

**Skagit County Planning Commission**  
**Work Session: NMFS/FEMA Biological Opinion –**  
**Special Flood Hazard Zones**  
**June 28, 2011**

**Commissioners:**           **Jason Easton, Chair (absent)**  
   **Mary McGoffin, Vice-Chair/Acting Chair**  
   **Carol Ehlers**  
   **Josh Axthelm**  
   **Annie Lohman**  
   **Dave Hughes**  
   **Matt Mahaffie**  
   **Elinor Nakis (absent)**

**Staff:**                       **Gary Christensen, Planning Director**  
   **Tim DeVries, Building Official/Floodplain Manager**  
   **Jill Dvorkin, Deputy Civil Prosecuting Attorney**

**Others:**                   **Oscar Graham, Consultant**  
   **Pat Bunting, Consultant**

Vice-Chair Mary McGoffin: (gavel) I'd like to call the Skagit County Planning Commission meeting to order. This is a work session this evening. I'd like to ask Tim DeVries to introduce our topic. Or, Gary, if you'd like to, that'd be fine. Go ahead.

Gary Christensen: Thank you. Good evening. My name's Gary Christensen. I'm the Director with Skagit County Planning and Development Services. I'd like to welcome all of those who are in attendance this evening, along with the Planning Commission members, and also those who may be watching this evening's proceedings on Skagit County channel 21, local TV station, as well as possibly watching through streaming video at skagitcounty.net. So again welcome, everybody.

The purpose of this work session/study session this evening is to discuss Skagit County's draft proposal to address Federal Emergency Management Agency, or FEMA, and National Marine Fishery Services, or NMFS, Biological Opinion regarding efforts to protect endangered species, primarily the Chinook salmon and Orca whales, within Special Flood Hazard Areas.

Joining me this evening in this study session to my left is Tim DeVries, who's the Skagit County Building Official, as well as the Floodplain Manager and the Project Manager for this project. To his immediate left is Oscar Graham, with Graham-Bunting Associates, and to his left is Pat Bunting, with the same firm, who is under contract in providing consulting services to the County. To Pat's left is Jill Dvorkin, who is with the Skagit

County Prosecuting Attorney's office, and at the far end is Betsy Stevenson, who is a Senior Planner with Planning and Development Services.

And we are here tonight to perhaps educate and inform the Planning Commission and the public at large about our proposal, which seeks to address those issues under the Biological Opinion and to be in compliance with the Endangered Species Act.

This study session tonight is not a public hearing so we will not be taking any public testimony tonight. We are at the moment scheduled to have a public hearing before you, the Planning Commission, on July 19<sup>th</sup> in this building starting at 6 p.m. We then, based on either public testimony or written correspondence, anticipate having deliberations with the Planning Commission in the month of August, and we hope then to have a recommendation from the Planning Commission to the Skagit County Board of Commissioners for their review and possible action on or before September 22<sup>nd</sup> of this year.

So, with that, if – I also want to mention that we are trying to reserve a little bit of time toward the end of this meeting so that we can take care of some general Planning Commission business items. So we'll do that before your departure.

So unless there are any questions from the Planning Commission, we can proceed to the Introduction and Background. So, with that, let me turn it over to Tim DeVries.

Tim DeVries: Good evening, Commissioners. Before going through the packet of information that's been supplied to you, I thought it would be helpful, both for your purposes and those members of the public either in attendance or viewing, to understand a little bit about what brings us here tonight.

A number of years ago – three or four years ago – the National Wildlife Federation brought suit in federal court against FEMA, and the basis of the lawsuit was that FEMA was not honoring its obligations as a federal agency in ensuring compliance with other federal laws and regulations that would apply. And specifically, the Wildlife Federation charged that FEMA was not ensuring compliance with the Endangered Species Act through its review of floodplain ordinances and its National Flood Insurance Program and so on.

The National Wildlife Federation was successful in that lawsuit and the court ordered FEMA to consult with National Marine Fisheries regarding the Endangered Species Act, and specifically the endangered species of salmon and Orca whale that exist in the Puget Sound area. There are approximately 122 communities in the Puget – northern Puget Sound area that are affected by this ruling.

So FEMA conducted its own study of whether their policies – their flood insurance policies and regulatory policies – were causing harm to endangered species, and concluded that they didn't think that they were. National Marine Fisheries took exception with that and produced a Biological Opinion that identified that there was

jeopardy to endangered species, that there was a taking that was occurring, and that in order to be in compliance with protection of endangered species that changes needed to be made, and they gave them a list of what were called “reasonable and prudent alternatives” that would help assure this compliance with endangered species.

A lot of the reasonable and prudent alternatives had to do with FEMA and its mapping and the way it goes about doing business. But number 3 – RPA number 3 – dealt with the individual communities and what needed to be done on a local level that was beyond the scope of FEMA through its regulatory practices.

And so that’s how we get here tonight, is that the Biological Opinion in Appendix number – Appendix 4 has minimum criteria that floodplain communities must meet. And what FEMA had begun doing a couple of years ago was working on establishing a model ordinance that jurisdictions – affected jurisdictions – could adopt that would incorporate protection measures for the endangered species and their habitat. There were other options that were presented to be as available, including revision to and assemblage of whatever codes and ordinances, regulations a community has, and through the process of combining them and packaging them, perhaps that was another avenue towards compliance. And then the third option that was available was each project in the floodplain would undergo a habitat assessment to ensure that each project would not, by itself, cause harm to endangered species and their habitat.

So over the period of a year that FEMA was working on the model ordinance, variance communities, cities and counties around this part of the state began taking a look at what programs they had and what regulations they had to figure out whether what they had was already sufficient or not. And over the course of that year it became known that there were a lot of questions that needed answers, that everybody had different circumstances. And so rather than place everybody in a position of September 22<sup>nd</sup> of 2010 being the deadline, a deadline was extended until September 22<sup>nd</sup> of this year whereby all of these communities can show compliance.

Since that time, there have been a number of workshops sponsored by FEMA, sponsored by NMFS, sponsored by the Puget Sound Partnership where we have been able to – and as well as other jurisdictions – been able to acquire more information on what is meant by certain elements of the minimum criteria, what’s acceptable. Have generally to learn enough that we were able to start working with a product.

So that’s why/how we come here tonight is that we have assembled what we believe is the path that Skagit County wishes to go down, the path that will provide the protection that’s required and at the same time not necessarily adopt the most restrictive requirements that there might be out there. We’ve been working with – we’ve met with FEMA twice now and National Marine Fisheries has been there at both of those meetings. And so we’re here tonight to present to you the documents and the methodology that we have been working towards and would like to have your input on.

So with that background, let me just briefly go through the packet of information that you have in front of you. The first document is entitled “Biological Opinion Compliance Checklist: Skagit County Proposed Draft Submittal.” This checklist originally comes from FEMA and what it does is in the most left-hand column it has the requirements that FEMA has observed in the minimum criteria from the Biological Opinion – what those requirements are that need to be met.

In the next column they indicate where in the Biological Opinion or the minimum criteria appendix that requirement can be found.

The next column is where in the FEMA model ordinance they located that language to meet that requirement.

And then the last two columns on the right-hand side were blank because this was where FEMA had anticipated that if a community was not going to adopt the model ordinance and they were not going to automatically require every single project to have this sort of a habitat assessment, that they could indicate where in their current codes and regulations a similar language that provides the protection would exist, whether it’s a draft revision or whether it’s something existing there already.

And then there’s the last column where you have an opportunity to explain how that current code language might be used or anything else that you think it would be good for FEMA to know.

This was intended to be what FEMA wanted to see with any other supporting documentation to indicate or demonstrate that you have met the requirements. It was a pretty simple proposition that, Here’s the requirement; here’s where it can be found; where is it in your code; explain a little bit about it. And if you have filled in all of the blanks and they agreed that the language in your codes matches what is required, then you could expect to have your program approved.

So that’s what we have in the first document that we will be referring to throughout the evening.

The second document is entitled the “Biological Opinion Proposed Skagit County Code Table of Code Amendments.” And what we have done here is we have identified only those sections of Skagit County Code that were changed and what the effect of that change is, and then cross-referenced to the Biological Opinion Checklist that I just was speaking about, so that you can see more at a glance what’s changing and why is it – what’s the effect of the change. That might be a little harder to discern from reading the actual code.

The next document is the draft revisions to the Flood Damage Prevention regulations, Skagit County Code chapter 14.34. And there are – the changes are highlighted, some in red and some in blue.

The next is the Critical Areas regulations, Skagit County Code chapter 14.24, where we have suggested some changes in order to be more effective and efficient and comprehensive.

The next document – actually the next two documents are Draft Elements of an Administrative Official Interpretation. And these documents are important because some of our codes and ordinances have language in them that can be utilized for compliance with the habitat protection standards, but the plain, clear language of them may not indicate that they are being used that way or going to be used that way. And, in some cases, some elements required an interpretation, and so for the benefit of both yourselves and the public, as well as FEMA, we're providing a draft Administrative Interpretation of certain sections of Skagit County Code.

And then the last item is – it's Attachment B – is the appendix from Biological Opinion that has the minimum criteria in it that we have been referring to.

So that's a summary of the documents that you've been provided. And I guess before we proceed any further, I'd like to offer to answer any questions, just about the history we talked about or about the documents that we provided.

Yes?

Carol Ehlers: Tim, as I read this I saw on the list of those areas in Skagit County which are directly affected, or list which cities and which rivers, and it looks as though it applies only to the Skagit River system. Then later on another page I found a reference to the Skagit and Samish Rivers. So I would like to know if this document applies only to the Skagit or whether it applies to both.

Mr. DeVries: The answer is that it applies throughout the floodplain of unincorporated Skagit County. And the reason for that is that the floodplain – if you read the Biological Opinion – the floodplain is considered habitat regardless of whether it is frequently flooded or infrequently flooded. By virtue of the fact that it can flood or does flood, it provides habitat in some way, shape or form. And because FEMA has authority to oversee the flood mapping and the National Flood Insurance Program through the floodplain, this applies throughout the floodplain but not outside of the floodplain. So there might be a number of rivers that it applies to besides just the Skagit and the Samish.

Ms. Ehlers: Well, I was looking at the second errata list. I'm going on what was given to me on Monday, not what was given out today because, of course, I haven't had time to read what we just got. Not that I've read this entire half-inch production either, but I did see that it includes all the cities in Skagit County on this list except for Anacortes. What kind of procedures are the cities going through to cooperate with and adopt – or whatever term is best – with Skagit County? Because we can't work independently on something like this.

Mr. DeVries: Well, I would agree that working cooperatively would be the best solution. I think partially because there were so many questions and so much unknown when this process was unveiled and began to unfold that there hasn't been a multijurisdictional approach to this. Anacortes, because its floodplain is so small and its number of properties is so small, has decided to take a different approach and require those habitat assessments on every single project because they won't have very many of them.

Mount Vernon a year ago was already approved by FEMA for having met the requirements with their existing regulations. I don't know what the status of Burlington or any other communities in the county are. I haven't had discussions with those individuals. But it doesn't appear that there will be a comprehensive, multijurisdictional approach.

Ms. Ehlers: So that when people come to any hearing, they should expect to deal only with the Skagit County part of the proposal.

Mr. Christensen: Let me add some additional comment to Tim's response. The County's proposal only addresses unincorporated Skagit County – none of the incorporated communities or cities or towns or municipalities. I do agree that some kind of coordinated, collaborative approach might be the best means by which to protect a resource or endangered species; however, with the three options that the federal government provided local governments, I believe most have chose option 2, in contrast to option 1, which is the model ordinance, and option 3, which is case-by-case consultation with federal agencies.

Option 2 allows local governments – the counties, cities and towns – to use their existing regulations, either as is or as might need to be modified. So each jurisdiction has its own critical area regulations, its own approaches which were adopted, for instance, under the Growth Management Act here in Skagit County because all jurisdictions are required to plan under that Act. So they have all chosen different buffers, different standards and perhaps utilized different best available science in arriving at those local decisions.

So it's somewhat problematic to try to take all of those different approaches and try to model those into a collaborative, kind of regional approach.

Ms. Ehlers: Thank you.

Mr. DeVries: Okay, the next agenda item would be to begin going through the Biological Opinion Compliance Checklist. If you have questions, we can address those. If you have questions pertaining to a specific thing we're talking about, we can address those as we go through, if you like.

In the first section of the requirements, you'll note that there are, leading things off, Activities Affected – what comes under these requirements. And what was being

suggested was a definition of “development.” The flood damage prevention regulations require a permit and would therefore require review for anything meeting the definition of “development.” And so we are responding to the suggested definition of “development” as coming from 14.04 with some additional language from 14.24, Critical Areas requirements, that we think will capture the need to protect not only the building and the grading and so on, but native vegetation elements as well.

Ms. Ehlers: Tim? Is this anywhere in – just anywhere in the floodplain or anywhere up above it also?

Mr. DeVries: It’s just the floodplain.

The second item is –

Ms. Ehlers: Excuse me, please, folks. When I do that, I don’t do it willingly.

Mr. DeVries: Okay. Just for clarification for anyone who might be able to use it: The Special Flood Hazard Area is the area regulated through our flood damage regulations. The Special Flood Hazard Area is comprised of both the floodway fringe, which we call the floodplain, and the floodway. And so when we refer to this applying to the floodplain, we’re meaning this Special Flood Hazard Area that encompasses floodplain, floodway and so on that is shown on the FEMA Flood Insurance Rate Maps.

The second item: In addition to Special Flood Hazard Area and floodway on the rate maps I just mentioned, the following areas are delineated: the riparian habitat zone, and this is referring to a buffer along either fish-bearing or non-fish-bearing streams, size of the buffer varying, depending on its size and whether it’s seasonal or not. We are proposing language under 14.34.055 that addresses that. And the annotation here: “Waters of the State...within the” Special Flood Hazard Area “will be overlain with a 250’ Protected Review Area pursuant to the” Riparian Habitat Zone “definition...”

Okay, so what this means is that we’re going to overlay streams with a 250-foot area that will – that we will use for review purposes, rather than have a lot of different streams that have a lot of different dimensions, you know, based on whether they’re fish-bearing or seasonal or not. This is a way to perform reviews in a more consistent manner.

Chair McGoffin: Okay. So, Tim, “Protected Review Area”: That’s a new term for us. That doesn’t mean something can’t happen there. It’s just going to be reviewed? Is that correct?

Mr. DeVries: That’s correct. And I – you know, this is an important area. And I think it would be well if we had somebody like either Pat or Oscar speak briefly to what’s being intended there and how this will work.

Oscar Graham: Good evening, Commissioners. I think the important thing to keep in mind with regard to the Protected Review Area is that these are existing maps that County staff currently utilize for critical area review purposes. And what will change is that the entire hundred-year floodplain will be superimposed over these maps and the waters of the state that are currently shown within the hundred-year floodplain or Special Flood Hazard Area will be overlain with a 250-foot review area. And so anything falling within 250 feet of those waters of the state, as defined under WAC 222-16, which is the current classification system utilized by the County, will require review.

So these are existing map resources. The County already uses those to require critical area site assessments or just to review projects on a day-to-day basis. But the maps will be enhanced to show these waters of the state or streams or water courses within the Special Flood Hazard Area that are going to require review under the critical areas ordinance.

Jill Dvorkin: To maybe further expand on that, the way this will differ from the existing code in essence is that our current critical areas ordinance under 14.24.520 requires a site assessment for fish and wildlife habitat conservation areas. Anything within 200 feet of a fish and wildlife habitat conservation area requires a special site assessment. What this does is pushes that out 50 more feet to 250 feet, consistent with the FEMA guidance which – that's the broadest buffer that they have for the review area – is 250 feet. So to comply with that, we added 50 additional feet to review for those habitat – you know, habitat concerns.

Josh Axthelm: Okay, is that a requirement or a suggestion? Because 250 feet seems like an awful – that's quite a distance. That's pretty restrictive.

Ms. Dvorkin: Well, let me correct myself in saying it's definitely not a buffer. It's a review area. So those require the site assessment. Now our buffers, as written in the critical areas ordinance, are not proposed to be amended. This is just the area subject to that additional site assessment to make sure that any activity within that 250-foot area is not going to adversely affect species. The requirement that FEMA has put forth is a series of – with the broadest being 250 feet and then ratcheting down, depending on stream type. But our proposal right now is just saying 250 feet for this review area and then, based on the review, using our critical areas ordinance to protect the functions and values. Sorry, it's very confusing!

Chair McGoffin: No, not really. I think what I'm hearing is that regardless of the size of the stream or river or whatever, it's going to have a 250-foot overlay for review.

Ms. Dvorkin: Mm-hmm.

Chair McGoffin: So I guess 250 feet, that's from your center of whatever width that thing is. It's just a blanket review area.

Ms. Dvorkin: Yes.



Chair McGoffin: Okay.

Ms. Dvorkin: That's as proposed.

Annie Lohman: Do you guys have any pictorial maps that you can show us so that we can see what you're talking about a little bit?

Mr. Christensen: We don't have any rolled up behind the desk that we could unveil. We will be working with GIS to produce Special Flood Area – or Special Flood Hazard Area – on a map with all of the waters of the state identified on that map within a 250-foot protection review area. So we'll know then which parcels in the county – geographically speaking – we'll know which ones would be subject to this review.

Dave Hughes: Will we have that before the public hearing?

Mr. Christensen: Yes.

Mr. Hughes: And we'll have copies, of course?

Mr. Christensen: Yes.

Ms. Ehlers: You're not talking about whether you're going to plant blueberries this year or not. You're talking about something – a physical construction of something, are you not?

Mr. DeVries: Yeah, if –

Ms. Ehlers: That's what's on your list of activities.

Mr. DeVries: Well, to – let me answer your specific example. Agricultural activities are exempt from a floodplain development permit, so they therefore would be exempt from the regulations within the floodplain development. So if you're going to plant blueberries, that being an agricultural activity you'd be exempt.

Ms. Ehlers: So, in other words, we're talking about *physical* construction. We're not talking about a mental picture I had of almost anything anybody wanted to do of any nature, like planting blueberries.

Mr. DeVries: Yeah, um – go ahead.

Ms. Dvorkin: I was going to suggest referring to the activities as listed in the 14.34.

Mr. DeVries: Right. Right. In 14.34 there's a list of activities that are exempt from floodplain permits. And then there later in the code there are activities that may be – *may be* – exempt from a habitat assessment. Agricultural activities certainly are on that

list. But I'd like to point out that while farming and planting and harvesting are exempt, removal of native vegetation in the floodplain may or may not be. So, you know, and I say that because your example of construction versus planting blueberries, well, there are other things between the two and they may or may not be exempt.

Ms. Ehlers: It'd probably be a good idea to provide us with the exempt list.

Mr. DeVries: And that's in 14.34. It's part of our draft revisions.

Mr. Axthelm: One more question on that 250 feet: That's just a blanket 250 feet. Is that what I'm understanding? So the requirement may be 50-foot; it may be 100-foot. If we have the potential of overlaying our maps, why would you do a blanket 250 feet when the control function is – for the control is a 50-foot or a 100-foot? Why subject to – that just seems to me it creates more work for you when that requirement is only 50 feet, or 100 or whatever it happens to be?

Ms. Dvorkin: I'll speak briefly to this. The way they – so 250 feet was chosen because already our code at a minimum requires that anything within 200 feet of a fish and wildlife habitat conservation area get this review. So we could tailor the language a little bit more closely to the – say that stream types, you know, F, S or however they are, you know, need this review up to 200 feet. And then the ones where FEMA identified a broader area up to 250 feet require the 250 feet review area. So we could probably, you know, do some finessing to make some areas a 200-foot review area for the site assessment and some 250-foot, but already our code requires that 200-foot, even if it's a 50-foot buffer. So we just thought, well, for the review area, 250 feet.

Additionally, all projects now in the floodplain, which extends beyond the 250 feet, *do* have to undergo some level of habitat impact assessment under the new FEMA guidance. So the 250-foot is for the more rigorous site assessment, as defined in the critical areas ordinance, and then there's more of a checklist style assessment that would be applied throughout the floodplain. So all projects will have to undergo some sort of review to look at habitat impacts.

Mr. Graham: I just want to add one thing to Jill's statement and that is that – well, actually there's two things. One has to do with the Biological Opinion and particularly with Appendix 4, and if you look at Appendix 4 on the very first page, which is actually page 222 following the cover page, it outlines some buffer standards. And you'll notice that those buffer standards are *not* 250 feet. I thought I'd bring this up now because it's probably going to be the most confusing thing that you hear all night. But those buffer standards that are listed under Appendix 4 were subsequently expanded through an errata letter, and I think Commissioner Ehlers mentioned that earlier. And you'll see, if you look at the errata letter, dated May 14<sup>th</sup>, that those buffer standards increased substantially – up to 225 and even 250 feet. And that is part of the reason why this review area was expanded – was to capture those expanded buffer areas that came out of the Biological Opinion.

The second thing I wanted to mention is that this is a review area and the review area may constitute two types of review. One would be internal review within the Department – within Planning and Development Services – and the other would be a professional site assessment prepared by a professional consultant, a qualified consultant. But there will be a checklist developed for internal use that will allow staff to fine-tune the extent of the assessment that's required. So there may be an ability to review some projects that come in and determine that they don't require further site assessment or that the required buffer width may not be that buffer width required under the errata.

So I wanted to get that out early so that if you have questions about either the Appendix 4 or the subsequent errata letter, we could at least establish an understanding of that early on.

Chair McGoffin: So I'd like to make a note to the Department. It'd be nice to develop a two-step process for an applicant because they could spend \$50,000 when they don't need to. You know, they need to know first time through the door what's involved. So, I mean I could see this being a very expensive outlay for anybody trying to do anything.

Ms. Dvorkin: I believe in the existing critical areas ordinance there is a provision that indicates that the Administrative Official may waive certain requirements within the site assessment process if it's deemed that it's not necessary. And so that provision would allow the Department to develop a policy which would do kind of just that. Kind of maybe take a first glance, and if it's pretty obvious that no functions will be impaired by the activity maybe forgo some of the – you know, hiring a consultant and going through the very expensive process. And again there's also that two-step approach with the floodplain as a whole versus that 250-foot review area. So the floodplain as a whole already gets the benefit of the truncated process.

Chair McGoffin: Right. Right. Okay.

Mr. Axthelm: It just seems to me that that blanket 250 feet – I know what you're saying with that that it makes it easier, but with computers today it's so easy to overlay and it would eliminate a lot of cost and a lot of labor to have to go through those processes. I think that should be something that gets looked at and maybe find a better way instead of having to have a blanket 250 feet when it's only a 50-foot amount. And it would save a lot of people a lot of money, a lot of time.

Ms. Lohman: I don't see in your – I finally found the exemptions. They're on page 4, if you're looking, in the chapter 14.34. It talks about "...normal maintenance of a levee or other flood control facility prescribed in the operation and maintenance plan for the levee or flood control..." Does that include, then, our dike and our drainage districts' infrastructure? Or is that – or have we missed putting that in here?

Mr. DeVries: Which item were you talking about?

Ms. Lohman: I'm looking at your list of exemptions.

Mr. DeVries: Right.

Ms. Lohman: On page 4 of your chapter 14.34.

Mr. DeVries: Right.

Ms. Lohman: And I see – to repeat myself – “...normal maintenance of...levee” and “other flood control” facilities, et cetera. But I don’t see anything referring to drainage infrastructure. Is that what you’re lumping in with flood control? Or is this an omission that we need to add in here?

Mr. DeVries: I’m not sure exactly how to respond to that. I think that, in the first place, this list of exemptions is what the Biological Opinion and the minimum criteria determined should be allowed to be exempt and to operate. And while I don’t think that they necessarily intended this to be an all-inclusive list, I think that they did intend it to be a very restricted list. And so that is certainly something that we can look into and we can communicate with them. I wouldn’t want to assume that it was inadvertently left out or not.

Ms. Lohman: Well, can you put that on your to-do list?

Mr. DeVries: I certainly will. Any more questions on the riparian habitat zone?

(silence)

Mr. DeVries: Okay, the channel migration zone, the channel migration zone being considered one of three elements of priority habitat, or potential priority habitat. And we will be mapping a channel migration zone, I believe, as part of the Shoreline Master Program update. Would that be correct, Betsy?

Betsy Stevenson: Mm-hmm.

Mr. DeVries: Okay. So we will eventually, upon completion of that project, have a mapped channel migration zone, but we don’t have (it) at this time. And so that’s why the notes indicate that at such time that we have an adopted map it will become effective under these regulations and be regulated accordingly.

Ms. Ehlers: How are you going to decide where the channel *might* migrate? Are you going to start from where it *did* once migrate and work its way in a sinuous pattern through the valley?

Mr. DeVries: Oh, I’m going to leave that question to much more qualified people than me. That’s going to be part of a project that Betsy Stevenson is managing and I’m not sure what their methodology and approach will be.

Ms. Ehlers: I don't know whether to feel sorrier for Betsy and her crew or for the people who might be more affected, because that's going to be one of the toughest issues that you're going to have to deal with.

Mr. DeVries: Okay, item b in – under Mapping Criteria: a requirement that new mapping must consider future conditions and the cumulative effects from future land change. This is – it might seem a little bit odd that there's a section in a local ordinance regarding flood mapping when it's actually FEMA who does the – performs the flood study with the Corps and so on – that performs the flood study, produces the maps in most cases. The reason that this is in here is that there *are* occasions when a local jurisdiction, a local community decides to fund their own flood study and produce their own flood maps, and perhaps that might be used in – to compare with the FEMA flood maps or for some other reason. And so this requirement is placed there so that if Skagit County were to embark on a flood study and produce flood maps, that they would have to consider the effects of future land change and land use change and so on.

The last item, c: "Communities are encouraged to consider identifying and evaluating the risk of flooding behind 100-year levees based on future conditions and cumulative effects." And so we will consider that.

Administrative Procedures: "...application "for a permit to develop in the affected area must include the elevations of the 10-, 50-, and 100-year floods, where such data is available." So you can see that there's a reference to the Biological Opinion and there's a reference to the model ordinance and we have proposed language that accommodates that need. Where the data's available, it should be shown on the site plans.

Item b: "...applicant must record a Notice on Title that the property contains land within the" riparian habitat zone "and/or 100-year floodplain before a permit may be issued." Again, the ESA reference and model ordinance reference. We added specific language to this but it's not anything new to Skagit County. We have required a recorded title notification for activities in the floodplain for a number of years. And so while the language may have changed a bit, the requirement has not.

"Communities that permit development outside the protected area must track the projects for which they issue floodplain development permits, including effects to flood storage and fish habitat and mitigation provided."

We have within our Permits Plus database – permitting database – we have the ability to track the information that they would like to obtain from us once or twice a year, and so proposed language is included to indicate that we are aware of that and will accommodate.

General Development Standards: "If a lot has a buildable site out of the Special Flood Hazard Area" – out of the floodplain – "all new structures shall be located there, when

feasible. If the lot is fully in the floodplain, structures must be located to have the least impact on salmon.”

So part of this is obviously a siting criteria: Don't build in the floodplain if you have a location outside the floodplain to build. Additionally, new structures need to be set back from the protected review area we were discussing a minimum of 15 feet unless the applicant can demonstrate that there's no adverse effect to the species or their habitat.

Ms. Lohman: So is that 250 feet *plus* 15 feet? Right?

Mr. DeVries: Yes.

Ms. Lohman: Can we write that that way so that people know that it's actually 265 feet, so that they don't think it's 15 feet?

Ms. Dvorkin: One thing that is important, I'd interject at this point, the protected review area is – consists not only of the riparian habitat zone, which is that 250-foot overlay, but it's also the floodway and also the channel migration area which we have not yet mapped. So that's not within our – won't be under the new regulations as adopted. But you need to think of it as the 250-foot width plus the floodway, wherever that meanders.

Ms. Lohman: So we ought to tell people that they might not have any property left. Because when you hide it in language that's to me not being very upfront.

Ms. Dvorkin: Hopefully – the protected review area is defined in 14.34.055, and if you think this definition could be more clear let us know and we can work on that. That attempts to describe this area that I just attempted to describe! It's confusing. This is again, you know, something that FEMA came up with, and based on the Biological Opinion. So this is the area that needs to be defined.

Chair McGoffin: Is there something you wanted to add?

Mr. Axthelm: This is where that 250 feet that I have an issue with because you said there's 250 feet (that's) just a review area and that the restriction may be 50 feet. Well, you just imposed a restriction on it of 250 feet plus 15 feet. So, in essence, it's 250 feet. I mean that's quite a bit.

Ms. Dvorkin: Right, and –

Mr. Axthelm: So where it's not – it's a review area, but then all of a sudden you've imposed a restriction.

Ms. Dvorkin: And the restriction has the caveat that if they can demonstrate that there's no adverse effect to species, which has to be done anyway. So not that it's a meaningless setback, but it's saying that it has to be set back unless it can be shown that there's no adverse effect to locating the structure there.

Mr. Axthelm: It costs. \_\_\_\_.

Ms. Ehlers: Are we creating a situation in which the individual who wants to do something has to prove to somebody else's standard – God knows who – that no possible impact might take place against a salmon? We'll ignore an Orca because they don't go up the river. And so that you are now saying – if I'm right – that the individual has to prove that there couldn't possibly be a net loss, rather than what has traditionally been that the government has to prove that there *would* be a net loss? So who has the proof? If you're going to guarantee, if you're going to say that we, as individuals, have to prove that nothing that happens on our property could possibly harm a salmon, Mary's 50,000 is cheap!

(laughter)

Ms. Ehlers: And I'm raising this question because of something that's going to go on – apparently – for the shoreline under the saltwater. Where – apparently – if a house burns down somebody will take the rights to claim that there *might* be some impact in some possible way by rebuilding that house on that site. And if you can't prove – this is the way it's been told me – if you can't prove that in no possible way will your rebuilding the house not harm a salmon, well, if you can't prove that then you've lost – it's been taken by eminent domain. And so this question of who proves how much of what is a crucial issue for not just this but for a number of discussions that are going to take place later. Because you can't have a situation where each one of us as individuals has to find not only the science but the best available science and the best – the latest political science dealing with the latest political agency. So figure out a way of handling this answer and give it to us so that it's clear, because I'm quite jumpy.

Mr. Graham: Well, Carol, I want to respond to your question. I think that you're right. I think it is a very different standard. And I certainly don't pretend to be an expert on the Endangered Species Act, but all of the workshops and training sessions that I've attended with County staff indicate that this *is* a completely different standard. It's not no net loss, it's not try to mitigate impacts. It's that you have to arrive at no effect or not likely to adversely affect a determination relative to the listed species. And, you know, I think that's something that's been emphasized throughout this process. It's troubled every local government that has tried to come to grips with this mandate. And you're right: It's a very different standard, and I think it's real important that everybody recognize that it *is* a different standard.

Ms. Ehlers: But, Oscar, what possible standard is there if you have to demonstrate that in no possible way could what you're going to do hurt something? This 250 feet away –

Chair McGoffin: So, Carol, the issue is they didn't make the standard. They just have to be compliant with the standard.

Ms. Ehlers: I'm not arguing with these folks.

Chair McGoffin: Yeah.

Ms. Ehlers: I'm arguing with what it is that, when all this is said and done, we're supposed to do. We, the landowners, in various places.

Chair McGoffin: All right, let's go to the next one.

Ms. Ehlers: Think about that question, because it'll come up again.

Mr. DeVries: Okay. Item 4.b: "Stormwater and drainage features shall incorporate low impact development techniques that mimic pre-development hydrologic conditions, when technically feasible."

We have proposed language in 14.34 to address this and comply with it. As you can see in the annotation: "Where technically feasible construction in the" Special Flood Hazard Area "shall employ Low Impact Development techniques such as those contained in The Technical Guidance Manual for Puget Sound." This Technical Guidance Manual has a number of Low Impact Development techniques. And so it's not a requirement that they meet that manual; it's that that manual offers options to them or ideas to them so that this condition can be met.

Chair McGoffin: Okay. So, Tim, I read an interesting thing on the actual Biological – which one was it? I can't remember where I read this, but they were – the model ordinance. That's where I read it. 5.2 – I thought this was really interesting. It said that community rating system credits would be provided where LID stormwater is enforced communitywide. So that's one way to make it a little bit easier on your applicant, is he's making it possible for the County to have a higher credit rating because he uses Low Impact Development features. Is that how I – is that correct?

Mr. DeVries: Um, yes. My opinion of what that's saying is if we made Low Impact Development techniques required throughout the county – not just the floodplain but everywhere in the county – we would get additional CRS credits for that. Because we are limiting the scope of what we're amending to only that within the floodplain; however, you know, as the NPDES permit areas continue to expand and, you know, we may eventually arrive at something like that.

Chair McGoffin: Thank you.

Mr. DeVries: Item c: "Creation of new impervious surfaces shall not exceed 10 percent of the surface area of the portion of the lot in the floodplain unless mitigation is provided."

The annotation there: "Impervious surfaces shall not exceed 10% of the surface area" in the Special Flood Hazard Area "unless it is demonstrated that there is no net increase in the rate and volume of stormwater surface runoff that will leave the site."



An explanation of how we will apply the impervious surfaces: If an analysis is provided that indicates that there's no net increase in the rate and volume of stormwater, then that may suffice to approve impervious surfaces of larger than 10%. New impervious surfaces.

Item d: "Any loss of floodplain storage shall be avoided, rectified or compensated for. Any compensation offsite must be in a priority floodplain restoration area identified in the associated ESU Recovery Plan for listed species."

So all building and grading applications include areas – all of our applications indicate that we'd like to know how much fill or excavation is going to occur as part of your project, and so it's through our applications and gathering that information that we will achieve compliance and understand if there's floodplain storage that is being affected **without** being mitigated for.

Ms. Lohman: What do you envision with that? Because I'm out on the floodplain as a farmer and a drainage commissioner's wife, and I know what it means when the water comes downhill. And I haven't seen any increase in our capacity. So what does this mean then?

Mr. DeVries: If you had a vacant parcel of land and you decided you were going to build a house, if you built with a crawl space that had plug vents you wouldn't be really reducing floodplain storage, because the flood water will come in and it will rise up and so there's a minimum, a very minimum amount of floodplain storage that's been removed; however, if you decide to bring in however many hundreds of yards of fill material it would take to build it on a pad, now you have reduced the floodplain storage and the effect of that is not only to move water around but it has an effect on – depending on its location, it could have an adverse effect on salmon habitat and a lot of other things.

So what this requirement is driving at is floodplain storage is important because floodplains are salmon habitat and we need to preserve the storage. If you're going to remove storage, you need to mitigate for that storage removal. And if you're going to mitigate somewhere else, it needs to be in an area that it actually will have a beneficial effect rather than an area that might be out of the way but not produce anything. Would you agree?

Ms. Ehlers: We've been trying to do that for all these years?

Mr. DeVries: In one way or another. In one way or another.

Ms. Dvorkin: And not reflected in the checklist is that Skagit County has added an exception to this provision for areas located landward of maintained levees subject to annual Corps review, because the thought is that those don't provide meaningful

storage so we wouldn't require of an applicant the compensatory storage requirement when it's landward of these levees, even if it's in the floodplain.

Chair McGoffin: All right, moving on, Tim.

Ms. Ehlers: Oh, I have a question on that one. How does Skagit County fit in a law like that? For example, out there by – on the way to Samish Island, I remember a number of years ago where the County directed the road water into one of those seawater levee areas that didn't provide enough flood storage. Now that was the County's action, not the action of an individual. So does the County have to follow this law, too?

Mr. DeVries: Yes.

Ms. Ehlers: I'm getting lots of heads nodding "yes." Good.

Mr. DeVries: Yes.

Mr. Axthelm: As far as the storage **around** the dikes, is that going to be something that'll be mapped as well? Behind the maintained dikes where that regulation wouldn't be required? Or is that something that would be *able* to be mapped?

Mr. DeVries: The exception for compensatory storage behind levees is located, I believe, in subsection 150, number 4, where we specifically say that the areas landward of not just levees but maintained, inspected by Corps of Engineer levees.

Mr. Axthelm: I'm curious kind of more on the transitional areas. Where do you draw the line? You know, Burlington one way, Sedro-Woolley the other way, there's the dike's end. Where does that line end? I mean, that's a long distance that goes across the valley.

Mr. DeVries: Yeah.

Mr. Axthelm: So is that something that would be able to be mapped? I mean, it's pretty easy to see when you can see the dike from, you know, across the road.

Mr. DeVries: It will – I don't know that it will be mapped. I know the area that you're talking about and it didn't seem to fit within regulatory language. So we'll – that's an area that we're still working on. Mapping may be the best solution for it.

The idea was that where you are not hydraulically connected to the source of flooding, then loss of storage has a reduced impact than it does further upriver. So I think if you are not directly behind those protected levees, if the source of flooding is connected to your site, that the compensatory storage would apply.

Item e: "Uses that are not permitted in the Protected Area" – this is the Protective Review Area – "unless shown not to adversely affect water quality, habitat, etc., include

septic tanks and drain fields, dumping of...materials, hazardous or sanitary waste landfills; receiving areas for toxic or hazardous waste or other contaminants.”

We added additional language under section 100, subsection 1, to account for this, and the note, the annotation indicates that while there were various permits, various activities that in the past may not have required a floodplain development permit that now will require that permit and they will need to show that they're not going to likely cause an adverse effect before they can be permitted.

Ms. Ehlers: Isn't that already covered very effectively under the aquifer recharge issue in 14.34?

Mr. DeVries: Excuse me?

Ms. Ehlers: In 14.34, there's a section on aquifer recharge that designates the entirety of the Skagit River basin as an aquifer I, and there's a whole string of things that are totally forbidden whatsoever in aquifer I.

Mr. DeVries: What section of 14.34 are you in?

Ms. Stevenson: 14.24. She's talking about the critical areas ordinance.

Ms. Ehlers: I'm in 14.24 – I'm sorry – in the critical areas ordinance. It's very strong in protecting aquifer I. It doesn't protect II at all, but that's not what we're talking about here.

Mr. DeVries: Well, I'm not sure that this is driving at aquifers as much as it is activities that could have an adverse effect. If you're going to install septic systems with drain fields, that activity alone could have an adverse effect, depending on where it's located relative to a stream. And while it's not prohibited outright, it is – those activities would be prohibited if you – if it's likely to have an adverse effect. So it's driving at the habitat, as opposed to the aquifer.

Ms. Ehlers: Well, the aquifer recharge ordinance was also directed at protecting the habitat and the quality of the water and the quality of the habitat for everything within it. And there's a very strong section in that that you've left out of this document that I do wish you'd look for. I think it's 14.24.320, where it says in aquifer I the following are forbidden. And, by George, it's a good, effective, solid protected list.

Mr. DeVries: Okay.

Chair McGoffin: So maybe cross-reference that, as well, on that.

Mr. DeVries: Okay. The next section is Habitat Protection Standards, found under 14.34, subsection 220. The first item, a: “Any improvements or repairs to...structures

that result in a greater than 10 percent increase of the structure footprint must mitigate for any adverse” effect.

So essentially what this is saying is that if you have a small addition to the house, perhaps that small addition does have an adverse effect, perhaps it doesn't. But if it's small enough and is less than 10%, you don't need – you don't necessarily need to mitigate the way that you would have to if you're adding on a larger addition that is 15 or 20%. It's almost like a small exemption to the footprint increase.

Ms. Dvorkin: If I could just – it's not so much written as whether you have to mitigate. It's those expansions that are less than 10% don't need to go through the formal habitat assessment process. So you don't need to do the review, and the review is what determines whether mitigation is necessary. So you actually don't have to do the review.

Mr. DeVries: Item b: “Removal of native vegetation must leave 65% of the surface area of the portion of the property in the floodplain in an undeveloped state.”

And in complying with this particular section, we have utilized a number of different sections of the critical areas ordinance. And I will defer to Oscar to provide some understanding of how we meet that requirement.

Mr. Graham: I'd like to begin by just saying that really the approach that the County has tried to take here is really through two arms, one being amendments on a pretty widespread basis of the flood damage prevention ordinance, or 14.34. But the second is utilizing existing provisions in the critical areas ordinance, which I want to remind you was just adopted about two years ago so it's pretty fresh in everyone's mind, I think. A number of the Planning Commissioners were active in that process. There was a lot of public process involved. There was a lot of science compiled that supported the critical areas regulations. And I want to remind everyone that that ordinance was adopted and not appealed.

Ms. Ehlers: They threatened to sue. They didn't change unilaterally. So that's not exactly the same as adopted without an appeal. The County didn't have the money to handle the argument.

Mr. Graham: I'll take any victory I could get. But let me just expand a little bit on the use of the critical areas regulations. I think going into this it was recognized that there was a lot of regulatory language in the CAO that I think the County felt really satisfied the requirements of the BiOp. You know, there's new – there's buffer standards adopted in 2009 that are pretty wide in terms of the buffer width. The treatment of fish and wildlife habitat conservation areas and wetlands really kind of dominated the adoption process, and the thought has been that we could utilize those existing buffer standards and the processes included in the critical areas ordinance to address a lot of the requirements of the minimum criteria.

Now I want to remind you that the minimum criteria are contained in that Appendix 4. And I also want to make sure that when you look at Appendix 4 that you also look at the errata letter because the errata letter purportedly corrects the buffer dimensions that are in Appendix 4.

So I want to just kind of step you through the process that the County is trying to utilize to address the buffer requirements under the BiOp. And the proposal is to use first of all the Administrative Official Interpretation process to specify how the critical area regulations are to be utilized in preparing critical area site assessments.

Ms. Dvorkin: Oscar? Sorry to interrupt. I think we were talking about the native vegetation? Or do we want to jump forward to the other?

Mr. Graham: Well, I thought that that would lead naturally to this discussion.

Ms. Dvorkin: Okay. Okay, so maybe we should point them to that point in the checklist?

Mr. Graham: So it would be at the bottom of page 6. So the Administrative Official Interpretation process has been utilized pretty widely by the County to clarify provisions of the code or to provide guidance in terms of how to comply with the code. And I know that there – I believe that you have at least one Planning Commissioner who's pretty familiar with the critical areas ordinance, so he will probably be aware of how this process works.

But, essentially, when County staff review a proposal within the floodplain, within the Special Flood Hazard Area – the “100-year floodplain,” as it's commonly referred to – we'll be looking at those water courses within that area and they'll be superimposed with that 250-foot review area that we've talked about, or some lesser standard if that comes out of this process. And as a result of that review, either internally staff will make a determination on a project through a checklist review or a critical area site assessment \_\_\_ will be required of a professional – a qualified, professional consultant. And that's where the – really the procedures in the critical areas ordinance come in.

And I want to just step you through those. It's just going to take a minute. But it really represents the second arm in this whole process, because we have these widespread amendments to the flood damage prevention ordinance and then we have the existing critical area regulations that are going to inform and direct the process with regard to the riparian buffer area.

Pat Bunting: That's in your package, what he's going through.

Mr. Graham: That is in your packet, and you will see that there is a section in your packet called “Draft Elements of the Administrative Official Interpretation.” And following that there is also an attachment which outlines all of the provisions in the critical areas

ordinance, which will be relied upon and will be providing some guidance in terms of how to use.

So when this map review occurs internally and a decision is made to require a professional consultant to prepare a site assessment, there are several parts of this critical areas ordinance that I want you to pay attention to. The first is the regulatory analysis. Now on the Draft Elements of the Administrative Official Interpretation, page 1, the bottom of the page, refers to "A regulatory analysis consistent with...14.24.080," and that regulatory analysis is required for virtually any critical areas site assessment. And that analysis requires consideration of all local, state, tribal and federal regulations that might pertain to a project.

So this is existing language in the code. It's utilized currently, but at this point it will require that the consultant provide some analysis of the Biological Opinion and particularly address the riparian buffer zone standards contained in the minimum guidelines of Appendix 4, as amended through the errata letter.

Now I know I'm throwing a lot out there, but I want to walk through this so that you can begin to generate some questions, and I know you'll have some.

Secondly, there will be a need to discuss use of the site by listed species. And I think this is really important because there's going to be a lot of areas in the floodplain or the Special Flood Hazard Area that aren't utilized by critical areas – by listed species. And so I think that's going to be a real key threshold in the preparation of these reports.

Third, there will be an assessment of the applicability of the riparian buffer standards included in the BiOp. And those are those larger numbers that we talked about that exceed the standards of the critical areas ordinance – the 225-foot number and the 250-foot number. And there'll be a need to take a look at those buffer standards, compare them to the buffer standards in the critical areas ordinance, and compare them both in terms of just the raw numbers – the buffer widths – but also compare them in terms of the best available science utilized to support them, and determine what the appropriate buffer width is for any given site that is being assessed.

So when the consultant is looking at those questions, the documents that they should be utilizing to base their recommendations on should be the data that was generated by the Department of Fish and Wildlife and contained in their management recommendations for Washington's priority habitats, and that's the riparian document dated December of 1997. That is the document that provides the basis for the errata letter that corrected the initial buffer standards that came out of the BiOp.

And, in addition, there will be a need to take a look at the County's critical area regulations and kind of weigh them against the recommendations of the BiOp and determine: Is there a need to expand the buffer based on the Biological Opinion and the riparian buffer standards included in the minimum criteria? There may be, and if there is a need for a wider buffer, then there is an existing set of provisions in the critical

areas ordinance that provides for expanding or increasing buffer widths. And that section of the code can be utilized to expand the buffer widths to the full width of the recommendations that came out of the BiOp, if necessary.

Now that's a section of the code that isn't used a great deal, but it's a section that was put there, I think, precisely for this reason, because there may be cases in the floodplain or in other contexts where an expanded buffer is appropriate. And this would be an opportunity to utilize that section.

So, in short, the existing critical areas ordinance contains most of the language necessary to address the Biological Opinion, in our opinion. Now there are going to be some minor amendments to the critical areas ordinance that will need to take place, but they're primarily a matter of cross-referencing between the critical areas ordinance, 14.24, and the flood damage prevention ordinance, 14.34, to kind of mesh these two documents.

Now, having said all that, does anyone have a question?

Chair McGoffin: Okay, so your interpretation is basically what you just said to us?

Mr. Graham: Yes.

Chair McGoffin: Okay. It's not going to be part of our code. It's just a comment?

Mr. Graham: No, it's a part of the code. All of the language that's relied on is a part of the code, but the Administrative Interpretation –

Chair McGoffin: That's what I'm saying.

Mr. Graham: – informs that code and provides some guidance on how to use it.

Ms. Dvorkin: And this is in the early development stages. Really the Planning Commission's role, I think it's instructive in terms of how we can use the CAO. But the process is still under discussion and how to utilize the existing provisions, and this is – you're right; it's not going to be part of the code amendment package, but we'll have to develop it in order to submit to FEMA for their compliance review.

Chair McGoffin: Okay. Got it.

Mr. Axthelm: So the Biological Opinion is – is just that. It's an opinion. It's not – I mean, it's a suggest – would you say suggestion?

Ms. Ehlers: It doesn't sound it.

Mr. Axthelm: That's what they want it to be, but it doesn't necessarily mean that it should be. To the best interest of Skagit County or to the best interest of –

Ms. Dvorkin: Biological Opinion guides FEMA's – FEMA. It's a federal to federal sort of thing. The way the local jurisdictions are involved is we benefit by participating in the National Flood Insurance Program. That subsidizes flood insurance rates for landowners and allows them to obtain flood insurance. Now that's been a question repeated at each and every workshop local jurisdictions have attended with the federal agencies. Well, how is this our responsibility for you to comply with this endangered species mandate? Well, it's because the local governments benefit from this federal program, and if we think it's too much we can opt out of the National Flood Insurance Program. But I think that's not a desirable outcome. So it's not technically guiding the local jurisdiction – or mandating this result to the local jurisdiction – but we do have to find some way to ensure that FEMA's, you know, program is consistent with –

Mr. Axthelm: That makes sense. Thank you.

Ms. Dvorkin: Yeah, okay.

Mr. Graham: And just to bring this full circle, the BiOp process – actually the judicial process, as reflected in the BiOp process, indicated that the National Flood Insurance Program was causing harm to endangered species. Yes?

Mr. Mahaffie: I have a question for you. As far as bringing it back full circle, removal of native vegetation must leave 65%. Where does that come back into it? Because it specifies within the *entire* 100-year floodplain. It also brings up, like, large woody debris – and how does a Forest Practice application come into this?

Ms. Dvorkin: So this –

Mr. Mahaffie: I mean I like where you're going. I just want to make sure.

Ms. Dvorkin: May I speak to this briefly?

Mr. Mahaffie: Yes.

Ms. Dvorkin: These prescriptions listed in the Biological Opinion are, as you have seen, very onerous, some more than others. And the 65% is one where we thought instead of adopting the direct 65% rule in our code, I think we can demonstrate that our codes as they exist – our critical areas ordinance – already sufficiently provides for protection of – and retention of – native vegetation. And that's where this litany of code citations comes in. There's, you know, requirements that the protected critical area remain undisturbed in its natural state. There's all these provisions that prevent someone from removing native vegetation without a critical areas review. So instead of adopting that strict requirement, the County's going to propose to FEMA that our existing regulations provide sufficient protection for those functions, so it does not need to adopt that directly.



Mr. Mahaffie: Again I kind of – I like your attitude on it, but I'm a little devil's advocate here. I'm looking at how FEMA would look at the functions of an entire floodplain vegetation versus what you're proposing. Are they going to buy it? Keep your fingers crossed? Is that the –

Mr. Graham: Well, I don't think there's any real assurance that's been given to Skagit County that they will buy it. But, you know, there has been a discussion about utilizing existing regulations and I think that, based on those discussions with NMFS and FEMA, almost every jurisdiction is trying to rely on existing regulations to an extent, and Skagit County is trying to take more of a two-pronged approach to this where there will be substantial amendments to the flood damage prevention ordinance, but the existing regulations in the critical areas ordinance will be utilized to satisfy – or at least *begin* to satisfy the buffer standards.

Mr. DeVries: Let me just tag onto that that we don't know what FEMA's going to approve. We have met with them twice. We are encouraged by their responses; they are encouraged by our approach. But the – you know, so far the only jurisdiction who has received approval is the City of Mount Vernon and that was a year ago. And while there are other communities like City of Everett, Snohomish County, King County who have compiled and submitted to FEMA, they have not yet received approval. They have received letters like review letters outlining a list of things that need to be clarified, that are not acceptable, and so on. So far nobody's been approved except the City of Mount Vernon. And so we don't really know. All that we can really go by is the feedback we get from them in our – in the meetings we have with them which, as I said, are somewhat encouraging.

Chair McGoffin: Okay.

Mr. DeVries: Okay, moving to page 7 – this would be number 5, item c –

Mr. Christensen: At this point, do we want to take a five-minute break? We're about halfway through the evening. We can keep plowing through this or we could take a five-minute break and stretch, if you so desire.

Chair McGoffin: Commissioners, do you need a break? Carol, why don't you take a break, if you want?

Ms. Ehlers: I can sit as well as anyone.

Mr. Hughes: I think the more worked up you've been getting your problem's been going away.

(laughter)

Chair McGoffin: Yeah, the cough went away.

Mr. Hughes: Are we off? Oh.

(laughter)

Chair McGoffin: It sounds like the Commissioners would like to continue.

Mr. DeVries: Okay.

Ms. Ehlers: I must admit that getting this yesterday morning improved my health considerably.

Mr. DeVries: So item 5, letter c: “The community must prohibit development in the floodway, RHZ” – the Riparian Habitat Zone – and the Channel Migration Zone “plus 50 feet or demonstrate that any proposed development in the area does not adversely affect water quality, water quantity, flood volumes...velocities, spawning substrate, and/or floodplain refugia for listed salmonids.”

So we have under 14.34.220 incorporated some habitat protection standards and, in addition, we have riparian buffers established under the critical areas requirements, including buffer width increasing.

Item d: “Any development outside the Protected Area” – again, ‘Protected Area’ is a term that is used in the – a lot of the FEMA literature and the model ordinance to describe that area that we refer to as the ‘review area’ – “Any development outside the Protected Area must mitigate for adverse indirect effects on stormwater, riparian vegetation, bank stability, channel migration, hyporheic zone” – did I pronounce that right?

Ms. Bunting: You did good.

Mr. DeVries: “...wetland and large woody debris functions such that equivalent or better salmon habitat protection is provided.”

Again we are referencing proposed revisions under the – under section 220 of 14.34, Habitat Protection, and incorporating those elements – pertinent elements – of the critical areas regulations.

“In the” Special Flood Hazard Area “outside the Protected Area, require zoning to maintain a low density of floodplain development.”

Within the FEMA NFIP realm, “low density” is generally minimum lot sizes of 1 acre or more, and while this might be an important function for an incorporated city that has small lots, we believe that we meet this standard with our current zoning requirements that go from 5 to 10, 20, 40 acres.

“All structures must be set back at least 15 feet from the Protected Area” or the protected review area “and sited as close to the” Flood Hazard – Special Flood Hazard – “boundary as possible.”

So again we’re seeing the requirement for that extra 15 feet, as well as a siting criteria that if you don’t have property – if you recall, there was a siting criteria that said if you have a portion *not* in the floodplain you need to build there; however, it’s possible that you might have a property where the entire property is within the floodplain. This is directed at getting it as close to the edge of the floodplain as possible so that the effects that you have on floodplain habitat are minimized as much as possible.

“The proposed action” – this would be a project of some sort that requires a floodplain development permit – “The proposed action must be designed and located so that new structural flood protection is not needed.”

We are referring to our critical areas regulations and our Shoreline Master Program regulations to comply with this condition.

“New road crossings over streams are prohibited outside the Protected Area.”

We generally feel that if – since the stream width – since the project – if somebody were replacing a bridge, it would require a permit and as part of that permit there would be review conducted to determine the effect on habitat. And so we’re leaning on that to guide the approval of a new bridge crossing, as opposed to an outright prohibition.

Do you have any further comment about that?

Chair McGoffin: Good luck.

Mr. DeVries: Yeah. The last item is “All bank stabilization measures requiring armoring of the streambank or shoreline shall utilize bioengineering per the Integrated Streambank Protection Guidelines” for “2003 (for riverine shorelines) or the State Shorelines Guidelines on bank stabilization (2003) (for estuarine and marine shorelines).”

Do you have a comment \_\_\_ about that?

Mr. Graham: I do. I just wanted to comment that Pat and I have had some experience with the Integrated Streambank Protection Guidelines, and we think that there needs to be some additional consultation with FEMA on this matter. We have worked with FEMA on FEMA-funded projects to repair roads in Skagit County, and the main obstacle to actually utilizing those FEMA funds for their intended purpose was the Integrated Streambank Protection Guidelines. And so we think there needs to be some more discussion about that. It’s a formidable document, but it leads you to places where, if you want to armor a bank along the – maybe the South Skagit Highway, you might find that you just can’t do it, and in some cases it might be something that the County would

want to do. So we thought there'd be a need for some additional consultation with FEMA on that and find out just how important that was to comply with.

Chair McGoffin: Okay.

Ms. Ehlers: But you haven't done so yet?

Mr. Graham: Have not.

Ms. Ehlers: How realistic is FEMA in such things? Because if you couldn't repair the South Skagit Highway, then that would be a devastating issue for the entire south bank. Does FEMA seem to be practical as well as theoretical? I know it was forced into this, but...

Mr. Graham: Well, yes, it has been a challenge for years, I think, for public entities who are trying to repair public infrastructure. So I don't think it's a new thing. But this just adds it into our own code and I think that's where there was some sensitivity. Putting it in our own code, adopting it, and then finding that our own code wouldn't let us do something might be problematic.

And, by the way, I just want to make sure that it's understood this document, Integrated Streambank Protection document, isn't – it's – I'm not saying it's a bad document, but it leads you to some spots that you just can't seem to get across and that makes it tough to work with in some contexts. In some ways it leads you to the right conclusion and it does offer reasonable solutions, but at other times it doesn't.

Mr. DeVries: It's a little bit difficult to say how FEMA will be in the future. This is something that's brand new and so we're – "we" being all of the floodplain communities of the Puget Sound area – are going through this together, along with FEMA and National Marine Fisheries, you know, having to try and figure out the best way individually, and we really don't know how things are going to turn out because there isn't a history to go on. There is a Biological Opinion that either has been or is being written for Oregon, and so our neighbors to the south will probably want to know how things went for us up here.

But it's hard to say what's going to – how things are going to be with FEMA in the future. FEMA is doing this as a result of a requirement to ensure compliance. There's nothing new about that to FEMA. They have a program of making community assistance visits every couple years, and they tour the jurisdiction and they take pictures and they ask for explanations and documentation that what they have observed meets the code. And that's your opportunity to find out how well you have been done, and if there's a couple of items that maybe we need to work on a little bit, well, then we have those identified.

And so this process, in terms of how it actually translates into actions and activities, is – it's a process that we're going to be going through for a while, just like we did a number of years ago when we had the flood maps and all of a sudden we had new flood

regulations about elevation and elevation certificates and flood resistant construction and all of those things that were new. And through this community assistance visit system we have gotten better – and as other jurisdictions have – and so it'll be likely to be that way with this.

Chair McGoffin: So the next thing we have is a public hearing and deliberations, and you need to get this to the Commissioners by September 20-something. So I'm asking, this little piece at the end about bank stabilization – could that just be something dealt with later on and 95% of it goes forward to the Commissioners?

Mr. Graham: Well, I think it would be better to deal with it sooner than later. I was a part of a meeting last week with FEMA and it was just one of those items that we didn't get to and didn't resolve.

Chair McGoffin: Okay.

Mr. Graham: But I think other than that, I think that this approach has been discussed, you know, in a fair amount of detail.

Chair McGoffin: Yeah, I think the rest of it is ready to go for our public hearing. I just didn't want the whole thing to get held up because of one little piece.

Mr. DeVries: Yeah, a couple of points I'd like to make: One is that we still have yet to submit our documentation to FEMA for official review and, hopefully, approval. We're just now reaching the point of being as complete as we are, and so there – if there is something in the Administrative Interpretation that can augment – that can be augmented for that bank stabilization procedure or something like that that doesn't necessarily require changing Skagit County Code, that can probably be fit in.

The September 22<sup>nd</sup> deadline is a deadline by which you must be doing something to protect, because this is kind of like a – it's not a free time. It's a time where you're not subject to enforcement. September 22<sup>nd</sup> is the day where you become subject to enforcement at a different level. And so what FEMA has told us is they expect that door number 3 – project-by-project habitat assessment – will be the default. And if you have not been approved, we assume that – we will expect to see those project-by-projects assessments when we ask for them.

Chair McGoffin: All right. Gary? Planning Commission business?

Mr. Christensen: Yes.

Matt Mahaffie: (inaudible)

Chair McGoffin: Oh, sorry, Matt. I didn't see you there.

Mr. Mahaffie: Well, weren't we having a few questions at the end on the agenda?

Chair McGoffin: Yes.

Mr. Mahaffie: I had a few questions.

Chair Mahaffie: Go for it.

Mr. Mahaffie: Page 3 in the second errata list, it lists the communities and their river systems. Should I take it to be – this process to be specific to? It says, “Skagit County and all...communities adjacent to the Skagit River, Sauk” River “and Suiattle” River.” This goes back to Carol’s question, Why are we including the Samish? It’s not listed. There are no listed species within the Samish. Why are we including it \_\_\_? Is that referred to someplace else?

Ms. Ehlers: May I have the document?

Mr. Mahaffie: The second errata letter, out of the appendix.

Ms. Lohman: It was on the FEMA website.

Mr. DeVries: I don’t have a good answer to that tonight, to be honest with you. I know that we have made changes and compiled other documents and comments to the floodplain generally because, with the exception of this list of cities and rivers, what we have been told by FEMA is that this applies to the floodplain. The Biological Opinion calls – refers to the “floodplain” and it doesn’t say, “floodplain of this river” versus “floodplain of that river.” And so we have not felt that it was – that we had two different floodplains to have a flood damage prevention ordinance that governs.

I’m not sure that FEMA’s going to accept the fact that you do it within a certain proximity to the Skagit but you don’t do it out in the flats and you don’t do it, you know, north/northwest of here.

Mr. Mahaffie: It just seems strange some jurisdictions have been categorically exempted from the process that do have floodplains because they don’t have listed species within those floodplains. Just because we’re a larger jurisdiction? I mean, I understand where you’re coming from, but...

Mr. DeVries: We’re kind of the floodplain poster child.

Mr. Mahaffie: \_\_\_. It almost seems like this was really – Skagit County was not taken into account, and the monster that we have.

Mr. DeVries: In a number of ways.

Mr. Graham: Just to follow on that, all five populations of Skagit Chinook are all Tier 1 populations, and Tier 1 means the most important. So, I mean, Skagit County, I think,

far from being overlooked, I think it was really looked at carefully throughout this process. And in some respects, having attended a lot of these meetings, you kind of got a sense that we were being spoken to directly – the bull’s eye.

Ms. Ehlers: May I comment? Tim, there is, as you know, a Public Works Department flood document draft, and in that draft there are two official maps which do not agree with one another. I went in twelve pages but it’s an electronic document – you know, you do those things one page at a time. And I understood from two of the people in the – in Public Works that FEMA used the wrong one of these two maps when they did that big study last year. She was quite contemptuous of their doing so. But if you’ve got two almost identical maps in a County document, it might be difficult for a stranger to know which one was the one you’re supposed to use. So please go find out which official map FEMA thinks it’s supposed to be using and that in other parts of the discussion –

Mr. DeVries: Yeah.

Ms. Ehlers: – is the correct one, so that – because that might help to explain this.

Mr. DeVries: Okay, yeah – good comment. The maps that – the floodplain that these regulations will apply to is based on the maps that have been currently adopted, that were adopted twenty-five or thirty years ago. They have nothing to do with the flood study done recently or the Comprehensive Flood Hazard Plan. And so when the time comes that FEMA has produced a *new* map and identified it as the *final* map that the County must then adopt and utilize, you know, that will – the Flood Hazard Area will change as a result. But the maps that were produced as a result of the most current flood study for all intents and purposes are null and void because the methodology of mapping based on the hydrology has changed.

So good comment, though. Thank you.

Ms. Ehlers: So it was quite clear from the discussion among those professionals in that Department that there is a lack of clarity between *our* idea of what we’re talking about and *their* idea.

Mr. DeVries: Okay.

Ms. Ehlers: They also left Glacier Peak out, but that’s another problem.

Mr. DeVries: Okay.

Chair McGoffin: Any other comments? Questions? Annie.

Ms. Lohman: Tim, you said what happens after September 22<sup>nd</sup>?

Mr. DeVries: September 22<sup>nd</sup> is the date where enforcement could be applied. You have to be doing *something* by that date. Now if you have been approved, if you have

adopted the model ordinance, that's great. You're automatically there. It's an awfully onerous document. If you have been approved for an assemblage of your current regulations, then that's great, too. If you have not, then it is expected that each project in the floodplain will be providing – you will require a habitat assessment that indicates not likely to adversely affect so that they know that until you do get your compilation of codes approved that there is appropriate review taking place.

Mr. Mahaffie: Who's doing the review if it goes to that point? Just a little background: There was a period – a little gray area there time-wise – where this was – I have done this. I went to Baker Engineering out of Boulder, Colorado, and it took a really long time done by somebody who had never been here.

Mr. DeVries: Yeah.

Mr. Mahaffie: Is that the situation if you're not done on time?

Mr. DeVries: Yeah, the report would have to be prepared by a qualified professional. If it showed no adverse effect, I believe that we can accept that. If it shows likely to adversely affect, then consultation with National Marine Fisheries Service is the requirement, which could be lengthy and/or expensive.

Ms. Ehlers: So the crucial ones are likely to adversely affect or not likely to.

Mr. DeVries: That's my understanding.

Mr. Graham: Well, those are two critical phrases – yes. And I guess I just want to maybe expand on this matter that Matt brought up a moment ago. I think this is really going to change the way that consultants prepare critical area reports within the floodplain because they're going to have to be meeting a different standard and they're going to have to be addressing issues that maybe we haven't been addressing in the past. So it's going to be a different process. And, by the way, I think Tim mentioned it would be FEMA that would be reviewing the documents if we default after the 22<sup>nd</sup> of September. And then I believe that NMFS would also maybe have a role in that process as well. So it would be federal review and it would be just as any project is reviewed under ESA. So you'd be going through this individual process. And we have done that and it's a lengthy process and it's one that, at least the last time we did it, involved lengthy consultation and multiple amendments to the assessment that we prepared. So it wasn't an easy thing to get to that not-likely-to-adversely-affect.

Ms. Lohman: So after the 22<sup>nd</sup> we're sitting ducks, even though our ordinance is in the pipeline?

Mr. DeVries: No, we're not sitting ducks because we will need to require those habitat assessments on floodplain projects – projects in the floodplain.



Ms. Lohman: So once it's adopted and it's being reviewed further up the pipeline, as far as local citizens go this is the –

Mr. DeVries: Okay, I understand your question. So we could submit to FEMA and be going through the review, and at the same time we will be going through the legislative process here. And so on September 20<sup>th</sup>, on Consent the Commissioners may sign the required paperwork and everything that establishes what we've presented here or how we change it. But until FEMA approves it, it doesn't necessarily qualify. It is at least theoretically possible that we go through the process and find out that there is some other modification that needs to be made in order to satisfy FEMA. Now we're hopeful of being able to submit to FEMA for review soon, and so that we have an understanding of what might need to be tweaked while we still can do it and we can be running parallel paths. And that's part of the reason we've met with them twice, is to gain an understanding that we're kind of on the right track or not.

Mr. Christensen: Yeah, let me –

Mr. Hughes: Skagit County and all other – what? – 369 jurisdictions?

Mr. Christensen: 122.

Mr. Hughes: Oh, 120- yeah. If they all turn it in on the same day, I mean how long is it taking FEMA to figure out the flood heights? I mean...

Mr. Christensen: So we've all been at this for some time. And, in fact, as Tim mentioned earlier, the first deadline was September of last year. Well, it took quite a while for the federal agencies to get together and conduct workshops and technical assistance and provide guidance to local governments. So everybody was afforded a one-year extension. That due date is now September of this year, September 22<sup>nd</sup>.

So, as has been pointed out, only one jurisdiction of the 122 is good to go. There are 121 other jurisdictions which are going to be submitting to FEMA and NMFS their proposal, which is either option 1, option 2 or option 3. As Tim indicated earlier, if you're option 1 in the model ordinance you're going to get a quick you're-good-to-go. Option 3, probably very similar if you're a smaller jurisdiction and just electing to go project-by-project. A vast majority of the communities are going to go option 2. They're going to try to use their local ordinances. They're all different.

And so what we've been attempting to do, and what other jurisdictions have done, is to have early consultations with FEMA and NMFS to try to get a sense of Is the approach that we're pursuing going to be blessed or is it going to be good to go. We need to get approval. Unlike plans and policies and regulations under the Growth Management Act, when the local government takes action it's presumed valid. As soon as the legislative body takes action and adopts a code, it's valid. When the County Commissioners take action on our proposal, it still must be approved by a federal agency. So it's not valid upon adoption. So there's a difference there.

Now come September 22<sup>nd</sup>, if we've not received approval for whatever action the County may choose to take, then by default we will be employing option 3 until such time as we receive approval on our proposal. So after September 22<sup>nd</sup>, even though we may have submitted our proposal to FEMA and we're awaiting a response, we don't get to implement our proposal until such time as we receive approval. And in the interim, everybody will have to comply with option 3, which will be a project-by-project review. And that's the story.

Mr. Hughes: I just want to ask one question. It's kind of – in looking through this, there's a couple areas in the chapter 14.34 that state that if the area is protected by an approved Corps of Engineer levee, that that area is exempt?

Mr. DeVries: There are a couple of – you're right – there are a couple of places where it says except areas landward of levees – maintained levees subject to Corps of Engineer inspection. One of them is compensatory storage where there's no hydraulic connection. Another is channel migration. We kind of know that where there are levees the channel probably doesn't migrate beyond those levees.

Mr. Hughes: So the exempt – the exceptions are just for those two specific – floodplain storage, for example. If it was an area that was protected by a levee, if they wanted to put in that ten feet of fill in a building they would be exempt, if the area's protected by –

Mr. DeVries: It would be exempt from the compensatory storage.

Mr. Christensen: (inaudible)

Mr. Hughes: Yeah.

Mr. DeVries: Okay, for everyone's benefit, compensatory storage is providing an equal amount of storage at or near a location where you have placed fill material that has reduced the storage. And so behind those levees, if they're not hydraulically connected, then you could bring fill material in and not have to compensate for it by providing additional storage somewhere else, which is difficult to achieve when you have flat land.

Chair McGoffin: Anything else?

(silence)

Chair McGoffin: I think we're satisfied.

Mr. Hughes: I – oh, I had a comment. You know, our last – the public hearing we had – I think it was on pipeline safety. I'm saying this more to the audience and the viewers. I thought in my lot of years on this Commission that it's probably one of the best public hearings that I've witnessed, as far as the crowd. The people that testified brought up very valid points to, you know, what was on the agenda. Hopefully that's the same on

this public hearing. But will you, as staff, as in the past they've – after the public hearing – take the comments and try to, you know, group them together and then have a sheet that explains why it's a good comment or not so – you know.

Mr. DeVries: Yes. Yes, we will.

Mr. Hughes: Okay.

Ms. Ehlers: May I ask: Do we have any choice?

Mr. DeVries: Yes. The National Flood Insurance Program is voluntary, and should a time come when we decide we'd like to control more of our own destiny without the federal intervention then we can opt out of the National Flood Insurance Program. And people who are required to have or desire to have flood insurance can find it through the commercial markets, wherever they might be available. So that's our choice. And the court recognized that when FEMA argued that, Look, these communities – floodplain communities – they write their own ordinances. We don't tell them what to write. And the court responded with, Yeah, but you sell them cheap insurance, don't you? So this is coming through application of the Flood Insurance Program.

Ms. Ehlers: I think that's a clarity that needs to be understood.

Chair McGoffin: "Emails regarding county business"?

Mr. Christensen: Yes. Let me turn to agenda item number 6, which is "General Planning Commission Business," and I have two items. I have a memorandum from Ryan Walters, who's a Civil Deputy Prosecuting Attorney, regarding e-mail communications between you and the public, so let me provide that to you. And just to summarize, certainly reference was made to a previous public hearing in which the Planning Commission held on Pipeline Safeties, and as a result of that there was a public records request under the Public Records Act asking for all communications regarding this matter from staff and you, as well.

So our Civil Division has asked that if you've received any e-mails regarding this matter that they be provided to the County so that we can, under the Public Disclosure Request, provide copies of those communications. Also what we will be initiating is, through the County, your own e-mail account, as a Planning Commission member. And we would be asking that you conduct all Planning Commission business through that e-mail account; that you not be deleting any incoming or outgoing e-mails, so that they can be properly made available to any parties who may request to review that.

As Mr. Walters indicates in this memo, I have for you a Skagit County Volunteer Network Access Agreement and which I can provide to you and you can either read through it or sign it this evening or at some later date, but we're asking that you return that to me, and in return we will then, through the Information Services Department, initiate and provide you with your own e-mail accounts as Planning Commission

members. So I will provide you with copies of the agreement. The signature page is the last page.

Ms. Ehlers: Gary? Since I don't have e-mail, how can I e-mail Mr. Luna that I don't have e-mail?

Mr. Christensen: You can call him.

Mr. Hughes: What if we don't want a County e-mail?

Mr. Christensen: If, upon your review, you're ready to sign that you can do so and provide me a copy of that. You can take it home and review it and read it and give it back to me at a later date. If you have questions about it, you can talk to Mr. Walters or myself. I'll do the best I can to provide any answers to your questions.

So the only other matter that I have is –

Ms. Lohman: Wait, wait. I've got. Let's hold on a second. Do other counties require this for their Planning Commissioners?

Mr. Christensen: I do not know.

Ms. Lohman: Can we find that out?

Mr. Christensen: Sure can.

Ms. Ehlers: This is the kind of thing that's being written about in the *Wall Street Journal* again and again that people are being asked to do. Because there's an ever-increasing activist group who wants all the e-mails anybody ever got on \_\_\_, and it's become more and more clear that one has to completely separate what you do as a volunteer from what else you do as a volunteer and what either of those or more might be from what you do personally. There's a much greater degree of discussion that has to take place. Some professor at Wisconsin wrote a comment about something the governor did and there was a flood of e-mails and lawsuits and all kinds of things because supposedly the professor had no right to discuss historical information about this – the historical background of this particular event. So it's become extremely touchy and I think it's probably good sense that Skagit County's doing this.

Ms. Dvorkin: The Planning Commission is an agency within the County and so it is subject to disclosure requests, and I think it's in the best interest of all the Commission members to have that separation because court decisions have held that, you know, personal computers that are used for work business or County agency business can be subject to, you know, review or these disclosure requests, and it's just cleaner to have a dedicated account that you can just ensure that that's what will be subject to those searches.

Mr. Mahaffie: Thanks, but this still won't clear us from our personal e-mails. If they ever have some type of thing where they have to go into your personal e-mail, they're going to go in there anyway.

Ms. Dvorkin: Well, ideally County – you know, and it's only County business that's subject to requests.

Mr. Mahaffie: Yep.

Mr. Christensen: Any other questions about Mr. Walters' memo or the access agreement form? Okay.

Mr. Hughes: Can you have this at our next meeting, which is every week now, isn't it? Seems like. It's like the old days!

Mr. Christensen: Our next meeting – July 19<sup>th</sup>, I believe, is our next meeting.

Mr. Hughes: Oh.

Mr. Christensen: Yes, Annie?

Ms. Lohman: Have you come up with a tentative August schedule?

Mr. Christensen: I think it's going to be – no. Well, it's now scheduled for the first Tuesday of the month. I think that's August 2<sup>nd</sup>. But given the fact that on the 19<sup>th</sup> we're going to hold a hearing, it may be later in August that we want to meet to provide sufficient time in which to review written correspondence and public testimony on the Biological Opinion proposal.

Ms. Ehlers: August 2<sup>nd</sup> might be an interesting date if indeed Congress decides not to increase the debt limit and, as Michele Bachmann talked about, we will pay the debts but we will prioritize whoever else gets paid, which might –

Mr. Christensen: So maybe there won't be any NMFS or FEMA employees, right?

Ms. Ehlers: There will, of course, be Congress people because they have to make the decisions.

Mr. Christensen: Okay. So the only other business I have then is the quarterly mileage reimbursements, and I have one for Mary and Annie.

Chair McGoffin: Any other comments, Commissioners? I think we can be done. All right (gavel). This meeting is adjourned.