Chapter 16.19 ICC Land Use Review Changes: first page is a summary of the proposal from the Planning Commission; attached materials are a series of proposed amendments based upon the comment letters Mr. Dearborn received.

Composite Review of the Ordinance, dated "last saved 7/12/98 3:16 PM", with the right hand column marked in black where the proposal is changed, based on late amendments received from Staff and Tom Roehl.

Handout as Provided 7/20/98: Amendments to Chapter 16.19 Land Use Review Process, proposed by Commissioner McDowell dated last saved 07/20/98 12:18 PM; using the 7/13/98 public hearing draft, with proposed added language in bold double underline and proposed deletions in bold double line out.

BOARD REVIEW

Amendment #1. Page 2 of the package of amendments [the document Chapter 16.19 ICC with summary of what the ordinance does, page 2 the first EDC request [and page 7 of 7/12/98 document] change to .070 to set out standards for when additional information could be requested and for what types of applications. Board agreed 7/13/98 to strike existing proposed section A and replace same with new A and B as proposed by EDC.

Amendment #2. EDC request to modify .080 and time-frames for approval of permits. Board on 7/13/98 was not comfortable making the change and decided not to set those deadlines, but wanted to discuss the issue again. And a question was raised about .060.F incomplete application cancellation provision, and the Board 7/13/98 decided to eliminate that but made no decision time lines binding.

Amendment #3. EDC request to modify .140. fourth provision, existing code dating back to 1984, be deleted because with complete application process this fourth option is not needed. Mr. Dearborn concurred with that provision A.4 could be deleted. Board agreed to strike #4; strike "or" at the end of #3 and put that "or" at the end of #2.

Amendment #4. EDC request change to .170, Type III Appeals [3rd page of EDC letter] changing dates set for hearing appeals and deciding appeals. In section B, EDC recommends changing 90 days that the Hearing is permitted to make a decision to 75 days. Mr. Dearborn recommended should the Board want to modify those dates, the Hearing Examiner should advise the Board on the modifications. Board agreed with staff recommendation and made no change.

Amendment #5. Page 2 of the Ordinance, .030. Coalition recommendation on aggrieved person definition, .030 [page 3 of the Coalition's list of changes]. The Coalition would like the County as a matter of policy to create a more liberal determination of aggrieved person. The Definition included in the ordinance is verbatim from State law 36.70B. Mr. Dearborn looked at this requested change, and had other lawyers review same, and they did not believe there was any substantive change over existing definition. There is a difference between what has to be shown for "standing" when challenging an ordinance that applies county wide versus challenging the approval of a particular project on a particular piece of property. Staff recommendation is that State statute language be used so there is no confusion. Board agreed to stay with the language as specified in State law.

Amendment #6. Coalition recommendation in section .040. regarding Type I administrative appeal. The Board previously decided that some decisions on Type I permits should be appealable to the Board by only the applicant, as included in the ordinance [bottom of page 3]. The Coalition asks that anyone be able to appeal Type I permits. Permit decisions that are appealable: denial; concurrency determination; SEPA conditions. The County is treating through thresholds, exemptions or other kinds of limiting factors in each of those ordinances, and Type I permit is narrowed to really ministerial actions. Staff recommendation: do not adopt requested change; only party aggrieved by a denial of a Type I project is the applicant; permitting appeal of SEPA or concurrency for a Type I converts them to Type II decisions. Board agreed with Mr. Dearborn's recommendation to not make the change as requested.

Amendment #7. Request by Coalition to reclassify certain Type I decisions to Type II [Table B, .040]. Certain types of Type I permits, accessory y use determinations, shoreline exemptions, concurrency determinations, and rezone amendments be classified as Type II decisions. Mr. Dearborn's recommendation was that the Board not accept the change proposed in this case, these are all decisions already determined as ministerial, almost check-list type decisions and should not be treated as Type II. The Board agreed with Mr. Dearborn's recommendation.

Amendment #8. Request by the Coalition with regard to Critical Area Determination. The Coalition is concerned that some of the critical area decisions need to be categorized in different categories [but were looking at an older version of the ordinance. Table B shows that all critical area determinations are Type II decisions. That is an issue to be

discussed by the Board during the hearing on July 27, 1998 on Ordinance #C-62-98, Fish and Wildlife Habitat Conservation Area Critical Area Regulations and Mr. Dearborn recommended not adopting the proposed change at this time but deal with that question as a part of #C-62-98. For next week Mr. Dearborn will prepare a table showing all of the decisions that can be made related to critical areas and what category they fit in. The Board agreed not to adopt the proposed change by the Coalition and deal with that question as part of Ordinance #C-62-98 on July 27th.

Amendment #9. Request by the Coalition that in .060 the acceptance of applications be increased from 14 to 28 days. State allows up to 28 days to decide whether an application is complete or incomplete from the date received. Proposal is 14 days as the amount of time for the County to allow for that complete application determination. Staff indicated that 14 days would be difficult but believed they could do the complete application determination within that time. Should the Board allow the increase it would effectively extend the whole approval time period: from 30 to 45 days for Type I; from 45 to 60 days for Type II; and from 120 to 135 days for a Type III. The Board had been concerned about allowing more time for those type permits and Mr. Dearborn therefore suggested that the Board adopt the change only if willing to extend the approval time periods. The Board agreed to stay with the proposal as is: 14 days.

Amendment #10. [top of page 7] .060.e – a request by the Coalition with regard to failure to mail complete notice – concern is that if the notice is not sent out the application is deemed to be complete. If 14 days is a reasonable time to make a determination then there is no penalty for making that determination – it is like all the other time frames.

Commissioner McDowell recalled the issue was review for completion versus approval, i.e. testimony last week from Shane Thatcher, Datum Pacific, Inc., and others, that the application is almost reviewed twice for the same thing – completion process and approval process. County staff has to recognize that accepting an application as complete is different than approval, which time would be the time to go back and ask for additional information. Applications should not be accepted unless are the items on the check list are there. The Board agreed not to adopt this proposal by the Coalition.

Amendment #11. Change to .170.d proposal by the Coalition. Current proposal is for staff to be given 7 calendar days to do notice of the hearing; existing ordinance provides 10 days [two full working weeks]. The Coalition would like that time period increased to 14 calendar days. Since staff indicates they have the ability to get the notice published within that 7 day time period Mr. Dearborn recommended the Coalition's change not be accepted. The Board agreed not to amend this section from 7 to 14 days.

Amendment #12. Keith Dearborn proposed an amendment for the Board to consider that would change the public comment time period from 14 days to 21 days. State law allows a public comment period no less than 14 days but no more than 30 days from the notice of application and allows 14 days from the complete application determination to public the notice. If the concern of the Coalition is that 14 days is not enough time to get comments in, the way to address that is to allow more time and he proposed 21 days. The recommendation of the Planning Commission is a 14 day comment period beginning 4 days after notice is mailed, and allows 7 days to mail the notice after the complete application determination. The Board accepted the recommendation of the Planning Commission.

Amendments Proposed by Commissioner McDowell

16.19.030 Definitions

Aggrieved person: ~~**the person appealing a decision of the county who shows that he/she may suffer specific injury and that the interests claimed are those intended to be protected by this chapter or the chapter under which the decision was made.**~~ A person is aggrieved or adversely affected within the meaning of this chapter only when all of the following conditions are present:

A. The land use decision has prejudiced or is likely to ~~**prejudice**~~ cause a specific injury or damage to that person;

B. That person's asserted interests are among those that the County was required to consider when it made the land use decision; and

C. A judgment in favor of that person would substantially eliminate or redress;

the prejudice to that person ~~**caused**~~, or ~~**likely to be caused by**~~ (b) specific injury or damage likely to be caused by the land use decision.

Closed record appeal: An administrative appeal on the record to the Board following an open record hearing on a Type III decision when the appeal is on the record with no new evidence or information allowed to be submitted and only appeal argument allowed. The one exception to the no new submission of information is based or partly based on staff decision available only to the applicant in the situation in which the denial of application is based partly or completely on the