The opt out program would be at no cost to the farmers and would be treated as a technical amendment to the Zoning Code, a Type 4 process. This would be a verification type process to determine that the property is actually eligible for the classification criteria. This would be an option as long as the zoning code stayed with this provision. The burden to make the determination is on the County for the first 180- days; after 180 days, the burden would shift to the property owner; whereas existing ordinance is 90 days.

Jeff Tate confirmed that under the existing code with the 90 day provision, no one had requested to withdraw.

Mr. Dearborn explained that the method used for mapping the soils was based on the 1958 soil survey. It is known that that is not completely accurate, but it is the best there is at the time. The 180 days applies for any prime soil determination. In the case of water rights determination, the farmer would have the burden to prove that he did not have a water right.

Commissioner McDowell was concerned how the farmer would prove "in the negative" as far as not having a water right.

Mr. Dearborn indicated the farmer would have to show that he did not have an issued certificate of water rights from the Department of Ecology [DOE]. Don Meehan pointed out that water right permit applications and issued certificates of water rights were a matter of record with DOE. And Mr. Dearborn noted that Number 4, the last opt out provision, is if the lands are not farmable.

Mr. Dearborn commented that staff looked at a map of wetlands and compared that to the designations and found that there are a lot of wetlands that are also prime AG soils. If farmed they are exempt; if not farmed, they are not exempt. Under the amendment adopted about a month ago they would be exempt under the Critical Area regulation; if Commercial AG, they would not be exempt.

Commissioner Shelton stated that even though no designation is going to change from Rural to Commercial AG, would that still give them the exemption.

Mr. Dearborn's answer was "yes". Farmers on the Committee asked that the County Commissioners reinstate the exemption for Rural AG, and present today is Mr. Muzzall who will l explain why they feel that is reasonable to occur.

As far as the opt in, Mr. Dearborn recalled that the Committee determined that the protection measures were sufficient and no further protection needed for Commercial AG lands than those already in place. He referred to his memo that outlined most of the protection measures the County has [8/17/99 memo on record]. Opting in to the zone will give small farmers the nuisance protection that large farmers have. For 10 acres and larger, it will remain a Type 1 decision, but for 5 and 10 acre parcels it would by Type 2 decision, appealable to the Hearing Examiner.

Commissioner McDowell asked that with the 5 acre opt in whether the farmers have to state what the purpose is.

Mr. Dearborn stated that the proposal from the Committee did not state that, but that issue was discussed and there was some concern about that. The property would have to be in the AG tax program or be able to demonstrate the eligibility to be in the AG tax program, but no restriction on the type of use. These are subject to SEPA and the responsible official could impose conditions on the use of the property to deal with questions like that. There are requirements of animal management plans as well for small parcels but he was not sure it applied to 5 acres parcels; but there is nothing recommended by the Committee other than to acknowledge the concern.

Jeff Tate knew that anything less than 2-1/2 acres requires an Agriculture Management Plan if in a RAID.

Commissioner Thorn thought perhaps this was an appropriate topic for the Planning Commission to deliberate on.

Another thing Mr. Dearborn pointed out was that you cannot be in the Rural AG zone and be in a RAID. The designation criteria proposal came from the Committee's "Farmer's Caucus" which consisted of both small and large farmers who all participated and came out with a proposal they felt could be supported collectively. Everyone felt the opt out process important, that it should be a simple process and that there should be an opt in process for small farmers.

Ray Gabelein, Jr., Langley, had a question about how many members of the Committee were from South Whidbey. He was given the names of those members and referred to the list of members on record. He was especially concerned that if the County took away the exemption for Rural AG, that it would mean almost the death of Rural AG on South Whidbey.

Commissioner Shelton made the point that it was not the Committee, Planning Commission or the Board that took away the exemption; it was the Growth Hearings Board. He could only assume that some of the property Mr. Gabelein was concerned about was his own property and that of his family. He suggested that one of the things that might be appropriate would be to opt in.

But Mr. Gabelein didn't think he could because it was diking and drainage property.

Mr. Dearborn clarified that that would not prevent him from opting in. Jeff Tate noted there was a total of 570 acres of Commercial AG on South Whidbey.

Roger Nelson confirmed that consensus of the Committee was that the exemption needed to be included for Rural AG.

Commissioner McDowell thought Mr. Gabelein's statement really profound and convincing, that by not having that exemption for those lands farmed in Rural AG, that that would be the death of that way of life.

Mr. Gabelein went on to say that he was raised on a farm but now actually has probably what is considered a hobby farm, obvious he can't make a living and send kids to college solely on farming there. He explained he was speaking mostly about the situation he sees on South Whidbey. The biggest problem would be if the exemption is taken away for Rural AG. Examples where he thought this would be a problem on South Whidbey were: Cultus Bay area - the low lands that have been farmed and working adjacent to the buffer of wetlands; same is true for Maxwelton Valley. For Long's Farm he thought there would be a huge loss if they were not able to farm in those areas of wetlands or buffers, and the same for the whole Bayview march. Mutiny Bay has some farming in the low lands too adjacent to wetlands or buffers. He hoped the County would fight to keep that exemption for Rural AG. When a farmer loses the use of a couple acres here and another there, it can make a big difference. Most farmers just want to continue doing what they are doing. Taking a little here and a little there is a problem and also the younger generation does not seem to want to pick up from there so it's harder and harder to keep going and it will impact everything farmers have been doing. Instead of growing crops, hay, running cattle, etc., those fields will grow houses and pavement. He asked the Board do something to keep the exemption for Rural AG.

Commissioner Thorn remembered that the Committee debated a classification such as CA-1 and CA-2, but could not come up with how to distinguish between them, and he suggested perhaps that was worth further consideration.

Mr. Dearborn mentioned that lots of counties exempt AG from Critical Areas ordinances whether they are designated long term commercial significance or not. Island County would be one of only a few counties that do not, and this County is not doing so because of the Growth Board decision.

Commissioner McDowell recalled Mr. Gabelein's testimony saying that Rural AG on South Whidbey is almost not commercially viable for those who want to send the kids to college; by losing small or large amounts of land it makes it less and less viable to stay in farming.

Mr. Dearborn stated that in order to do what is now being discussed would require preparing and introducing an ordinance reinstating the exemption for Rural AG and hold hearings on that ordinance, and the Committee is recommending that occur.

Chairman Shelton acknowledged that Ray Gabelein was not the first person from South Whidbey to testify about the same issue; Fred Frei, Jr., has testified on the same issue.

Mr. Gabelein expressed a desire to see the County go to court on that particular issue. And the Chairman stated that the County had reserved that right to do so.

Ron Muzzall stated that the Committee work had been a good experience. Both ends of the spectrum were represented on the Committee and the Committee dealt with some dicey issues. They did caucus and came up with proposal which really was more towards the preservation side, and the Committee as a whole agreed and were able to come up with proposal that represents that give and take. Addressing the issue of wetlands brought up by Mr. Gabelein, he recalled that back in 1987 when dealing with wetland issue in the County there were varying degrees as far as what constituted wetlands and there was a lot of fear on the part of farmers that it would include such things as ditches, irrigation ponds, etc. He saw the same situation today as far as Rural AG is concerned. He likewise gave some examples, specifically: Waterloo drainage – and down across Whidbey Golf and Country Club, then on to Fakkema's. At one time there was a drainage district. Large areas in there pool up in the winter and then drain out; all of it farmed. Waterloo marsh itself he found interesting Isaac Ebey took cattle up there and pastured them in the 1840's. A good portion of that falls in the Rural AG zone. He noted an entirely different topography in that area from that in Ebey's Prairie. Some