

Skagit County Board of Commissioners
Work Session: Shoreline Master Program Update
February 7, 2022

Commissioners: **Ron Wesen (District 1)**
 Peter Browning (District 2) – Chair
 Lisa Janicki (District 3)

PDS Staff: **Hal Hart, Director**
 Betsy Stevenson, Senior Planner/Natural Resource Manager
 Peter Gill, Long Range Planning Manager

Others: **Jason D’Avignon, Skagit County Deputy Prosecuting Attorney**
 Dan Nickel, Shoreline Master Program Consultant
 Tom O’Brien, Ecosystem Services Division Manager, Washington
 Department of Fish and Wildlife

Chair Peter Browning: All right, good morning. I’m Chair Browning. It’s 11 o’clock on February the 6th, Monday – February 7th – I’m sorry, February 7th, and I’d like into call to order the Board of County Commissioners. But before we begin, please rise and join me in a salute to our flag.

(All recite the Pledge of Allegiance.)

Chair Browning: Thank you. Well, we have an hour here today with Planning and Development Services – Hal Hart – and we’re going to be talking about the Shorelines Master Program, and this is a work session. So I’m turning it over to Peter Gill, it looks like are the spokesperson today, right? Peter?

Peter Gill: Good morning, Commissioners. Yeah, Hal, I don’t know if you wanted to say anything to start us off?

Hal Hart: Yeah. Good morning, Commissioners, and I’m fine with Peter doing most of the talking today, but I think it’s really important that we’re able to answer the questions you may have today or questions you’ve heard from the public or things of that nature. It’s also really important that we discuss the difference between the recommendations from staff and any difference between recommendations from the Planning Commission. So any of those things will be important to flesh out today. So thank you, Commissioners.

Chair Browning: Great. Thank you.

Mr. Gill: Thanks, Hal. Yeah. So today we did want to talk about the Shoreline Master Program. I guess this is our second work session with you all. The first was on January 25th. We did send a memo for this meeting so you should have that in your meeting packet. The first few pages just describe what we’d like to do today, which is mainly go through the Planning Commission recommendations and the Department recommendations and get your feedback on those.

But before we get into that, we also wanted to talk about whether you want to have a public hearing on the local adoption of the plan before it goes to the State. And then if you do want to

have a public hearing, what would you like to have a public hearing on, in terms of what document would we put out for public comment? So those are a few of the things we'd like to do before we get into the specific recommendations from the Planning Commission and the Department. So if you're comfortable with that now, we could probably talk about the public hearing before I go on into the recommendations.

Chair Browning: Commissioner Janicki?

Commissioner Lisa Janicki: Yeah, I just – you know, this is such a huge project and has, you know, impacts to so many folks in Skagit County I just – I felt like a public hearing, although not originally scheduled for a public hearing in front of the Commissioners – I think we'd be remiss in *not* having a public hearing. And I know Ecology may and probably will call for a public hearing, but that's not the same as doing it locally on Zoom. I don't know. I'm in favor of pausing and taking the time for that public hearing.

Commissioner Ron Wesen: Yeah, I agree we should have a public hearing and I would assume it should be based upon whatever the three of us want to put out for our final copy.

Mr. Gill: Okay.

Chair Browning: And I also agree.

Mr. Gill: Okay. Great. Well, Jason D'Avignon from the Prosecuting Attorney's office is here, and he's working up – he *will* work up a resolution for that public hearing with the timing and the public notice and all those things. So we will get that drafted up for you all.

Chair Browning: Great.

Mr. Gill: Great. So I guess that moves to the next question about what we would want to put out for – to get the public comments on. Right now we have the April draft Shoreline Master Program that has all the comments and track changes that led up to that public release draft from April of 2021. So we have that, and then we have the Planning Commission recommendation that is in the recorded motion, and then we also have the Department recommendations. And so in order for us to put out something fairly clean for the public to know what they're commenting on, your input on ___ (short skip in recording). I think they will help us to do that. So if you are in a position and you feel like you can move one way or another, that will help us out a lot in terms of getting a draft out for review. Does that make sense? Any questions on that?

Chair Browning: I guess just in – just exactly do you want from us to help you make that decision?

Mr. Gill: Well, so right now we have prepared that matrix or the tables that are in the memo. They're Appendix 1. And that lists out the 17 recommendations for amendments to the Shoreline Program that the Planning Commission recommended. It also shows kind of some of the Department recommendations on about half of them that have slightly different connotation or need of a change. And so if you clearly want to go with the Planning Commission recommendation in the updated draft, if you let us know then we can make the Shoreline Program that we put out reflect that and we could, you know, we could either keep the Department recommendation in a comment on the side or we could not even include it, depending on what you want to do.

But Betsy Stevenson from natural resources department or division – or *team*, I should say, of Planning is here, as well as Dan Nickel from the Watershed Company, and they're prepared to

run through each of those with you all today and kind of feel out, if you have a strong opinion one way or another, how to go. Does that help?

Chair Browning: It helps. What would your timeline be? What would you like as far as a timeline in getting back to you with this information from the Commissioners?

Mr. Gill: Well, if we could do it today at this meeting, on some of it anyway, that would be helpful. And we'll take whatever you can give us today. If it's too quick, then we will have to put it all out and just see where – see what the public comes back with.

Chair Browning: Well, let's have at it then.

Mr. Gill: Okay. So great. So yeah, so the Planning Commission did publish the recorded motion. You all got that on December 14th. It had about 17 different changes in there. Betsy and Dan prepared the table that is attached to your memo that describes all of them. But today we've got some slides that show the Planning Commission recommendation and the Department recommendation side-by-side, and we wanted to run through those now with you all. So I am going to go ahead and share my screen and I will turn it over to Dan and Betsy.

Dan Nickel: Thanks, Peter. Can you hear me okay?

Mr. Gill: Yes, thanks.

Mr. Nickel: I guess between Betsy and I we're planning to kind of jump back and forth between these topics. And Peter explained it pretty well. We plan to just kind of walk through. There's about nine different Planning Commission recommendations in which the Planning Department has a response to of a differing opinion. So we're going to run through those. And then there's a couple of areas that the Planning Department has also recommended changes that the Planning Commission did *not* recommend, so we do want to mention those to you as well.

As Peter indicated, you know, if you can provide us feedback today maybe and save your questions till the end, or you can ask questions as we go through this to provide any direction. That would be great. If not, like Peter mentioned, we can always create a new version for the public hearing that includes both the Planning Commission's recommendations as well as the Planning Department's response.

So I guess, Betsy, I think you're on for the first one. You want to jump in there?

Betsy Stevenson: Sure. Thank you. So the first item from the Planning Commission recommendation was about public access, including the Countywide UGA Open Space Concept Plan. They recommended that we take that out as part of it. The staff still recommends that it be retained as written. A necessary component of the SMP is a public access plan. The Skagit County UGA Open Space Concept Plan is referenced in the public access provisions of the SMP public review draft but it's not binding. Together with the Comprehensive Parks and Recreation Plan, it provides guidance for where public access *may* be most beneficial to the public. The SMP Update simply encourages that public access be consistent with these two documents. Based on public comment, the Planning Commission discussion, and the Department recommended some proposed clarifying language, which is under number 4 in this section, to read: "The Skagit County UGA Open Space Concept Plan is a voluntary plan." So we added that language to make it more specific – that it *is* voluntary and it's not a regulatory document. And the UGA Open Space Concept Plan and the Skagit County 2020 Comprehensive Parks and Recreation Plan provide for a connected network of parks, open space, and trails and together constitute Skagit County's

Shoreline Public Access Plan, which provides more effective public access concepts than individual project requirements for public access. So the Planning Commission recommended, as you can see by that strikeout, that that be taken out and not included as part of our public access plan. So the staff still thinks it's important to keep it in there because it is a document that was adopted and approved by the County. It is conceptual in nature and it does identify some public access areas in the county and it *is* a voluntary plan. It's just something that we would use as a resource when we were looking at shoreline access and public access opportunities with applicants that are required to address that issue as part of their proposal. So I think there's a lot of language here that doesn't necessarily – that'll relay a little bit better in another section when we talk about public access, so I'm going to hold off on talking about that until that section.

Commissioner Janicki: Betsy, could you just – the sentence, the language that clarifies that the UGA Open Space Concept Plan is voluntary. That – where does that go? Where is that getting inserted?

Ms. Stevenson: It would be right before on A there – as I'm pointing to my screen. Sorry about that! You can't see me pointing. A, where they've deleted that, it would be right before that.

Commissioner Janicki: Okay.

Chair Browning: Commissioner Wesen?

Commissioner Wesen: Yeah, thank you for that, Betsy. A couple things on that. You mentioned the Skagit County UGA Open Space Concept Plan has been adopted by Skagit County?

Ms. Stevenson: Yes. Sorry.

Commissioner Wesen: And so you're just trying to clarify that is what you're doing there.

Ms. Stevenson: Well, my thought basically is yes, we're trying to use the Open Space Plan as part of our Shoreline Public Access Plan because we're required to do a public access plan. And it does provide a lot of the information that we are required to put together and gather, and since it's already there and it's something that's already been approved by the County it seemed like a reasonable assumption to make that we could utilize it instead of creating a new one and starting from scratch.

Commissioner Wesen: And the other thing you mentioned, you know, the nexus to the proportionality of what access is. I think that's a concept that people have a hard time understanding.

Ms. Stevenson: Yeah. I was going to talk about that one a little bit later because there's another section on public access that it may be a little bit more relatable to. But yes, meaning – you know, "nexus" means that there has to be a connection between whatever the proposal is and the impacts of that proposed project on public access and the potential increased demand for public access. And then the proportionality rule, these are both things that have gone through the courts so these are legal things that we have to look at. The proportionality is that the public access is proportional to the impacts of the development. So the first one is there has to be a connection, first of all, with whatever public access is being talked about – a nexus – and that the increased demand requires that public access. And then the proportionality is whatever – then you've determined that there *needs* to be public access, that that public access is proportional and kind of connected to the proposed project that has the impacts that requires the public access.

Commissioner Wesen: Thank you.

Ms. Stevenson: Next slide, please, Peter. Unless there's other questions. Sorry, I should – I got ahead of myself. I'm sorry. Just jump in.

Commissioner Janicki: So are we going to make a – are we poised to make a – to give direction to staff here which way we're going? Are we going to do this item by item or are we going to – yeah.

Ms. Stevenson: Whatever you're comfortable with, I guess is what I would say. Other people may weigh in. We would love as much direction from you as we can get today, but if you want to do it as we're on the topic or if you want to wait until the end or if you don't want to weigh in on it at all today. I think whatever is your pleasure.

Commissioner Janicki: I'll defer to the other Commissioners. I mean, I know that it wouldn't make sense to come by and, I mean, look at one and the other one on public access – I think that's done, like, at 5 or 6 or something – together. But I mean I don't know. Chair Browning, I'll leave it to you. I just don't want to lose that process if we've got to make up our minds here.

Chair Browning: I'm comfortable keeping track of what we – how we feel and then making it available to the Planning Department *after* this. But if you want it to be on camera – Commissioner Wesen, what would you like?

Commissioner Wesen: Yeah, I mean this is – it came out in December. And just to remind everybody, the County Commissioners just said we're going to have a public hearing. So we're going to get more feedback from the public, and then we're going to vote on our final draft that we're going to send down to Ecology, and they may say that some of these things are not acceptable and they'll send it back to us to amend it. And so that's the process. So from my perspective on this first one, I'd go ahead with the Planning Department's recommendation on that and we'll see what the public has to say on it and we'll see what Ecology has to say about it at some point.

Chair Browning: Okay.

Commissioner Janicki: I agree – go with the Department. Keep the language in there and add that voluntary piece.

Chair Browning: I'm comfortable with that also. Okay. Let's do it each item at a time then. That sounds perfect. Yes, I agree with Commissioner Wesen that we should leave it, follow the Planning Department's.

Mr. Nickel: All right, the second item on this list, I'm going to cover here. So this actually stems from originally a Planning Department recommendation back in 2016 when this Shoreline Program was going through Planning Commission review. And essentially it was to remove Table 14.26.420-1. That is the dock standards. But to remove that and just refer all the regulations that related to dimensional standards for docks, refer them to the WAC – WAC 220-663-80 for saltwater conditions and WAC 220-660-140 for freshwater areas, or per the conditions of a hydraulic project approval from the State. Now the intent there originally in 2016 was to allow for direct consistency with State rules from the Department of Fish and Wildlife. Since that time, though, after more review of this it is clearer and Ecology also recommends to include a table of standards like these currently in the draft Shoreline Master Program. That way we have clear

standards for dock width, certain dock lengths, and various components. It is still consistent with the State rules, with many of the hydraulic project approval requirements. So we're not trying to be out of compliance in any way, but it does help the County to have these standards in place. So again, the Planning Commission's recommendation was to remove that table, Table 420-1, but the Planning Department would prefer to keep that table in place.

If there's any questions on that, I'd be happy to clarify or answer those.

Chair Browning: You're saying that tying the County requirements would create more issues than it resolves. Explain that better, if you could.

Mr. Nickel: Yeah, I mean if we were just to rely on the State standards that are in the WACs, that might actually bring up more issues than the County actually needs to handle. There's other requirements in those State statutes that the County doesn't necessarily need to be involved with. So the County's rules here in this table are in some sense somewhat simplistic, dealing just with various width requirements and decking requirements but not necessarily getting into the orientation of a dock, which is sometimes brought into play through State review, you know, and other requirements from the State. In a sense, in the County's mind it would be a simpler process because it's clearer because you have the dimension standards right there in your table.

Commissioner Wesen: Wasn't there an issue about the width of the ramp or the dock, depending on which lake it is?

Mr. Nickel: Yeah, that is also, I believe, covered in –

Commissioner Wesen: So that's not included here? That's later on?

Mr. Nickel: That is another recommendation.

Commissioner Wesen: Okay.

Mr. Nickel: Correct. I believe it's recommendation number 8.

Ms. Stevenson: The other thing I guess I – sorry, Dan – the other thing I would say in terms of trying to implement this at the staff level, is if we just adopt their codes by reference we don't have any on-the-ground, site-specific flexibility like Fish and Wildlife would to adjust and address, because they can use it as guidance and that sort of thing. If we adopt them by reference, we'd kind of have to implement them as-is and so therefore we would be implementing a standard and be responsible for things that might be very different from what the HBA actually says when it's done. So that became problematic as we got into it a little further and realized that was going to be an issue.

Chair Browning: So you would have some flexibility as far as doing administrative decisions if you leave it – if you follow *your* guidelines on this?

Ms. Stevenson: Yeah. I think Dan pointed out that we picked up and are trying to be compliant with both State Fish and Wildlife *and* Ecology guidelines in terms of the dock widths and the different components of the dock, and so that we're trying to be as consistent with them as we can, but we don't want the entire section of their hydraulic code as something that we're going to be responsible for in addition to implementing, also enforcing.

Commissioner Janicki: Betsy, can I just ask: In the Planning Commission column, that last sentence about move the numeric limits on number of boatlifts into the development standards section, is that going to be addressed if we adopt the Department's recommendation?

Ms. Stevenson: I'm going to kick that back to Dan again. He worked on this more than I did.

Mr. Nickel: Yeah, there's actually numerical standards for the number of boatlifts and canopies that are in the table, and the recommendation was to move those standards into the narrative under the development regulations. So that would be – that's an area that would remain consistent with the table, if that makes sense. So if we didn't have the table, the recommendation was to take those numerical limits and move them into the narrative in the development regulations.

Commissioner Janicki: You know, it's counterintuitive to think that writing it all out again in our code makes it easier to administer because it always seems like administering by reference when other things change. But I'm willing to accept the Department's recommendation here.

Chair Browning: Commissioner Wesen?

Commissioner Wesen: Yes, I do too.

Chair Browning: Okay. Good. All right, thank you.

Mr. Nickel: Great. Thanks, Peter. Let's see, the next one here is also related to overwater structures and docks. This is a recommendation related to, again, Table 14-26-420-1, and this has to do with watercraft lift canopies, essentially a boat cover and canopies. The regulations as they're proposed would require the overwater cover to be of a light permeable fabric to allow some light transmission through it. The intent there is to avoid shading into the aquatic area. There's impacts from shading that have been identified that relate to both fish use as well as aquatic vegetation. And so the intent there is to try to minimize impacts to our aquatic environment. The recommendation from the Planning Commission is to remove the requirement that it be light permeable fabric so that it would allow for more of a solid cover. Their reasoning for that simply is – or not simply, but the reasoning for that is because most of these are going to have boats on – these lifts will have boats on them and the covers, therefore, even if they were transmitting light, wouldn't essentially reach the surface anyway because of the boat. The Department still recommends keeping that requirement for light permeable fabric because in certain circumstances a darker, non-translucent canopy cover could still provide shade in areas outside of the boat. So we still recommend keeping that provision in place.

Commissioner Wesen: On this one, there was quite a bit of discussion at the Planning Commission meetings, and I'm going to go with the Planning Commission recommendation on this one.

Chair Browning: I agree with Commissioner Wesen. I have listened to the arguments and I agree with the discussion.

Commissioner Janicki: What's the risk or argument that we may get pushback from the State on eliminating that requirement? And I know there's some DFW folks on this session.

Mr. Nickel: Yeah, that's a good question. On whether or not they're going to be *required* to put in a light permeable fabric, I'm not certain of that at the State level. I know in some areas with the Corps of Engineers where they have jurisdiction there are certain requirements to put in light

permeable fabrics as well. So I think from the County's perspective, we're trying to instead again rely on State or federal guidance, but to have something in place similar to the dock standards which can be consistent across the board. I'm not sure if there's somebody on the call from the State Department _____.

Commissioner Janicki: I was more looking for best science because I tend to – I'm leaning the other direction from the Commissioners, though I know there's a whole pain in the neck component of actually covering a boat. So covering a boat without building the boatlift canopy, you can still cover a boat that's – anyway.

Mr. Nickel: Correct. Yeah, there's a lot of science out there that does speak to what overwater cover does in terms of impacts to fish migration, specifically juvenile salmon, and, you know, its effect on habitat. So, you know, if there's areas that we can make sure that we are minimizing those types of impacts – it's very similar to graded decking on docks. You know, by having graded decking you're allowing light to transmit through the dock surface and therefore minimizing – not eliminating, but you're at least minimizing the impact of shading to that area under the dock. And the same thing applies to a light permeable fabric for an overwater boat cover.

Commissioner Janicki: Dan, how do you reconcile the thought that, you know, we want people to leave riparian buffers and trees and shade over the lake, but we don't want to shade the lake?

Mr. Nickel: That's a really good question too. There is a difference between a hard shade line, one that's very linear and defined that a dock or other types of hard structures will have, versus a more – a shade from a tree or some other similar type of structure on the shoreline provides a different type of shade environment. The issue with docks tends to be that juvenile migrating salmon, which are migrating in the nearshore, will come up upon a hard shade line like a dock and will actually pause or move out into deeper water and go around the dock. And that's actually been studied. Some folks in the University of Washington studied this years ago and documented that movement. And it puts them in more of a predatory risk going out into deeper water or areas where their predators might reside. And so it is different than having trees along the shoreline. But that's a very common question that does get asked.

Commissioner Janicki: Well, I'll defer to my other two commissioners. I'm not sure that I think that's the best idea going forward but I'm ready to – I mean, I think you need a decision to move forward for a public comment document.

Ms. Stevenson: Okay, back to me. I know that you guys have heard about this. I know that you're all probably as well versed on it as I am so I'm not going to take a whole lot of time going through it. The laws changed between the time we finished our initial 2016 draft – or the guidelines, I should say, changed. So when we were doing our periodic review update as part of this process in 2017, some new language went into play or is at least clarified and being interpreted slightly differently than it had been in the past as far as forest practice and timber harvests go. So I'm summarizing because I think you guys are all very much aware of this and have strong feelings so I don't want to take up time that we can use someplace else. But the Planning Commission did a lot of work on this. They considered it very carefully and they wanted to change and amend the Master Program as we wrote it to say that timber harvests that are not intended for conversion to other uses consistent with the section of the code should be allowed to include construction of low impact temporary access roads without a shoreline substantial development permit. Roads should be properly abandoned following harvest.

As the guidelines are written and as we understand it, building a road would be considered development and substantial development, based on the cost, and would require a shoreline permit. So we recommend that the language be retained as written. We also understand that the community and the foresters in the area and probably you as well feel very strongly about this. So I think with that, unless you have questions about what we did propose, the language that we proposed left things fairly flexible and what it applied to and what it didn't apply to. The only thing that the State Department of Ecology is, if you are strictly cutting timber, nothing else, just the actual act of cutting the timber itself does not require a shoreline permit or a shoreline exemption. So we wrote ours up basically to cover everything else. But I'm going to stop there to give you guys some time to share your thoughts, because I know you have them. If you have questions of me, let me know.

Commissioner Janicki: So I have to support the Planning Commission recommendation on this one.

Commissioner Wesen: I do too.

Chair Browning: I do as well.

Ms. Stevenson: Pardon me while I noisily go through the pages here. I'm sorry. So this is the other section on public access, where the Planning Commission asked that we – "maintenance of public access should not be the financial responsibility of the landowner." So if you read the whole section on public access, it actually *does* talk about that and that it has to be agreed by all parties before it happens. So Planning staff believes that we did a pretty good job of – and I will say our attorney Jill at the time worked really hard on this section and spent a lot of time with it before it went to the Planning Commission. The Planning Commission had some great conversations and when we came up with the language that we did. But we did talk about – a lot of the question that we had on this one was related to the dikes and using the dikes for public access. That can't happen unless there's an agreement with the landowners, whoever they be – whether it be the dike districts or the landowners who own the property under the dikes. I mean, those are specific situations where the dike districts can't and they've told us so much, because a lot of them don't actually own the property so they can't enter into agreements. So because the dike is there, because they may or may not own the land, it would have to be the districts, the landowner, whoever may want to maintain it. The perfect example is the Padilla Bay Trail. There were several public entities that came together – the County being included as one of those – to determine who was going to maintain it; who was going to, you know, take care of it; who was going to enforce things and put up signage. And it's all very clear of who was responsible for what. So I really believe that the language that we have in there was well written, carefully done, and it would not necessarily be the financial responsibility of the landowner. The landowner is the one that comes to the table and agrees to whatever the agreement is, and it's kind of spelled out in the language in the code that that would happen and would need to include all parties. So they certainly don't have to sign on that. They're not going to get forced to do that, if that makes sense. So at this point in time we would recommend that we leave the language as it's written. And this is where I was going to get into the nexus and proportionality conversation a little bit, but we already did that. So basically where it talks about new dikes and levees being required to provide public access, but it's only where access rights can be secured, meaning the landowners have to agree, everybody needs to agree, and that isn't necessarily going to happen. And as flooding becomes more regular, as I think it may in the future when we get less snowpack and more rainfall, the dikes become more of areas that flood fights will be happening and public access may not be a great idea and maybe those agreements are during certain times of the year when they're open for public access and not all the time when they're out there trying to flood-fight and do things like

that. Because it could actually be real dangerous to be out there at certain times. So those would all be things that would be happening on a case-by-case, site-by-site basis, and I, at least – and I'm going to say the Department – feels pretty strongly about the way the language is worded and written that we've covered that no, it's not going to be the financial responsibility of the landowner – unless they agree to that as part of the agreement between the different parties that would be working on this public access. And I don't think a landowner is going to agree to that if that's not something that they want to be responsible for.

Commissioner Wesen: So Betsy, just to be clear, the Planning Commission agreed with all yours; they just wanted to add that maintenance part. Is that what you're saying here?

Ms. Stevenson: Yeah. They didn't actually change any language but they didn't feel like the language that was in there was specific enough as far as who's actually pay to maintain it. The problem being is that each of those agreements is going to be a little bit different, and the more specific that we get in our code the less flexibility the parties coming together to try to determine what's acceptable and what's necessary and how it's going to work, they may get hamstrung from something that sounds like a really great idea just because of something that we wrote into our code.

Commissioner Wesen: Thank you. Yeah, I would agree with the Planning Department's recommendation there.

Commissioner Janicki: I concur.

Chair Browning: And me as well. Thank you. I very much appreciate this one because your example of Padilla Bay is a great one. It took a lot of cooperation and it *is* different, yeah. Thank you.

Ms. Stevenson: Okay, this one's mine too. I got the short straw – you can tell! No, I'm teasing! So basically we are proposing and have proposed, based on the guidelines and the information from Ecology and kind of the thought process that went through our heads when we were developing the language as well, that floating homes should be prohibited. It is language that we have included in the Residential section, and I have a copy of that in front of me here under Residential Development. So basically under the second section in the Residential Development: When allowed, these uses are allowed in shoreline environment designations subject to the following: single-family residences used in shoreline jurisdiction when developed in a manner consistent with control of pollution and prevention of damage to the natural environment; multifamily housing is prohibited unless served by public sewer and water; and the third one is overwater homes and floating homes are prohibited. So the Planning Commission didn't like the idea of prohibiting anything. They just felt like that language was too strong. So they wanted to allow for the future possibility of floating homes when they can be properly sited, design-supported, regulated, and served by appropriate infrastructures such as access, power, water, and waste disposal. Based on what's happened in the state and other areas for floating homes, I don't think that's going to happen necessarily. And we at this point don't have infrastructure available, so it's really hard to do something. I suggested maybe we put something in a goal or something like that, but they didn't really go for that. They just didn't want us to say that it should be prohibited.

Chair Browning: But this still could be changed down the line if it became an issue. This does not include live-aboard boats, though, right? Those are different?

Ms. Stevenson: Yeah, that's handled differently.

Chair Browning: Perfect. Okay.

Ms. Stevenson: So basically what the WAC says is right there in italics: "New or overwater residences including floating homes are not a preferred use and should be prohibited." So the Planning Commission saw that language "should be prohibited," but if you read through the definitions that Ecology has – and those of you who have been through this before know what that is. "Shall" means shall and "should" means shall unless you can prove that it meets all the guidelines in the Shoreline Program, and floating homes doesn't necessarily do that. And part of the problem that I see is there aren't really great facilities for such things that are in the County jurisdictional areas. They're mostly inside the city limits where you might have a colony – or whatever you want to call it – of floating homes. There may be people that might think going up one of the river channels would be a cool place to be, but we know that that's not necessarily a good idea either, and that's more of a danger than anything. But if they're out in the marine environment they're going to need some protection from wave action and wind action and things like that. We're just not prepared to deal with it. So from somebody who's been interpreting and implementing code for a very long time, it's best to just let people know clearly what you're thinking and not give them a sense that you *might* consider it, but maybe not right now. Right now it's better to say it's prohibited. If at sometime, you know, all of those things are available and we are looking at areas that might just work for that, we can certainly come back and review it and change our code if we needed to.

Chair Browning: I would go with the Planning Department's review on this one.

Commissioner Janicki: I agree.

Commissioner Wesen: Yeah, I agree.

Chair Browning: Thank you.

Mr. Nickel: Great. I think the next one is mine. So this goes back to the dock issues – recommendation number 8 from the Planning Commission. And this is in relationship to many comments that were received from folks in and around Lake Cavanaugh. And kind of stepping back a little bit, the Planning Commission reviewed a draft in early February, an early draft prior to the release of the current public review draft from April of last year. And in that February draft, Table 14.26.420-1, that is, again, the Dock Standards Table. It included a couple of columns, one that dealt with lakes that *have* anadromous fish and one – another column for lakes that did *not* have anadromous fish. And in that version there were different dock width dimensions, where lakes with anadromous fish – again, this goes back to the shading issue that overwater structures can put on an aquatic environment – the lakes with anadromous fish had a dock width of four feet and lakes without anadromous fish had a width, allowable width, up to six feet wide. That's for a single-use pier, so for just a single-family residence. The document that was released in April for public review combined those two columns, and the reason for that was based on feedback that we received from both the Department of Fish and Wildlife as well as the Department of Ecology. And in that version, that table had a dock width of four feet wide across the board. Since that time the Planning Department has recommended to return Table 14.26.420-1 to that earlier version in February that split apart both the – for lakes *with* anadromous fish and lakes *without* anadromous fish to have two different dock widths based on those conditions. The Planning Commission's review of this, though – and, again, based on feedback from public specific to Lake Cavanaugh – was to – their recommendation was to just across the board have for single-use piers to have

them be a maximum width of six feet instead of four feet. Again this is – you know, according to both Fish and Wildlife and Ecology recommendation, to implement a four-foot wide maximum width for lakes with anadromous fish, that would be the Planning Department’s recommendation.

Chair Browning: And this is – the one question that comes up always is: Will the people have to retrofit their docks? And this is not the case. It’s – we’re talking about new docks and rebuilds, right?

Mr. Nickel: That is correct.

Chair Browning: Okay.

Mr. Nickel: And there’s quite a bit in the rebuild scenario. We should recognize that there is quite a bit of retooling that was done to that section on pre-existing docks that *will* allow for docks to be reconstructed in a different configuration as long as they are meeting certain standards – width being one of them. And so for a dock that exceeds, let’s say, a total length or a total size limitation, they certainly can rebuild that in a different orientation as long as the environmental impacts are addressed. The intent of that is to allow flexibility. So for the most part we’re talking about new docks meeting these requirements.

Chair Browning: Great. Thank you.

Commissioner Wesen: So any new dock that’s put in, aren’t they going to have to have impervious so the sunlight can get through that dock?

Mr. Nickel: They would need to have graded decking installed.

Commissioner Wesen: So what difference if it’s four feet or six feet if it’s a graded deck?

Mr. Nickel: That’s a good question. There is still a shade on it, even with a graded deck. It’s not fully illuminated underneath so there still is that shade line present.

Commissioner Wesen: And I think the other thing they brought up was safety and maybe ADA access on some of these docks, so I would go with the Planning Commission recommendation.

they’re just talking about the fixed part. They don’t reference the ramp or the floating –

Mr. Nickel: That’s correct. It was just about the fixed pile portion of the dock.

Commissioner Janicki: So there was a whole bunch of conversation about the safety issue. Is that easily summarized as to what we’re accomplishing if we were to go with the Department’s recommendation?

Mr. Nickel: Yeah, there was a lot of concern and discussion from the Planning Commission, as well as from the public comments, related to safety issues, and that is part of their reason for that recommendation to have a fixed pile portion be six feet wide. There are many areas where you have four-foot-wide piers and they are commonly built to be that width in other areas, but that is still a concern from a safety standpoint. So there is no – I guess in the Planning Department’s consideration a four-foot wide pier is known to be safe but I think with – Betsy, maybe you can answer this question in terms of ADA access: What type of flexibility is built into the requirements to allow a wider pier for ADA access?

Ms. Stevenson: We've had that situation with the Fish and Wildlife boat launch ramp areas when they've got a dock that they're building and they do it to ADA. And I'd have to look at the plans. I don't know if they had to be wider or not. I'm not so sure that they did, but I would have to doublecheck. That's a good question. The other thing that comes to my mind – and just for food for thought; I'm not trying to influence you one way or the other – in talking to Ecology at one point years ago about somebody's dock and how they wanted to build it, it's like, these are places where you're supposed to moor your boat and go get in your boat and go take off and go boating. It's a dock to dock your vessels. It's not necessarily, you know, a place for a lot of people to gather. So they felt that four feet was wide enough to get to and from your boat safely. So that's just kind of where that came from. But –

Chair Browning: I actually go with the Planning Commission in this one. I just think that for the most part the ramp part is not over that much water in most cases.

Commissioner Janicki: Well, the other part of the docks – and maybe I missed it in the listing – was the – it came up with Lake Cavanaugh's conversation about how close to shore the first pilings are and that they had to be a certain distance out and in certain parts of lakes that go deep really fast that wasn't practicable. How does the concern about location of pilings tie into these decisions we're making right now?

Mr. Nickel: That's a good question and I'm not sure I have the answer for the piling location off the top of my head.

Ms. Stevenson: I'm not sure this decision affects that though necessarily. All we're talking about is changing that dock width to six feet for everybody for the Planning Commission recommendation. Right?

Commissioner Janicki: Yeah. I'm just trying to figure out which chart that I'm – maybe that I don't because – to me it all ties together. How do you put in a dock? I get a dock _____. You know, whether it's people gathering on it or boats tied to it, there was that functional part of how do you actually build a dock in certain – given the depth of the certain lakes.

Ms. Stevenson: Yeah, okay.

Commissioner Janicki: So maybe that's just a follow-up that can be – somebody can clarify for me later. And then if we go with the Planning Commission recommendation six feet no matter – again, it's six feet just on the fixed portion, or are they talking about six feet for the fixed portion, six feet for the ramp, and six feet for the floating section? I don't really understand their recommendation.

Mr. Nickel: The recommendation was for the fixed pile portion of it – of the dock. The ramp would stay at – the ramps are –

Commissioner Janicki: At four and eight.

Mr. Nickel: Yeah, ramps are four feet wide and the floating section of the dock can be up to eight feet wide.

Commissioner Janicki: Okay. So I do agree with the Planning Commission's recommendation. I've got that table up in front of me right now.

Mr. Gill: All right. I don't want to jump in here but we are coming up on the end of the meeting. We have about three minutes left and we've made a lot of progress. And I don't know, Chair, if there's room to roll over a little bit longer? Or if we have to wrap up in three minutes, we might want to jump to one or two items.

Chair Browning: I am the only one that has a meeting at 12 o'clock and it's flexible. So if it's okay with the other two commissioners, we could do the – go – we could take another 15 minutes?

Mr. Gill: Yeah, I think we only have four more slides – Dan?

Ms. Stevenson: Yep.

Mr. Gill: I think we need to make sure that we get to the cleanup section – the last two items on our list – before we wrap up. So Betsy, Dan, if you can help me to do that, that'd be important.

Ms. Stevenson: Okay. So I think this one's mine. I'll just keep going in the interest of time. The Planning Commission towards the end of our discussions with them, wanted us to keep the setback averaging provision in the residential development section of our existing Shoreline Program, which, if you're familiar with it, the setback for a residential structure would be 50 feet from the ordinary high water mark or the average of the distances of residences within 300 feet either side of your property, whichever is greater. So it has worked. It's gotten harder as time has gone along to get access to all those properties to do that work. A lot of people don't want you tramping around out there. I remember being out at Big Lake real early one morning out there looking at property and a lady came out in her robe and coffee going, What are you doing? So I said, Oh, well, your neighbor down the way is proposing to do something so I was out there measuring. That's not happening so much anymore. People really don't want you on their property, and sometimes you can't even get on their properties. The other piece of it that's even more important is that now that we're required to integrate the critical areas ordinance requirement, or the critical areas requirements and buffers, into our Shoreline Program, it's just not feasible to do it anymore. Because part of the beauty of bringing this in here is that then somebody will only have to get one permit and not go through the critical areas variance process *and* a shoreline variance process. But the buffers are larger and the averaging just doesn't work. So although I'm glad that they liked it that – that that worked for them before, it just really isn't possible to do it anymore.

Commissioner Wesen: If you're not able to do it, it's not possible, I mean, what are our choices then? I mean, if you can't do it, you can't do it. It's got to work on the ground. I guess the other thing, with our satellites and so forth – the aerial photographs – I mean, how – I mean, they're pretty accurate now so you don't have to be on the ground with a tape measurer.

Ms. Stevenson: Trying to determine the ordinary high water mark without being on the ground is difficult.

Commissioner Wesen: Right, but you're on the property owner's place so you can kind of see. I understand the reason that they like the averaging, but I understand the application to have staff be able to do the work. So I would go along with the staff recommendation.

Chair Browning: I hate giving up the averaging but I appreciate your argument and I would go with your staff argument on this one.

Commissioner Janicki: I agree. And Chair Browning, I don't know if you see hands up on your screen come up.

Chair Browning: Oh, I'm sorry. Oh, Tom. Oh.

Commissioner Janicki: Brian has had his hand up for quite a while.

Chair Browning: I'm sorry, Tom. Please –

Tom O'Brien: Well, thank you. I didn't want to be rude and intrude but, on the other hand I didn't want to be rude and lurk out here in the dark when DFW's name was mentioned earlier. And I just wanted to say that we really came here today to learn and to see how your processes play out. I'm the ecosystem services division manager at Fish and Wildlife, and the riparian ecosystem's recommendations come through my office. And we do look for – first of all, we've appreciated very much the Watershed Group's presentation of the data and their rationale of various determinations. And we do look forward to – also appreciating that you're going to have a public hearing. So we will be commenting to you, we hope directly, and if not before, at the public hearing and probably as well aligning our comments with that of Ecology's when they comment at a later date. And so I appreciate your patience but, again, I didn't want to be rude and just lurk here, and thought I would pop in and say hello and thank you so much for your work.

Chair Browning: Thank you, Tom.

Ms. Stevenson: Okay, moving on to number 13. So this – just how this came about as well, one of the Planning Commission members came to one of the meetings and asked a question about how the pre-existing legally established structures and different uses worked in Chapter VI or Part VI of the SMP. And we talked about it for a while, but seeing that it was going to take some time, I met with him separately for, oh gosh, maybe two to three hours on a Saturday morning to just go over it with him and how it works and what it means and the language that's there. The Planning Commission – he was concerned and wanted to make sure that what was in there, how it worked and what it meant and how we were going to interpret it as far as repairing, replacing or maintaining those structures and uses that were in place prior to the Shoreline Program going into play that would then become pre-existing legally established – what we now call nonconforming, but, you know, we've gotten new language a little bit. This is another section that Jill worked very, very hard on – our attorney at the time – and she spent a lot of time researching and doing the work. This is an area where we tried to align better with our existing code and some of the definitions that we use for replacement, repair, and those things so that it does align well.

By the time we got done with our meeting, he was pretty comfortable with what the code said and how we were interpreting it and how it would be used and providing some flexibility for folks – if that makes sense. So I think since they didn't actually propose any language – what I heard them say when they were having the discussion is we just want to go on the record as recommending to the Board that they make sure to keep an eye on the Planning Department, that we implement and we interpret this the way that it's written now and the way we've described it to them. Because they felt strongly about that. They wanted to make sure that that all stayed in play. So I think this is their way of going on the record to do that. But the sense that I got is that they weren't necessarily looking for code change at the time, but they just wanted to be on the record so that you guys were aware that this was a concern of theirs and they wanted to make sure that somebody was watching us. Which I'm fine with.

Chair Browning: I'm comfortable with the PDS response as long as it doesn't turn into a two-year process, as long as it's something that can move along quickly – relatively quickly. I understand the importance of making sure people realize that shoreline stabilization is an issue and pre-existing structures is something to be discussed. I still – so I would be willing to go with yours as long as you understand the importance of being quick.

Commissioner Wesen: The other issue with that, people need to realize they still have to do a critical area review on their property, correct?

Ms. Stevenson: Yes, but it'll all be integrated into the Shoreline Program.

Commissioner Wesen: Just because they get a bye for a pre-existing footprint doesn't mean they can't do all this – they *have* to do all this other stuff. So that's the issue, I think, not everybody understands. Yeah, I agree with the Planning Department's recommendation.

Commissioner Janicki: Me too.

Chair Browning: Great.

Mr. Nickel: All right, the next two items here are different colored. They're Planning Department recommendations that we discussed with the Planning Commission but they did not get included in the Planning Commission's recommended changes. So I just want to highlight two of these. They're both based on public comments that were received during the 60-day public comment period. This first one relates to the use of – or the reference to using best available science and best management practices. The comment was specific to the geologically hazardous areas section of the SMP. That's Section 14.26.563. But after PDS reviewed the comments in its applicability it actually felt like it was better referenced across all critical areas review processes. So PDS is recommending that this be incorporated into Section 515 – 14.26.515 – as part of the site assessments that use best available science and best management practices as part of that methodology. And that's pretty standard practice across the board and acknowledging that is something that the Planning Department feels comfortable with including. But again, it was not included in the Planning Commission's recommendation.

Commissioner Wesen: I think you've got to include it – best available science, best management practices. That should be what we're trying to do.

Commissioner Janicki: I concur.

Chair Browning: I do as well. Thank you.

Mr. Nickel: And then the last item we wanted to bring your attention to is, again, a part in response to the public comments that were received. This was specific to the area and in the critical areas portion in the Fish and Wildlife Habitat Conservation Area section. It was pointed out that there are actually a couple other riparian buffer functions that were not part of our materials, and those are specifically microclimate as well as nutrient inputs. And these are acknowledged in other best available science documentation as being part of riparian functions. And so there's a suggestion here, a Planning Department's suggestion, to include this into two areas: specifically, the first one in subsection 572. That is just the list of functions that need to be addressed in a review process and then specifically calling out or defining what those represent. So in subsection 573, Microclimate, that would be that riparian vegetation creates small-scale microclimates upon which plants, fish, and wildlife depend. And then subsection (vii) there, Nutrient Inputs: Riparian

vegetation supports substantial populations of insects which are important to the diet of marine fishes like juvenile salmon. Again, this was discussed with the Planning Commission but it was not part of their recommendation.

Chair Browning: A lot of the work on microclimates and nutrient inputs are – it's getting a lot of momentum in all of our salmon recovery stuff. And I think that it's very important to really emphasize. In this role it just emphasizes something that's very essential that hasn't been addressed as much in the past, so I would really like to see it left in.

Commissioner Janicki: Just to clarify – this isn't – this is a – I've got the April draft open in front of me, but all of these would be an add to what was in the April draft. Am I correct?

Mr. Nickel: That is correct. Yes.

Commissioner Janicki: Yeah, so I support adding all of that language in.

Commissioner Wesen: So one question I have with adding that language in: What are we going to do for the applicant when this comes up? I mean, do they – what do they have to do? Or how is our Planning Department going to use this information?

Mr. Nickel: Well, this is part of, you know, documentation that an applicant would need to provide to the Planning Department to analyze riparian buffer functions. There's a suite of other functions that are also included and those include the recruitment of large woody debris; shade; bank integrity; runoff and infiltration; and wildlife habitat. So those are all encompassed into that analysis and so these are just acknowledging that there's other functions that need to be addressed, all of which kind of are included in that together, because they do overlap quite a bit.

Commissioner Wesen: So it's not going to be a totally new study has to be done. It's just going to be adding some more words on what they've already been doing.

Mr. Nickel: Exactly.

Commissioner Wesen: Yep, I'm fine with that.

Chair Browning: _____ comments, just the recommendations from PDS when we're building, we're working on our waterfront, but just telling us what we *can* put in. It's giving us some good advice on what we can put in to create plant life that would then support small salmon life. Really it's been done kind of not haphazardly; it's been done in the past. This would just really formalize that in a much more effective manner. I think it'd be good. So, yes.

Mr. Gill: Great. And that wraps us up. There were two other items in the packet that was distributed to you that had to do with some formatting cleanup in the draft that would help us to present or to put out a new draft. That, we didn't cover it here, but it is mostly about formatting and a couple of cross-references that didn't change the meaning of anything but were mistakes that we had to fix. Dan, is there anything else that you wanted to say about that?

Mr. Nickel: Well, I would just add up here that, you know, there's a number of areas – I guess there's an additional eight items that were Planning Commission recommendations that we did not discuss because the Planning Department, you know, also agrees with those. Those are included in the matrix.

Chair Browning: Yeah.

Mr. Nickel: So those are areas along with the, you know, the cross-referencing and formatting items that Peter just mentioned are also part of our – the whole packet.

Chair Nickel: Well, thank you, Dan. Thank you, Betsy. This is good. This is pretty exciting. It's only – we've been working on this a while! But I look forward to the hearing. I think it'll be really good because we've thought these through so it should be a pretty healthy discussion. But I think it's very justified and, again, a lot of hard work, and I really appreciate that – how important this is. The more I'm working on the salmon recovery stuff the more I realize the importance of especially some of these. So thank you.

Ms. Stevenson: Thank you for your great direction. I really appreciate it very much.

Mr. Gill: Yes, this is very productive and I appreciate the extra time as well. So that's wonderful. Thank you. This is going to help us to get a good draft out.

Chair Browning: Great. Thank you, Peter. Thank you, Hal. And we're right at 12:15 so that was well – 15 minutes well-used. So thank you and we'll see you all somewhat soon, because we'll be following up on this fairly quickly, right?

Commissioner Wesen: That's right.

Mr. Gill: Good. Thank you.

Chair Browning: All right, thank you. We're now out of session.