

Skagit County Planning Commission
Deliberations/Action: NPDES
Presentation: South Fidalgo Stormwater Mngmt. Plan
Presentation: 2010 Legislative Work Program Update
May 4, 2010

Commissioners: Jason Easton, Chairman
Carol Ehlers
Jerry Jewett
Dave Hughes
Mary McGoffin
Elinor Nakis
Annie Lohman
Matt Mahaffie
Kristen Ohlson-Kiehn (absent)

Staff: Gary Christensen, Planning Director
Michael See, Public Works Stormwater
Coordinator
Ryan Walters, Deputy Prosecuting Attorney
Jan Flagan, Surface Water Section Manager
Dan Berentson, Natural Resources Administrator

Others: Kate Rhodes, Otak consultant

Chairman Jason Easton: (gavel) Good evening. I call this Skagit County Planning Commission meeting to order, tonight's business meeting concerning a number of issues. Your agenda is in front of you. You've had a chance to review that; it was e-mailed out to you earlier. Are there anything – anything you'd like to add to the agenda tonight?

(silence)

Chairman Easton: All right. Hearing none, then we will agree that that is our agenda and we will move forward.

Planning Commission Business: Mr. Director?

Gary Christensen: I have none unless you have some.

Chairman Easton: I'm not aware of any. You have received mail: law seminars, a piece of mail there for you you should all have. There's also been a memo that's been passed out for – related to tonight's issues, and then I have one piece

of mail that was sent to me that I'll be reading later in the deliberations. We're going to get to the work plan, which will probably discuss our schedule, later in the evening. Okay, great.

With that, I want to turn this over for a brief conversation from – is it – Michael, are you going to take it? – okay, to Michael for – Michael See – to share with us where we're going to go tonight and directions concerning our deliberations.

Michael See: Good evening, Commissioners. My name is Michael See. I work for Skagit County Public Works as the Stormwater Coordinator. The reason we are here – gathered here – tonight is to continue deliberations regarding the proposed code changes that were the topic of the March 2nd Planning Commission meeting and hearing.

Skagit County Public Works, as you likely know, has been working closely with Planning and Development Services to develop code changes to Skagit County Code 14.04, 14.32 and 14.44 that are intended to allow the County to maintain compliance with our National Pollutant Discharge Elimination System Permit – NPDES – which I'll probably just say as our stormwater permit. It flows a little better.

It should be noted that in writing the proposed code amendments staff and consultants emphasized needing the minimum requirements of the permit to have the least impact on our vast array of stakeholders. I thought it might be helpful to give both the Commissioners a little refresher background as well as the viewers at home so they know what we're talking about.

Skagit County is the holder of an NPDES Municipal Stormwater Permit that is issued by the State Department of Ecology for the protection of regional water quality and the management of municipal stormwater. Our Phase II Stormwater Permit requires that Skagit County meet numerous permit requirements that range from public education to code changes like we're doing here to changes in our own operation and maintenance activities.

The proposed code changes before you satisfy the permit requirement to develop and implement ordinances that prohibit illicit connections, discharges, and address stormwater runoff from new development, redevelopment and construction site projects. In order to meet our August 2009 deadline for adoption and provide sufficient time for public involvement in our Planning Commission process, staff developed and the Board of County Commissioners adopted an interim ordinance on August 18, 2009.

As the staff report memo addresses in more detail, our NPDES permit comes from the federal Clean Water Act which was established in 1972. The federal Clean Water Act was modified to include stormwater as a source of pollution in 1983. As a result of this all states throughout the country, including Washington,

were mandated to develop NPDES permit systems for municipalities relating to stormwater. Washington Department of Ecology developed their stormwater – their first stormwater – permit in the mid-‘90s and that was issued to larger cities and counties which are referred to as “Phase I.” In those situations that was the entire county that those permits fell under. In 2007, Skagit County and other medium-sized municipalities were required to obtain municipal NPDES coverage under the Phase II permit.

It should be noted that failure to comply with our NPDES permit requirements can result in Skagit County being subject to significant fines, penalties and third party lawsuits.

The proposed change – the changes that are proposed with our proposed code amendments will likely result in some of the following changes:

- Expansion of the current code that prohibits illicit discharges to be compliant with our permit;
- In addition the code changes would strengthen the enforcement actions that could be taken if violations are found;
- For the owners of private stormwater facilities, the responsibility to operate and maintain these facilities will increase. In many situations this will be the homeowner associations that are responsible;
- The proposed code changes will specifically mandate the use of the Department of Ecology 2005 Stormwater Manual within the NPDES coverage area. This manual puts more emphasis on water quality and generally results in more complex, larger and more expensive stormwater facilities.

Tonight’s process: When we last met with the Planning Commission in March there was a motion made which was tabled. Ryan Walters is going to speak for a little bit after me to talk about the process and where we go from here; however, since that time staff have been reviewing the concerns raised by the Planning Commission as we interpreted them and developed a draft motion with findings and recommendations that we can live-edit tonight. Or we’ll try to break that ground, and it might be a little clunky but we’ll do that.

Staff have also included for the Commissioners’ consideration options in the draft recorded motion that address the concerns of the Planning Commission while achieving compliance with our NPDES permit requirements.

At this time I’ll let Ryan Walters address a couple of the topics.

Chairman Easton: Great.

Mr. See: And Ryan will be helping us with the live edit portion also.

Chairman Easton: Good. Thank you, Michael. Ryan?

Ryan Walters: Good evening. Ryan Walters, just here from Gary Sorenson's good-bye party – if I appear disheveled.

Chairman Easton: You appear fine.

Mr. Walters: All right. Chairman Easton had requested some briefing on the motion. You had tabled the motion. Under your bylaws the option to table is not listed so I guess that would imply that we defer to Robert's Rules of Order. Under Robert's Rules you can table and there's no necessity to pick up from the table, so you can start with a new motion or I would suggest that we roll right into the draft recorded motion that staff have prepared and that we do a live edit of that motion, meaning I'll bring it up on the screen and you can suggest whatever changes you'd like. We have several options prepared. They're all bracketed. So you can choose from those or choose additional or different words as you see fit.

Chairman Easton: And then the motion would be made following the editing of the draft – in theory – then?

Mr. Walters: I would suggest that you –

Chairman Easton: Or do we start deliberations by – again, since we tabled the motion, either – we're not going to pick that same motion back up?

Mr. Walters: You can either pick –

Chairman Easton: – pick it up or we can, we can –

Mr. Walters: It probably makes sense to propose the draft motion and then –

Chairman Easton: – and then start editing the proposed drafted motion?

Carol Ehlers: That would be the clearest.

Chairman Easton: All right. So with that –

Mr. Walters: I also provided you a memo on that Definitions question.

Chairman Easton: Yes.

Mr. Walters: And I can provide you a summary of that now or later or not at all.

Ms. Ehlers: Well, perhaps you can address one part of that. I was asking that at least one additional definition be added to 14.04. Your memo comments that the section of 14.04, Definitions, is getting longer and longer and longer.

Mr. Walters: Correct.

Ms. Ehlers: And there is a desire to eliminate and not have so many, particularly those that are actually regulation within the definition. That's a much larger issue than tonight.

Mr. Walters: Right.

Ms. Ehlers: You suggest that we refer to the original document – the state permit, I believe – NPDES – for the source of the definitions. It is not a characteristic of Skagit County Code to in the section itself refer to the original document on which it is based. But that's not a bad idea because then people would know where to go for the rest of the laws that they have to consider. So think about that while we're going through the rest of it, because as long as you have used the term "runoff" again and again and again in the basic document I think there ought to be a definition of "runoff" that somebody can find if they want to know what it is.

Mr. Walters: And which document do you refer to as the "basic document"?

Ms. Ehlers: Well, the basic document is –

Mr. Walters: The code amendment or the threshold – the threshold and the standards? ____.

Ms. Ehlers: No, the basic document that I think of is what you gave to us on the 19th of May, 2009, when you have – this one, NPDES Phase II – which seems to be a basic document for the operation. Am I correct?

Mr. See: I can comment on that. That document you have there, Carol, is our Stormwater Management Program Plan. So it is a requirement of our permit that annually we update that and make it available to the public. It essentially goes through all the permit requirements, says what is required, what we're currently doing and what we're planning on doing. It's nothing that we're codifying in this process.

Ms. Ehlers: No, but if it's what you are going to expect the public to know as the background for whatever else is required, then somehow or other there has to be an easier way than now exists. For someone who doesn't – who's never taken part in these processes and suddenly is caught by either having to have a permit or having to react to something somebody next to them – or, particularly, above

them – is doing, to be able to find out how to find your way through this increasing morass of documents. And in this – your Plan – runoff is a major item.

Mr. See: Yes.

Ms. Ehlers: And runoff isn't quite the same as stormwater runoff. Stormwater runoff is the initial whoosh that comes from the **inch-long** rain __ rain that day that goes down the roads and goes wherever it goes. Runoff is what happens the next couple of days or a week afterwards which is the latent – the aftereffect, if you will – of the initial stormwater runoff. And the experience of large numbers of us here in the county downhill from something is that that is the point at which it's equally dangerous or problematic in terms of quality.

Mr. Walters: So to the extent the term “runoff” is used in the Plan, staff could incorporate a definition into the Plan. I would recommend that if the term “runoff” is not used in the ordinance that we don't need a definition of “runoff” in the ordinance. The term is used in the ordinance once in a definition of “stormwater runoff” and another time in a definition – or in a substantive section talking about irrigation runoff where I think it's probably clear from a dictionary definition.

Chairman Easton: Okay. Here's what I'd like to do. Before we address points one through four or five that we need to address, let's get a motion on the table with – the draft motion – and we'll come back to the definition of “runoff” there. And the way I envision sort of the live editing is, you know, we're going to have a couple of – I've suggested they put some options for us up here. If they're not options that you all want – if you want to make a different suggestion we can do that – they have the ability to do that live here with us, but I want us to move forward through this sort of one at a time and then we'll come – I'll come to each one of the things that we discuss that have shown up – that show up in the staff plan. Is that all – is that agreeable?

(sounds of assent)

Chairman Easton: All right, great. So the Chair will entertain a motion for the draft – well, that language was in front of me and then it just flew away – for the draft of the – can we go to the top of that, Ryan? Thank you. The Chair will entertain a motion for the – a recorded motion regarding updates to the County's drainage code for compliance.

Jerry Jewett: I'll move we accept it as recommended.

Chairman Easton: Okay.

Dave Hughes: Point of clar- – does this include what we – the amendment to the motion before?

Chairman Easton: We're going to go through each point in the amendment now. We're going to open up discussion on this. I want a motion to accept – we're – he's making a motion to accept this. If it's seconded, we'll go into deliberations on this. The five points that came up during the amendment process when it was tabled, we'll go through one at a time and make – we will consider them and change them as this committee sees/feels fit as we go through it. Does that make sense?

You see on your screen right now – the first one would be the acronyms and definitions. We will discuss this, whether we want it the way that it's typed out or whether we want to change it. And we'll go down and discuss agriculture: Should practices be exempt? We'll go through each one of those things that came up during our discussion.

Mary McGoffin: Chairman, I'll second that.

Chairman Easton: All right, so it's been moved and seconded. Does that answer your point of order? I don't want to run past you. Does that answer your point of order?

Mr. Hughes: (inaudible)

Chairman Easton: You all right?

Mr. Hughes: Keep going.

Chairman Easton: All right. It's been moved –

Mr. Walters: In the motion as it appears on the screen, the bold portions are what we extracted from the discussion last time; in italics are staff recommendations.

Chairman Easton: Okay. So it's been moved and seconded to accept the draft findings as presented to us right now, and we will now edit them. All right? We recognize this is a little –

Mr. Hughes: Ass-backwards.

Chairman Easton: Well, it's a little clunky, but we're trying to accomplish dealing with our concerns, at the same time finishing deliberations and getting findings done in a timely manner. All right? Did you have a question? All right.

Let's move to point 1 then. In the staff report legal counsel strongly recommended against incorporating definitions and acronyms directly within the text of the ordinance. They supplied a separate memo on the topic, which is the

top – the memo that Ryan distributed earlier. Did you want to summarize that memo now?

Mr. Walters: If you want. Basically there are a number of problems with our existing code with respect to definitions. We have way, way too many of them. In many cases they're definitions for terms that are used only once in the code, so they don't need to exist as definitions. They can simply exist in line with the rest of the code. Also some of them are "stuffed" definitions in that they're not just to define the term but they define the rule associated with the term, which is bad practice because then if you want to know what the rule is you can't just read the text of the ordinance, you've got to jump back to 14.04 where Definitions are to find the rule.

There are various other problems that we don't correct in this proposal. For instance, there's no typographic convention that indicates when a term is defined versus when we use a dictionary definition. Also some of the terms seem to simply just adopt dictionary definitions and where a dictionary definition suffices and there's not really any controversy on that point we should probably just leave it undefined.

So here we have a couple of specific problems with adopting the acronyms from Appendix 1 directly into the code. And those specific problems are, one, they're part of Appendix 1 so if Appendix 1 changes – because it's a Department of Ecology document, not our document – then we would need to update our code to reflect the changes in Appendix 1. And the other reason that's a problem is because the method through which we adopt Appendix 1 is to say, You must comply with Appendix 1. So if we incorporate the definitions from Appendix 1 but we still say you have to comply with Appendix 1, then we might have a direction to comply with Appendix 1 but we are using definitions that might be different from Appendix 1 so they may not update at the same time.

The other couple problems are if we take those definitions and put them in 14.04 they would apply to the entire Title 14, and there might be instances in other chapters of Title 14 where those terms appear. And if that's the case then we would be changing the definitions of those terms, and that could be problematic, and we haven't done an analysis to find out if that's the case or not but, if we did, we would want to double-check. Now we could restrict the application of those terms so we'd put them in 14.04 and then we say, Term, comma, Drainage, but that starts to complicate matters quite a bit in that there's still no indication as to whether the term is defined or not. And in many cases the term may not even be used in the Drainage chapter.

Now, alternately, we could take those definitions (and) we could put them at the beginning of the Drainage chapter, but that's not the common practice throughout Title 14. That doesn't mean we can't do that but I'd recommend against that for

the same reason that I gave before in that if we update – if *Ecology* updates Appendix 1, then these definitions don't get updated.

So there're a couple alternatives, at least one of which was indicated in the staff report, and that is we give you the definitions and maybe all of Appendix 1 when we give you a permit application for any kind of drainage related permit. Another alternative or something that could be used in conjunction is that when we provide the code online we provide a link to Appendix 1. So you don't have to find Appendix 1, you don't have figure out what document that is or what it's a part of. You just click and it will bring up Appendix 1 and you can read Appendix 1.

Chairman Easton: Okay.

Ms. Ehlers: That would take care of it.

Elinor Nakis: Yeah, it would.

Ms. Ehlers: Both of them would take care of it. I'd like to move that we accept both of their recommendations, one that Appendix 1 – because it is a broader document that gives context and enables people to understand where the direction of this is going and not just some specific, small sentence – that we accept the recommendation that all of Appendix 1 be given to people – the acronyms and definitions – as part of the application packet. And my second recommendation is that there be a link on the website so that people can easily go to where they need to go without having to understand this entire process.

Chairman Easton: Is there a second?

Ms. Nakis: I second that.

Chairman Easton: Okay, any discussion?

Ms. McGoffin: Well, I think most applicants probably know these acronyms and definitions maybe better than we do. So I would leave it up to make available to an applicant, but "should" is a pretty strong word. I would just say make available. On a website, definitely make it a link. But I don't like to use "should" unless we really have to.

Ms. Ehlers: "Should" isn't as powerful as "shall."

Ms. McGoffin: My point is make it available, but it's – that's –

Chairman Easton: So Mary wants to change the word "should," to make it available. Is there any heartburn over that? Does anyone have – I'm sorry. Annie?

Annie Lohman: Well, my question is actually before Carol's motion, and that goes to – maybe you can answer it, Ryan. When you have similar acronyms or the same acronym but they might have different – as you say – a different definition or a different regulatory action or a different practice, how do you decide whether it's Appendix 1 or the County's own code that takes precedence?

Mr. Walters: So that one's easy. If it exists in Appendix 1 and it's defined in Appendix 1 we use the definition for Appendix 1 when you're reading the rules there in Appendix 1. If you have a term defined in County Code proper and the term appears in a provision of County Code, then we use the definition per County Code. If the definition does not appear, then we would use the dictionary definition.

Ms. Lohman: Okay, then that leads me to my second question. When I looked up Appendix 1 in the agricultural exemption that was referred to it says "generally exempt." So what does that mean?

Mr. Walters: That's a good question. I would not have written "generally exempt."

Ms. McGoffin: That was written by Department of Ecology.

Ms. Lohman: Yeah, I realize that but do you see where an aggie has heartburn over that because "generally" is a large net.

Mr. Walters: Right. I think that our Department would be very likely to interpret that broadly.

Ms. Lohman: With a guarantee?

Ms. Ehlers: But that doesn't –

Mr. Walters: ____.

Ms. Ehlers: That isn't very secure.

Chairman Easton: Well, the difficulty is with Ecology –

Mr. Walters: – having written it.

Chairman Easton: – having written it –

Mr. Walters: Not specific.

Chairman Easton: Right?

Mr. Walters: Yeah.

Ms. Lohman: So if you adopt – excuse me; I’m speaking out of turn.

Chairman Easton: Go ahead.

Ms. Lohman: If you say we’re going to adopt Appendix 1 and agriculture, according to Appendix 1, is *generally* exempt – they talk about conversion from timber to ag and construction of impervious surfaces are not exempt. It still leaves quite a bit of unanswered situations. So how do we decide which definitions then, if they have common acronyms and terms? I’m thinking BMPs and other certain similar terms.

Mr. Walters: Well, that’s going to depend on what substantive revision you read. So if we’re talking about a substantive provision of Appendix 1, we would apply the definition in Appendix 1. As a practical matter, we’re the ones doing the permitting, doing the enforcement, doing the regulations, so it would be our Department that would be making that decision on a regular basis.

If – well, I’m not entirely sure exactly what your question is, so I’m not entirely sure exactly how to answer it.

Ms. Lohman: Well, it goes back to “generally exempt.”

Mr. Walters: Right. We should avoid constructing anything in our own code that’s like that.

Ms. Lohman: Correct.

Mr. Walters: But I’m not sure that we can get away from adopting Appendix 1.

Ms. Lohman: My point is in the NPDES permit coverage area it envelopes a lot of agricultural land that is not densely populated, and that’s where some of us are having problems. And it isn’t – we’re not attacking you, Michael or Lori – it’s a reality and we want to know who’s in charge.

Ms. McGoffin: Um –

Chairman Easton: Go ahead.

Ms. McGoffin: You know, that’s non-negotiable. That’s what they wrote in their memo to us – the boundaries were non-negotiable. So I don’t want to take time to worry about that. It’s not something that we have any comment over or control over, so I just don’t see where discussing the boundaries is going to matter.

Chairman Easton: We're going to have a chance to come back to that, as we move forward, after the acronyms. Are you –

Mr. Walters: And one thing that we are proposing as item 4, is that we – so item 4 is here and you should have a paper copy of that. Attachment A, which I'm going to bring up now, provides exemptions. And one of the exemptions, properly applied agricultural and forestry chemicals, we propose to change that from that to this, such that “discharges from agricultural activities that are compliant with existing code, our existing ag critical areas ordinance.”

So this addresses a couple of different things, one of which was the Planning Commission's concern over multiple sets of BMPs being applied. We don't think that's a good idea either, so what we propose here is that we just refer back to our existing ag CAO. If you're compliant with that, you're compliant with this.

And so that might be considered to expand the exemption, the “generally” exemption that's in Appendix 1.

Chairman Easton: Let's agree that we're done – let's see if we can agree that we're done with number – scroll back up for me, please – numbers 1 and – you know, number 1 was what – so you all remember – number 1 is what we voiced during our last discussion as being concerns. Number 2 is staff's now edited, slightly edited, change that's been suggested about how to handle that. Are we all comfortable with that? It's been moved and seconded. Is there any further discussion on that one point?

Ms. Ehlers: You don't have the second half of my motion in there.

Mr. Walters: Oh, yeah, the link.

Ms. Ehlers: The link.

Mr. Walters: Would you like me to type that?

Chairman Easton: Please.

Ms. Ehlers: Please.

Mr. Walters: So I think –

Ms. Ehlers: So it doesn't get forgotten.

Ms. Nakis: That would be great.

Mr. Walters: If you agreed with Mary's motion –

Ms. McGoffin: Make available.

Mr. Walters: That was “should make available with the relevant application forms and through a link on the code webpage.”

Ms. Nakis: Okay.

Chairman Easton: Is everybody agreeable with that language?

Ms. Ehlers: Yes, but if this is – the subsidiary issue is dealt with. I was going to raise it later, but this seems necessary. In here you talk about how these are – how the – essentially the ponds that are the result of the 2005 manual shall be maintained and managed by homeowners associations. These – from my experience – are innocent, ignorant people who don’t understand what they’ve taken on. The language most of the time is written in engineering and homeowner doesn’t understand engineering terms. Will you be giving Appendix 1’s acronyms and definitions to those who have to maintain this too? Because, you see, that’s – they’re not sophisticated the way Mary’s applicants are. I’ve watched.

Mr. See: Right. The operation maintenance of private stormwater facilities is a whole other education outreach effort that’s going to have to be conducted.

Ms. Ehlers: Yes.

Mr. See: And in other jurisdictions in Phase I communities it is a – it’s a big effort. Yeah, you do, and a lot of those standards that those facilities are maintained to are – there’s often that information, those standards are in the 2005 Stormwater Manual. And, yeah, it will be a large education outreach effort that we’ll have to work our way through.

Chairman Easton: Okay.

Ms. Ehlers: Okay.

Chairman Easton: All right, let’s move –

Ms. Ehlers: Then I’ll accept that.

Mr. See: Okay. Thank you.

Chairman Easton: Any other? So number 3 was one of our concerns that was raised last time we met and staff was – Ryan’s already jumped ahead a bit and proposed this new language that replaced language earlier in another section of the code. Just by way of reference, you all have seen this before – it was sent to you – so this isn’t the first time you’ve seen this language. Is there anyone who

has – wants to make a comment or a concern about this language or would like to make a motion that we accept this change?

Ms. Ehlers: I defer to the ag people, to Dave and Annie.

Chairman Easton: This might be a good time for me to read what the Ag Advisory Board sent to me. Tonight I received from the Ag Advisory Chair the following letter.

The members of the Ag Advisory Board strongly approve your decision to remove natural resource ground from the NPDES Phase II permit area. We feel the maps set forth by the census are obviously flawed in their estimate of population numbers. The current maps would incorporate a large number of productive agricultural properties. The potential restrictions and regulations which will or could come from these permits will make these properties unfeasible to competitively farm. We support your position to protect and maintain productive agricultural lands in Skagit County now and into the future.

Sincerely, Nels Lagerlund, Chairman, Ag – Skagit County –
Chairman, Ag Advisory - Skagit County Ag Advisory Board.

I just want to clarify I'm reading a letter from them. We had not made a decision. We tabled our discussion. We brought this up as an area of concern. We hadn't finished our discussions on that so we are doing that now.

Ms. Ehlers: There is a precedent for – in this municipal census-determined municipal area. Ann Marie Gutwein is the first person in the County that I know of to be impacted by it. She's the one who deals with the six-year transportation plan. A major part of this census-determined area is between I-5 and Bay View, and is not only farm land but bog land. She is obligated under the NPDES – not the NPDES; the federal designation – to have federal standards on Josh Wilson Road: four lanes, bicycle lanes on each side, and sidewalks. There are few things sillier than having sidewalks down there between I-5 and Bay View. And she said she had no difficulty getting across to the federal government that that was not a good use of money, and that they said that she didn't have to.

So there's – as far as the feds are concerned there seems to be at this point in time greater understanding of the ag situation than might be interpreted from what you've said to us about DOE is adamant.

Chairman Easton: Hey, let's take a look at 4 – and Dave pointed this out to me – in relationship to 8. And let me just clarify: If you choose – if we as a commission choose to do number 4, we're going to expand the code to read as it follows there. If we choose to accept number 8 and the language in number 8 or language similar to it, that's a finding – correct? – that we would be sending to the Commissioners about our concerns.

Mr. Walters: It's – the phrase is “a recommendation” –

Chairman Easton: Right, recommendations.

Mr. Walters: – because it recommends that staff protest the designation of resource lands as ____.

Chairman Easton: So I just want to clarify: We have one –

Mr. Walters: It wouldn't change the code.

Chairman Easton: Right. We have a code change and then we have a recommendation that staff protests. So those are kind of – the BMP question kind of ends up in the middle of these two, but if you look at this right now as we're deliberating – at those together as one piece, they sort of act ____.

Anyone else want to comment, you know, for or against the adding of these?

Ms. Ehlers: Well, I think number 8 is clear that we shouldn't accept.

Chairman Easton: And any disagreements over number 4? Any changes to the wording? We have our attorney here. We can write it live if we need to.

Ms. McGoffin: Looks good.

Chairman Easton: I think that 4 and 8 – I'll just say – I think that 4 and 8 address the concerns to the level at which we can address them. We are limited with Department of Ecology and the federal government for how far nine – albeit outstanding – public servants can be, about how far we can go. And I think it respects what the Ag Chair sent to us also.

Ms. Nakis: Mm-hmm.

Chairman Easton: So any other further discussion on 4 and 8?

(silence)

Chairman Easton: Okay, hearing none then we'll take those two changes as they appear on the screen. We'll move back to number –

Mr. Walters: So if you are – and I should ask this for number 2, too – if you are accepting 4 and 8, then are you rejecting 3, 1 and 7?

Chairman Easton: Yeah. Go back up – yes. Go back up to 1. Yeah, 1 would be replaced basically by 2. Object if you feel it's necessary.

Ms. Ehlers: Yes, that's –

Ms. Nakis: No, it's correct.

Chairman Easton: 3 would be replaced by 4 and 8.

Ms. Lohman: Wait, wait, wait. I think really 3 is kind of an emphasis of what's said in the Appendix. Because in the Appendix it says ag practices are – agricultural is generally exempt.

Chairman Easton: Would you like to repeat that?

Ms. Lohman: I think we need to – we want to make sure that everybody knows that commercial agricultural practices involving the working of the land for production are generally exempt. And it's just basically an emphasis that that's what's said in the Appendix.

Chairman Easton: So...

Ms. Ehlers: So what do you want it to read as?

Ms. Lohman: Well, I think we want to keep it. We don't want to totally –

Ms. Nakis: You want to write it exactly the same as the Appendix?

Ms. Lohman: Well, we were already regulated under Skagit County Code, but then when you have the overlay with the NPDES, or whatever the order the letters are, you said that we have to be compliant with the Appendix. So as far as the Appendix goes, ag is exempt. But you still have to follow the County Code. So you *can* say both, correct?

Mr. See: Can I add something?

Chairman Easton: Please.

Mr. See: The reference – the Appendix 1 document refers to runoff control for new development, in which case it talks about ag practices being generally exempt. The other kind of piece of this is the water quality section, in which we're referencing – the CAO references our current practices. So when we're talking about the Appendix 1 it's – for ag it's only in the development – the possibility of development – that Appendix 1 would be the reference, not the water quality section being the ag CAO references.

Ms. Ehlers: So you have two categories that this covers: one, the new development, and the other the general conditions anywhere.

Mr. See: Yeah, the water quality section addresses illicit discharges and the remainder of the document, the majority of the portion, references runoff control and new development.

Ms. Ehlers: I think you better have it.

Chairman Easton: Do you have a suggestion for –

Ms. Ehlers: I think you need protection in both directions.

Ms. Lohman: Right. It goes back to which hammer are you going to hit it with.

Chairman Easton: So how do you want to address it? You want to put a suggestion out there how to address it?

Ms. McGoffin: It just – it seems like a redundancy, Annie, because it's already written once. Do we need to write it again?

Ms. Ehlers: If we don't write it the second time, can you think of any way in which they can be caught?

Mr. See: Can they be caught?

Ms. Ehlers: Caught in a problem not of their own desire.

Mr. See: I think what we've proposed in 4 is probably – to stay compliant with the permit and the requirements is probably a really good option. That's my opinion.

Chairman Easton: "This would result in no new regulations for agricultural activities, impacts on water quality, and avoid the imposition of another set of BMPs."

Mr. Walters: So if you look at the exemption in Appendix 1 it says that "Commercial agricultural practices involving working the land for production are generally exempt." And then, you know, we propose here an exemption in 14.32.090(4)(b), which I'll bring up on the screen here. So 090 is Water quality, and (4) is Allowable discharges and Exemptions, and (b) is Exemptions. So we're suggesting that for wa – for purposes of water quality, what would be exempt would be any discharge that's compliant with our critical areas ordinance for ag.

Now but if you then go back to Appendix 1, it says that commercial agricultural practices involving working the land for production are exempt; however, the conversion from timber land to agriculture and the construction of impervious

surfaces are not exempt. So if we say agricultural practices should be exempted I guess there's maybe some question as to Does that include construction of buildings. Because we're not allowed to exempt construction of buildings. We need to comply with Appendix 1 that says the construction of impervious surfaces are not exempt.

So "Agricultural practices should be exempted" is a little bit broad. We – what the staff recommendation would exempt your discharges for water quality, which is probably the majority of the problem. If you're constructing a building you're going to need to comply.

Gary Christensen: How about this: If it's – I'm thinking out loud here – if we were to refer to this number 3 with a bit further – maybe an adjective there – and refer to "agricultural, soil-based practices" should be exempted. What's interesting is when I looked at Appendix 1 and you look at the very beginning of this Appendix, the title refers to "development and redevelopment." I think the intention here is that agricultural practices/farming the land is not defined as development or redevelopment, and I think the intention here is it should be generally exempt. So if you're farming the land/the soil, turning it, disking it, plowing it, seeding it, harvesting it, it's okay; it's exempt; however, if you're going to have agricultural activities that might mean building structures or facilities, those agricultural practices may not be exempt. But if you're farming the land, if you're turning the soil, that's generally going to be exempt. I think that's perhaps the intention.

Ms. Lohman: Right.

Chairman Easton: What was that phrase you used? "Agricultural –

Mr. Christensen: "...soil-based practices."

Chairman Easton: "...soil-based practices"?

Mr. Christensen: Does that help?

Ms. Ehlers: That differentiates what Ryan's been telling us.

Mr. Walters: The only problem with that is where to put it.

Chairman Easton: Where to put it.

Mr. Walters: Yeah, because if you look at our existing code, what we're proposing here to replace this strike-through with this discharges of farm chemicals provision. That is under Water quality. So we wouldn't want to put "soil-based agricultural activities" in the exemption from Water quality because I think we've already covered it there. What we're looking at is development.

Ms. McGoffin: Ryan?

Mr. Walters: So –

Ms. McGoffin: Ryan? Aren't we covered? If you scroll all the way to 10 it says, "The provisions of this chapter shall apply whenever the following activities are proposed or performed: New Development. Land disturbing activities." To me you're okay to farm. You just can't disturb the land for other things than farming. That's how I read "land disturbing activities."

Mr. Walters: What section are you reading?

Mr. Christensen: It's number 10 on the recorded motion.

Ms. McGoffin: And then you don't need to get into adding a new definition of "agricultural soil –

Chairman Easton: Which is now number 9, it looks like, the way you have things changed with the numbering.

Mr. Walters: Right. Okay, so –

Ms. McGoffin: I think that covers it.

Mr. Walters: You know, that *might* cover it; however, "land disturbing activity" I think is defined.

Chairman Easton: Annie?

Mr. Walters: Or "new development" is defined.

Ms. Lohman: What if we –

Chairman Easton: Annie? Let Annie –

Ms. Lohman: I'm just thinking out loud here.

Chairman Easton: Go ahead.

Ms. Lohman: You know, subject to you guys adding on here, what if you just said that normal agricultural activities are not considered new development? Ongoing agricultural activities are not new development, or something like that, because then you are going back to the normal tillage and customary agronomic practices and it would not be building barns and those sort of things. It would kind of fall in line to the thinking behind the Shoreline Act agricultural exemption.

Ms. Ehlers: Wait, wait – go back to land disturbing.

Mr. Walters: Here's our definition of "land disturbing activity."

Ms. Lohman: See and that's where you could have somebody make a big reach. So you need to have a bold statement that says agriculture is *not* new development.

Mr. Walters: Well, that's why we have – well, so agriculture – *agriculture* is not new development. For the purposes of water quality we have that exemption.

Ms. Lohman: But is it okay just to make a statement?

Mr. Walters: To say that agriculture is not new development?

Ms. Lohman: Yes.

Ms. Ehlers: I like Gary's wording.

Mr. Walters: The question is what is agriculture in that instance. Is it the actual farming of the land or _____.

Ms. Lohman: Well, doesn't County Code have a definition?

Mr. Walters: Say that again.

Ms. Lohman: Don't you have a definition?

Mr. Walters: Of "agriculture"? I'm sure that we do.

Ms. Ehlers: You may like these 14.04 Definitions better when you've finished with it!

Ms. Lohman: There you go.

Mr. Walters: But our consultant from Otak has additional comment she'd like to give.

Chairman Easton: Please.

Kate Rhodes: The agriculture – the general agriculture exemption that's in Appendix 1 that they're referring to is for new development. And that's typically referring to as you got to the land disturbing activities. Now if you go deeper into what's in Appendix 1, there are various triggers of things that you have to do if you do so many square feet of land disturbing activities. And essentially what it says in Appendix 1 is that agriculture – land disturbing activities for agriculture

aren't going to trigger those requirements. For land disturbing activities, not for agricultural development, because building a barn and having an impervious roof would then still require various things through the development requirements.

Chairman Easton: Is there a – maybe I found a – let me think out loud here for a second. Can we recommend – could we consider recommending to the Commissioners that they find a place to make this more – to find the right place to make this apparent?

Mr. Walters: I think the primary question is what is it that you're trying to do. We have essentially two sections. We've got Water quality – we've got discharges; and then we've got construction, if we want to call it in those, you know, more easy to grasp terms. So if we put it in those terms, what are we trying to accomplish? What do you want? Because –

Chairman Easton: Agriculture's not – we're not going to be able to get agriculture exempt from construction.

Mr. Walters: No.

Ms. Lohman: No, we're not asking for that.

Chairman Easton: And no one's asking for that, so it only needs to be addressed in the water quality section.

Mr. Walters: And there we have some language –

Chairman Easton: Which we did.

Mr. Walters: – that encompasses that.

Chairman Easton: Okay.

Mr. Walters: Does that make sense?

Mr. Hughes: I just want to make one point. And this – maybe this is why those of us in this industry are a little cautious or suspicious that – there are examples out there where – in fact, it was a farmer in Snohomish County maybe – oh, I think it was about ten years ago. Someone – regulatory person – came to that farmer and said If you plow, you need a fill and grade permit because you are moving x-amount of yards of dirt. So –

Mr. Walters: I swear to God that's not going to happen here.

Mr. Hughes: You know –

Ms. Ehlers: Well, they could try.

Ms. Lohman: They did.

Mr. Hughes: I hope this is –

Mr. Walters: Really?

Mr. Hughes: Yeah.

Ms. Lohman: Yes.

Mr. Walters: In Skagit County?

Mr. Hughes: No.

Ms. Lohman: They tried to have –

Mr. Hughes: No, this is different. I heard about it in the county south of us, but – you know, it's just – you know? You can – I put up with Carol for years as far as wanting to be so precise in words and in examples like what we just brought to you is the reason why. It's just stuff like that, it's kind of – yeah, we don't – construction, that's, you know, that should come under the normal rules of everyone else. But, you know, going out and plowing or doing something that grows a crop or feeds an animal or like that is what we're kind of watching out for.

Chairman Easton: We're a lot closer, I believe, to dealing with this from what we brought up the last time we met to now. By changing the code in the water quality section I think we make a better statement to the fact that ag's got to be – general ag practices, you know, *have* to be exempt. And if we can go any further to – without touching construction, I don't know where we would put that in our ability to recommend. And that's why I was saying maybe we need to forward that to the Commissioners.

Mr. Walters: So let me point you to a section of existing code, which is not proposed to be changed, because, again, we've got – the structure of chapter 32? Not great. Let's just put that out there. And then staff tried to make as few changes as possible to bring us into compliance, so we didn't get the opportunity then to do a complete re-write which would have made everything clearer.

But if you look at 14.32 – and let's just bring it up on the screen here – if you look at 14.32 and then we jump to 040, which lays out the activities that are going to be regulated by this chapter, we have New Development and we have Redevelopment. Now there's this introductory sentence which introduces a list which we're suggesting that should be titled number 1 and then New

Development and Redevelopment should be (a) and (b), because then it goes on and it says you need a permit and then it says Exemptions. And the very first exemption under what is a regulated activity is commercial agriculture. Now towards the end of this chapter it says in an NPDES drainage area you're going to apply Appendix 1, but, as we've seen, Appendix 1 generally exempts agriculture. And, moreover, when we get into the water quality section we have another specific exemption for discharges from agriculture. So I think that we have it pretty well covered. We tried anyway.

Mr. Christensen: Ryan? If Appendix 1 has a more kind of a general term and the County is more specific in terms of how the exemption is to be applied in its own code, is this not the guidance we would be looking toward in terms of exempting – what is that? – “Commercial agriculture and non-conversion forest practices”?

It would appear – our code would appear to be much more specific than the exemption term that is used for agriculture in Appendix 1.

Mr. Walters: And yes, typically the rule of construction is if you have a more specific term it controls over a more general term.

Mr. Christensen: Yeah.

Mr. Walters: And you can't get much more general than “generally.” However, 14.32.120 says that we apply these additional thresholds that are in the Appendix 1; however, we say “new development, redevelopment and construction projects.” So then we would go back to new development, redevelopment and construction projects which *aren't* defined in 14.04 but *are* defined in 14.32 –

Mr. Christensen: Yes.

Mr. Walters: – in this list – 14.32.0 – okay, so that's not there. It's here. It's defined here.

Mr. Christensen: Yeah, with a much more definitive term as to what general agriculture is exempt. We're defining that ourselves more specifically.

Mr. Walters: Right. Yeah, so we are very clear and very specific on what is regulated and what is exempted, and then in the section where we apply this more stringent standard we're not changing what it applies to, we're applying more stringent standards when it *is* applied.

Mr. Christensen: Yeah.

Mr. Walters: So, again, I think we would be okay.

Ms. Lohman: I just want to make sure that agriculture, because of its land disturbance – which is number 1 under New Development – that we are not akin to new development. And while it may seem like we're belaboring this point, in Snohomish County they very narrowly defeated a right-to-plow – they had a right-to-plow –

Mr. Walters: Was that a rogue planner?

Ms. Lohman: No.

Mr. Walters: No?

Mr. Christensen: But, Annie, I think we get to your concern, and I certainly understand and support that, as well.

Ms. Lohman: And I think this county supports agriculture, but we want to make sure the words on the page reflect that.

Mr. Christensen: Yeah, I think that – yes, we're trying to find a way to make it work. And I think we're all in agreement. I think, in terms of administering the code, that we're going to look at those activities that are defined as "new development" and "redevelopment" and then look at the exemptions. And the County has clarified in more exact terms that commercial activities are – or commercial agricultural activities – are going to be exempt. I think we're much more specific as to what our intentions are – that they be exempt – than Appendix 1, which is used in a more general term. And I think under the rules of construction we're going to apply our more specific exemption language than that which we gain from reading Appendix 1.

Chairman Easton: If there's a – you want to move on?

Mr. Christensen: And maybe it's worth in the recorded motion clarifying, you know, this is truly your intention – either as a finding or a recommendation – that agricultural activities in Skagit County in which there's, you know, tilling of land, harvesting of crops, grazing animals are those types of agricultural activities that are going to be exempt.

Chairman Easton: Anything further on this section?

Ms. Ehlers: But we have to tell him which one to pick.

Chairman Easton: That was my next –

Mr. Walters: If I might propose a third way: You could combine previously number 3 and 4 such that it reads "Agricultural practices should be exempted; therefore expand the proposed," which makes very clear your intent – that you

exempt agricultural practices – and then provides a specific code section that you want changed to make that happen.

Ms. Ehlers: I like that.

Chairman Easton: I'm supportive of that. That feels like it strengthens it. Can we live with that?

(several sounds of assent)

Mr. Walters: Here let me make that change here.

Chairman Easton: Let's take up the topic of BMPs, shall we? Staff has recommended that we choose not to define BMPs, and you can see that in your staff report. It's also referenced in the back of the last page or the second page or the back page of your memo from legal staff in the last paragraph.

Ms. Nakis: So the only definition would be the one in Appendix 1?

Mr. Walters: If you want, we can bring up Attachment A, which is your proposed code, and we can look through where we have BMP. So the first instance is the definition itself, and a couple instances in that definition. And then there's a substantive section that says you shall achieve compliance through best management practices as described in the Stormwater Manual.

So my point in the memo is because every time we say "best management practices" we say the "best management practices that are in the Manual." You know, we can just open the Manual and find the best management practices, so we don't need to define it. And in the next instance where it says "BMPs" it again talks about the Manual, and then if we search further "BMPs as set forth in AKART" – also in the Manual. And then when we come down here, "BMPs and is carrying out AKART," which is referenced in the Manual again. And then I think – yeah, there is one other manual, the "Low Impact Development Technical Guidance Manual." I think that's the last instance.

Ms. Ehlers: That should be underlined.

Mr. Walters: Which one? What now?

Ms. Ehlers: The "Low Impact Development Technical Guidance Manual for Puget Sound."

Mr. Walters: To identify it as the title of a document?

Ms. Ehlers: Yes.

Mr. Walters: I don't think we typically italicize or underline, though. Like this one –

Ms. Ehlers: Well, there you have.

Mr. Walters: We capitalize, though, to definitely indicate. This one is underlined because it's an insertion. It's a change from the last version of the Code.

Ms. Lohman: It's an editing change, Carol.

Ms. Ehlers: Oh, it's because of the editing.

Chairman Easton: Any time they edit they end up underlining it so you know it's an edit.

Mr. Walters: And it shows up in blue. And then – or actually a random color. Today it's blue. So and then if we search again I think that – yeah, we're referencing the Manual. This one is referencing the Manual.

Ms. Lohman: Can you scroll up to the title when you get done finding all those?

Mr. Walters: Yeah. So this one is in "Enforcement Provisions for Water Quality," so this is referencing the Manual and also referencing the RCW.

Ms. Ehlers: Is there a statement in here someplace in the beginning referring to what the – which number the Manual is? The 2005 Manual, I think, is the one you're talking about.

Mr. Walters: And this is the last instance of BMP. Yeah, so let's see – when we find the Stormwater –

Ms. Ehlers: I understand that if you don't – if you don't identify which year each time it means you don't have to change the Code so much when the next one comes out.

Mr. Walters: When we find the Manual, described in the Stormwater Design Manual, how did we address this? Do we have a – in the Stormwater Design we repeatedly referenced the Stormwater Design Manual. I think maybe there's a definition? Yes. So then we defined the term "Stormwater Design Manual" and it references *the* Stormwater Management Manual for Western Washington or a subsequent manual adopted by Ecology.

Chairman Easton: Okay. All right, so what's your pleasure on BMPs?

Mr. Walters: Let me show you the recorded motion.

Chairman Easton: Comments?

Mr. Jewett: If you had a definition you'd have to have a definition for every place it's referred to. ___ already referred to so it doesn't make sense to have it.

Chairman Easton: I agree with staff's recommendation about that. I agree with Jerry. Anyone? So we'll go ahead and –

Mr. Jewett: Remove.

Chairman Easton: Remove.

Mr. Christensen: You're choosing number 6?

Chairman Easton: We'll choose number 6, yeah.

Mr. Walters: Original number 6.

Chairman Easton: Original number 6. You want to maybe hold up on renumbering until we get done?

Mr. Walters: Yeah, I think we've kind of crossed that bridge already.

Chairman Easton: Okay.

Mr. Walters: I crossed out numbers at the beginning of the originals.

Chairman Easton: Crossed out numbers at the beginning will be the numbers we're referring to. All right, number 4. We already – no, that was a different number 4, wasn't it? Number 7: Natural resource lands should be excluded from the NPDES permit boundaries. Comments?

Mr. Jewett: I thought we couldn't change the boundaries.

Chairman Easton: Which was why we discussed number 8 but I want to take it in order. Any more thoughts about how we can address the area that we can't address?

Ms. Ehlers: Well, if we can't exclude agriculture then we can't exclude the others.

Ms. Lohman: I think maybe the intent of number 7 is captured in number 8.

Chairman Easton: Yeah, I feel like "oversight that Skagit County should protest" sums it up well.

Ms. Nakis: Natural resource lands? That includes forestry lands?

Ms. Lohman: Mm-hmm.

Mr. Walters: It would. Does it *actually* include any forestry lands?

Ms. Rhodes: That's how it was worded in the _____.

Mr. Hughes: But there isn't any. I don't believe there is any in the boundary.

Mr. Walters: I don't think so either.

Ms. Ehlers: Is there a mine within the boundary?

Mr. Walters: Anybody know?

Mr. See: I don't know.

Mr. Hughes: A what?

Several voices: A mine.

Mr. Christensen: There might be. The Meridian Rock Quarry to the south is – that's in Mount Vernon's urban growth area.

Ms. Lohman: Yeah, that would be.

(several inaudible voices)

Mr. Hughes: That's an urban –

Mr. Christensen: Yeah, that might even be in the – no, I think that's Mount Vernon's city limits.

Chairman Easton: Okay, so are we comfortable with number 8?

(silence)

Chairman Easton: Hearing no objection, move on – moving on to number 9.

Mr. Walters: Okay, do you want to talk ____ number 9?

(several inaudible voices)

Chairman Easton: Cross out what?

Matt Mahaffie: Number 8.

Chairman Easton: Go back up, Ryan.

Mr. Walters: Go back to 8?

Chairman Easton: Please. He just crossed it out and renumbered it to number 5. That's all. He struck number 4 and replaced it with number 5.

Mr. Christensen: The old one or the – the paper copy that we're working off is to strike number 7 and retain number 8?

Chairman Easton: Retain number 8 – yeah. Let's move to – does that make sense?

Ms. Ehlers: That's clear.

Chairman Easton: Okay, can we move on? All right, number 9.

Mr. See: Number 9 was brought to our attention by our technical person who does development review for drainage, Shane Whitney. It was a fairly minor clarification that just clears things up a bit, from his perspective, and references the changes – the changes, I believe, then would reference the appropriate stormwater hydraulic modeling manual – or the proper hydrology model.

Chairman Easton: Okay, any questions about number 9?

Ms. Ehlers: What kind of stormwater conditions does that hydrology manual consider?

Mr. See: The different models – there's several, you know, listed there on (b), and different models are used for different – it depends on what your output – your – not what your output you're looking for but what level of modeling you want to do, whether it's continuous flow or peak. So the different models have different uses depending on the situation.

Ms. Ehlers: Well, that makes sense but I was thinking more on the amount of water. I remember some consultants that came a number of years ago and had some very interesting drainage ideas, and then it turned out that these would only work if it didn't rain more than a half-inch a day.

Mr. See: Right. In the – I believe the 2005 Stormwater Management Manual generally requires the Western Washington Hydrology Model be used and I believe that's what our own development review staff tends to check, you know, figures with when they get something in for development.

Ms. Ehlers: That doesn't really answer the question, but we'll get to it someday.

Chairman Easton: Moving on to number 10.

Mr. Walters: And this was a change that I identified as one that was pretty important, even though it's extremely minor, just for clarity. Basically the first sentence that is not numbered at all in 14.32.040 introduces a list and then there are two items in the list and that's it, but they're all numbered the same. So I suggest that we number the first sentence, indent the two items and then continue on.

Ms. Ehlers: Yeah.

Chairman Easton: Any concerns with the indentations?

Ms. Ehlers: Good eye!

Mr. Hughes: Do we need a –

Chairman Easton: Do we need a motion?

Mr. Hughes: No, do we need a definition of "land disturbing activities"?

Mr. Walters: We have one.

Mr. Hughes: Okay. We probably –

Mr. Walters: So that's in our existing code.

Mr. Hughes: I realize that – that I'm getting back to beating this horse to death – but plowing's going to do that.

Mr. Walters: Right. And that gets back to the kind of confusing structure of this chapter because it lays out all the things that it includes which encompasses lots of stuff including everything agriculture does, and then it starts taking it back out. So that's why there's the Exemptions section that follows the list of things that are included.

Chairman Easton: Can we just put a note there that says "See Exemptions"?

(laughter)

Chairman Easton: And there's a lot of them!

Mr. Walters: Well, so if we look at 14.32, the section we're talking about is "Regulated Activities" and so this would become numbered as to the things that

are actually regulated. You'd have indent, indent, this one thing saying you've got to get a permit – that's number (3) – and then Exemptions. So it's almost directly after that. And the very first exemption is commercial agriculture.

Chairman Easton: Mr. Hughes?

Ms. Lohman: Good thing you start with "a." It'd be first.

Mr. Walters: All right, there's one additional thing and that is "Finding," number (4). I would suggest maybe we would want to make that match to the recommendation, maybe change "include" to "distribute." Because we had it, so I would suggest we should distribute the definitions –

Chairman Easton: And provide the link.

Ms. Ehlers: And strike that ___.

Ms. Nakis: Distribute or make available?

Mr. Christensen: Yeah, make available.

Mr. Walters: Right, that was the term: "make available." And then we would probably strike that phrase.

Ms. Ehlers: Yeah.

Chairman Easton: Okay.

Ms. Ehlers: And then you'd want to strike (5).

Mr. Walters: Good – yes.

Chairman Easton: Right. All right. Let me restate the motion and then we'll take general discussion on the whole motion. So, based on the above findings, Jerry Jewett moved and Mary McGoffin seconded that the Skagit County Planning Commission recommends that the Board of County Commissioners adopt the code amendments as proposed in Attachment A with the following modifications. And those modifications would be the ones that we just all agreed to that we went through. Your agreement to those doesn't imply that you have – that you – you're just agreeing to how we're forming this. I don't want that to be misconstrued as meaning that I know how or we know how you're going to vote on the overall motion. So I don't want there to be any – I want to make sure that we're working together to get this written well, but leave everyone their freedom to vote their conscience.

So, with that, I'll entertain just general discussion on this topic for just a few moments because I think we've spent a lot of time on it. Are there any other thoughts that need to be added? Concerns with anything on the record? Any other additional findings or recommendations? All right, with that then I'll call the question.

Mr. Hughes: Maybe I should have –

Chairman Easton: Go ahead.

Mr. Hughes: I intend to vote no on this, more so to let the Commissioners know that, you know, at our last meeting we did vote eight-zero with one abstention to add deleting this from natural resource lands. And I feel like now I'm on the record, that they will review the record and, you know, I think I – you know, maybe the Chair doesn't agree, but I think this flies in the face of what the Ag Advisory Board – their letter. I also heard, you know, there must be people that watch us on TV because I have had people, you know, say that, you know, that was a good amendment to the motion.

And so that's why I won't be voting for it, just, number one, to, you know, bring it to the attention of the Commissioners. At one point we had – other than one abstention – we did have unanimous agreement on that. And, two, I think there's quite possible something that the County should fight to, you know, clarify that maybe there was a mistake made in including ag land – you know, low density ag land in this permit deal.

Ms. Ehlers: I think there's a lot of people that agree with your concern that ag land is lumped in with the rest. It's a good example of the frequent inaccuracy of the census tracts with what they claim to measure. When you have a census tract that claims to be urban that goes way out into rural areas, then it becomes difficult for those who are analyzing the populations involved and the different issues that those populations have. And it's always a bit cloudy. And these census tracts, God knows how they're created in the first place. But it's certain that these never did represent where population was. And some of them, especially between I-5 and Bay View, I don't think have 500 people in them. It isn't how that land is developed.

So – and you see it in other documents. This is something that you're going to have to face later. I've seen a census document which says that all of Skagit County is a municipal urban area. And that's why I'm saying there's a lack of understanding on the part of those who establish these things of what they're doing when they include places that are never really suitable for urban. Am I clear?

Male voice: Mm-hmm.

Ms. Ehlers: Okay.

Chairman Easton: Since we voted – since our first half of our deliberations, it's become clear that if we – we have no authority to change the boundaries.

Ms. Ehlers: Mm-hmm.

Mr. Walters: No, and, I mean, you can propose –

Chairman Easton: And “we” is not just these nine, not just the nine of us. “We” as Skagit County doesn't have any authority to change the boundaries.

Mr. Walters: That's right. I mean certainly the Planning Commission can recommend whatever you want. It's just that when you do that it's going to make me recommend to the Board that they ignore your recommendation.

Chairman Easton: Yeah, and you know what's interesting about that?

Mr. Walters: Yeah?

Chairman Easton: Is it means that we actually said it. And I'm, you know, I've been on the Commission long enough to know that we – our recommendations have been opposed by staff before but they *have* been noted.

Mr. Walters: Right.

Chairman Easton: And so if there's a majority of us that want to include what we know will then be opposed, but just – you know, I mean there's nothing wrong with that. But it does give us the chance to vent that.

Mr. Walters: The problem that occurs is if it's a sub – considered a substantive change or whatever the language is, the Board needs to go back and have its own public hearing on it and the outcome will still be the same because I feel fairly confident that the Board will not change the boundaries because they're rather fond of their County Administrator and don't want him to go to jail. And that is not an – is it unlikely? I hope so, but it's written down that that could happen for non-compliance with the Clean Water Act.

So what staff have tried to do is take the substance of what you want, which is to exempt ag, and accomplish that without changing the boundaries, because they set the boundaries and I think the problem with the way that they set the boundaries is it's just a matter of resolution. You know, you've got an urban area that looks like this and they put a big block over it so it encompasses the things that aren't inside the block. Now it's unfortunate they do it that way but, you know, they're doing that for the whole country so that's how it happens. They

have tried – and we have tried to pick up on everything that they’ve provided us – ways to exempt agriculture so that we have little or zero effect on it.

Ms. Ehlers: Well, I suggest that we take whatever the number is – I think it’s now number 4 – the Planning Commission is concerned by and put that at the very beginning of whatever it is that we get to say.

Mr. Hughes: Big number 1?

Ms. Lohman: Yes.

Ms. Ehlers: Mm-hmm.

Ms. Lohman: I could agree with that.

Ms. Nakis: I would, too.

Chairman Easton: So be it. Without objection then, we’ve renumbered it for effect.

Mr. Christensen: I certainly believe that that recommendation, which appears to be universally accepted and prioritized as maybe your main recommendation certainly will be – will draw the attention of the Commissioners.

Chairman Easton: Yeah. Well, I appreciate that.

Ms. Ehlers: And they can use that, since it’s our number 1, in any discussion they have. And furthermore, people like Ann Marie Gutwein, who’s also stuck with this, can use it also.

Chairman Easton: Commissioner Hughes referenced that I may disagree about in relationship to the Ag Advisory Board strongly – you know, their concerns. Since our last deliberations the study I’ve done and the study that the staff’s done put us in a position where this is the – this is what I believe is the best we can do without crossing the lines that we’re not going to be able to cross. But that’s why I’m going to vote for it, but under protest. I mean, I would have preferred to have been able to tell the boundaries where they should be, but they’re being set by a higher authority than we have the ability to limit. We can and we have reached in, I think, and strongly tried to protect ag to the best of our ability and that – and these deliberations including the video of this are available to the Commissioners and they’ll – and staff’s going to reference these as they go forward. But it’s under – sort of under protest that we need to get into compliance but some things are just going to be out of our control. So unless there’s anyone else that wants to speak for or against, I’m going to call for the question.

All right, all those in favor of the motion, signify by saying aye.

Ms. Ehlers, Ms. Nakis, Mr. Jewett, Chairman Easton, Ms. McGoffin and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

Mr. Hughes: Aye.

Ms. Lohman: No.

Chairman Easton: Okay. So let the record show six-two.

Mr. Christensen: Annie and Dave?

Chairman Easton: Annie and Dave as nos.

Mr. Christensen: Nays.

Chairman Easton: Nays. And were there any abstentions? No. Okay. I think –

Ms. McGoffin: Kristen's absent.

Chairman Easton: Kristen's absent. Thank you, staff.

Mr. Hughes: (inaudible)

Chairman Easton: Yeah, that's the plan, actually. I appreciate your guys's patience with this on this and I appreciate the Commissioners' patience as we went through this.

The next item on the agenda –

Ms. Ehlers: I appreciate the effort they made to hear what we're saying.

Chairman Easton: Yeah, I want to commend them. Let me add something to that. That's really important, Carol. They took a lot of time to go through these. They asked me to come in and meet with them and go over some of this ahead of time – you know, like a month ago – to make sure that I got the basic sense of what we were trying to accomplish, got – made sure it made it in here. There was a lot of thought that was put into this and I appreciate that. I don't feel like our recommendations, as they were in process, were ignored and that's very important. Thanks for pointing that out. Great job, everybody. Kudos to you and your staff and Gary.

At this point we have a brief – we didn't discuss how brief this presentation will be earlier, so I'm not sure how brief it'll be but the Chair will remind you that we have a brief –

(laughter)

Chairman Easton: The Chair will remind you that we have a brief presentation now on the South Fidalgo Stormwater Plan, presented by Public Works. I believe Jan's here to present; is that right?

Jan Flagan: Good evening, Commissioners. I'm Jan Flagan. I'm the Surface Water Section Manager for the Public Works Department. And we have recently held a public meeting on the South Fidalgo Stormwater Management Plan. A couple years ago we noted that this was an area of frequent concerns. Drainage issues came up frequently. And this map shows the location of drainage concerns that we had, and we noticed that they were clustered in specific areas and we determined to try to come up with a plan to address these kind of issues.

So we hired Tetra Tech, the consultant, and we initially held a number of community meetings. We had maps on the wall and people got to bring up issues that they noted. Tetra Tech looked at all these areas and they came up with a plan of projects to correct the issues. And we're trying to correct issues regionally and we're trying to plan for future development. So the corrective actions that we take will be, you know, sized for full build-out. And we had this meeting on April 29th and we posted a notice in the *Skagit Valley Herald* and the Anacortes newspaper; we sent out 600 postcards; we put it on the Skagit County's listserve for the subarea planning subscribers; we had it posted on our webpage. And the meeting was pretty well attended. There were about twenty-five to thirty people there. Commissioner Wesen was there and Carol was there. And I think it went –

Ms. Ehlers: See, Dave?

Mr. Hughes: A conflict of interest when that comes up!

(laughter)

Ms. Flagan: Anyway, so what we did was we came up with a plan that has different features. Some of it was projects and some recommendations for development standards. For example, you know, while the County encourages the use of low impact development techniques, including infiltration in some areas there because of the slope stability issues. We're recommending that we not plan to infiltrate.

So this map shows the blue squares are areas that we identified the possibility of getting drainage easements to handle running – conveying runoff from future

development. The green circles with the I, we're minimizing infiltration practices. And then the projects have the little balloons that show the major project locations.

So we're starting to plan for those. We're going to schedule those; I have a six-year drainage improvement program where I plan out the upcoming construction and we're hoping to start on those projects next year.

We're going to have another community meeting on Tuesday, May 11th. So that's it.

Ms. Ehlers: Tell them the time.

Ms. Flagan: Hmm?

Ms. Ehlers: Tell them what time.

Ms. Flagan: 6:30 and it's at – I can't think of the name of the school.

Ms. Ehlers: Fidalgo School.

Ms. Flagan: Fidalgo School!

Ms. Ehlers: As one of the ringleaders for creating the drainage utility as a result of November 1990, which I've now learned from information given to the – what's that committee you're on, Jason? That Flood Zone _____?

Chairman Easton: Yeah, that one.

Ms. Ehlers: Well, the information that they had at the last meeting, in the upper Skagit valley there were thirty inches of rain in November of 1990, and down where we are in the rain shadow we had probably fifteen inches of rain that month. And it scared us spit-less. And, as a result, Dave has heard more about drainage than any one person should ever have to hear who didn't get caught in it.

Mr. Hughes: We got caught in it in 1990.

Ms. Lohman: Yeah, we did.

Ms. Ehlers: But you didn't get – you caught it in a different kind of drainage.

Chairman Easton: He was standing in it!

Ms. Ehlers: You had floods.

I want to commend what Jan and Kara Symonds and the others did. That was the best notification process that I have seen since October 1987.

Chairman Easton: Wow.

Ms. Flagan: What was October 1987?

Ms. Ehlers: October 1987 is when the notice came out the **Nori** affair. But –

(some laughter)

Chairman Easton: Madame Commissioner?

Ms. Ehlers: This – no, I'm hoping that everybody in Fidalgo Island who may happen to hear this or see this will take the opportunity to review what's on the Internet and come to that meeting on May 11th. Because it's an excellent opportunity to see what's proposed, have some input in on it, and then, having said your piece, maybe the problems will be dealt with.

Ms. Flagan: Right.

Ms. Ehlers: So this is, as far as I'm concerned, a heartfelt thank-you.

Chairman Easton: Thank you. Thank you, Jan. Thank you, Public Works. I think at this time we're going to turn it over to Planning. We have a work plan to look at.

Mr. Christensen: Okay, everybody has a copy of the Department's Legislative Work Program for 2010, as approved by the Board of County Commissioners. This was mailed to you or provided to you in advance of this evening's meeting. It should look somewhat familiar. It includes many of the projects with some updated information which was discussed with you earlier this year in which you held a joint session with the Board of County Commissioners. The Department since then has had a number of meetings with the Board of County Commissioners and recently – I'm going to think maybe a month ago – they formalized the Work Program by motion, accepting it as it is represented here with some updated information.

You'll notice that down at the bottom there's an April 27th date, so this information would be considered current as of that date. Certainly this is an ongoing work program or project so it's hard to keep it up-to-date. We do so periodically through meetings with the Board of County Commissioners and e-mails and other project updates, and want to, as well, appear before the Planning Commission and let you know about how things are progressing or not, and what might be some of the projects that are going to be coming your way in the immediate future.

This project list, there are eleven of them. They're really not in any sense of order, with the exception of perhaps the first one. It is number 1 by purpose. It is the Bayview Ridge Urban Growth Area UGA Implementation Work Program. The others that proceed are simply other work program projects which the County Commissioners have prioritized as receiving resources and staff attention and Planning Commission attention for this calendar year.

With that, I do also want to note that even though this is the 2010 Work Program, the Alternative Futures, the CPA 2010 docket, as well as the Shoreline Master Program Update are projects which we will be working on this year but in all likelihood they will not be coming before the Planning Commission for any kind of public hearings. Certainly you wouldn't be making any recommendations on those. These are multi-year projects. You may receive periodic updates or more information than I may be giving you tonight, but we do want you at least to have those noted here and to provide you that information and the public as well.

What I'd like to do is just go through each of the projects, their description and status. I'll provide some additional information beyond that, which is in the matrix here. Remember the general public and audience may not be as familiar with some of these projects as you. I did provide an update to the Board of County Commissioners, I think it was last week. It was on their televised agenda so certainly you and others can look at that presentation as well.

But let me just go through these. I will say if you have some questions about them feel free to stop me and I'll try to clarify them. Let's just try to remember the time so that we get through all of the list, or you can simply just make a note and we can address any questions or comments that you might have at the end. What I would also like to do as part of this presentation is kind of tell you what are the next ones that are coming up and what your schedule is and which ones you'll likely be addressing sooner rather than later. So I'll try to point that out and, if I don't, then remind me to do so.

Okay, so let's start at the top. Number 1, Bayview Ridge Urban Growth Area UGA Implementation. You'll notice in your matrix what is also identified is the project manager for each of these projects. So if you or the public has any questions or follow-up or want to know who you can talk to to get more information, you can do so by contacting the project manager.

On this first project, I am the project manager/lead staff person assigned to working on this project. Principally it is the next stage of planning for Bayview Ridge. As the Planning Commission is well aware, the County went through a very extensive, exhaustive subarea planning process in which goals, objectives and land use policies were adopted by the County Commissioners in 2008. And those are kind of the guiding principles for development now at Bayview Ridge, the subarea, which includes an urban growth area.

How do you make that happen? That's now the implementation part of our work program. The County has hired a consultant, HDR, who has an office in Burlington. They're a nationally renowned firm with offices throughout the nation and several offices here in the state of Washington. We've asked them to do some research, literature review and to issue a report on different types of planned unit development and low impact development techniques and regulations. That is part of what was referred to as Phase 1.

And Phase 2 now is looking at some of those examples and options and choices for developing a walkable, livable, sustainable community under the subarea goals and policies. HDR has issued a final report that came out in February of this year. Since then the County's held two workshops, the first of which was with County and service providers, so it was those agencies, departments who provide some level of service at or within the subarea plan. For instance, County service providers would be Public Works with regard to roads and drainage; Parks with regard to park facilities; and programs, Sheriff in regard to law enforcement.

Other service providers would be Public Utility District Number 1 for water; City of Burlington for sewer. There are also several fire districts and several dike and drainage districts and a school district, Burlington-Edison, all of whom provide service there. One of the challenges that we have in implementing the subarea plan goals and policies is making sure that all of these service providers can indeed provide service and that the service, the utilities, will be concurrent, if not at the time of the development there will be a plan for those services and utilities to come online.

So that's where we're at. We will have a draft PUD/LID ordinance that will come out in July. It's likely then that the Planning Commission will hold public hearings this fall on that draft ordinance, regulations, guideline and standards. And we expect then the County Commissioners to probably take action on that before the end of the year.

The second project is the Guemes Island Subarea Plan. The project manager is Carly Ruacho. She's Senior Planner/Team Leader in the Department. As you know, the County has been anxious to review and release for public comment the Guemes Island Planning Advisory Committee's drafted Island Subarea Plan for Guemes Island. GIPAC is recognized by the Board of County Commissioners as the official advisory planning group on the island. They have drafted a plan. Currently that plan is undergoing internal review by the Department, legal counsel, Health and Public Works. We have hired a consultant to assist with that effort, Mark Personius. I think you – many of you know him. He helped with the Alger effort, so we were successful in getting that subarea plan adopted with Mark's assistance and he is on board to help with that review as well.

Things are moving along well. In all likelihood the Guemes Subarea Plan we are hopeful will come to you perhaps in July. It – once we've completed our internal review we do want to go back and discuss the drafted plan with GIPAC prior to release to the public for review and discuss any issues that we may have as well as any issues that they have. So in that we're not there yet, our hope is that whatever differences there are we can easily resolve those and then release the document for public review in July. It might be that you would hold a public hearing in July and then probably reconvene sometime in the fall to deliberate on that subarea plan prior to making a recommendation to the Board of County Commissioners.

Master Planned Resort/RV Park Standards: Project manager is Carly Ruacho. The description of that project is to develop a Master Planned Resort and recreational vehicle park standards and guidelines. We have had consultations with a proponent here in the county who is very much interested in having park standards and guidelines adopted by the County. We – it simply has been a matter of resources in which we haven't been able to spend much time on this project to date. We have had some draft products and literature to review and some proposals and we will probably be reviewing those and having some meetings in a short period of time, but we don't expect this probably to come before you until sometime this fall. We're again hopeful that we can hold public hearings in the fall before the Planning Commission. You can form recommendations and the Commissioners will take action before the end of the year.

Alternative Futures: This is a multi-year project. The project manager is Kirk Johnson. We're – the description of the project is "Development and evaluation of alternative development scenarios for Skagit Valley" that looks out fifty years, out through 2060. As looking at several different alternatives there will be a preferred alternative that will emerge, all of which seeks to maintain the ecosystem, conserve lands and natural resource industries, and allows for smart, sustainable communities.

This project was off and running a year or so ago largely as a result of the County having received an EPA grant which provided a good deal of the funding and covered the costs initially. That money was spent or was soon to be spent and we were – I'm pleased to be able to say – successful in getting another EPA grant to continue with that project. We were notified just a month or two ago, announcing that there would be additional funds made available to continue that project.

It involves a number of local governments, agencies, interest groups representing a wide variety of folks and interests. And we will be in short time – the Board of County Commissioners will be appointing a citizens committee. The Board just today – in fact, earlier today – announced that there will be a public notice or announcement in which they will be asking interested citizens to submit

letters of interest, statements of qualifications who would like to be appointed to the citizens committee who will ultimately be looking at the four scenarios and making a recommendation for the preferred alternative.

Again, this is an ongoing project. It will go certainly beyond this year into next year and the year thereafter, so it's a multi-year project.

The fifth item is the Shorelines Master Program Update, or SMP. Shoreline Master Programs must be updated to be consistent with recently adopted Department of Ecology guidelines. Local master programs regulate new development and use of shorelines along rivers and larger streams, lakes over 20 acres, and marine waters within their jurisdictions.

Some counties and cities have recently adopted or updated their Shoreline Master Programs, others are in the process, and others have yet to begin. Skagit County last year received notice from Department of Ecology that we would receive a grant to do our SMP update. We are currently working with a consultant or consultants to prepare a scope of work which will be submitted to Department of Ecology by July of this year, and we're hopeful then that Ecology will approve that scope of work and work program and that those funds will be released. That's probably, I think, a two- to three-year work program project as well.

The last Shorelines Master Program that was adopted by the County was, I think, 1976, so some time ago. So it certainly is timely that we update that. Part of that project is going to be looking at Shoreline Master Program Act requirements as well as Growth Management Act requirements and trying to reconcile and assure that those two are consistent with each other.

The sixth item on the work program is the Skagit County Capital Facilities Plan – or CFP – Update. Capital Facility Plan updates are to happen annually. I will admit that we don't or haven't always updated these on an annual basis. Our current CFP, although it does have a six-year planning horizon, falls short of our next six years. We – “we” meaning Department staff – met with Administration and Budget/Finance staff last week and talked about the next steps for updating the Capital Facility Plan. We will be focusing on County facilities this year, as well as updating some of the inventory and projects to make sure that they're more up-to-date. Projects that have been completed will be moved off the list and ones that are anticipated or forecasted in the future will be placed on the list.

We'll probably be doing a more comprehensive update next year in which we'll also be looking at service providers other than the County, so other special purpose districts. We'll begin some of that work this year, but, simply said, we won't be able to complete that wholesale change this year as part of the County's budget process which the Commissioners will adopt in December. We hope to get many of the mechanisms in place so that it will facilitate and allow us to do a

more comprehensive CFP update next year. And we'll be working with many of the special purpose district providers this year and into next year.

We will, however, probably in July ask that you hold a public hearing on what will be our updates to the Capital Facility Plan this year, and in particular three school districts have submitted proposals to have their impact fees reduced for single-family residences within those districts. I think it's Conway, Mount Vernon and Sedro-Woolley, I believe. So we will – what we're hoping to do is actually have the Guemes Island Subarea Plan and the CFP hearings before the Planning Commission in July.

Chairman Easton: Separate hearings?

Mr. Christensen: Separate hearings, yes.

Chairman Easton: I was just going to suggest that –

Mr. Christensen: Maybe same night, but separate hearings. Some of the logistics still to be worked out, so we'll see.

Chairman Easton: We had discussed the possibility of the hearing for Guemes being on Guemes.

Mr. Christensen: That certainly is an option. I think our preference, though, would be to hold it in the evening, conduct it here because we can televise it, we can record it, and then run special ferries that evening so any islanders who wish to make the hearings here can do so. They can come and be assured of being able to get back home after the proceedings. But there is certainly some benefit in holding hearings here where we've got our audio-visual and recording and television capabilities, and to do that remotely is a little bit more difficult.

Chairman Easton: Okay.

Mr. Christensen: We can certainly talk more about that. Yes?

Ms. Ehlers: Gary, I do not remember that the Planning Commission has ever held a hearing on school impact fees. I know the first one that was held years ago under GMA was for Conway and I know that was at the County Commissioners because I happened to be there for something else that followed that hearing. I don't think it's appropriate for us to deal with financial issues.

Mr. Christensen: Well, you're not holding a hearing to discuss the school districts' capital facility plan per se; it's the County concurrency ordinance and the regulations that we adopt to implement their capital facility plans for which you'll be holding the hearing.

Ms. Ehlers: But please check that.

Mr. Christensen: Yeah. Jerry, did you?

Mr. Jewett: Oh, I was just going to say we have in the last eight years –

Ms. Ehlers: Have we?

Mr. Jewett: – because we've had it since I've been on the board.

Mr. Christensen: Yeah.

Mr. Jewett: Yeah.

Mr. Christensen: And we typically – in that we don't do annual CFP updates, there wouldn't be a reason to hold a hearing on a different school impact fee unless they were proposing to change one. And I think the districts for the most part – this, I think, would be the only time that I'm aware of a change to an impact fee. I think we probably held a hearing – and I'm pretty sure – on the first one, and there just hasn't been any proposed amendments since then. So it will come before you in July, I believe.

Annual – I should also mention that Carly Ruacho is the project manager there. You'll notice that Carly's name appears here many times. She's the project manager on six of the eleven projects, so she is busy.

The seventh project is the Annual Skagit County Code Amendments. These annual amendments are considered on any calendar year to implement regulations, to clarify the intent and assure consistency with the Comprehensive Plan. We would like to do these annually. If so, that keeps us from having to do a whole bunch in any one year. If we do them periodically or often or annually then hopefully the list is much smaller, it's more timely, it's more efficient, and not as comprehensive. But we have been bookmarking and creating a punch list of code amendments that we hope to do this year, and that'll likely be a fall agenda item as well.

The eighth item is Comprehensive Plan Amendments 2010 Docket. These – again, Carly is the project manager on these. Comprehensive Plan amendments include policies, land use designations and modification to urban growth boundaries. Petitions for Comprehensive Plan amendments can come any year. They have to be received by the County by the last business day of July. Within sixty days of having received those, or by that last business day of July, the Department makes recommendations to the Board of County Commissioners. The Board then decides which one, if any, is placed on the docket and, if so, then the Department moves those forward for SEPA review, ultimately Planning Commission public hearings, and a recommendation from you to the Board.

Those matters, if the Board creates a docket this year, would likely be heard and addressed next year.

Number nine: FEMA Flood Insurance Rate – or FIRM – Map and Regulations. Project manager is Tim DeVries. As you probably are aware, earlier this year FEMA issued updated flood insurance rate maps. It wasn't probably but about a week after their release there were errors and omissions and a lot of discrepancies, so they recalled them and they are all now back someplace being reworked. We had thought that they might come out or be released late spring, early summer but our discussions with them are that there're still a lot of double-checking and homework and assessments that have to be redone. So I'm not even sure that we're going to even see these this year. It's a bit out of our hands, and I haven't seen any preliminary indications that their release is imminent. Dan, you haven't heard anything, have you?

Dan Berentson: Well, after our _____ conference in Washington, D.C. a month ago FEMA told us that when they reviewed that – they wouldn't release the maps until that information was reviewed. And _____ upon it, so we'll be meeting again.

Mr. Christensen: Yeah. Thank you. So if you didn't hear that or those watching, FEMA is needing to not only go back to the drawing board and re-do the calculations. They're also entertaining some additional information that's been submitted by local governments and giving that a second look as well.

The tenth project is FEMA & NMFS Biological Opinion, or what we sometimes refer to as the "BiOp." Project manager is Tim DeVries. The National Marine Fisheries Service, or NMFS, issued a BiOp regarding the National Flood Insurance Program and necessary actions to protect certain Puget Sound species of salmon and Orca. Skagit County is a Tier 1 jurisdiction, as well as the cities within. And we are required to adopt (a) regulatory scheme by September of this year, pursuant to the BiOp and the FEMA guidelines. All of this came about as the result of a lawsuit and FEMA's work then has been to address those lawsuit requirements. The actual implementation then is going to be left to local governments. There is a workshop, I think, for northwest region counties which is going to be in June. This indicated a workshop that was earlier this week that was down in south Puget Sound and they are working their way north. So we'll have one here in Skagit County, I think, in June so we'll learn a little bit more about what kind of options there are with regard to the regulatory scheme that Skagit County and the cities will have to have in place by September of this year.

Ms. Ehlers: Can you give an illustration?

Mr. Christensen: Well, there are a couple of options, one of which is there's a model ordinance that will be presented or provided for local governments to simply adopt. That's one option. Another option will be to look at requiring that

all development submit what they call – it's not the correct term, but do onsite investigations to assess whether or not there is any harm being created – this is all under the Endangered Species Act – which can be very onerous on a project-by-project level. Typically I think you'll find if you're a local government that doesn't have many projects that may be the regulatory scheme that they choose because they simply don't have many projects. But if you're a jurisdiction that has a lot of development in the floodplain or in riparian habitat areas, then another regulatory scheme, such as a model ordinance or other options, other derivatives from that that might be employed or used.

So we're all in kind of an information gathering mode. We are concerned about the regulations and how those are going to be administered and what effect they may have on lands not only within the county but within the cities, as well. So we're needing to get more answers to the many questions that have emerged.

The last project here is, of course, the matter which you addressed tonight which is the NPDES Phase II Permit. Carly has been assisting as the project manager. It's principally a Public Works project. Michael and Lori have kind of ushered it along and we're certainly, I think, relieved and grateful that you've concluded your deliberations, and we'll now formalize that and send it on to the Board of County Commissioners for their review/action. So that'll be before them if not this month (it will) be before them early next month for action.

So that's a quick rundown for the work program. Again I think the things to focus on for the Planning Commission will be the Guemes Island Subarea Plan and the CFP, and I believe we'll probably be ready to – we're trying to have that ready for you in July, which means that we probably will not meet in June because we simply are just trying to – if we had enough weeks in this month to be ready in June, we'd meet in June and hold the hearings then but the fact that we haven't completed the internal review on the Guemes Island Subarea Plan and we don't want to schedule the public hearing until we've gone back and talked to GIPAC.

And with regard to the Capital Facility planning efforts, we're still trying to gather information from service providers. So we are working diligently to assemble all of that information, get it ready so we can release it for public review, and hopefully have public hearings before you in July.

Chairman Easton: So then most likely a meeting in July, no meeting in August, and a meeting – then meetings in September.

Mr. Christensen: That very well could be how it plays out, yes.

Chairman Easton: Okay, great. Any questions? Anything else?

Ms. Nakis: I actually have a question. Someone asked me on the street the other day if there was any restrictions or requirements or guidelines for

homeowner associations in Skagit County, or if they were just left to – on their own.

Mr. Christensen: Okay.

Ms. Nakis: And would that be addressed in the Comprehensive Plan amendments? Is that something –

Mr. Christensen: Not likely. It wouldn't be something that comes forward as a proposed Comprehensive Plan amendment. Typically CC&Rs – Conditions, Covenants and Restrictions – which may be adopted as part of a plat or a subdivision in which the developer proposes those, and then oftentimes once the development is built it becomes the responsibility of a homeowners association then to administer those CC&Rs. That is a private matter between the homeowner association, so the County and the Cities – if there is such an instrument in place on development – does not have any administrative or enforcement mechanisms for those types of instruments. By their very nature and composition, they are structured for the association which is formed as a result of the lots being sold and people moving in and building homes. It is they themselves, then, that administer covenants, conditions and restrictions. Typically they have a Board of Directors. There may be an annual community meeting. They have bylaws. They talk about different guidelines or designs or requirements that that development must abide by. It's nothing that the County or the Cities themselves would administer or regulate.

Ms. Nakis: So, for example, if a main thoroughfare goes through one of these homeowner association areas and it wasn't intended to be a main thoroughfare but it becomes one, would they, the association, decide if they wanted speed bumps or stop signs, or is that a City – the City's issue?

Mr. Christensen: Well, if it's a public road then it's going to be the jurisdiction that has – that regulates transportation or the road network system. So if it's in a city, it's going to be that municipality. If it's in the county, then it's going to be the County or it could be – or the state or the feds, depending, you know. I'm assuming you're talking about, like, residential streets and so forth?

Ms. Nakis: Right.

Mr. Christensen: So if so, then it's going to be the County or the Cities, or a City. And typically that's all known in advance, though, as part of the plat approval process. There's going to be road standards that the jurisdiction will assign to those types of neighborhood streets, so that should be known as part of the land division approval process. That should all be understood, agreed to and specified prior to final approval for that plat.

Typically associations are going to be dealing with the color of a house, maybe some open space or greenbelt or park maintenance responsibilities. They may deal with the inclusion or exclusion of home businesses in homes. They may prescribe – there may be architectural review committees that would look at house plans and decide whether they are harmonious or compatible with the general character of the neighborhood. So they're more design and neighborhood uses and not so much like road networks and standards.

Ms. Nakis: Okay. And my other question would be where there is a pond – you know, where they – wetlands mitigation and results in a pond that's fenced off and whatnot, is there any rules in Skagit County that require that those gates are to be locked all the time or –

Mr. Christensen: Not unless the approval of that subdivision restricted the access to those areas.

Ms. Nakis: Okay, so it wouldn't be a City concern or a County concern normally?

Mr. Christensen: Well, it depends on if these are natural areas or if it's an area that, say, serves as a surface water retention pond.

Ms. Nakis: That's what it is.

Mr. Christensen: If it's drainage, then certainly the plat conditions might specify who has access to that, whether there needs to be a fence, whether it needs to be secured, who has maintenance responsibilities for that. It may be the City or it may be that homeowners association.

Ms. Nakis: Oh, okay. Okay, that's my questions. Thank you.

Ms. Ehlers: In that regard, there was a major set of questions – since you gave me the opening, Elinor – there was a major set of questions on the 29th which I'm sure will also come up on the 11th. But if a homeowners association is on the plat and it must be on the plat legally responsible for drainage, does the County have the authority or responsibility to ensure that that which the County ordered to be done be continued to be done? You might want to answer that question later.

Mr. Christensen: I do have my Public Works experts here.

Ms. Ehlers: Well, we have two of them back there. This is the kind of question, you see, that was raised early this evening on this NPDES and Mike has already said it's an issue that has to be thought through and dealt with, but have you anything to add now?

Ms. Flagan: Well, you know the Drainage Utility has plans to do projects that are – sometimes they're on private roads or in private subdivisions. And unfortunately we have – we rely a lot on cooperation of the property owners to provide us access or easements or whatever. And, you know, that's it. If it's a road drainage – a private road drainage – issue, that tends to go with the homeowners road – homeowners association. But if it's a regional drainage, then we do do work on private properties but it does require some cooperation.

Ms. Ehlers: Well, and that would have to be set up from the beginning.

Ms. Flagan: Right.

Ms. Ehlers: And that would be understandable.

Ms. Flagan: Right.

Ms. Ehlers: But the – if in a plat a pond is mandated, is it the County's responsibility to ensure that that pond is initially built? Or is it the responsibility of the entire neighborhood around that pond to sue a bunch of people to make sure the pond is built?

Ms. Flagan: I'm not sure of the regulatory portion of that, but –

Mr. Christensen: Well, if that pond is required to serve as a retention facility and that retention facility is required under County regulations, then before that plat can be finalized it has to either be constructed or bonded to make sure that that's completed at some time.

Ms. Ehlers: That's what I thought, but I wanted to make sure after what you had just said to Elinor. Thank you.

Chairman Easton: Thank you, and thank you to staff and to the Commissioners and we are adjourned (gavel).