

Skagit County Planning Commission
Public Hearing and Deliberations: NPDES Phase II Permit
March 2, 2010

Commissioners: Jason Easton, Chairman
Dave Hughes
Annie Lohman
Carol Ehlers
Mary McGoffin
Elinor Nakis
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Staff: Lori Wight, Public Works Stormwater Specialist
Mike See, Public Works Stormwater Coordinator
Tim DeVries, Planning Building Official
Betsy Stevenson, Senior Planner
Kirk Johnson, Senior Planner

Speakers: June Kite
Howard Gulley

Others: Kate Rhoads, Consultant from Otak

Chairman Jason Easton: Good evening. I call this Skagit County Planning Commission meeting to order (gavel). At this time I'll turn – we will begin our public hearing on the proposed amendments to the Skagit County Unified Development Code, Title 14, Section 14.04 Definitions; Section 14.32 Drainage Ordinance; and Section 14.44 Enforcement.

We'll turn this over to staff and let them decide who will go in what order, and then at that time we will turn it over for public testimony.

Lori Wight: Okay. Did we have anyone who had signed in? I'll check the sign-in.

Chairman Easton: Check the sign-in and then give us a quick – Lori, do you want to give us a quick introduction before we turn it over for the public?

Ms. Wight: Certainly. This evening – is my microphone on? Okay, we're good. This evening we're talking about the NPDES – which stands for National Pollutant Discharge Elimination System – permit. The permit requires that we make some amendments to Skagit County Code 14.04, 14.32 and 14.44. The

goal is to prohibit non-stormwater illicit discharges into Skagit County's municipal separate stormwater system and to address runoff from new development, redevelopment and construction site projects in the urban growth areas and the census urban defined – census urbanized areas of Skagit County. So we're trying to be in compliance with that permit.

I'm not sure at this point if we would go ahead and do –

Chairman Easton: Sure.

Ms. Wight: – public testimony?

Dave Hughes: May I ask a question?

Chairman Easton: Sure.

Mr. Hughes: The reason I ask is I know if it's not answered there'll be people who will get up and ask it, so maybe we can kill a couple birds with one stone.

Why is a lot of this area – or why is there a lot of natural resource lands included in this area?

Ms. Wight: Actually these census-defined urbanized areas, those were – actually I'm going to let Mike talk about that because he's done a lot of the research on that and those overlay most of these areas that you might be referring to.

Mike See: Good evening. Mike See, Skagit County Public Works. In relation to the boundary question there, the minimum requirements that EPA passed down to all the state departments of ecology that were developing their permits were to include the census-defined urbanized areas. And the U.S. Census Bureau determines those blocks and areas, and their purpose for determining those census blocks are more for counting people than what other departments or agencies decide to use the maps for.

So like some of the agricultural area, for instance, between Burlington, west of Burlington, and between Burlington and the urban growth area, it's in – the census block in whole had enough people in it to trigger that that area be included in the permit coverage. So the box surrounding the what appears to be ag land had enough people to trigger that block be included. In the census-defined areas – the map you see on the screen and before you – is the minimum requirement that we were given by Ecology.

Chairman Easton: Okay, does that answer your question? Annie, did you have a follow-up?

Annie Lohman: Well, I have a question of you.

Chairman Easton: Okay.

Ms. Lohman: If we have questions in the proposed language, when do you want us to ask those?

Chairman Easton: During deliberations. We'll have time to ask staff during deliberations.

Ms. Lohman: Okay.

Chairman Easton: Dave's question was intended to try and help the public's testimony.

Carol Ehlers: I'd like to add something to that. This municipal area was established by the federal government, not a City – any of the City governments or the County government.

Mr. See: That's correct.

Ms. Ehlers: And so anyone who disagrees with its existence or boundaries needs to consider the federal world and not any local. I think that – that was crucial in my understanding of what it is.

Now I have a question to follow up: If this ordinance we're talking about now applies only to this area, are we to expect it eventually over the entire county?

Mr. See: The areas could change. Our current permit we're working on meeting requirements for – and one requirement are these ordinance changes – expires in 2012. Obviously there's a new census going on. The census-defined urbanized areas could shift. I don't know if Ecology would do anything more drastic than that as far as our boundaries, but obviously if the census-defined areas expand we would have to expand. Well, the ordinance is written in a manner that it would include the expanded areas.

Chairman Easton: Okay. At this time let's go ahead and hear from the public and then we'll have a chance to ask staff questions during the deliberations.

All right, there was a sign-up sheet in the back and then there will be an opportunity for those who didn't sign up to testify also. Due to the number of folks that had signed up to testify, we're going to limit testimony to five minutes. There's only two folks who have signed up to testify at this time. We ask that when you come – when your name is called that you come forward, state your name, spell your last name, and give us your address, please.

The first one who has signed up to testify is June Kite.

June Kite: Any microphone?

Chairman Easton: Either one will work.

Ms. Kite: Okay. June Kite. My last name is K-i-t-e. I reside at 20819 Starbird Road, Mount Vernon, which is in the Conway area. I was a member of the Drainage Utility Commission at the onset of developing the Drainage Utility for the County.

I did submit a – or I did write – a comment letter in February but I failed to get it turned in at the comment period time and so I asked and was told that I could distribute that comment letter, which you have before you.

Chairman Easton: Did you give a copy of this to staff also?

Ms. Kite: I did.

Chairman Easton: Okay. Thank you, June.

Ms. Kite: Both to Kirk Johnson and to Mike Sees (sic).

Chairman Easton: Okay, thank you.

Ms. Kite: I have some additional comments to make this evening. The letter that I wrote in February, it introduced the “Clean Water is Everybody’s Business,” and that was a County publication that went out in the *Skagit Valley Herald* and comments are available – or copies are available.

I also asked Public Works to provide or to make available the Drainage Utility brochure and Mike See has those copies if you would like to have a copy.

The Skagit County Drainage Utility brochure defines the area that the Utility services as all of Skagit County unless they have established service boundaries of their own, meaning Cities and other taxing districts.

There are two areas of concern that I wish to add, in addition to my other comment letter. My number one concern is the census-defined urban and urban growth areas and the map illustrating the Skagit County jurisdiction.

My second concern concerned the code sentence structure – just how the code is written.

I’ve had an occasion to read many Skagit County codes and have often wondered if there was a way to really say what the code means! 14.32.120, the NPDES Drainage Area: In conversation with Public Works it was explained that

“census-defined” means urbanized areas, and this includes villages and areas where development occurs, and that the County was the holder of the NPDES permit. This, then, could be construed as development occurs only in urbanized areas. State Ecology is to cover the remaining rural areas – question? – except that the County Drainage Utility jurisdiction includes rural areas and it is funding projects throughout the entire county. Two projects that I followed closely was the Hillside Motel – is an example of a rural development proposal that is not included in the County NPDES drainage area. Another example: A 150-lot CaRD in the Big Lake area applied for Forest Practice Conversion and received the NPDES from State Ecology. Both of these proposals proceeded with grading of the hillside before meeting approved conditions.

A problem arises when there seems to be no coordination between State and County on rural development proposals. If the proposed development does not meet County regulations or permitted conditions, State Ecology still may grant the NPDES. There is need of language that clarifies permits are not to be granted until the proposed development has completed a public review process and receives approval.

14.04.020 Definitions: The BMPs – the best management practice – drainage, it is – here I question the handling for the – the sentence handling. It is improper to define “practice” as “practices.” It is best to have a concise statement as to the purpose or intent of BMPs. The draft sentence is long, disorganized and confusing. The third line has “prohibitions of practices.” I’m sure that was not intended that way.

I have suggested languages that say, “BMPs are activities and procedures to prevent or reduce pollution and erosion discharges into surface waters.” Short and concise. “This includes but is not limited to procedures for (a) general good housekeeping, management, maintenance and operations, and education; (b) design and maintenance of conveyance systems to control and treat runoff for the protection of receiving waters; and (c) the prohibition of illicit discharges.” And this includes all of the language in that long statement.

Chairman Easton: So, June, are we about done?

Ms. Kite: I’ve got the NPDES [National Pollution (sic) Discharge Elimination System]. The sentence as written on the fourth line authorizes the discharge of pollutants, and I’m sure that’s a mistake. To be correct, the NPDES permit is “delegated” authority from EPA and State Ecology to the County and local jurisdictions to enact regulations in compliance with the Clean Water Act for the prevention of the pollution.

Washington State has also “delegated authority” to the County and local jurisdictions to provide for “land use and development regulations” within their respective jurisdictions through the Growth Management Act. Development in

rural Skagit County outside of the “census-defined urban area – urbanized area” – is regulated, monitored and enforced, including drainage.

Thank you for the opportunity to comment.

Chairman Easton: Thank you, June. Next we have –

Ms. Ehlers: I have a question.

Chairman Easton: Oh.

Ms. Ehlers: June?

Ms. Kite: Yes?

Ms. Ehlers: You gave us language that had (a), (b), (c), but I don’t have it in front of me.

Ms. Kite: Oh, no. Those were comments that I have that I will make. This was my comment letter for tonight.

Chairman Easton: Would you like staff to make copies of that for the rest of us for tonight?

Ms. Kite: I would. I would appreciate that very much.

Chairman Easton: Would that be possible?

Mr. See: Sure.

Chairman Easton: Or Lori. I’m sorry. Thank you.

Ms. Kite: Thank *you*.

Chairman Easton: Howard?

Howard Gulley: Good evening. My name is Howard Gulley, G-u-l-l-e-y, 15815 Yokeko Drive. That’s on the south end of Fidalgo Island down Dewey Beach area. And all of you are new to me except for Carol. The Commissioners –

Chairman Easton: I promise he’s been here for a long time, too!

Mr. Gulley: The Commissioners know my story very well. And that – I have become quite knowledgeable over the last decade with stormwater runoff because of how it went through my property. And the beginning of the story is when we bought the place in 1968 the land was dry and everything else, but after

that, starting in the early '70s, the first section of Goodyear Nelson's timberland above me was logged. Five years later they didn't get enough timber so they went back and got some more and we begin to get a runoff from in there.

I immediately jumped on a band wagon saying, you know, How in the world did this happen, and was railed all over the county on who would allow this to happen, and the answer is no one. Whether or not you can log or not is managed by the State, and the criteria for the State is that how much money can they get out of it for, at that time, the school fund. Of course that doesn't exist anymore because they managed to role everything together in the great general fund so you can't tell where any of the money goes down there. But anyway it was a money issue and had nothing to do with anything else.

Shortly after this happened to me, they did revise the way they did business so that now they notify the County whenever they issue a permit for logging. But, as I learned then, that that goes into the great file somewhere and that really nobody is in charge, and it was this person over here is the one who takes care of that, between Public Works and everybody back and forth.

Nothing has ever been resolved on that and so to this day if a logging permit comes in, now what kind of effect is that? It all depends upon the ground and that's the problem *you're* going to have in trying to come up with some great ordinance. Some ground water seeps into very well; some it doesn't; some of it's very steep and runs off fastly; and other ground is rock and the water will go down, find where that rock is, and goes horizontally. That was the case I have because the south end where I'm at on the County's charts is plotted as sub-oceanic lava flow, and the water goes down and finds a rock and comes out right where it wants to on those _____. There's nothing you can do about that.

So then to complicate it, to make sure the County helped out there, we had a drainage ditch on the upside of the road and which every – and we had to call them about every two years. They had to come out and dig it out some more to keep that thing flowing. Well, they decided that the proper thing to do was to solve that problem so they put in a couple basins, threw a pipe in there, and filled it all in, which meant all the water that was seeping down from the hill that used to go into the ditch and down a culvert drain into the bay now goes under – now went underneath the road and the problem increased. And so then when the trees started falling and it took the corner of my house, crushed one car, damaged another car, we got it squared away and the County now has probably the smallest drainage district in the – maybe in the country. It goes about 300 feet. So they had to dig a trench down there and put in a curtain drain to replace the ditch that they filled in.

To help resolve this problem from my standpoint after this year after year, I've gone through a number of projects which I've been working on now for seven –

almost eight – years, and I’ve laid 490 feet of drain lines to my property so that when I open the car door and step out I’m not stepping into mud.

Commissioner Munk (sic) came down and investigated my place and he had to get his shoes cleaned after that because he – his footprints were about four inches deep in the – in my every part of my yard.

This is going to be a continuous problem wherever you have it and this goes on whenever you do any development or change anything. And you can’t put in an ordinance that just says, Well, this is blanket; it covers it. Because, as I mentioned before, the type of ground you have is all important.

Chairman Easton: Mr. Gulley, you’re – we need you to wind up your testimony, please.

Mr. Gulley: You’ll have to speak a little louder, please.

Chairman Easton: Mr. Gully, could you wind up your testimony, please?

Mr. Gulley: I have a few points here and this thing here.

Chairman Easton: Go ahead. Just wind them up for us, please.

Mr. Gulley: Okay. One of the things you have down here is you have down here under “Exemptions” you have “Acts of God and nature.” It’s very hard for you to come up with some guidelines and things that are going to work when you don’t know what the rainfall’s going to be and it varies so much from time to time.

And then the next one you have down here which just blows me completely apart is – my favorite one is “Best Management Practices.” And best management practices is depending upon who’s interpreting it at that moment. And that’s probably the most dubious thing in the world. And so your difficulty is going to be able to come up with something which is going to work, is going to provide some protections to let people know what’s happening. At the same time not make it so difficult that nobody can afford to do any business in the county at all period. That’s your problem.

Chairman Easton: Thank you for your testimony. Is there anyone else wishing to testify?

(silence)

Chairman Easton: Okay, at this time we will close the public hearing (gavel).

Commissioners, as we discussed at the work session, we reserved the opportunity to potentially deliberate tonight. I want to consider – or I’m open to a

motion to – whether to deliberate tonight or not, or at least a voice vote. Are you open to deliberate?

Ms. Ehlers: Well, there's a problem in that one thing that's been turned in we haven't seen.

Chairman Easton: And that would be?

Ms. Ehlers: June's.

Chairman Easton: Second letter?

Ms. Ehlers: Yes.

Chairman Easton: Okay.

Ms. Ehlers: Now Betsy has them but – and we could read them. You could take a break for a bit and give us a chance to read them.

Chairman Easton: Sure. Yeah, good point. Thanks for reminding me of that, Carol.

Ms. Ehlers: I don't want to make anything appearing that we spent time on illegal because of some process.

Chairman Easton: Minor, yeah. No, and I don't want to belittle that at all either. Well, if – is there anybody who objects to doing this tonight, because we can move it to later in the calendar? As we went through our work orders for the next few months – and you all remember that there's lots of stuff to do! – so are we comfortable with adjourning for fifteen minutes, reviewing these materials, and then reassembling for deliberations? Anyone uncomfortable with that? Speak now or I'll see you in fifteen minutes.

(silence)

Chairman Easton: All right, we're going to recess then (gavel).

(recess)

Chairman Easton: Welcome back to the (gavel) – call us back into session. The Skagit County Planning Commission's now back in session. At this time, Commissioners, for any of us that have questions for staff we're going to go ahead and deliberate on the aforementioned parts of this ordinance. We'll take questions for staff – I think twenty minutes – you know, roughly – worth of questions for staff, and then let's go into at that point – you know, and if we need to go a little longer we will – at that point then I'll entertain a motion, discussion,

and we'll go from there. Does that sound good? With everyone nodding heads, all righty. With that, you can direct your questions to whatever staff member makes the most sense. Staff, that sounds good to you? All right.

Who wants to go first?

Ms. Lohman: I'll go first.

Chairman Easton: All right, Annie.

Ms. Lohman: My question is: What are the consequences to the County if they say We don't agree with the boundary lines that have been offered up? Can we draw different boundary lines and say this is what we would rather do?

Mr. See: At this point in our permit, which was issued to Skagit County in February of 2007, the boundaries of the permit are established. As I was mentioning earlier, there will be a new – in 2012 Ecology will issue a new permit and at that point there would be an appeal process when that permit's issued. We could formally appeal the boundaries. At this stage in our current permit the appeal process was finished last year and there were some modifications made to the permit. I spoke to Ecology specifically regarding the boundary question, since that's come up over the last year, and they had some comments relating to boundaries but it wasn't extensive enough to merit changes to the permit.

So a short answer is we can't change it now, but we could appeal it in our next permit.

Mr. Hughes: May I follow up?

Chairman Easton: Please.

Mr. See: Sure.

Mr. Hughes: I don't know which question to ask first. Why are we here, number one, and number two is What if we vote no on this? Does it matter?

Mr. See: It does for the County. The NPDES permit that the County holds for our drainage system – because Ecology, through the Clean, is essentially enforcing the federal Clean Water Act. And within the Clean Water Act, stormwater is identified as a pollutant and Skagit County was identified as needing an NPDES Phase II permit for our municipal stormwater system. And one of the requirements of that permit were these ordinance changes that we have before you folks.

The implications for Skagit County to be non-compliant with our ordinance is, in essence, to be in violation of the federal Clean Water Act, which entails very

significant fines, both from Ecology and the EPA. In addition, the Clean Water Act is somewhat unique from other laws in that it allows third party lawsuits for violations of the Clean Water Act, which that would be a very likely result.

Chairman Easton: Okay.

Ms. Ehlers: Well, then that leads to this follow up question: Some of us are uncomfortable with some of this language or with some things that are not included in here. Are we being given this as something we are required to rubber stamp, or may we make changes?

Mr. See: We're definitely – we have some bookends as far as what Ecology mandates specifically in the permit that the ordinance address. Kate Rhoads from the consulting firm Otak helped us draft the language so that it would comply with the specifics in the permit. There is a little bit of flexibility in that language, but in some areas to meet the permit requirements it has to be somewhat specific.

Chairman Easton: And I have a question. Where? Where's the flexibility? Because I haven't been able to find it.

Mr. See: Okay.

Chairman Easton: So can you cite an example where we might be able to find some flexibility? Because it would seem that boundaries are not flexible.

Mr. See: Correct.

Chairman Easton: If we – we don't have our Otak advisor with us – oh, we do; I'm sorry – so we could touch language but you'd have to on the fly tell us whether that's not violating the language. So maybe Kate would be best to tell us where we have some flexibility, or maybe we're surprising you with the idea that we're looking for where we might have flexibility. So, anyone?

Mr. See: I can have Kate at least talk about –

Chairman Easton: Sorry I forgot that you were here.

Mr. See: – her process in working in helping us develop the ordinance and trying to meet the specific permit requirements.

Ms. Ehlers: I don't think we need that so much as answers to some specific questions.

Chairman Easton: And I would like to start with: Where is some – where are some areas of flexibility that jurisdictions like ours have on this issue?

Mr. See: It's good to note that staff, while working with consultants in this whole process, our goal was to meet the minimum requirements of the permit. So we didn't put things into the ordinance that were needed to be there to meet our permit compliance. The possible changes that could be made are how things are phrased, but most of those points are things that need to be made to meet our permit compliance.

Chairman Easton: So you believe that this is the minimum necessary to comply?

Mr. See: That's been our effort through the whole process.

Chairman Easton: Kate, do you agree?

Kate Rhoads: (inaudible)

Chairman Easton: Okay.

Ms. Ehlers: Well, I have a question. I'd like to relate two documents. The first one is the draft drainage ordinance changes. I'm using the version that had blue and black because I found it much easier to follow and request staff that, in the future, please do something like this. It's much easier to keep track of what we're looking at.

And if you look at page 5 of 6 of that one, up at the top – this is 14.32.120(3) – that's 3 in parentheses – are you all with me? – line one: "The County hereby adopts the Thresholds, Definitions, Minimum Requirements" et cetera. Now I've had some heartburn on the fact that the Definitions, as given to us in the Western Washington Phase II Municipal Stormwater Permit, with a modification date of June 17, 2009 – which is the big document – has a series of definitions and acronyms in it which seem quite practical. If in the code you adopt all of these definitions, why don't you put them in 14.04?

Mr. See: In –

Ms. Ehlers: And I'll use it – I'll use the example that attracted me. In the permit, "runoff" is one of the definitions. Runoff is what Howard Gulley has told me about every time I've bumped into him at any meeting and for any source for the last seven years. And runoff is not necessarily stormwater runoff because some of it's *delayed* runoff. Some of it's natural groundwater runoff. In the 14.04 you didn't include "runoff." Then I noticed there were some others that come in the same category.

So if you're adopting all of the definitions in the Phase II permit, why don't you put them in our document so somebody has *one* place to go look instead of two?

Mr. See: I'll check on that.

Ms. Ehlers: Surely that is permissible.

Mr. See: In that line – or wait – line three under 14.32.110 on page 5 of 6 that you were referencing, after listening to you there and reading it also more carefully what that intent is to adopt all the definitions, thresholds and requirements found in the Appendix 1 of the NPDES permit. That Appendix 1 isn't the definitions in the front of the permit. It's an appendix to the permit that is a mirror image of a similar appendix in the 2005 Ecology Stormwater Manual. So we were instructed by Ecology that we needed that language for compliance.

In regards to the definitions that are listed in the beginning of the permit, not all those were used in the draft ordinance language and we –

Ms. Ehlers: I'm not – I don't have – the ones I'm talking about in this permit are on page 45 of 51 and those *are* the ones in the Definitions – in the appendix.

Mr. See: Kate –

Ms. Rhoads: Do you have a copy of the appendix?

Mr. See: I don't –

Ms. Ehlers: We've been given three copies of this.

Ms. Rhoads: No, no, no, no – the *appendix* to the permit. So that's the permit. There's an appendix that has a different set of definitions.

Ms. Ehlers: *What?*

Ms. Rhoads: Yeah, that only relate to development. So they relate to development using the Department of Ecology's Stormwater Manual. The definitions in the permit relate to the entire permit and there's lots of different other requirements other than the development requirements in the overall permit.

Chairman Easton: And that is why Ecology – and that's why Ecology required you to do it?

Ms. Rhoads: Adopting the definitions that are in the *appendix* because those are the ones that specifically relate to the development standards in the DOE manual.

Chairman Easton: Okay.

Ms. Ehlers: Wait a minute.

Ms. Rhoads: And they actually changed them, and the reason why you have to specifically adopt the definitions in Appendix 1 is because they're different than in the DOE manual because Phase II NPDES permittees aren't required to use the manual in the same way as other Phase I permittees.

Chairman Easton: Yeah, for heaven's sake we wouldn't want to make that simple! Other questions?

Ms. Ehlers: I don't understand why about half of them are included and the other half are not.

Chairman Easton: I think –

Ms. Rhoads: When I put the definitions in the code, I used the definitions that are actually *used* within the code. Now I know that there's some discrepancy in the exact language and that's because I used definitions that were in a guidance document that Ecology put out and Ecology didn't have the exact definition in their guidance document.

So some of the things like “Best Management Practices” the definition is a little bit different, but I used that – the one that was in the guidance document for that.

Ms. Ehlers: So we can't use – we can't divide it up as A, B and C because that's not what the guidance document did.

Ms. Rhoads: No.

Chairman Easton: Okay.

Ms. Ehlers: Well, “runoff” is referred to in this plan that we got a year ago.

Mr. See: Which plan is that?

Ms. Ehlers: In May of last year, you gave us a presentation about the – this permit process, and this is the “Skagit County NPDES Phase II Stormwater Management Plan.”

Mr. See: Correct.

Ms. Ehlers: And in three different places it refers to “runoff,” which is what triggered my looking for “runoff.” I find it in the permit. I don't find it in the Definitions, and I would like to find it in the Definitions because if this ordinance applies only to someplace where somebody's building a building then it is not going to solve the problem of pollution because runoff goes through septic fields,

runoff goes through all sorts of places that you don't – that you want to manage it. And it is – those are pollutants that you need to control for the County to be honorable in its effort to take care of the water that's flowing in the streams. That's my logic.

Chairman Easton: Can we just request – go ahead, Kate. We need to –

Ms. Rhoads: I just wanted to clarify that the ordinance is only showing definitions that have changed from the chapter of your code that's titled "Definitions." So I don't know if – "runoff" might be in that –

Ms. Ehlers: It isn't.

Ms. Rhoads: It isn't? Okay.

Ms. Ehlers: I looked.

Chairman Easton: Okay. Can you add a definition for "runoff"?

Mr. See: It's something we could consider and take back to legal counsel and see what the implications would be.

Ms. Ehlers: Can you add the definition of "runoff" that is in the NPDES II permit?

Chairman Easton: You – okay, wait a just – okay, hold on. Michael, this is a great example of where I need staff to seriously consider flexibility.

Mr. See: Okay.

Chairman Easton: Okay? *Legal counsel* to add the definition of "runoff"? You have to consult legal counsel to add the definition of "runoff" that's already in the NPDES – I just want to be clear. If we have the ability to make an impact we – we're going to need you to work with us a little bit more here. Okay, as a finding – when we get to that place – we're going to need to be able to give you a list of some things that need to be considered. Are we that rigid that we're going to have to have all these checked through legal counsel?

Mr. See: What, you know, Public Works –

Chairman Easton: Lori? Lori looks like she wants to say something.

Mr. See: Yeah.

Ms. Wight: Due to the fact that we don't come before you as often as we should probably and know the processes, we want to be sure that we're not going to go outside of that SEPA publication.

Chairman Easton: Okay.

Ms. Wight: And so I think that's why Mike gave the answer that he did.

Chairman Easton: Okay, I don't want to put you guys in a spot.

Ms. Wight: It wasn't to say, Oh no, we're not going to. It was more – we want to make sure that we're going to be still in compliance with – procedurally – with that public notification process.

Chairman Easton: All right.

Ms. Wight: If it's a minor change, I understand that those can happen, but I don't –

Chairman Easton: It would seem from my experience that adding a definition would fall under a minor change, but I appreciate your – I apologize. I appreciate your efficiency in wanting to make sure that it's done.

We want to keep moving with the questions. I think Annie has some – a question.

Ms. Lohman: First off I want to thank you for giving us the Drainage District overlay –

Chairman Easton: Yes.

Ms. Lohman: – on top of there. But on page 3 of 6 under "Best Management Practices," it talks about procedures to go through, and I'm wondering how this is going to work with our critical areas ordinance for existing ongoing agriculture. Because a lot of this area defined in your map is agriculture. It's not urban; it's agriculture. So where is the farmer going to comply with, or the drainage district? How are they going to know? If they step over here they're out in the drainage district under the CAO. If they're over here and they happen to land in this overlay area they're under the NPDES. So how are you managing those conflicts?

Mr. Hughes: I think that – you know, not to interrupt – but if there's any resource land – forestry resource land – in this plan included, you know, on some up the upriver shaded areas.

Mr. See: The Appendix 1 that we were referencing does. One of the exemptions is agricultural practices – working the land – as well as forest practices since they're – they fall under the purview of Department of Natural Resources.

So for the most part, the active working of the land for agricultural purposes are exempt. The – we made an effort to reference the currently used section of the critical areas ordinance that refers to agricultural chemicals so that agricultural chemicals used in agriculture practices are exempt as well – if they're used properly, essentially.

Chairman Easton: So what's the – for the most part – is it just – are you saying it's just the chemical portion?

Mr. See: Right. So the chemical working of the land are exemptions for agriculture, where potentially the project would have – if for agriculture a large building was being built, potentially there might be a need to design that for stormwater considerations when in past it possibly hasn't. But that would depend on the site, the project and something that development review would have to work through.

Mr. Hughes: Aren't we already on large buildings required some sort of –

Tim DeVries: Yeah, if I could add on to that –

Mr. Hughes: For as long as I've been building.

Mr. DeVries: Currently when a project comes in for review one of the review areas is for drainage, and under the requirements for temporary erosion and sedimentation control the developer has to indicate How are you going to keep exposed soils onsite? Are you going to use silt fencing, straw bales? Are you going to tarp the soils, ___ to keep it from being tracked onto the road? How are you going to keep the dirt onsite until you can landscape and cover?

And agricultural practices currently are exempt from those requirements, and this would be no different. Development that is not exempt, like construction of a building or construction of a roadway, would have to maintain their erosion control features, whereas the farmer who's out working in his fields and coming on to the road and going to his next field would be exempt from that.

Does that answer your question kind of?

Chairman Easton: Yeah. Do you have any other questions around the ag issue before we move to other questions?

Ms. Lohman: Well, yes, I do.

Chairman Easton: Go ahead, Annie.

Ms. Lohman: Can we maybe put that as plainly as you said it so that there isn't any question? Because I'm not finding it easily that says that ag activities – you

know, regular, ongoing ag activities are exempt. I'm finding irrigation and as long as you're compliant with the chemical application according to the code you're – but I'm not seeing it, and if it's not written there I'm concerned.

Chairman Easton: Michael?

Mr. See: Annie, I could confer with Kate on what we did and didn't include. We included some of the exemptions specifically because they're specifically listed in the permit. The exemption for agricultural practices or working the land is something that's listed in that Appendix 1. I'm not totally sure why we didn't include that in our development.

Ms. Rhoads: I believe that you were looking at section 14.32.090 Water Quality. Is that correct?

Ms. Lohman: Yes.

Ms. Rhoads: That's the Water Quality section. That's not necessarily related to development. There's two things that go on in this code. One is water quality – preventing pollutants from being discharged – and the other is doing review and controlling runoff from new development. So what you were looking at is the section on water quality, which actually applies countywide. And the reason why it applies countywide is because prior to making these changes there was language in here that said you can't discharge pollutants. It was very – pretty basic. You can't discharge pollutants. And by expanding that and saying that you can use BMPs you actually are helping people to be able to do more activities under the – using best management practices and not discharging pollutants.

Chairman Easton: But what about what Tim just described? Where – what does that qualify as? That would be a pollutant, correct?

Ms. Rhoads: Um –

Chairman Easton: Tim just described that in a construction situation where a new home was being – or a new building was being built that you have to mitigate for water, you know, being – quality being impacted.

Ms. Rhoads: Right.

Chairman Easton: But a farmer driving off his muddy field crossed a road that would bring – potentially – bring mud into a ditch that has water quality issues, wouldn't Annie's question, being that it's not spelled out, even in – you know, which section, or both – actually probably both sections – why is – and, by the way, am I the only one who's – I'm still a little confused about – did I miss it? Where's Appendix 1?

Ms. Ehlers: It isn't here.

Ms. Lohman: Yeah. We don't have it.

Chairman Easton: How is it that – well, why is that? Not to – I'm sorry; let's stay with Annie's question for a second then we'll come back to why Appendix 1's not here.

Ms. Ehlers: And why we can't use what's here.

Chairman Easton: Let's stay with Annie's question for a second. Where would that be best addressed?

Ms. Ehlers: Is it elsewhere in the ordinance? I didn't find it.

(several inaudible comments)

Mr. See: So the exemptions, as Kate was pointing out, are specifically more related to the development sections. Illicit – the water quality sections, my understanding is the agricultural chemicals is specifically addressed as an exemption in that. But that was the extent there.

Chairman Easton: Okay, would – can you consider – this Commissioner would like you to consider adding in the water quality section a statement that says something to the equivalent of what Annie said earlier, which was better said by Annie; that is, best and normal practices of agriculture – or something to the effect – best and normal practices of agriculture are allowed –

Ms. Ehlers: – where BMPs –

Chairman Easton: – where BMPs are exemptions – I don't know. Annie, maybe you could state it. But there should be something in relationship to water quality.

And now let's take up the question of Where's Appendix 1.

Ms. Rhoads: And that's how BMPs – it's referring to BMPs that are in the DOE manual. If there's – if there's not a BMP in the DOE manual you can make – you can come up with a best management practice so that that activity will then meet that BMP.

Chairman Easton: You've got the chief Building Official of Skagit County who just told us that the best building – and the best Building Official in Skagit County – using the best building practices for our agriculture people – just told us – I love you, Tim – that that's fine, but we've got a member of our Commission who can't find it in the way in which our ordinance has been drafted. So as we go forward

from here, at least a couple of us are asking you to consider adding language as long as it – you know, I mean obviously we're not asking you to do something that doesn't comply with – that's un-, you know, non-compliant. Can that be done? As a consultant, can that be done?

Mary McGoffin: Just for clarity.

Chairman Easton: For clarity.

Ms. Rhoads: I imagine so. It really depends. I'm not quite – there's a distinction here between activity done during development and something not with development.

Chairman Easton: I want it in both places.

Ms. Rhoads: Okay.

Chairman Easton: It can't hurt. Can it?

Ms. Rhoads: We could –

Chairman Easton: Exempt ag in both places.

Ms. Rhoads: I think DOE would have a problem with that. There was an exemption for agricultural earlier as it related to pesticides and they weren't very happy with that. So –

Chairman Easton: But didn't you just say there's –

Ms. Rhoads: We changed it in a way that they could – that they were happy with it. So we can come up with some language and come up with a best management practice so that if you're trailing mud on a road that you do something to prevent that from polluting. But it can't exempt the activity. You can't exempt it from the ability – you can't exempt it from the potential of that mud washing off into the receiving water and polluting the receiving water.

Chairman Easton: Annie?

Ms. Lohman: My whole point in bringing this up was there is a collision on whose BMPs are you using. Is agriculture supposed to be under the stormwater design manual or are we on NRCS guidance or are we the Conservation District? Whose BMPs does agriculture get to use, because of the overlay of your map laying on a bunch of agriculture ground? That's what isn't spelled out exactly. You have quite a few exemptions and they touch certain elements in ag, but it's – you're – what you're saying and what's written here isn't quite enough for some of us in ag.

Ms. Rhoads: Well, we reference the BMPs that are in the DOE manual. Certainly you can add additional BMPs to that list.

Ms. Lohman: We don't want to get into a war of prescribing a bunch of BMPs that, you know, the farmer can't get out and go plow. That's not what we're asking.

Ms. Rhoads: No, no.

Ms. Lohman: It's a clarity issue.

Chairman Easton: Okay.

Ms. Ehlers: How much discussion was there with DOE on the large amount of agricultural – agriculturally zoned land in this territory?

Chairman Easton: Yeah.

Mr. See: This goes back to the boundary that is established – was established – by – well, set by EPA, delegated to Ecology and then delegated to us. But there wasn't an opportunity to discuss boundaries or the land that's included in it.

Ms. Ehlers: Well, yes, but within that boundary, how much discussion was there about the fact that you're not talking about any kind of traditional EPA/DOE-considered development? It's an entirely different economic existence with an entirely different rule, and I think it's that rule that Annie needs defined so that those of you who are going to enforce it – if somebody comes in and asks Which BMPs do I follow? – that someone can say, You follow these. Is that it?

Ms. Lohman: Pretty much. I don't want to get into the right to farm and we're going to have a plowing ordinance. I don't want to go there with this.

Mr. See: Okay, um –

Ms. Ehlers: You've got to have something that you can tell people where to go.

Mr. See: We made an effort in the stakeholder process to involve some of our drainage district commissioners, as well as invite and have attendance at the first stakeholder meeting from Western Washington Ag, where – so we've definitely made our due diligence effort to try to identify issues relating to agriculture and –

Chairman Easton: How well was that attended?

Mr. See: The first meeting was fairly well attended. I think we had ten or twelve folks attended.

Chairman Easton: Good.

Mr. See: Attendance dwindled after that. We had at least three other stakeholder meetings after that point.

Chairman Easton: Okay, I have a question for you. I want to reference June Kite's second letter or – well, actually it was tonight's testimony – on the back page. Lori, do you have a copy?

Ms. Wight: I do.

Chairman Easton: Second to the last paragraph: Is that a mistake, the sentence reading, fourth line, quote, "authorizes the discharge of pollutants"? And June's question was to be correct the NPDES permit should say "delegate."

Ms. Wight: Let me take a look at that section. Which section are we talking?

Ms. McGoffin: It's a definition, Lori.

Ms. Wight: Oh, thank you.

Ms. McGoffin: It's the NPDES definition.

Ms. Wight: Okay.

Mr. See: I would – I'm not sure exactly where Kate – probably from the guidance manual that Ecology put out is where she got that definition. But essentially I would say that it is correct. The National Pollutant Discharge System is the same system that municipal septic treatment plants use to discharge the effluent that leaves their plant, as well as big industry with industrial NPDES permits. It's known that what's leaving their site is technically a pollutant; however, they're given a permit with standards and goals that they have to meet for the water that leaves so that the EPA, in a sense, can regulate the amount and the quantity and concentrations of pollutants entering. So it's a way to allow those activities yet regulate them.

Chairman Easton: Okay. Are there any Commissioners who haven't asked a question who would have a question?

Elinor Nakis: I just had a comment or, I guess, question, yes. On the – on Ms. Kite's letter – second letter – to us that was handed out, Definitions 14.04.020, the BMPs, Best Management Practices. Could you adopt her language for that definition? Or would you consider doing that?

Mr. See: I think we could consider changes of that nature where we – there’s – obviously, for us in Public Works a lot of the procedural things are new to us or were not a daily activity for us. So if we’re hesitant in saying yeah, we’ll make that change, it’s because we want to ask some people in Planning what – you know, does that trigger a new SEPA, a new public hearing –

Ms. McGoffin: Maybe, Michael, just maybe take under consideration her suggestion.

Mr. See: Yeah, we definitely can take it under consideration.

Ms. McGoffin: Okay.

Chairman Easton: So that would be the suggested language that goes over the – starts and then goes over to the second half – is on the back page.

Ms. McGoffin: Yeah.

Chairman Easton: So by my count – and I’ll come back to seeing if there’s more comments and questions – there are three things so far the Commissioners have asked you to take under consideration. That one; the definition of “runoff”; and ag – and I’m just calling it “exemptions” for lack of a better term – “ag clarification,” let’s call it. Under both portions, as Kate pointed out, both Water Quality and Development.

Now this is just for right now. For right now, this is just in the form of discussion. If we get – when we get to the point that we’re in our deliberations further along, these may come back to you as findings, which then would be reviewed by all of us.

Ms. Nakis: And there was one more?

Chairman Easton: Is there one more? Did I miss one?

Ms. Nakis: Add all acronyms found in the NPDES definitions.

Chairman Easton: Including “NPDES”?

(laughter)

Ms. Nakis: Yes!

Chairman Easton: So add all acronyms to the – like as in the form of a glossary or something. Good idea. I hate acronyms. I use them all the time, but I hate them.

Does anyone else wish to question – have questions for staff before we go forward with motions? Carol?

Ms. Ehlers: Two things: The relationship between this drainage ordinance, with or without its additions, and the geo-hazards ordinance has never been clarified. The relationship between drainage and what happens with runoff, other than this, has not been clarified. You learned a lot about that when you were paying attention to Fidalgo Island.

John Cooper has a clearing ordinance that he wants to have approved. He drafted it back in 2008 and gave me a copy. It needs some work, from my standpoint, but the principle of having a clearing ordinance that deals with clear cutting that does not have a house on it. Now that's going to be crucial for some areas within this metropolitan area where the ground is steep. It's going to be crucial for the rest of the county when the *other* reference to metropolitan area, which I've seen in legal notices, that the whole bloomin' county is a municipal area, including all the forest lands and the national parks and everything else, which makes no sense but this is the federal government.

At some point there's going to have to be a recognition that when you clear cut in residential and commercial as dense areas – I'm not talking forest lands, I'm not talking the Secondary Forest, I'm not talking about Industrial Forest, okay? But where you have residential areas or commercial areas where the buildings are very susceptible to too much water and their viability is susceptible and their long-term existence is susceptible, somewhere or another that has to be dealt with other than the glib comment Well, you just sue, because *just suing* is no good when you've lost your building and your house and your land.

Chairman Easton: Carol, is there a question in there?

Ms. Ehlers: It's – it'll get there. And so the question is: How are you going to relate the other issues in your next step of the process once you get something done with us? Mike, you said something about a clearing ordinance and – before the meeting; can you tell us about that?

Mr. See: Farther along in our process of writing the ordinance to meet our permit requirements – actually within the last few months – we've identified that there is a need in the future for a clearing permit that would address when ___ activities one or more acres in size that don't necessarily trigger any other County review permits. That's something that we're – we didn't want to last minute throw something on the materials that we've run through a stakeholder process, and it's something that we're discussing with the Planning Department at this time.

Ms. Ehlers: I have no complaint with your not including it in this because this is bad enough.

Chairman Easton: Okay! Question number two? Did you have a second question? Oh, if you don't I want to –

Mr. Hughes: Encourage?

(laughter)

Chairman Easton: I didn't want to instigate a second one! It wasn't my intention!

Ms. Ehlers: No, I think I'll leave it at that.

Chairman Easton: Sorry.

Ms. Ehlers: As long as I know something is going to be happening.

Chairman Easton: At this time the Chair would entertain a motion.

(silence)

Chairman Easton: Or we can all go home.

Ms. Ehlers: We have to have some sort of an ordinance; that's the difficulty.

Chairman Easton: Well, we probably should have some sort of motion to start with.

Ms. McGoffin: All right, I move that we adopt the changes made to the ordinance, as presented to us, in addition to our comments that we'd like you to take under consideration.

Chairman Easton: Do I have a second?

Jerry Jewett: I'll second it.

Chairman Easton: Okay. It's been moved to adopt the ordinance as the changes have been presented to us in the – with the addition of the four comments that we have asked for to be included, those four being the addition of – in a – acronyms definitions; the – let me find my notes – the –

Ms. McGoffin: Best management practices.

Chairman Easton: – best management practices for ag; the –

Ms. Lohman: Well, wait a second. That's not right.

Chairman Easton: I'm sorry. Not the best management practices.

Ms. Lohman: It was a clarification.

Chairman Easton: The ag clarification –

Ms. Lohman: On the exemption.

Chairman Easton: – ag clarifications on exemptions; the definition of “runoff”; and the suggested language referenced in June Kite’s testimony tonight for BMPs. Okay. That’s – one of the things we’re trying to do now is for me to repeat the motions so that they’re clear and easier for the transcription. So I’m going to try to practice doing that. Remind me to, please.

All right, any discussion?

Mr. Hughes: How – since the parliamentary procedure guru – whether it’s amend a motion to at least bring it up to exclude on the map all natural resource lands from this ordinance.

Chairman Easton: You would like to make an amendment to that?

Mr. Hughes: Yes.

Chairman Easton: – to that effect?

Mr. Hughes: Yes.

Chairman Easton: All right, there’s been a motion to amend the motion to – is there a second to that amendment?

Ms. Lohman: I’ll second it.

Mr. Hughes: Thank you.

Chairman Easton: Okay, so there’s an amendment on the floor to remove all natural resource lands from the map in consideration, and it’s been seconded so we will take a vote on the amendment. Any discussion –

(several Commissioners talking at the same time)

Chairman Easton: I’m sorry – that we will discuss the amendment to the motion. Any discussion on the amendment?

Ms. McGoffin: So, just, David, explain to me your –

Mr. Hughes: I, you know, whether – if this is going to be – if this is a rubber stamp, then so be it. But if it isn't let's develop this ag land. I have a feeling it's just the beginning of the end for this area, and whether – that's just, you know – we talked about it during our discussion here and it has been brought up. They say it can't be done. It probably can't, but –

Ms. McGoffin: It makes a statement.

Mr. Hughes: Yeah. Thank you.

Chairman Easton: Other comments?

Ms. Nakis: I have one. When you say “natural resource lands” –

Mr. Hughes: As defined in the Skagit County Comp Plan on their maps.

Ms. Nakis: That includes agricultural lands and forestry lands?

Mr. Hughes: Ag-NRLs – Natural Resource Lands – and if there is any Forestry-Natural Resource Lands.

Chairman Easton: Is the seconder agreeable to that clarification?

Kristen Ohlson-Kiehn: Can I ask a question of Dave? Because I just –

Chairman Easton: Sure.

Ms. Ohlson-Kiehn: I'm trying to understand this. So just bear with me here. So the way I understand this permit – the NPDES permit – the Department of Ecology's given the County the authority to manage water quality under these areas that are circled, right? And the dilemma – I think I understand the dilemma that Dave and Annie are talking about, and I want to see if this is right, if this speaks to what you're saying, Dave, so I understand why you want to exclude it from the map.

But the Department of Ecology's also given the Conservation District the authority to manage water quality on ag lands, right? Is that right?

Chairman Easton: The Department of Ecology on the right to manage water on the ag land?

Ms. Ohlson-Kiehn: Uh-huh. We don't know? Okay.

Mr. Hughes: I don't – I'm not aware of that.

Ms. Ohlson-Kiehn: Okay. Because that was my understanding, is that the Conservation District is funded by NRCS and that they provide – they give ag managers the opportunity to provide plans on how they're going to mitigate –

Ms. Lohman: Right. That's true.

Ms. Ohlson-Kiehn: – water impact –

Mr. Hughes: Right.

Ms. Lohman: Right.

Ms. Ohlson-Kiehn: – on ag lands. And so the – so the conflict, it sounds like, is that on the one hand you've got the Conservation District providing technical assistance to ag lands on how to comply with Department of Ecology and, I guess it's the Clean Water Act. I'm hoping I'm right about that.

Ms. Lohman: Mm-hmm.

Ms. Ohlson-Kiehn: But then on the other hand, since the ag lands are included in these polygons, you've also got the County and the Public Works Department with their NPDES giving you different advice – potentially – on ag lands, on how to mitigate for water quality. And that's – is that the issue that creates the confusion?

Ms. Lohman: Yes.

Mr. Hughes: Mm-hmm.

Ms. Ohlson-Kiehn: Okay, so and that's – is that why you want to exclude ag from these particular boundaries?

Ms. Lohman: Yes. Yes. Yes.

Ms. Ohlson-Kiehn: Okay. I understand that and that makes sense to me. I'm not sure – it doesn't sound like you have the jurisdiction to be able to change the boundaries of this map, but I think it *is* an important question for the County to ask and get answered: How are you supposed to manage for water quality on ag lands if you're getting two jurisdictions telling you two different things?

So I guess then the question is Is the answer to that question changing the boundaries. And I guess –

Mr. Hughes: It's a start.

Ms. Ohlson-Kiehn: Okay.

Chairman Easton: I guess for me the answer is I'm going to vote in favor of the amendment because it at least puts us on the record – it puts *me* on the record – to the Commissioners of saying You need an answer to the question of you've got conflict and you have a publicly religion of protecting ag land that's in conflict now over water rights – on water management, and you can't set them up into this situation. So find – you're going to have to find some solution and, obviously, negotiating with the Clean Water Act is not, you know, simple. You know, and obviously it's outside of our jurisdiction. But I'm going to vote in favor of the amendment.

Ms. Ohlson-Kiehn: Okay.

Ms. Ehlers: Well, in that case, what ought to be added to the amendment somewhere, even in parentheses, is the avoidance of having more than one jurisdiction.

Mr. Hughes: It could be a finding.

Ms. Ehlers: And its BMPs.

Chairman Easton: We add a fifth finding that – would you be agreeable to adding a fifth finding that stated that only one jurisdiction – help me with this.

Ms. Nakis: Well, I just had written this: "When an area is within several jurisdictions, which jurisdiction supersedes?"

Chairman Easton: Does that sound good?

Ms. Ohlson-Kiehn: I think that's a reasonable question because I think that's a question the Department of Ecology has to answer for *you* guys.

Chairman Easton: All right. That'll be our fifth finding then, and you can get that – extract that from the transcript – that wording. All right.

Ms. Lohman: Jason?

Chairman Easton: Yeah, go ahead.

Ms. Lohman: I think we need to clarify what our wording is, don't you?

Chairman Easton: Clarifying the wording on the fifth –

Ms. Lohman: On Elinor's.

Chairman Easton: Elinor, will you read that back again?

Ms. Nakis: “When an area is within several jurisdictions, which jurisdiction supersedes?” So which – whose rules are to be followed?

Chairman Easton: Which jurisdiction supersedes.

Matt Mahaffie: Can I –

Chairman Easton: Matt?

Mr. Mahaffie: A little comment here. Perhaps I’m wrong in my understanding, but if the NRCS – if you have the Conservation District issue a Farm Management Plan, it lists BMPs. The BMPs are transferrable. BMPs are BMPs. If it is the best management practice for the property it’ll satisfy the NPDES. There’s not a conflict of jurisdictions. Different best management practices for different agencies doesn’t make them not best management practices. You can make up your own best management practices under the NPDES if you have just cause. I think it’s kind of a –

Chairman Easton: So you think the fifth finding is not necessary?

Mr. Mahaffie: I don’t think so. There’s – just because there’s more hands in the pot, I guess, it doesn’t really make a conflict.

Chairman Easton: So let me clarify this. You think the fifth finding’s redundant?

Mr. Mahaffie: Yes.

Chairman Easton: Which would mean then if the rest of us or the majority of us were okay with it, you just would think it’s redundant.

Mr. Mahaffie: Yeah.

Chairman Easton: Okay.

Mr. Mahaffie: I mean, it’s – yeah.

Chairman Easton: Anybody who’d want to –

Mr. Mahaffie: Well, I think it kind of comes back into some of the other comments that have been made. I mean, it’s –

Chairman Easton: Okay.

Ms. Ehlers: Well, I’d like to bring it back into something I brought up two months ago, and that is the question of who’s going to manage this thing. If you have Mr.

X who has a piece of property in the ag zone, to whom does he go for his best management practice in case he doesn't happen to have a set?

Mr. Mahaffie: In the ag zone? _____.

Chairman Easton: Okay, let's get back to –

Ms. Ehlers: Well, you see, that's what needs to be known because the way this is written he goes to them and they don't know about ag BMPs. That's not their –

Chairman Easton: Okay, Annie's going to respond to Matt and then we need to move forward with the amendment. Annie.

Ms. Lohman: Matt, I think that you are partially right. But there is some – there's a little bit of contention on which BMPs are – some people don't agree with BMPs that NRCS wants agriculture to use and some people want them to be more stringent. For example, if I were to pick a buffer BMP, some people want a very wide buffer width, site potential tree height buffer width, and other people have documented that they can use an extremely narrow buffer width and accomplish basically the same thing. And there is a conflict there. So to say that a BMP automatically – if it satisfies NRCS it'll automatically satisfy over here, that is not a true statement.

Chairman Easton: Okay. Elinor? Elinor and then I'm going to call the question – or someone – yeah. Go ahead.

Ms. Nakis: So this – the drainage ordinance: Does it address Howard Gulley's problem that he had with his property?

Chairman Easton: I think that's a better question for when we're on the actual motion and not on the – because right now we're just discussing the amendment, so can we come back to that when we get to the motion?

Ms. Nakis: Oh, yes. Okay.

Chairman Easton: Okay, so right now we're going to call the question on the amendment, and the amendment was to remove all portions of the NRL from the map – correct? All those in favor, signify by saying "aye."

Mr. Hughes, Ms. Lohman, Ms. Nakis, Ms. Ohlson-Kiehn, Ms. Ehlers, Chairman Easton, Mr. Jewett and Ms. McGoffin: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Passes unan – any abstentions?

Mr. Mahaffie: Abstention.

Chairman Easton: Okay, so Matt abstains. So it passes eight-zero, with Mr. Mahaffie – did I say that right? – Mr. Mahaffie abstaining (gavel).

All right, so the amendment has passed. Now we will enter into discussion again and then we'll take your – we'll go with Elinor first to go back into discussion about the actual motion.

Ms. Nakis: Okay, so my question was: Does the definition of the drainage – or the drainage ordinance definition – does it cover what needs to be covered for Mr. – so that something that happened to Mr. Gulley doesn't happen again to someone else?

Chairman Easton: A perfect question for staff, in my opinion.

Mr. See: The focus of the ordinance changes that are before you is relating to Ecology – our NPDES permit, which it focuses on water quality. And it's illicit discharge, illicit connections and runoff control for development, redevelopment. Within that specified area the runoff control portions are – would be – implemented. The only portion of this ordinance that expands beyond that is the water quality section, which is essentially illicit discharges, pollution. So I don't see that addressing Mr. Gulley's concern. And Dewey Beach being outside of the NPDES area.

Ms. Ehlers: No, but there are hills within the NPDES area and those hills have people who live on them and down below them. So, in that sense, does it – does this ordinance help them?

Chairman Easton: It doesn't cover Anacortes, right?

Ms. Nakis: Does it address forestry practices?

Mr. See: No. Forestry practices are an exemption under the Appendix 1 that forest practice, forest activities, logging activities are regulated by the Department of Natural Resources.

Ms. Nakis: Even on property that is privately owned?

Mr. See: I believe so.

Ms. Nakis: That's state owned? Or only federal?

Chairman Easton: No, state –

Ms. Nakis: No, it says here the Utility covers all rural Skagit County except Rural and Reservation lands.

Ms. Ehlers: The Drainage Utility does not cover the Secondary Forest or the Industrial Forest. They don't pay it any – only those who pay into the Drainage Utility are benefitted by it, which is why the drainage districts are outside, all the cities are outside and the forests are outside.

Mr. See: I would encourage –

Ms. Ehlers: But –

Mr. See: I'm sorry.

Ms. Ehlers: And so what is on this map that Annie got for us – the one with the drainage districts? – in this particular case I think that everything is covered by this ordinance that is outside of a city is covered by the Drainage Utility. But the Drainage Utility cannot pay for new development.

Chairman Easton: Okay, so the answer to your question is no.

Ms. Nakis: Right.

Mr. See: And I would recommend, you know, concerned citizens with drainage problems contact our Surface Water Management Department at Public Works and we have staff that will go out and – onsite – and do a drainage investigation and see if something qualifies for a Drainage Utility project, which is separate from this ordinance.

Ms. Nakis: I guess I – it would be nice to have something that was preventative in here.

Chairman Easton: You – Kate, could you join us for a second?

Ms. Rhoads: Sure.

Chairman Easton: So you heard Mr. Gulley's testimony earlier?

Ms. Rhoads: Yes.

Chairman Easton: Is this not the vehicle where this stuff gets addressed?

Ms. Rhoads: Remind me: Was it – was it forest practices?

Chairman Easton: Yeah, forest practices above his property.

Ms. Nakis: On private forestry land.

Chairman Easton: Private land.

Ms. Rhoads: I believe that it would not apply if it's forest practices. Now you can do development within forest practice areas, in which case if that was happening if you went over a certain threshold you might have to provide some flow control.

Chairman Easton: Okay. So what I'm hearing consistently from both staff and consultants is that we don't have the purview within this to be able to do that. That would be outside of what's involved in this actual permit.

Ms. Ehlers: And that's what I want dealt with later.

Chairman Easton: That's a clearing – that's the clearing ordinance potentially? Would that be where that could be addressed?

Mr. See: Potentially. That – yeah, we're still _____.

Chairman Easton: Or the CAO? I mean where would you – if tomorrow I had the ability to say we wanted to fix this and I could fix it, where would I write it down?

Ms. Wight: In the clearing and grading.

Chairman Easton: In the clearing and grading. Okay, that's the question, that's the answer, so that's where you would write it down. Not that we can do that tomorrow, but that's helpful.

All right, the public hearing is closed so we're going to have to keep moving. We're in deliberations at this point. Does anyone else want to speak to the motion – for or against the motion? Annie?

Ms. Lohman: We're being asked to vote on something with – you know, we have been told now – a couple of things have been referenced in Appendix 1, and I'm one of these people, I've got to see the words rather than go by what somebody has told me. I just have a lot of heartburn when it's Trust me: the words are there. But I want to see them.

Mr. See: Yeah, and –

Chairman Easton: What happened? To Appendix 1?

Mr. See: Public Works staff, as we have stated earlier, this is new ground for us and –

Chairman Easton: Yeah.

Ms. Wight: I'll take responsibility. Of the plethora of documents that I have provided you, I did not provide Appendix 1. I will get Appendix 1 to you. Appendix 1's the – pretty big.

Chairman Easton: This big?

Mr. See: No, it's –

Ms. Wight: Oh, that's the back portion. Okay, yes. We have a notebook that has the whole Stormwater and then Appendix 1.

Ms. Ehlers: Well, we have a – in what you gave all of us, you've given it to us three times.

Ms. Wight: That – yes, the permit.

Ms. Ehlers: This permit. Why can't we use the definitions and acronyms that are at the end of the permit?

Ms. Wight: Because, as Kate explained earlier, those apply to more than just the municipal NPDES.

Chairman Easton: Okay. All right. How many – I'd like to poll –

Ms. Ehlers: Then what's it doing in this permit?

Chairman Easton: Okay, okay. Hold it. We've been through this so we're going to move past that for a second. How many of you would prefer to wait to vote until you've seen Appendix 1?

Ms. Nakis: I would.

Ms. Ehlers: I would. I want to know what I'm voting about.

Chairman Easton: I've – I mean, we've referenced it like ten times so I'm kind of – is that a majority?

Ms. McGoffin: I don't need to.

Chairman Easton: Mary doesn't need to – Jerry?

Mr. Jewett: I'll go either way.

Chairman Easton: Elinor says yes and I say yes. All right. Seeing a majority of us – I believe that's a majority. One – you said – two, three. What are you doing?

Mr. Hughes: Going with the flow.

Chairman Easton: I need a sort of a – you know – a decision.

Mr. Hughes: It helps me.

Chairman Easton: Okay, so we have a majority. Betsy?

Betsy Stevenson: Yeah?

Chairman Easton: I'm going to be calling on you in like thirty seconds.

Ms. Stevenson: (inaudible)

Chairman Easton: No, not right now. We're going to need time to review it. We're not going to be able to do that tonight.

Ms. Lohman: What is the – when is the – when is the decision date that you need?

Chairman Easton: Oh.

Ms. Wight: August of this year.

Chairman Easton: Yeah, we've got time.

Ms. Lohman: Okay, so we have time if we – okay.

Chairman Easton: See here's what I propose: I propose that we suspend our deliberations, that – we have most of them done – that we review Appendix 1, that we tag this to another – to the back end of another meeting or, you know, or the front end to another meeting. And, you know, a lot – say, no more than a half-an-hour I think should be plenty of time for us to finish this. And does that agreeable to everyone?

Ms. Ehlers: Yes, especially if we have the draft of what we've moved and seconded and added.

Chairman Easton: Yeah, and you would have a chance then to talk to legal staff about our findings. So we'll all have findings. We'll have draft findings.

Here's what I would prefer for draft findings: Have them available on the computer so that if we can make minor changes, and if staff – if legal staff – feels like they need to be present because we'd like to live-edit our findings so that then we could **lock** them off here in person, okay? So you may need – if legal staff wants to be here, you may need to – and you may need to be here too, I would guess, Kate.

Mr. Jewett: What do you do with the motion that's before us?

Chairman Easton: We're going to suspend – I believe that we would withdraw – we'll withdraw – we'll ask the maker of the motion to withdraw it or we'll suspend the meeting?

Ms. McGoffin: No.

Mr. Hughes: No, just continue it.

Chairman Easton: We'll just continue the meeting.

Mr. Hughes: The motion's still on the table.

Chairman Easton: The motion's on the table and we'll continue the meeting.

Ms. Lohman: I don't remember the – what you call that.

Chairman Easton: What do we call that? Continue the meeting?

Ms. Ehlers: Table it to the next meeting.

Chairman Easton: Table it and continue to the next meeting. All right.

Mr. Hughes: Everything's still on that we have –

Ms. Lohman: Right.

Chairman Easton: All right. So we have a couple of – we have one item of general issues that I'll cover real quick, which is your quarterly mileage. Note that there's a new mileage amount per mile; the cost went down per mile with what the feds – federal government – is reimbursing you at. Your reimbursement rate is now fifty cents per mile.

Mr. Hughes: Buy a moped.

Chairman Easton: Some of you already have the number that's – that has been calculated for you by Carly, which is very nice. Some of you don't. If you do a calculation, it has to be done through Mapquest.

Kirk Johnson: Right, so the number that's been provided for specific people is the number that the Auditor will accept. So if you write a different number in there, that's not what you're going to get paid. You'll get paid what the Auditor has determined is the correct number.

Chairman Easton: Okay. So you want to turn those in or mail them in to the Auditor?

Carol has a brief question for Betsy concerning Young Island.

Ms. Ehlers: A year or two ago –

Chairman Easton: Do you want to come to the microphone, Betsy?

Ms. Stevenson: Yeah.

Chairman Easton: Go ahead, Carol.

Ms. Ehlers: A year or two ago the Planning Commission went through a process changing the exact status of a very small island in the lee of Burroughs Island in Burroughs Bay, which is west of Fidalgo Island. It was a stunningly complicated process, as anything seems to be these days for the Shoreline Management Program. But it appeared to go through with enormous quantities of paper and thought on the part of Betsy and a consultant. It went through the Planning Commission with no difficulties. And now all of a sudden there is a legal notice in the paper that finally it was approved in February and anyone who wishes to appeal can appeal to the Growth Hearings Board.

And since this was something that went through smoothly I wanted to bring it up to the Planning Commission because sooner or later we're going to have a whole Shoreline Management Program to do and if this small little thing that wasn't appealed or objected to by anybody, including DOE, took two years and has these difficulties, I can just envision the problem that's going to be held when we do a whole Shoreline Management plan.

But perhaps Betsy can explain in particular why does it go to the Growth Hearings Board instead of the Shoreline Hearings Board?

Ms. Stevenson: Because we're a county that plans under the Growth Management Act, so under the shoreline regulations under the WAC it specifically states that any master program or map amendments would be appealed to the Growth Management Hearings Board.

Chairman Easton: Okay.

Ms. Ehlers: For all these years they've gone to the Shoreline Hearings Board – in the '90s.

Ms. Stevenson: Well, these are new WAC regulations. They are the same ones we'll be using to update our Master Program.

Ms. Ehlers: So does the Shorelines Hearings Board no longer have jurisdiction?

Ms. Stevenson: They hear permits and those types of decisions. They don't hear amendments anymore.

Chairman Easton: Thank you, Betsy. I'm sure Carol might have some follow-up for you after the meeting.

Ms. Ehlers: No, but these are the questions I think the people on the shorelines need to know are available to be asked.

Chairman Easton: You bet.

Ms. Lohman: It's going to be different after this year.

Chairman Easton: Yeah, well, this next legislative session may make some changes to that. Annie's right about that.

Ms. Lohman: It's going to be way different.

Chairman Easton: All right. With that, I'd like to thank staff. Public Works, I know it's not always fun to come before us and stuff but we appreciate it. I want to thank the Planning staff because they're always fun to have with us, and our chief Building Official for gracing us with his presence tonight. And I want to thank the public for coming and joining us at a public hearing. And, Commissioners, thank you for giving us your time.

Mr. Hughes: The agenda?

Chairman Easton: What about the agenda?

Mr. Hughes: What's happening? I mean –

Chairman Easton: Oh, at this point I haven't been briefed on what our next agenda item would be so if Mr. – Mr. Johnson?

Mr. Hughes: Well, or –

Mr. Johnson: That's the whole reason I was here tonight –

(laughter)

Chairman Easton: Man, I've done my whole thank-yous and everything! I was ready to go!

Mr. Johnson: – not to change the mileage on your mileage sheets. We don't have an item that will be ready for you for the first week of March, and a number of us are –

Mr. Hughes: April.

Ms. McGoffin: You mean April.

Mr. Johnson: – going to be away – oh, I'm sorry; the first week of April. Anyway, so you may want to come back with Public Works staff to address – Jason is shaking his head no – to address the NPDES ordinance. Or you may not. But there will likely be a public meeting on the Bayview Ridge PUD ordinance, which is in development, probably the evening of – late afternoon or early evening – of March 23rd or 24th, so that's a Wednesday or a Thursday. And you would be invited to attend that. That'll be with the consultant that's helping to develop the PUD ordinance. There'd probably be some – a slide show, different images reflecting other PUD ordinances throughout the country – livable, walkable development types. So that might be something of interest to you because that will be coming before you before the end of the year.

Ms. Ehlers: March 23rd?

Mr. Johnson: 23rd or 24th.

Ms. Ehlers: Which one is Tuesday?

Mr. Johnson: Well, one is a Wednesday and one's a Thursday. It hasn't been decided exactly.

Chairman Easton: So it wouldn't be an actual Planning Commission meeting?

Mr. Hughes: It's not a Planning Commission meeting. It's just a –

Mr. Johnson: No, it just would be something that you might be interested in attending.

Chairman Easton: Here's what I suggest, Lori. Let's you and I and Gary have a conference call and we'll figure out the calendar of when we'll come back together. Next week or later this week let's do that, or next week. Then we'll figure out when we'll come back together. There may be something that he's got that we may be able to put together, but I don't think getting together just for a

half-an-hour or forty minutes to finish this when our deadline's not till August makes sense for anybody. And I want to give you guys enough time to get things finished up and all ready with legal staff and everything.

All right. Thanks again and we are adjourned (gavel).