

Shellfish Public Meeting: October 1, 2001
Heritage Hall
6:00 pm – 8:30 pm

NOTES

Opening remarks

John Tennis opened the meeting, reminding the crowd that it was the beginning of the new water year. He outlined the meeting's agenda:

- Welcome from Commissioner O'Sullivan
- Comments on the history and direction of program (Tennis)
- Review of Proposal by Mark Swartout
- Panel Q & A

Tennis noted that this meeting would contribute to a proposed ordinance for the shellfish program that would go through further public review.

Remarks by Kevin O'Sullivan

Commissioner O'Sullivan expressed his concern that the shellfish program must have a balanced, fair approach, focused on identifying problems, coming at issues with science and logic, and not finger-pointing. He is personally concerned with accusations against farmers made without science and logic behind them.

History of program- John Tennis

John Tennis reviewed the history of local shellfish closures, seasonal closures (influenced by heavy rainfall), and the County's obligation to set up shellfish protection districts. The County has worked with other jurisdictions and agencies, as well as the public. The County has met with 18 different stakeholder groups, 18,000 newsletters were sent out, 330 surveys were received by County, a Thurston County Television (TCTV) program was devoted to the shellfish issue, and public workshops/open houses have been held.

The draft proposal today differs from previous plans, taking into account diverse interests, opinions, and suggestions gathered from this public outreach. It is a two-phase program that builds on current activities to protect and preserve watersheds. More study needed for Phase II. The earlier program had \$1.2 million reported in *The Olympian* as price tag, now that number is \$1.1 million, with more work pushed into Phase II.

Tennis noted that the meeting is being recorded and comments will be used to formulate the ordinance to create shellfish districts. The ordinance will have another public meeting and a hearing, prior to adoption.

The Draft Plan- Mark Swartout

Mark introduced himself as a coordinator working across departments and jurisdictions on this issue. The goal is getting districts created. Tonight there isn't a need to get into all

details but to focus on a work program to effectively address the problem. Boundaries are an important part of the ordinance.

Swartout reiterated the number of responses received in the countywide survey and previous public outreach, and briefly discussed the two-phase program created as a result of those responses. He referred to the blue handout that describes the draft plan, highlighting that it is a phased program focused on finding out enough information to appropriately target sources. Phase I highlights testing, correction of pollution problems, monitoring and reporting findings. No new taxes or fees will be imposed without information on sources. Two separate districts are proposed to be created based on watershed boundaries.

Swartout discussed the basic contents of the plan as listed in the blue handout (*September 2001 Shellfish Protection District Newsletter*.) He highlighted ongoing efforts by the Commissioners to work on compliance with existing regulations and programs, and noted that other agencies are working on pieces of the response, such as Ecology's Total Maximum Daily Load (TMDL) plans. Swartout noted that a key component was developing an effective public involvement process—we need support from the public to do the work. He said the County hasn't designed this piece yet, but it will be part of the Phase I program and will help structure what will happen in Phase II. He cautioned that Phase II is not developed yet, and that we need to move forward carefully or we won't go anywhere.

Swartout introduced the panel available for a Q&A period:

- Scott Clark, Water and Waste Management Department
- Kirk Robinson, Thurston Conservation District
- Art Starry, Environmental Health Department Director

Public Questions and Answers

Tony Zinicola, Chair of Henderson Inlet Watershed Council:

Q: What distinguishes Phase I activities from Phase II activities?

A: (Swartout) Phase I is doing what we're currently doing with the current level of funding. If we have to ramp up and do more, that will be Phase II.

Steve Langer, member Henderson Inlet Watershed Council

Q: What is the difference between the \$1.1 million and \$1.2 million figures—what was taken out of the program?

A: (Starry) There are a couple of differences between the earlier proposal and current one. Enhanced efforts to deal with compliance under the nonpoint ordinance, and an operation and maintenance system for septic systems are not in current proposal. Those two components totaled about \$100,000 in costs.

Steve F., citizen:

Q: Ecology is revamping Total Maximum Daily Load plans (TMDLs) under Clean Water Act (CWA), but what does this have to do with shellfish? We don't have to locally deal with TMDLs until state makes us. Smell a rat—how do local efforts dovetail with state efforts?

A: (Swartout) When a water body doesn't meet CWA standards, Ecology must report to the Environmental Protection Agency (EPA) by listing water body on 303(d) list, and Ecology must develop a TMDL plan for the water body. Fecal coliform is a one of the parameters of TMDL. We don't know how this will tie into shellfish district. Ecology will be reporting what they know. I don't see the County funding Ecology's work. We'll be working WITH Ecology to avoid duplication.

Steve F. (follow-up)

Q/Comment: Why not just address shellfish problem and leave TMDLs alone? Too much to bite off—gets into bull trout issues and where they live. Makes me nervous to hear from the County about TMDLs.

Catherine Gylys, shellfish grower in Nisqually Reach.

Q1: I'm concerned with new developments, clearing canopies, increasing storm runoff, stormwater projects put in without consideration of where the shellfish farm is. Concerned with lack of awareness by county environmental planners.

Q2: If two districts are formed, will it be two times the bureaucracy or will they work together?

A: (Swartout) We hopes staff knows where producers are—once the districts are formed this will be more clear. As for having two districts—the characteristics of the two watersheds are very different. Henderson is less rural and ag than McAllister. People need to take ownership of their particular watershed— this helps to separate them out for people to identify with them. I hope it won't double bureaucracy. Some of the same issues should be covered at same time, while unique issues will be dealt with by individual watersheds. We will try to make it as efficient as possible.

Lea Mitchell, citizen.

Q: I'm frustrated by the proposal—makes it seem like these problems are new, but they are the same from 15 years ago. I recognize the good work done by the County, but the proposal seems to procrastinate and ignore the obvious problems. As for improving enforcement and compliance with existing regulations—how do you do that with current funds without compromising current activities?

A: (Swartout) The Commissioners are interested in increasing enforcement and compliance, and this program is still in development. We may be ready to present it by next public meeting. (Robinson): Thurston Conservation District is working on two programs with farmers right now in the watersheds. There is current work being done.

Doug Deforest.

Q: I compliment the County and Commissioners for a plan on the right track and a balanced approach. But why are you not recommending ongoing system of septic

tank maintenance and repair? The Totten-Skookumchuck Plan recommended this. We need an ongoing system to avoid problems.

A: (Starry) Septic programs have changed a lot over the years—two years ago it changed from requiring Operation and Maintenance (O&M) certificates for everyone to a program that focuses more on education. We still require permits for more complex systems (10% of systems need a renewable certificate). The County has considered a variety of proposals on this issue, and the proposal before you is available for comment right now. Your comment is taken.

Nora Jewitt, Woodland Creek resident.

Q1: Not sure how many private and public storm sewer facilities are out there—are privately maintained stormwater facilities going to be looked at?

Q2: Are the current building regulations effective to handle stormwater?

A: (Clark) We are going to look at increasing inspections on privately owned facilities, currently Homeowners Associations (HOAs) do maintenance with our technical assistance. But we can't enforce without a violation. Our hope is to increase public education and information and offer technical assistance. As for the building regulations, national studies indicate that current stormwater facility designs won't reduce fecal coliform levels necessary to protect commercial shellfish harvest. New technologies are being developed, but currently are too expensive to implement on private development.

Fred Michaelson, Nisqually Delta Association and Hogum Bay Heights Homeowner Association.

Q/Comment: Concern that under RCW 90.72, the County is out of compliance with the 180 days given to form a district. Why is the County dragging this issue out? Why not put muscle into McAllister Creek? In April 2000, growers were notified of impending downgrade--- which finally happened Nov. 30, 2000. Tim Ransom formed a stakeholder group to strategize to defeat and overcome problems in the watersheds. Did the Commissioners read that shellfish response program written by the Puget Sound Water Quality Action Team (PSWQAT) and stakeholders? February 28, 2001 was when report was issued—we are now past the 180 day timeline. What the County has provided on the sheet about continuing current activities sounds abominable. I disagree with Mr. DeForest. What are you doing about land use under RCW 90.72? We would like to know why you couldn't move forward on information already provided to County. It seems impossible not to have an idea about Phase II. There are lots of organizations interested in this and would like more action to address problems. Have the Commissioners read the Betsy Dicks report (Ecology)? Have they responded to its conclusions about the watersheds? Are the Commissioners dedicated to fixing these problems?

A: (Swartout) About the 180 day clock—you are right and that is why we are trying to move forward. The problem is that the issue is so big and complicated—we needed the public to help develop solutions.

(O'Sullivan): We have looked at the reports. We just can't take a document and say that's the way it is. We have to get community buy-in from farmers, neighbors, developments, etc. Takes hard work and time and financial support. We want to do it right—motivate,

not mandate. We can have an army of regulatory people, but that isn't the answer. We need community responsibility. And I'll take my time on that.

(Swartout): Creating the district does implement part of the shellfish program identified in the PSWQAT report.

Loretta Linstad, resident.

Q: There seems to be a lack of coordination among county agencies. I attended a 3-hour hearing on a clear-cut near shellfish beds. It appeared that the county environmental planner was not aware of impacts of the clear-cut on shellfish beds downstream. What is the county doing to ensure everyone involved knows what to do?

A: (Swartout) Phase I also intends to get staff focused on issues. Once districts are formed, staff will be coordinated around these.

Ann Simons, resident.

Q: What about prevention? The County recently approved a clearcut along streams feeding into shellfish beds. The public isn't in power, the County is. We need to focus on proactive prevention so we don't have to pay on the back end.

A: (Swartout) Prevention is public education. (Starry): There are some current grant applications proposed by county to deal with animal waste issues and dealing with private stewardship of properties to minimize impacts of runoff, but we don't know if those proposals will be accepted. As for coordination among different reviewers (see Simons question, above), we're making a concerted effort to forward applications considered by county to technical experts. Planning and Environmental Review staff now routinely brings in Environmental Health staff to comment on water issues.

Bruce Wishard, resident, People for Puget Sound policy director.

Q: Phase I seems like existing programs and funding, which is what got us here in the first place. I see declining water quality through the course of Phase I. How long will Phase I continue before we see a real proposal? When will Phase II end? Comment on balance—I agree that a program must be balanced, but that must include solid enforcement. We need that in addition to education and technical assistance.

A: (Swartout) The County Commissioners are working on compliance. There is no time frame set—this depends on the public involvement piece.

Zena Hartung, citizen.

Q: I'm interested in seeing change, and I don't see it here. Heard at last meeting that having clean water was the goal. But I see no goals here, just business as usual, which won't get us to clean water. I ask the Commissioners, if a top-down approach isn't going to work, will an educational approach get us to clean water? If not, why not give people who want clean water some leadership.

A: (O'Sullivan) We're looking at reorganizing the compliance department, cross-training and multi-tasking to try and utilize staff more effectively. I do feel we are showing

leadership. We won't operate out of fear. We want to be logical and make sure that science supports logic.

Q (follow-up by Zena H.): Are you pleased that you are a Commissioner of contaminated water?

A: (O'Sullivan) I feel I am leading.

Q (follow-up by Zena H.) Who are you leading? Are you leading staff to clean up water?

A: (O'Sullivan) We are doing the best we can to respond to people.

Marv Cypert - citizen

Q: I hear a bunch of people concerned with their own interests. I support Kevin's approach to get community buy-in, not just solving individual's problems. Have the growers participated in keeping the water clean? Lots more people than in this room live in the County and the Commissioners must balance these opinions against everyone else's. Beating up on the Commissioners won't accomplish anything. I also have a question about the City of Lacey's involvement—they occupy large portions of the watersheds. Is someone here from Lacey to discuss what they are doing outside the County's jurisdiction?

A: (Peter Brooks, City of Lacey) This is the County's plan, which is why the County is talking about it. Lacey's biggest concern is stormwater and we are continuing to put in stormwater basins to reduce direct discharges into Woodland Creek. Fecal coliform is one of the issues, though, and ponds don't deal with the issue. Ag and failing septic tanks occur mostly in County. Beachcrest septics may be contributing, but most of Lacey is on LOTT.

Q (follow-up by citizen): I haven't heard from Lacey.

A: (Brooks) Lacey City Council signed their portion of the response strategy and passed that along to County. The city has responded.

Q: (follow-up by citizen): If the county were to assess a fee to citizens, would it include Lacey citizens?

A: (Brooks) Yes—Lacey residents in the district will be represented.

Comment (Swartout): We are demonstrating by our dialogue why this public involvement process is working.

Robin Downey, citizen and director of Pacifica Shellfish Growers.

Q: Growers depend upon marine environment and can't move. I agree that we should not point fingers, but that we need to work together. I'm curious about the program budget—why was money taken out of two of the most effective programs? I would like to see the budget and where the dollars fall out. Districts have been formed before—have the Commissioners looked at what worked and didn't work in previous districts? We don't need to reinvent the wheel—we can shorten up time frame and learn from past efforts. Shellfish growers are living in fear and losing money. What happened to the Response Plan? Is it available?

A: (Tim Ransom) I can provide copy of the Plan.

Q (follow-up by Downey): I also disagree with money spent on DNA testing. I want more money into known sources of pollution.

A: (Ransom) There is a strategy in place to review implementation by jurisdictions. The County was assigned the responsibility to set up districts--- it is an iterative process.

Other agencies and jurisdictions have tasks under the Strategy, too.

A: (Swartout) There is a tendency to focus on impacts to commercial shellfish harvesting. Closures affect recreational harvest as well. All programs are developed with local responses and public input. We've looked at other districts, but this current program has to be developed by our residents.

A: (Starry) The differences in the earlier budget and current budget are the removal of those two programs (nonpoint enforcement and o/m of septic systems). Grants and other outside sources help to fund the program—not all county dollars. DNA, for example, could be grant funded to find out what the fecal coliform sources are.

A: (Swartout) The “budget” is not something we've adopted---there are many elements to the response program, such as Roads Department Best Management Practices (BMPs) under the Endangered Species Act (ESA). These types of other programs were included. So it isn't really a budget but proposed costs associated with a shellfish protection program.

Jerry Yamoshita, shellfish grower in Henderson Inlet:

Q/Comment: County Commissioners, Health Officers, Soil Conservation people, PSWQAT, Ecology are all trying to clean up waters, all trying to get cooperation to accomplish mission. No matter how hard they try, they won't succeed without cooperation of all the people. I ask people to assume responsibility—like owning an automobile. Ownership of a house or farm can also hurt people—impacting water and food. When you own auto, you must have emission test and have liability insurance... homeowners also have responsibilities—to ensure the septic system is not failing. Farmers must ensure that livestock aren't creating a pollution problem. The cost would be far less if people would all work together. I would like to see this cooperation with each other and the government. Everyone's help is needed to survive together and not fight with each other.

Bob Bower, PC chair, farmer, and forester.

Q/Comment: 18 months ago a proposal was brought forward to require permits for all septic operators. It was heavy on enforcement—we had a huge turnout from public at a hearing on this proposal. It was very controversial and there were very angry people at the thought of regular septic inspections by the County. I supports a permit system, perhaps with businesses implementing it. Many citizens out there have adamantly opposed mandatory permitting system for septic tanks. I believe it can be sold to the public if limited in scope (such as 200 feet from a water body). The County took a lot of heat on that proposal—it needs to be sold better to people's neighbors and public buy-in is needed. This is a far larger problem than just Henderson Inlet—the health of the South Sound is fair to poor. We are all going to have to buy off on this program. Recently we worked on saving Green Cove Creek—the City of Olympia had given up on urban creeks. The County led the

effort to try and save Green Cove Creek, not the City. But creeks empty into the Sound. Impacts are far reaching.

Susan Markey, citizen.

Q: We've had a year since the downgrade. Why haven't we had public involvement in the last year? What will this new public involvement look like that will be different?

A: (Swartout) Meetings we've done have helped frame the issues. The next step will be to involve dedicated stakeholders to work on the problem. A different type of public involvement process will be needed that can't be done in forums like this. Could take several meetings to focus on each issue involved in the program.

Mark Sloan, Henderson Inlet resident.

Q: I encourage the County to do DNA testing. Why not bring in Washington Fish and Wildlife to address Canada geese and water mammals to address their contribution to the problems?

A: (Swartout) There is a program for geese. Seals are not a major contributor. (Starry): Elevated fecal coliform readings are associated with rainfall events and are worse in southern end of the inlet. But where seals haul out the water quality is pretty good. Closures are associated with freshwater contributions—there is a disconnect with seal areas.

Q (follow-up from Mark): Can the DNA test identify whether fecal is from humans or animals?

A: (Starry) It can break into categories-- humans, wildlife, avian populations, and other general categories.

Swartout noted it was 8:00 pm and asked for a show of hands to go on for 15 minutes? Most folks raised hands.

John Thomson, citizen.

Q: Why not testing spill from Fort Lewis sewer?

A: (O'Sullivan) I was up at Fort Lewis recently. They want to assign someone to work with the County on the issue. We're interested in looking at whole area of impact, not just county lines.

Catherine Gyls, shellfish grower:

Comment: No fecal coliform should be coming out of Fort Lewis effluent pipe.

A: (O'Sullivan) I will be touring their facility and bringing them into the loop.

Tim Ransom, PSWQAT.

Q: Can you explain, "exploring innovative systems?"

A: (Clark) Things that kill fecal coliform are sunlight and ultraviolet light, and where the soils allows us, we can infiltrate stormwater to filter fecal out. There are new technologies including fungi that eat fecal coliform, and we are seeing costs go down on ozonation and other techniques—but they are still cost prohibitive and don't have a proven track record. So now we're dealing with infiltration and preventing fecal from

making contact with stormwater. Stormwater by itself is not a pollutant, but it carries the products of our lifestyle. Pets, geese, agriculture, leaking septic systems all make contact with stormwater. Our facilities are not designed to deal with bacteria.

Swartout.

Q: Can we address an earlier question about the contribution of fecal coliform down the Nisqually?

A: (Starry) The primary source of fecal coliform bacteria in the Nisqually area appears to be McAllister Creek. Closure areas are influenced by McAllister Creek—this watershed is within Thurston County. We've talked with Pierce County, but the primary source appears to be McAllister, within Thurston County. I think it will be good to have the information Commissioner O'Sullivan gets from Fort Lewis.

Tony Zinicola, citizen.

Q: Has the County established internal measures to monitor results of Phase I? To be made public?

A: (Swartout) The staff-coordinating group is working on it.

Q: (follow-up from Tony): But are there outcome measures identified?

A: (Swartout) There are no goals to measure the program against. (Referred to Zena's question). Once we get goals established in Phase 1, we can get to measurable objectives.

Steve Langer:

Q: Three questions: Does anyone have the right to destroy a public resource for private gain? Does anyone have the right to pollute someone out of business? Should we hold people accountable for their actions against the shared public resource? I agree that we would work together. Commissioners, are you committed to cleaning up watersheds in a timely manner?

A: (O'Sullivan) Yes, but not under fear and finger pointing. We are responsible to over 200,000 people. We need to make sure we do up front work so that the program works.

A: (Oberquell) I agree with Kevin. And my definition of timely may be different than yours. Who can define what timely is? Different people might have different definitions. That's why we're here now. We are committed.

(Cathy Wolfe concurred with Oberquell).

Steve Langer.

Comment: I'm concerned that Phase I has no timelines associated with it. I ask elected leaders set the timeline so that people aren't run out of business. We have rights as citizens for an answer.

Fred Michaelson.

Comment: There is no finger pointing or fear. I have been here since the beginning of these meetings. To a lot of us it seems like this has been going on for eternity. The only thing new is that Department of Health (DOH) is shutting things down. The blue sheet is disappointing. We want you to be innovative, and give staff something

more innovative to work on. Example: Ecology is doing farm sweeps, sampling fecal coliform for two months—it is off the chart. TCD is working with Ecology staff to visit farmers. Natural Resource Conservation Service is looking at how farmland works and how deep the groundwater is. There is no one coordinating body that people are working for--- all the work gets lost sometimes. There is no innovative cooperation among agencies—this is what we need. Something better than what we’re seeing.

Ann Simons.

Comment: All of us here have the right intentions. My experience with business says you must have goals, objectives, and measurable outcomes, and a timeline. I want the county to produce this for the public by the next meeting. We don’t want state taking this out of our hands.

A: (O’Sullivan) It is a matter of resources—Department of Social and Health Services (DSHS) recently told us that we have to place violent sexual predators in our community. This is an example of mandates from the state placed on limited staff and local resources. Recent statewide initiatives impact these resources. We have to take a balanced approach, take our time, and not act out of fear.

Swartout took another vote on continuing another 15 minutes and only one person wanted to continue. He invited public to stay and ask individual questions. Comments will be summarized and brought to Board for discussion. He asked for final comments from the panel. Robinson noted that TCD and the County and Ecology are doing innovative things to work with farmers.

The meeting ended at 8:35 pm.

Additional comments and questions were provided in writing. These are:

Q: No name – What does “Route land-use development proposals to interested groups for review and comment mean? Is this different than the current process? If yes, does this mean interest groups will have any authority or will their comments be advisory?

A: The County routinely provides citizens and interest groups the opportunity to provide comments on proposed development. This action says we will provide opportunities to anyone in the watershed if they wish. As stated above this is not different than the current process. The comments are advisory and taken into account as public input into the permit process.

Q: No name – Much of your emphasis is on testing – what kind of commitment does the County have to prevent silting and degradation of water sources in the first place? Specifically, will there be more stringent review of land-use permits.

A. Permits are reviewed with regulations that are meant to protect and prevent degradation of water. Part of the Phase 1 program will be to review current regulations and if needed make recommended changes in Phase 2.

Q/comment: No name – At a minimum, the County could have increased enforcement of non-point and other land-use (*regulations*). No new regulations, only enforcement of existing (*ones*). Solving this problem takes leadership, which doesn't entirely depend upon the entire community buying into the plan. It requires resolve to fix a public health problem