioner Sullivan said there are many challenges ahead as the State budget is balanced. This year has been different because of the unknown budget issues at the federal level; He attended a Public Infrastructure Fund meeting last week. The Port Townsend Business Park transportation improvements and the PUD Sparling Well project were approved for funding.

Chairman Austin reported that he was in Washington DC last week talking with the State Congressional delegation who are supporting programs that impact our County but these programs and services are at risk. He discussed the Dosewallips River with Congressman Dicks who is enthusiastic about doing what he can to encourage the Forest Service and Park Service to fund the repair of the road. He will be meeting with some citizens on the Upper Hoh this week.

Commissioner Johnson went to the ground breaking ceremony for 4 houses being started by Habitat for Humanity. He will be in Olympia again on Wednesday and Thursday as well as the Hood Canal Coordinating Council meeting on Wednesday.

Philip Morley explained that the Public Infrastructure Fund is an offset from the State sales tax. The PIF Board recommended that the PUD and City loan/grants be converted into 100% grants. There is still funding available through this fund and a letter of interest will be issued for projects.

Approval of Minutes: Commissioner Sullivan moved to approve the minutes of the February 22, 2011 meeting as presented. Commissioner Johnson seconded the motion which carried by a unanimous vote.

UPDATE re: Washington State Department of Natural Resources County Income Report: Sue Trettevik, Olympic Region Manager, and Brian Turner, DNR, presented and explained the County income report to the Board. Sue Trettevik noted that the numbers for calendar year 2011 are higher than previously projected because of good response on sales and good prices on stumpage. The Department would like to resolve the \$30,000 payment from the County on the Silent Alder agreement because it has not been received yet.

Brian Turner reviewed the 2011 sales. The Tee Time and Silent Alder sales have both sold at a good price. These two sales total about 7 million board feet which is the annual target for Jefferson County. The majority of the work on these sales should be completed by the end of October with most of the revenue coming in this summer and fall. The Larson Lake sale is almost complete and Skidder Trap sale is currently active. Most of the income from the 2010 sales should come in this year. Much of the wood is being exported to China which is driving up the price here. He then reviewed the sales planned for 2012 for a total volume of 8.6 million board feet.



provisions found in Article 10.6 of this program (i.e. non-conforming development). . . “ because the non-conforming development provisions would also be considered exceptions to the CAO.

The Board agreed with the change made by staff

Item 8 - The County agrees with DOE's required change.

Item 9 - Skipped because it is a duplicate.

Items 10 & 11 - The County agrees with DOE's required change including the 100 foot dock length.

Item 12 - The County agrees with DOE's required change.

Item 13, 14 & 15 - Finfish and Net Pen Aquaculture – After last week's discussion on this issue, staff prepared draft language that blends together the DCD recommendation and provisions in the Whatcom County SMP that has been approved by DOE and not legally challenged. She handed out a 7 page document that shows the entire aquaculture section from the LASMP in one place. She then reviewed the provisions in the document.

Article 2.E Definitions: Includes a definition for experimental aquaculture to be consistent. The word “cultivated” toward the end of the sentence may be redundant and staff suggested that it be deleted from the sentence. Chairman Austin asked how new a “new” harvesting method has to be, to be an experimental aquaculture? Michelle McConnell clarified that since the definition says not previously used in the State, staff would look to State agencies to assist in determining whether something is new or not.

Article 4.3 Allowed Use Table: Currently this table includes Net Pens/Finfish with an “x*” across all designations which indicates the prohibition and DOE requires that this be changed. This text has been struck and the following has been inserted:

	Priority Aquatic	Aquatic	Natural	Conservancy	Shoreline Residential	High Intensity
In-water Finfish (including Net Pens)	Prohibited	Allowed to be permitted with some limitations	Prohibited	Prohibited	Prohibited	Allowed through a discretionary conditional use permit
Upland Finfish	Prohibited	Allowed to be permitted with some limitations	Prohibited	Allowed through a discretionary conditional use permit	Prohibited	Allowed through a discretionary conditional use permit

The reason an in-water use would appear to be allowed in an upland designation is so the adjacent upland is reviewed before allowing the in-water use to assure that use compatibility issues can be addressed if needed. The reverse is true for upland Finfish where they are allowed with some limitations in the aquatic designation because the project may need some connection to the water.

Article 8.2 Aquaculture – No changes are proposed until policy 8 where text is added to limit the scale and the time frame. Philip Morley asked how an experimental practice becomes a standard practice? At the end of the time period the use or development would be determined to be standard if the species cultivated or the technique being used is at that point considered to be common or standard, Michelle McConnell explained. The County would look to State agencies that are involved in the management of these uses to help make that determination.



Philip Morley asked about the impact of potential State budget cuts to DNR? Sue Trettevik explained that several programs are being reviewed for possible cuts including: The Forest Practices program, the Fire program, and Camps and Recreation programs. The fees for burn and Forest Practices permits are being reviewed to increase revenue. The discussion turned to recent Trust Land transfers within the County. There is a Community Forest Bill which, if it passes, will have an impact to several parcels near the Hood Canal Bridge.

BID AWARD: Official County Newspaper: County Administrator Philip Morley reported that an analysis was done to convert the prices to square inch instead of column inch because the two bidding newspapers have different column widths. The price per square inch for the PDN is \$5.33 and for the Leader the price per square inch is \$4.76. There is also additional information regarding the circulation of each newspaper. Staff recommends that the bid be awarded to the Jefferson County/Port Townsend Leader.

Commissioner Sullivan moved to award the bid for the official County newspaper as recommended by staff. Commissioner Johnson seconded the motion which carried by a unanimous vote.

BID AWARD re: Recycling Services: Jack Reid, Solid Waste Manager, reported that staff recommends the bid be awarded to Skookum Educational Programs for the County's recycling services. The monthly rate of the new bid is about \$3,700 per month less than is currently being paid and the services are being expanded slightly. Skookum will take on additional maintenance for cleaning, mowing, and weed eating the area. Al Carins, Solid Waste Coordinator reported that Jefferson County operates its recycling center more hours than King County's recycling center. This bid includes the operation of the Developmental Disabilities employment program with slightly more hours than in the current contract.

Commissioner Johnson moved to award the bid for recycling services to Skookum Educational Programs as recommended by staff. Commissioner Sullivan seconded the motion which carried by a unanimous vote.

Staff Recommendation for Ecology Required and Recommended Changes; Shoreline Master Program (SMP) Comprehensive Update (MLA08-475) (Continued from March 7, 2011): Michelle McConnell, Associate Planner and project lead, handed out a new version of the *Draft Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program* (dated 3/14/11.) She explained that the Board finished their review of the 61 required and recommended changes and gave staff guidance on how to proceed with DOE on each of those items. She then advised that DOE has responded on some of the pending items by e-mail which is attached to the agenda bill. She then reviewed the draft response document and noted that it contains a column with Jefferson County's response.

Items 1 & 2 – The County agrees with DOE's required change.

Items 3 & 4 – Alternatives are proposed.

Items 5 & 6 – The County agrees with DOE's required change.

Item 7 – Alternative proposed. Michelle McConnell reported that additional text was added in roman numeral 1 (see underlined text): "All provisions listed in Section D.2-13 and E1-4 below (e.g. building setback, buffers, CASPs, reasonable use, non-conforming lots, water-oriented use/development) and



Policy 10: This is just a note to reference required change for number 12 in which the last sentence of Policy 10 would be struck since the entire aquaculture section is included in this document.

Policy 11: No change.

Policy 12: This policy would be deleted because it supported the existing prohibition on net pens.

Policy 13: This policy now reads "*Finfish aquaculture, including net pens as defined in Article 2, that uses or releases herbicides, pesticides, antibiotics, fertilizers, pharmaceuticals, non-indigenous species, parasites, genetically modified organisms, feed, or other materials known to be harmful into surrounding waters should not be allowed unless significant impacts to surrounding habitat and conflicts with adjacent uses are voided or minimized.*"

Staff has reviewed this further and feels that it should be amended to say ". . . unless significant impacts to waters (rather habitat) and conflicts with adjacent uses are effectively mitigated." The term "mitigation" is more comprehensive.
The Board asked for further review of this item

Section B. Uses and Activities Prohibited Outright

Items 1 and 2 – This entire section is deleted.

New Section B. (formerly C) Shoreline Environment Regulations

Michelle McConnell reported that this is where the regulations are tailored to be most pertinent to the type of conditions that are in various parts of the shoreline.

Item 1. Priority Aquatic: new text added at the end of the sentence "except finfish aquaculture, including net pens, is prohibited."

Item 2. Aquatic: Remains as written and would allow finfish aquaculture including net pens in this designation.

Item 3. Natural: Added text at the end to say "Finfish aquaculture, including net pens is prohibited."

Item 4. Conservancy: Added text in the second line to say "Geoduck and upland finfish aquaculture may be allowed with a conditional use permit. In-water finfish aquaculture, including net pens, is prohibited."

Commissioner Sullivan stated that the Whatcom County Code allows upland finish in all the aquatic areas with conditions. Michelle McConnell reported that Whatcom County does not have a separate Priority Aquatic, in-water, designation because that designation is unique to Jefferson County. Their regulations allow experimental net pens in all aquatic areas. This recommendation, Michelle McConnell explained is a hybrid between the DCD recommendation with some of the Whatcom County provisions woven into it and is based on earlier conversations with the Board.
The Board asked for further review of this item

Item 5. Shoreline Residential: Added text at end of sentence "Finfish aquaculture including net pens is prohibited." This would mean upland and in water finfish aquaculture.

Item 6. High Intensity: Additional text at the end of this designation reads "except finfish aquaculture, including net pens, may be allowed with a conditional use permit."

Section C (formerly D). Regulations – General

Item 1. No changes

Item 2. New text added to address proposed clarification #21.

Item 3. No changes

Item 4. No changes



Item 5. New text and deleted text as a result of recommended change #13.

Subparagraphs "i" through "vii" are the same. Roman numeral "viii" added text to read "Aquaculture uses and developments, except finfish aquaculture, shall be located at least six hundred (600) feet from any National Wildlife Refuge, seal and sea lion haul outs, seabird nesting colonies, or other areas identified as critical feeding or migration areas for birds and mammals. Finfish facilities, including net pens, shall be located 1,500 feet or more from such areas." This provision came out of the Whatcom County Code.

The Board asked for further review of this item

Roman Number "ix" through "xiv" are unchanged. New item "xv" adds text to say "Aquaculture wastes shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48). No garbage, waste or debris shall be allowed to accumulate at the site of any aquaculture operation." Michelle McConnell explained that this is a provision from the Whatcom County SMP and it is a general regulation that applies to all aquaculture operations.

Commissioner Sullivan pointed out that he feels no garbage accumulating is pretty restrictive. Is there a threshold for garbage accumulation? Michelle McConnell suggested that the Board add some language to this item. Commissioner Johnson asked if this applies to shellfish aquaculture as well? Michelle McConnell answered that is correct. The discussion continued regarding what is considered waste and what is considered part of the process of shellfish aquaculture. The Board members indicated that they would like further review of this language and more clarity through the addition of a definition of what is and is not considered waste.

The Board asked for further review of this item

Item 6. New text as follows: "If uncertainty exists regarding potential impacts of a proposed aquaculture activity, and for all experimental aquaculture activities, baseline and periodic operational monitoring by a County-approved consultant (unless otherwise provided for) may be required, at the applicant/proponent's expense, and shall continue until adequate information is available to determine the success of the project and/or the magnitude of any probable significant adverse impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

Michelle McConnell explained that after further review by staff they feel that the words in parenthesis ("unless otherwise provided for") should be deleted because it is not necessary. This wording was taken from the Whatcom County SMP.

The Board asked for further review of this item

Item 7. New text as follows: "Aquaculture use or development approved on an experimental basis shall not exceed five (5) acres in area (except land based projects and anchorage for floating systems) and three (3) years in duration; provided that, the County may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate by the Administrator."

There is a new policy proposed, Michelle McConnell explained, that connects to this regulation. Because there is additional State and federal regulation of aquaculture and in-water uses, the County will look to the appropriate agencies for guidance on when an experimental project is no longer considered experimental. This is a provision from the Whatcom County SMP.



Section D. Regulations – Finfish

All of the regulations above this point apply to all aquaculture. The following regulations apply specifically to finfish aquaculture. She then reviewed new text for items 1 and 2 and roman numeral “i” through “ix.” These provisions are primarily from the Whatcom County SMP.

Commissioner Johnson reviewed the wording of “vii” and asked if it means that if the project can demonstrate “such means are infeasible” they can continue their operation without cleaning their nets and other apparatus? Michelle McConnell explained that her understanding is that these are all cleaning methods that would be out of the water and the project would be allowed to clean the nets in another manner. Commissioner Johnson expressed concern about this wording.

Section E. Regulations – Application Requirements

Michelle McConnell explained that these regulations regard application requirements. What used to be Item 6 is renumbered as Item 1 and deletes and adds text about proposed bottom, floating/hanging or upland aquaculture. The 9 items listed are to make it clear that upland aquaculture is not excluded.

Item 2 (previously #7): No text changes, just number reformatting.

Commissioner Johnson said that he doesn’t understand why Jefferson County can’t duplicate the Whatcom County regulations. Michelle McConnell stated that she understands that DOE is having internal discussion on this issue tomorrow and they hope to hear back from them at that time. The County can hold up and wait for their feedback or proceed with putting a version out for public comment and through that comment make changes to the LASMP to send back to DOE. There may still be a concern by DOE on the water dependent preferred status of aquaculture, but it’s not clear exactly what DOE is concerned about. Commissioner Sullivan pointed out that the law hasn’t changed since Whatcom County adopted their SMP. Whatcom County’s SMP has withstood legal challenges in other areas and it appears that DOE did their job and that all Counties should be treated equally. Stacie Hoskins explained that there are local circumstances that could warrant a different approach. In providing some version of the Whatcom County proposal it is hoped that DOE will comment on it during the County’s comment period so that their comments can be included in the County’s final decision.

Commissioner Sullivan stated that he would be willing to allow net pen aquaculture in all the aquatic designations with the conditions that have been outlined. Has the County received everything that Whatcom County used to backup what they have in their SMP? Michelle McConnell stated that she doesn’t think the County has all the backup from Whatcom County and that is part of why DOE doesn’t feel the County has adequate science in the record to support an outright ban. David Alvarez added that net pen aquaculture siting wasn’t an issue in Whatcom County. Philip Morley pointed out an oddity about the SMA and GMA in which if the regulatory agency (in this case DOE) lets something slip through and no challenge is made legally, then it stands and is presumed valid, but that doesn’t mean that it can’t be challenged if a new jurisdiction adopts the same thing. It’s about whether it complies with the law and there is science to back it up. The County needs to look at how defensible it is to regulate a water dependent, preferred use. Does the County have adequate information in the record and science to backup what is being proposed?



Commissioner Sullivan added that there could be many people commenting on the County's proposed language if there is a hearing and the Board won't make a final decision until a public hearing is held. Michelle McConnell reiterated that on whatever the County submits to DOE as a response, DOE has the final say on if it is legal and adequately supported.

David Alvarez suggested that the final text approved by the Board in response to the DOE be posted on the County website with enough time before a hearing to give the public time to review and comment on it. The discussion turned to what is left to be done for the Board to approve a hearing notice. The review continued on the required changes.

(See Draft Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program dated March 14, 2011 starting on page 7) Required Changes - Continued:

- Item 16: The County's alternative is more specific with the WAC language.
- Item 17: The County has an alternative proposal to address an oversight to what DOE put in their proposal.
- Item 18: The County agrees with DOE's required change. The supplemental document does not reflect this change and that will be corrected.
- Item 19: The County has an alternative proposal.
- Item 20: The County agrees with the change in the Use Table regarding Boathouses.
- Item 21: is a duplicate of item 16
- Item 22, 23 & 24: The County agrees with these changes from DOE.
- Item 25: The County has an alternative proposal to decline the DOE required change and to keep the text as proposed in the LASMP so that a separation is kept at 300 feet.

Attachment C. Recommended Changes

- Item 1: The County agrees with DOE's recommended change.
- Item 2: The County declines DOE's recommended change, which means there would be no change to the LASMP.
- Item 3: The County agrees with DOE's recommended change.
- Item 4: The County declines DOE's recommended change to add a definition for frontage setback.
- Item 5: The County has an alternative proposal.
- Item 6: The County has an alternative proposal. The County has added text for consistency with the way the provision reads in Article 6.
- Item 7: The County agrees with DOE's recommended change.
- Item 8: The County agrees with DOE's recommended change which is to add the date of adoption to the document.
- Item 9: The County agrees with the DOE recommendation to delete redundancy.
- Item 10: The County has an alternative proposal for increased clarity.
- Item 11: The County agrees with the DOE recommended change for readability.
- Item 12: The County has an alternative proposal to take out the words "pedestrian" and "residential."
- Item 13: The County agrees with the DOE recommended change to make the citations correct and adding some acronyms.



Item 14: The County has an alternative proposal that included the language with a reference to the RCW.

Additional Revisions Proposed (by the County) for Clarification

Michelle McConnell said that these clarifications are proposed to either correct typographical errors, grammatical errors or other issues of clarity.

Items 1 & 2: Address SPAADs and vesting.

Items 3 & 4: Correction of typographical errors.

Items 5 & 6: Changes for clarity.

Item 7: Notation consistency.

Item 8: Corrects an internal reference.

Item 9: This clarification adds the "Diameter at breast height (DBH)" references. Staff recommends that a definition of DBH also be added to Article 2 (definition 2.B.10).

The Board agreed with the change made by staff

Item 10: This reformat keeps things alphabetical.

Item 11: A comma is added.

Item 12: The word "of" is added so that the title reads accurately.

Item 13: Corrects the order of words so that the acronym follows the term.

Item 14: Corrects a problem with the word order.

Item 15: This is formatting for proper grammar in a list.

Item 16: Include the word "vertically" so that it is clear and separate from the other provisions that are similar and related.

Item 17: Corrects the name of the Park.

Item 18: Takes garages off the list for accessory because they have been added to the definition of appurtenance and adds "decks" to the accessory list.

Item 19: This is revised for clarity. Chairman Austin questioned if this was a substantial change by the County (on page 7-32 of the LASMP) because a lawfully established boathouse would no longer be protected? Michelle McConnell explained that a boathouse is an accessory structure and the intent of the statute and the WAC is to ensure that primary structures and appurtenances are protected from erosion. An accessory structure is by definition not necessary, it's optional. Stacie Hoskins pointed out that this provision is addressing new structural shoreline armoring or expansion of it. If there is existing shoreline armoring, it can be repaired to protect an accessory structure.

Item 20: Adds a new item "iii."

Item 21: Clarifies that these use and development activities are not considered development and do not require a SDP.

Item 22: Eliminates redundancy and clarifies how the provision reads.

Pages 10 through 22 of this document lists the County's rationale for each of the possible changes. The Board then continued the discussion on providing staff clarification on the net pen issue.

Chairman Austin asked how much latitude the County has in presenting information for a public hearing? David Alvarez reported that a summary of the topics that will be discussed can be put in the hearing notice.



A draft hearing notice was then reviewed. A suggestion was made that it be posted on the internet and that the changes be distributed. A possible hearing date was also discussed.

The meeting was recessed at 12:07 p.m. All three Commissioners were present when the meeting reconvened at 1:35 p.m.

COUNTY ADMINISTRATOR BRIEFING SESSION: County Administrator Philip Morley reviewed the following with the Board.

- Calendar Coordination
- Legislative Update
- Continued Planning for 2011
- Miscellaneous Items
- Future Agenda Items

Staff Recommendation on Ecology Required and Recommended Changes; Shoreline Master Program (SMP) Comprehensive Update (MLA08-475) (Continued from the morning session): The discussion continued from the morning regarding a hearing notice and the publication deadline of the Leader which is 3 p.m. The discussion then turned to the impact on the schedule for adoption if there is a delay in publishing the hearing notice. The County has indicated to DOE that final action would be taken by April 30. A draft hearing notice was reviewed. The hearing notice was approved by the Board setting the hearing for April 29, 2011 at 6:00 p.m. in the Superior Court Courtroom. (Item later deleted in minutes.)

The review of the aquaculture section of the County's response to DOE on changes to the LASMP continued (see Supplement titled *Draft Jefferson County Response to Ecology on Changes to the Locally Approved SMP; Finfish & Net Pen Aquaculture*)

Page 6. D. Regulations – Finfish, Item vii: If language was added, Commission Sullivan said, that indicates all net and other apparatus cleaning would be done on land, he feels that would take care of all of the problems associated with doing this cleaning in the water. Commissioner Johnson pointed out if the cleaning was done on the beach the wording would have to include how far back from the water it could be done. The concern is the use of toxic substances for cleaning. Michelle McConnell pointed out that there is also a provision in the general regulations D.5.xiii, page 5, which says "*Aquaculture use and development shall avoid use of chemicals, fertilizers and genetically modified organisms except when allowed by state and federal law.*" There is also policy number 11 on page 2 which says "*Chemicals and fertilizers used in aquaculture operations should be used in accordance with state and federal laws and this Program.*" Commissioner Johnson indicated that he feels the issue is covered as worded, but he would like to see the words "unless demonstrated such means are infeasible." Michelle McConnell clarified the rule of thumb is that the entirety of the program applies and everything needs to comply. Stacie Hoskins suggested that a period be placed after "... other similar means," and the following be added as the next sentence "When



such methods have been demonstrated to be infeasible alternative methods may be proposed so long as they are consistent with this program.”

Page 2, Item 8: Chairman Austin asked that the definition of experimental aquaculture be reviewed again. Experimental aquaculture used to mean aquaculture that uses species that have not been previously cultivated in the State of Washington. How is a growing method or harvesting technique determined to be significantly different than what's been done before? General Regulation, Item 6 (page 5) requires that a County approved consultant be hired which could have a chilling effect on using the most effective, up-to-date methods of harvesting or cultivating shellfish. With that in mind he feels that the definition of experimental aquaculture should say “cultivating new species, or using growing methods or harvesting techniques that differ significantly from common practice,” instead of “that has not been used in the State of Washington.” David Alvarez explained that anytime there is room for interpretation by the Shoreline Administrator that interpretation is vulnerable to challenge that the Administrator was being arbitrary and capricious. Chairman Austin questioned how “growing method” is defined? Stacie Hoskins pointed out that Item 6 on page 5 talks about when uncertainty exists and if there is adequate information to figure out the probable significant adverse impacts. Chairman Austin said that he feels the phrase “for all experimental aquaculture activities,” throws in any sort of change in aquaculture activity and makes the applicant vulnerable to be required to hire a consultant.

Commissioner Sullivan pointed out that this becomes an issue if the County allows experimental finfish aquaculture. Chairman Austin noted that this provision is in the general regulations and not specific just to finfish. Michelle McConnell noted that this came from the Whatcom County SMP and staff would defer to State agencies for guidance when something is considered experimental. Chairman Austin suggested the following wording for Item 6 – “If uncertainty exists regarding potential impacts of a proposed aquaculture activity including all experimental activities, these operations must comply with state and federal regulations.” Commissioner Sullivan advised that the essence of an experimental activity would required that you know the baseline and measure and monitor to figure out what is and isn't working. Michelle McConnell suggested to assure the consistency of any change in wording that the WAC and statute definitions of experimental aquaculture activities be checked. The discussion then turned to the differences in the LASMP definition of experimental aquaculture and the State definition.

Philip Morley suggested that the language say “*Experimental aquaculture means aquaculture that cultivates new species or uses growing methods or harvesting techniques that have not previously been used in the State of Washington and that differ significantly from common practice.*”

The Board agreed with this wording change made by staff

Item 5, page 5, xv: Chairman Austin suggested that the last 2 lines starting at “No garbage, . . .” be deleted since compliance is required with all federal state and local waste disposal standards.

The Board agreed with this change as suggested

Item 6, page 5: This provision, Commissioner Sullivan said, is only on proposed and experimental (new definition) activities. David Alvarez noted that anytime the word “uncertainty” is used there is a risk of being accused of arbitrary and capricious interpretation. SEPA as well as other regulations are the vehicle to



protect from impacts. The discussion turned to how this provision applies and what it applies to exactly. Commissioner Sullivan suggested that the regulation (Item 6, page 5) be tied back to the policy. David Alvarez stated that the first determination for the purpose of Item D.5 is if an item requires a Shoreline Substantial Development Permit (SDP). If the provisions of C.3, page 3, are met then no SDP is required. If the use or activity doesn't require an SDP then you have to go to C.5. The discussion turned to how an application is handled that includes uses or activities that are beyond the expertise of staff to review.

Commissioner Sullivan then suggested the following wording for C.6 (Page 5) "For all proposed aquaculture activities that fail to meet any of the criteria in 8.2.A.2, and for all experimental aquaculture activities, . . . " This would give a threshold and make the provision less vague. The trigger for this provision was then discussed.

Philip Morley suggested the following wording "*For all experimental and other proposed aquaculture activities subject to a Substantial Development Period (SDP) or Conditional Use Permit (CUP) the County may require, at the applicant/proponent's expense, baseline and periodic operational monitoring by a County approved consultant, to determine the extent of any adverse impact. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.*"

The Board agreed with this wording change as suggested

Article 4.3 Allowed Use Table, Page 1: Commissioner Sullivan pointed out that the Conditional Use Permit for the in-water finfish in the High Intensity designation, was suggested by the Planning Commission and this use could also be in the Aquatic designation, but not the Priority Aquatic designation. Michelle McConnell reminded the Board that they had asked to prepare a listing of locations where the pending Aquatic shoreline environment designation (SED) is adjacent to the pending Conservancy, Shoreline Residential, and High Intensity SED by Marine Shore Reach (see Attachment dated 3/7/11.) Limiting to the Aquatic only designation adjacent to High Intensity designations yielded about 9 locations while limiting it to the Aquatic designation but allowing it adjacent to Conservancy, Shoreline Residential, and High Intensity gives you a list of about 38 locations. The allowance is substantially expanded with 38 of the 64 marine shore reaches identified which is 59%.

Chairman Austin asked if there is any risk that the finfish industry will say the places net pens are permissible are not practical for net pens? Are there places where net pens could be reasonably placed that are not in an enclosed body of water, and the water is not too shallow? Michelle McConnell answered that they have not been able to find adequate standards for "adequate flushing" through the DOE. There is an old DOE document that defines standards for flushing and depth.

Commissioner Johnson noted that the Whatcom County SMP limits to "limited portion of their life cycle" and "involves minimal supplemental feeding" and "no use of chemicals or antibiotics." Michelle McConnell explained that when staff prepared the version being reviewed today, they tweaked that wording slightly because the LASMP already had a definition for net pens that excludes structures for use in restoration enhancement activities. Commissioner Johnson expressed concern that the wording could be



interpreted to mean that native salmon could be part of a fish farm. Michelle McConnell reported that the typical practice is to hold smolts and hold them in a particular area so that they chemically imprint on a particular place. She then reviewed the definition of aquaculture which says "*Aquaculture means the farming or culture of food fish, shellfish or other aquatic plants or animals in fresh water or salt water and may include development such as structures, as well as use of natural spawning and rearing areas. Aquaculture does not include harvest of wild stock Geoduck on State owned lands. Wild stock Geoduck harvest is a fishery.*" The idea is that aquaculture is an activity targeted at production of food whereas net pens that might be used for the purpose of salmon restoration are not used for a commercial food purpose.

Chairman Austin pointed out that if the policy says that commercial salmon net pens cannot be located in Jefferson County waters, then do we need the rest of that paragraph? Structures solely for enhancement and restoration would not be for commercial salmon. Michelle McConnell noted that this wording is to help clarify to the reader that structures that might look like a net pen but are used for restoration or enhancement aren't considered net pens. Commissioner Johnson stated that he understands what the wording is trying to clarify.

Michelle McConnell then continued a summary from the Planning Commission approach to allow net pens only in aquatic shoreline designations and only when adjacent to conservancy shoreline residential and high intensity designations. This expands from 1 designation to 3 of the 4 upland designations. The remainder of the document that is not in table format is marine shore reaches that either don't have an aquatic shoreline designation (meaning they are priority aquatic) or not adjacent to any of the three upland designations (which means they are adjacent only to natural.) Philip Morley pointed out that there are 24 Conservancy, 25 Shoreline and 9 High Intensity.

Michelle McConnell then read from the County's response to DOE (document dated 3/14/11 on page 20 of 22 for items 13, 14 and 15) "*County recognizes the legal limitations for a complete prohibition of a water-dependent, preferred shoreline use and proposes alternative provisions to allow the use only in appropriate areas to ensure adequate protection of shoreline resources and minimize use conflicts.*" The discussion continued regarding the designations and the impact this provision may have on them and if there are more places identified to allow the opportunity for net pens to be placed.

Chairman Austin pointed out that net pens have to be located 1,500 from the nearest shore and they cannot interfere with navigation. There may not be any place in the Hood Canal where they could be placed without creating a navigation hazard and dissolved oxygen problems because there isn't enough flushing. Commissioner Sullivan asked if the County needs to identify places on the list that can't meet the flushing requirements or if they should be kept on the list because there will be places that won't meet the standards? Stacie Hoskins reviewed Map #11 of Quilcene and Dabob Bays and noted that the extent of the Shoreline designation depicted is 1,000 feet and if 1,500 feet is the standard those bays would be excluded. Michelle McConnell added that it depends also on the definition of adequate flushing. Policy #A3 in the aquaculture section says "*The County should engage in coordinated planning to identify potential aquaculture areas and assess long term needs for aquaculture.*" Commissioner Sullivan asked if there has been a prohibition in Jefferson County on net pens? If that is true what was the mechanism and is it still in effect? The DCD staff will look into this.

DRAFT



The discussion continued about what the DOE is asking the County to include in their policy; how any changes to the LASMP that result from the new policy language would be reviewed by the public and DOE; what policies need to be added or changed to allow for commercial net pen facilities other than commercial salmon net pens which are already prohibited; and the changes needed to the Use Table (Article 4.3 Allowed Use Table, Page 1). Michelle McConnell noted that if DOE agrees when the County sends their response with alternatives to address required and recommended changes and with the alternative proposal, then it is adopted. DOE could also edit the alternative proposal which would then be sent back to the County for the County's agreement before final action to adopt takes place.

The County Administrator noted that the Board is not done with their review and more time is needed. After consideration of the amount of review still needed, and the need to have a hearing, the Clerk checked to see if the public hearing notice that was sent to the Leader could be cancelled. The Clerk reported that the hearing notice was pulled. Staff advised that they will come back next Monday to continue this review and they will bring a draft legal notice for the Board to consider.

NOTICE OF ADJOURNMENT: Commissioner Sullivan moved to adjourn at 4:30 p.m. until the next regularly scheduled meeting or properly noticed special meeting. Commissioner Johnson seconded the motion which carried by a unanimous vote.

MEETING ADJOURNED

JEFFERSON COUNTY
BOARD OF COMMISSIONERS

SEAL:

John Austin, Chair

ATTEST:

Phil Johnson, Member

Lorna Delaney, CMC
Clerk of the Board

David Sullivan, Member