

Skagit County Planning Commission
Work Session: Shoreline Master Program Update
June 19, 2012

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

Staff: Betsy Stevenson, Senior Planner
Ryan Walters, Civil Deputy Prosecuting Attorney
Dale Pernula, Planning Director

Consultants: Lisa Grueter, BERK
Dan Nickel, The Watershed Company

**Advisory
Committee:** Kim Mower
Tim Hyatt
Brian Lipscomb

Public Commenters: Howard Gulley
Tom Stowe
Kathy Mitchell
Ellen Cooley
John Ravnik

Chair Annie Lohman: I call to order the meeting of the Skagit County Planning Commission. This is a work session on the Shoreline Master Program Update. Everybody is here with the exception of Commissioner Hughes. Are there any agenda revisions? I have one. I'd like to, at the top of the order, talk about the timeline very briefly and the June 29th public comment on the draft draft, and the draft that's going to go to Ecology and how that works with us. And then we're going to go to – the very next item's going to be Agricultural Activities, and then we'll jump back to the top of the list and go in the original order. Is that okay with everybody?

(sounds of assent)

Chair Lohman: Okay. So, Betsy, if you could explain to us the timeline and the June 29th – I just want to make sure that the Planning Commission has a chance to incorporate our comments into the draft that goes to Ecology.

Betsy Stevenson: Sure. The website does include the working draft document for people to be looking at. When we went before everyone – at the beginning of the process when we went out for public – the participation and the workshops – the visioning workshops – we told people we'd be checking in every so often. This was our attempt to meet with you early in the process and to get it back out to the public to just say, Hey, here's where we are. We wanted to touch base with you, check our progress, see if we're incorporating things, whatever. So in order for you to have a chance to see whatever those thoughts might be from the public we put a date on it so it would give us a chance to put it together, get it to you, have you get a chance to consider it before we have to send something off to Ecology.

I will continue to take comments. It's a very informal process at this point. We're going to do the adoption later on this year/early next year, so there will be a formal public hearing before you again and we will take written comments at that time and respond to those comments as part of the process. These we're just accepting as kind of (a) checking in sort of time, and we wanted to make sure that you guys had a chance to see them and be a part of your process, as well. That's why we put that date there. But I will continue to meet with people, take comments, right up until the time, you know, that you guys hear it again and the comment period and the public hearings are all closed. So it doesn't stop people from continuing to review it. It's a working draft. It's being revised and reviewed by the Advisory Committee, by staff, by you all at the same time right now, so it's a very fluid kind of process and document.

I don't know if that answers your questions? Your comments will definitely be a part of – it's going to be a quick turnaround from your last meeting, but we're incorporating the things that you guys are talking about now and we will do the best that we can to reflect those things in what gets packaged up to go to Ecology. It gives us about a week after your last meeting to get that done and put together for them.

Chair Lohman: And you're incorporating our comments throughout these work sessions?

Ms. Stevenson: Yes. Mm-hmm, yeah.

Chair Lohman: Carol?

Carol Ehlers: Well, I find that these work sessions stimulate my thinking process. And I go home and sometimes at three in the morning something surfaces. Public use was one of those. I'm getting the impression that "public" means free. It doesn't seem to mean free when it comes to state parks, but when it's proposed that a short plat has to provide a 20-foot shoreline access with everything that means, four lots isn't much. I went and looked at the Burrows Bay area where I have almost all the plats, and it was

only long plats that had to put – provide shoreline access, and they had to provide shoreline access going back to the 1940s.

Chair Lohman: Commissioner Ehlers, the topic was talking about the timeline and how our comments were going to be incorporated, so can you – because we'll be incorporating those.

Ms. Ehlers: Okay. What I want to do is – none of this was brought up that way when we talked about the subject. This is the kind of thing that happens *after we talk*, and then you start to think, and your thinking may go back on what you said or it may change and go forward. And having watched how Ecology has treated us I'm really worried that what might come to them after July they think is terrific and we don't, because we haven't had the time to actually massage some of the language.

I'll give an illustration. This is directly connected. We're going to talk about flood. I want to know how the flood ordinance that we spent last summer on relates to this flood ordinance. I don't want them conflicting. I want everybody able to actually follow the law instead of being caught between one law and another. And the same thing applies to the critical areas, which we're going to talk about later.

Mary McGoffin: Chair, I'd like to move that we adopt the revised agenda.

Jason Easton: Second.

Chair Lohman: It's been moved and seconded that we adopt the revised agenda. All those in favor?

Ms. Ehlers, Mr. Easton, Elinor Nakis, Ms. McGoffin, Matt Mahaffie, Chair Lohman and Josh Axthelm: Aye.

Chair Lohman: All those opposed?

(silence)

Chair Lohman: Motion carried. Okay, so we're discussing the timeline and thank you, Betsy, for clarifying that. So now we're going to jump into the Agricultural Activities. This'll be 14.26.320, page 45 in your draft. This is the clean draft page number. Go ahead and lead off.

Ms. Stevenson: I'd like to just point out to you as well that I did send you a memo that is sort of related to this topic as well, so hopefully you have it. If you don't, I brought some extra copies as well.

Mr. Easton: We're on page 45 of the working draft? Is that right? Thank you.

Ms. Ehlers: Page 7 on the memo.

Lisa Grueter: Correct. Page 7 of the Discussion Guide and 45 of the regulations. One of the main points of the proposed language is that existing agriculture on agricultural lands – meaning lands that’s already in use for agricultural purposes as of the date of the Shoreline Master Program – is not subject to the Shoreline Master Program. And consistent with the current SMP, agriculture will continue to be allowed in all the use environments. There’s a requirement for a permit only when there are uses being added – when land is coming into agricultural use after the effective date of the SMP, or if there’s a non-agricultural use or conversion or that sort of thing. That’s when the SMP would apply was when there’s a change.

Consistent with the current SMP, we’ve retained a condition that in the Natural environment that agriculture be more passive with pasture or grazing lands. And there are some other performance standards, but they’re pretty consistent with your current SMP or reference the new SMP guidelines, such as ensuring no net loss of ecological function or preventing erosion, and that sort of thing.

Chair Lohman: Anyone want to start comments? Jason?

Mr. Easton: So I have a question. I’m not sure if I understand some of these definitions well enough, so let me see. So the gist of my question is: There is cottage industries that are attached to certain parts of agriculture and potentially can develop in relationship to agricultural land. Would those things be affected by this section potentially, if they don’t exist prior to the SMP?

Ms. Grueter: If there is a new structure being added that would be like a value added operation or a commercial enterprise?

Mr. Easton: Yeah.

Ms. Grueter: They would be subject to the SMP so they would need to meet the appropriate setbacks and that sort of thing. There is an allowance for agricultural activities and accessory uses similar to your GMA development regulations, so we are allowing for the same types of uses that your general zoning code would allow.

Mr. Easton: Madame Chair, follow up?

Chair Lohman: Go ahead.

Mr. Easton: So if an existing building on an agricultural piece of land is within, say, a buffer that’s now proposed – so it would be technically would be nonconforming then after the SMP – you wouldn’t be able to be replaced – you know, it wouldn’t be able to be built from scratch if it wasn’t already there. If that was being converted from some sort of regular space that’s being used in agricultural – you know, an agricultural warehouse type of setting – to some type of income-generating – some of the things that we’ve – because this board and the Board of Commissioners is trying to be

sensitive to the economic needs of the agricultural community and the need to drive some tourism dollars and other things in that direction. Can conversion then take place if it's within that, you know, passive – assume the SMP's in place – converting an existing building that would be in a nonconforming use position on the property? Would that be allowed? From reading through the draft, I wasn't clear on that.

Ms. Grueter: Well, I don't believe the nonconforming regulations have come your way. And the Advisory Committee is still working with those.

Mr. Easton: This is an editorial fact: It's a challenge to be this far into this – and I know it's egg and chicken stuff, but trying to balance where nonconforming use –

Chair Lohman: Are you thinking, Jason, of like maybe taking an idle dairy barn and making it mini-storage?

Mr. Easton: Well, I'm thinking about taking an idle dairy barn and making it Snow Goose, or working on making it, you know, a pie barn, you know, where your pet –

Chair Lohman: Still within the Ag?

Mr. Easton: – you're selling flowers. Still it's in Ag – what do you – there's a legal term for that. It's sort of an ag-related – Kim, you know what I'm talking about. It's an ag-related, allowable use within GMA. So I recognize that we don't have our conforming use issues yet sorted out. I just want to make sure that we do protect – that agriculture *does* have the potential to expand, in particularly in the direction of retail. That's what I'm sensitive to. And I'm not sure that we've really captured that here. So I want to challenge the team to consider whether – you know, you're better at the framing of the language than I am – whether that should be addressed here. And, I don't know, maybe Ryan wants to add something, but do you all understand what I'm getting at? Okay.

Ms. Ehlers: Let me follow that with an example: Snow Goose, on Fir Island Road, is in the Ag zone but it was essentially a useless piece of agriculture because it was too close to a slough and goodness knows what else – and the road – and it's long and narrow. And it was permitted under the old SMP to be developed as an agricultural sales place because there wasn't any other, and it was considered a very good use of a site. It had originally been an industrial site, I understand, so it was a change in use to something more practical that applied more suitably to what was actually needed. And that's what makes it a good example for you to think about. Could we do that again?

Chair Lohman: But doesn't the underlying zoning control the activities anyway? So if they're in the Ag zone and it's an allowed use, then it would –

Ms. Stevenson: In the shoreline area, not necessarily. There's some information in the RCW that I gave you, 90.58.065, that defines those, Agricultural Equipment and Agricultural Facilities, under (2)(c). The last thing that it includes in that is roadside

stands and on-the-farm markets for marketing fruit or vegetables and that sort of thing. I don't know exactly – I mean, every case is going to be a little bit different.

Mr. Easton: I agree.

Ms. Stevenson: But if it's an existing agricultural structure that isn't being modified or changed – and, like I said, these rules haven't been written yet so this is still the intention – and it's being utilized by the farmers for some sort of agricultural-type facility/accessory-type thing that fits in still with the definitions that are in the Shoreline Program, even if it's inside the shoreline area, it's still within the same use category, I guess I would say, in that sense. So it would probably be allowed, provided you don't – you're not adding, you know, parking and all the other stuff that might come along with that, in the shoreline portion of it.

Mr. Easton: I love everything you just said except for “probably.” So I would – I mean, just – I don't mean that –

Ms. Stevenson: Probably specifically what you're talking about without having the regulations figured out –

Mr. Easton: Right.

Ms. Stevenson: – but, I mean, yeah, it's still – if it's still being used for ag purposes. If it's turning into something else that's a commercial venture by the farmer to make additional income that isn't necessarily under one of our definitions here, it's going to make it a little bit more difficult.

Mr. Easton: Well, and this is where – this is a work session and I'm still working out what I'm trying to articulate. But I'm a little concerned your definitions are too narrow to allow for what I believe is a healthy, important part economically to give our agricultural community the best chance for their long-term survival. And so I challenge you to consider making sure we're specific in the way in which we draft these definitions to allow this to be used within existing state law.

Chair Lohman: Ryan?

Ryan Walters: Well, and in this instance, in the agriculture activity section that is drafted, 14.26.320, we incorporate the RCW definitions because we're trying to make this, you know, as broad as it can be. So we just use wholesale the RCW definitions that are in the section Betsy mentioned, 90.58.065.

Mr. Easton: I think that's all I have.

Chair Lohman: I have something that kind of dovetails. On section (2), where it says “Applicability,” you reference 90.58.030, section (3), subsection little (e), subsection Roman numeral (iv). And that is – these are exempt – these “...shall not be considered

substantial developments...” and Roman numeral (iv) is “Construction and practices normal or necessary for farming...” et cetera. But I think that you also ought to include Roman numeral (viii) and Roman numeral (x), which are also exempted and very integral and important to agriculture. And that’s – Roman numeral (viii) is the “Operation, maintenance and construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as part of an irrigation system...” et cetera. And Roman numeral (x) is the “Operation and maintenance of any dikes, ditches, drains, and other facilities...” I think those need to be incorporated by reference and not stopped just at Roman numeral (iv).

Mr. Walters: We’ll take a look at that.

Chair Lohman: Also I need a clarification. It kind of goes back to Jason’s question about if you want to build an agricultural structure. For example – if this was enacted – we had to replace a hundred-year-old barn and build a new barn. I mean it was falling down. It was obsolete and derelict. It needed to be replaced. The RCW says, “Construction and practices normal or necessary for farming.” So that would be exempt from a shoreline substantial development permit, correct?

Ms. Stevenson: Not necessarily – for a new structure.

Mr. Walters: Well –

Chair Lohman: So what’s construction if it’s not new?

Ms. Stevenson: Within the shoreline area.

Chair Lohman: Okay, if it’s in the hundred-year floodplain –

Mr. Easton: Where are you going to set the setback?

Ms. Ehlers: If you can’t replace a derelict barn, what can you do?

Chair Lohman: I guess my question goes back – step back again, then: Is the hundred-year floodplain then –

Mr. Axthelm: But that may not be regulated by this document, right?

Chair Lohman: I’m not sure.

Ms. Stevenson: We want to make it as clear as we can, because it sounds like a lot of this comes back to the nonconforming or the preexisting kinds of uses and how we’re going to handle those. And we’ve been thinking a lot about it for residential development – or at least I have – but it sounds like we need to spend some time making it pretty clear as far as the ag industry, as well, both for structures and uses.

Mr. Easton: Yeah.

Ms. Ehlers: Mm-hmm. Yes.

Ms. Stevenson: You're changing from one use to another, making sure that it's still ag-related.

Chair Lohman: Because it – I mean, in that little (iv) it says the word “construction” multiple times in there. It says it again for when they're talking about irrigation.

Mr. Walters: And there's also an exemption – or part of the definition of “agricultural activities” in section 065 includes replacement of agricultural facilities.

Mr. Easton: So is it then your belief, Ryan, that that *would* be allowed?

Mr. Walters: I actually do think so, unless our consultants could correct me. But at first glance, I think it would be.

Ms. Stevenson: Okay.

Mr. Walters: And, also, it's not just a matter of being allowed. It's a matter of, Is it allowed? And, Is it allowed with or without a permit – with or without a *shoreline* permit?

Mr. Easton: I was going to say... I'm glad you clarified that because I was surprised to hear we were going to be ____! Hey!

Chair Lohman: But then at the very beginning of the chapter, you say exemption for existing agriculture and you reference 065.

Mr. Walters: Right.

Chair Lohman: Which has that – what you just read.

Mr. Walters: That's what I'm saying.

Chair Lohman: Yeah.

Mr. Walters: I mean, because that is already referenced.

Chair Lohman: More, anybody?

Mr. Easton: I'm good.

Chair Lohman: Okay, and I have another question. Page 46 – where you're in the development standards – you're referencing the critical areas ordinance for ongoing

agriculture. "...the following standards apply...no net loss of ecological" function "and no significant adverse" impacts....

Mr. Walters: So I think the important thing to point out about this section is that the development standards listed here in this section don't apply at all if you're already exempt, which most agriculture is going to be. So that's why at the beginning of this section, paragraph (1) states the exemption. And if you qualify for the exemption, which is contained in 90.58.065 and which is a lot of agriculture – I think if you look through there, I mean, most all agriculture – existing agriculture – is going to be exempt, then we don't get to the development standards.

Chair Lohman: Well, for clarification then, would it be better to say "new"?

Mr. Walters: Um –

Ms. Ehlers: It does in (3).

Mr. Walters: Yeah, that really is the basis – new – it's very similar to our critical areas ordinance: ongoing ag, existing ag has a separate treatment. In the Shoreline Management Act, existing agriculture is exempt from shoreline plans. But the exemption is laid out in 90.58.065, so we don't want to articulate some *other* exemption. We want to use that one. It's not *precisely* new ag, although it is very closely that.

Mr. Easton: Madame Chair?

Chair Lohman: Go ahead, Jason.

Mr. Easton: So is existing – are there currently existing agriculturally-zoned properties in the county that are not currently considered agricultural in the sense that they would be viewed as – so you have the zoning to be in Ag, but you're not an actively agricultural property right now, so you could be viewed as new ag on a zoning that's – I mean, even though you're in the zoning? Because I'm concerned about land that's not being actively used in ag right now that's *zoned* Ag. I don't want to do anything to make it more difficult for that to become ag land when I'm battling to keep us from losing ag land.

Mr. Walters: So theoretically – I don't know necessarily about what's on the ground – but theoretically you could have a parcel zoned Ag-NRL that is not being used for ag – maybe it's used as a residence – that, under our critical areas ordinance, does not get the benefits of our ag critical areas ordinance, our special section for ongoing ag. You could have a parcel – under our critical areas ordinance – you could have a parcel that is used for what you might consider agriculture but doesn't meet the thresholds of our critical areas ordinance definition for "ongoing ag," so it would not receive the benefits of ongoing agriculture. This is the ongoing ag section.

Mr. Easton: One more follow-up.

Chair Lohman: Go ahead.

Mr. Easton: So here's my concern, with listening to your explanation. I'm concerned that we're going to make it more difficult to take existing land that's not currently part of the ag inventory – in the sense that it's being, you know, actively farmed – and make it more difficult for it to get into that category by passing the SMP as it's written. Is there – am I misunderstanding – Betsy's shaking her head. Am I misunderstanding something?

Ms. Stevenson: Well, the definition under the "agricultural activities" in the RCW – I mean, without reading through the whole thing, it lists agricultural activities means a lot of things: "Producing, breeding, drying, rotating crops; "allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement..." There's a lot of things in there. "Lying dormant for market conditions" kind of leaves it open for anything.

Mr. Easton: It's a pretty gray area, yeah.

Ms. Stevenson: So, I mean, and that falls under the category of being exempt, so I guess I'm shaking my head "no" because I think that the definitions under the shoreline requirements in the RCWs, which I gave you tonight with the other stuff –

Mr. Easton: Yes, and I appreciate it.

Ms. Stevenson: it – it's pretty wide open for that. And they don't necessarily require that the property be zoned for ag, either.

Ms. Ehlers: Ah.

Mr. Walters: That's an important distinction.

Mr. Easton: Yeah.

Mr. Walters: The Shoreline Plan doesn't require that zoning constraint; our critical areas ordinance does have a zoning constraint.

Ms. Stevenson: Right.

Mr. Easton: Right, right. Thanks.

Ms. Stevenson: I think that helps.

Mr. Easton: I mean, just to circle back: Still do want to see that we make sure we incorporate my concerns about Ag-NRL, the cottage industry – whatever. I know there's a – I can't remember what the phrase is in the Comp Plan – you know, that that stuff is incorporated in the way that the definitions are written and it's clearly supported as much as possible. I think I can – without having to ask the Chair to take a vote – I think it's pretty universal amongst the Commission over the years – this Commission and the Board of Commissioners – that anything we can do to help support the ag industry and that side of things has been, you know, pretty consistent. I want to make sure that we're – I recognize that we're up against the Department of Ecology's feelings being a little different. I would prefer to be on the edge of almost them being disappointed in this choice. So I would say to our consultants, Please find us right on that edge with your advice. Thank you.

Mr. Walters: Well, and actually I think we are on pretty firm ground in terms of what the RCW will support.

Mr. Easton: Excellent.

Mr. Walters: But maybe what we will do, in response to your comment there, is add another example.

Mr. Easton: Well, and Annie – I think Annie's example about replacing a barn, that needs to be clear to the average person at the counter reading through this recognizes that that replacement barn is not – you know, I'm not so concerned about the person reading it as I am about the person interpreting it across the table. I want it to be very clear. If that barn's replacing an existing barn or an existing ag building that it's not going to get lumped into, Hey, now you've got to be 200 feet off this creek.

Chair Lohman: So then to dovetail again on Jason's thought and jumping back to number (2), sub (d), then maybe we need to clarify that. If you're existing ag and you're doing – I think it's a little confusing because in the RCW it includes construction; in here, you took it away.

Mr. Walters: What section are you referring to? (2)(d)

Chair Lohman: (2)(d) in the 14.26, page 46.

Mr. Walters: (2)(d) in 320?

Chair Lohman: Right.

Mr. Walters: (2)(d) refers to *new* agricultural facilities.

Chair Lohman: But you could read it as new agricultural facilities – wherever you put your *emphasis*.

Mr. Walters: On the wrong syllable?

Mr. Easton: Did he say “syllable”?

Ms. Ehlers: Mm-hmm. That’s part of the joke!

Mr. Walters: So –

Chair Lohman: I think we need to clarify (d) – what exactly you’re going after. You’re going after *new* agriculture; you’re not going after that established agriculture, maybe building of something. Correct?

Mr. Walters: I think I see your distinction. I think, yeah, we will need to –

Ms. Nakis: New, not replacement.

Mr. Easton: Because it comes back to her barn example.

Chair Lohman: Yeah, the barn example.

Mr. Walters: Right. And I think maybe we can lift some more of the verbiage from the RCW and put it (in). Because this list here is a list of examples. It was introduced by “e.g.” So we can, I think, lift some of that language and make that clear.

Mr. Easton: I mean, some of that language that Annie was reading earlier would probably bring some clarification, don’t you think, Annie?

Chair Lohman: Yeah. So I think we need to clarify item (d). And one more thing in this section, on page 47, why are you including item (g)? (4)(g)? It’s the purple highlighted. Because we’re talking about agriculture and now you’re talking about minimum lot size?

Ms. Grueter: I think that was language that comes from the ag zone and so we were trying to make some consistency with the ag zone. But I think it’s kind of a universal principle in the zoning code, so we were talking about moving that to a General section.

Ms. Ehlers: Well, if the minimum lot size is supposed to be 40 acres and you have a 20-acre parcel, you haven’t reached the minimum lot size.

Ms. Grueter: I think in the Ag-NRL zone there are allowances for ag stretchers on any size of lot. But I believe, Betsy, there are some limitations on residential uses. Is that correct?

Chair Lohman: But my question goes back to – the title of the section is “Agricultural Activities,” and so I hiccupped when I got to that.

Ms. Grueter: We can go back and look at the source of that, but I believe it was from the zoning code – and we'll double-check that.

Chair Lohman: And then item (h): “New non-agricultural structures on agricultural lands...” What are you envisioning? Are you encompassing residential, like a farm house residential or – because there, again, in the context of the ag – ag activities – what are you referring to?

Ms. Grueter: I believe in the Ag-NRL zone there are some siting criteria where structures are placed to maximize the protection of prime soils, and I think that's where that reference comes from.

Mr. Easton: Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: Yeah, I just feel like (g) and (h) don't belong there. They seem out of place to me.

Mr. Walters: Well, and they are just references to other code provisions.

Ms. Ehlers: Yes, but –

Mr. Axthelm: A question? If it's –

Mr. Easton: I'm sorry. They don't come across that way.

Mr. Axthelm: If it's covered in the other code sections, why would we refer to it here? It seems to be a double up and a confusion there. Why not refer – I mean, everything seems to refer back to the other code. Why not let that take care of it? If this is an issue that doesn't have to do with shorelines, let the other code take care of it.

Mr. Easton: It's like keep the Shoreline Plan about the shorelines.

Ms. Ehlers: Yes.

Mr. Axthelm: Exactly. Because otherwise what happens is then you go back and you change your other code but, oops, you can't do that because now you have to go back and change the Shoreline.

Mr. Easton: And we've had that problem before.

Mr. Axthelm: So too much redundancy, in my opinion, causes issues because then even though you're trying to make this code conform to the other code, it doesn't have to. It can have conflicts, but that's the whole point. This refers back to the other code.

Ms. Grueter: Development permits would need to meet the regulations of both, zoning and shoreline. But certainly we don't need to repeat here. We *can* cross-reference.

Chair Lohman: Carol?

Ms. Ehlers: I was – the conversation's gone a little beyond it, but the question of new: When I think of the heartburn that's been held on many people I know – and I've been part of some of it – trying to avoid the implication that perhaps this building you are doing is new and the stress on repair and maintenance where you agonize in the meeting, in your meetings beforehand as to how you can describe this building as repair and maintenance so that it comes under the critical areas ordinance or it comes under some other ordinance, because – God help you – you can't build something new.

Now if the barn's gone down, you ought to be able to replace it. If a staircase has gone down, you ought to be able to replace it. It's a new staircase. It's a new barn. And these rules have to be clear throughout that you can replace – we're going to get to that in the nonconforming issue – but that you can replace something that is suitable for where it is. Because if we expect Mother Nature to stop blowing and raining and flooding, we're crazy.

Mr. Walters: So, right. So almost all that will be handled by the nonconforming section that we don't have yet. But in terms of agriculture, we do have that allowance.

Ms. Ehlers: Well, it has to read consistently so that we don't get tripped up in our own ignorance.

Mr. Walters: Well, it's not going to read exactly consistently because agriculture is treated special. It has a much – I mean, it has an exemption. But I think its effect will be similar. I mean, I guess we won't know until we get to that section.

Chair Lohman: Anything else on ag?

Mr. Easton: I have a question.

Chair Lohman: Go ahead, Jason.

Mr. Easton: About the (4)(b): Is that language required under the state law?

Ms. Grueter: I believe that language is in the present SMP. I would have to go back and double-check. There are some guidance language in the SMP Guidelines that are in the state rules that talk about addressing water quality and vegetation conservation and things of that nature, so that's why we retained it. But we'd have to go back and double-check that, but I believe that's from your current SMP.

Mr. Easton: Okay. Thank you.

Ms. Ehlers: (4)(b) relates to a federal principle that came out of the Dust Bowl, and that is that you have to do everything you can in agriculture to prevent erosion, because otherwise you don't have soil left.

Mr. Walters: Well, and it's probably not exactly the same rule, but it's consistent with our Ag-CAO, which requires erosion controls, and a lot of consistency with the NRCS standards.

Chair Lohman: I want to jump back a little bit on the – you reference in the Natural that agriculture's allowed in all of the classifications and that only in the Natural environment are you – new agricultural activities would be restricted to non-intensive. So my question is I thought that I saw in the WAC that it said that – it really urged you not to designate as Natural where there is ongoing active agricultural taking place. Are you guys – is that what you are doing?

Ms. Ehlers: Doesn't that relate to that memo you just sent us?

Ms. Stevenson: Yes. And that throws the floodway in there, too.

Dan Nickel: The memo that you – the progression of the environment designation mapping – so we're now looking at that floodway designation in the middle reach of the Skagit as a unique designation. And the intent there is to continue to allow agricultural activities in that area, to allow new agricultural activities to occur. We investigated the Natural environment designation and we discussed with the Shoreline Advisory Committee. And, you know, we wanted to take a look and see what that would look like, and so we've gone away from that. We're looking at some other type of designation that's more in line with agricultural uses. And so that's kind of where that progression is right now. We're still working with the Advisory Committee to come up with the appropriate language there for that designation criteria for the floodway designation in the middle Skagit.

Ms. Stevenson: I don't think there's any place else that we mapped Natural that's ag.

Mr. Nickel: No, no.

Ms. Stevenson: Yeah, I don't think so.

Chair Lohman: Okay.

Ms. Ehlers: Well, before we leave this, I often hear a reference to the "middle reach" of the Skagit. Would somebody please locate that?

Ms. Stevenson: That's just kind of the pipeline at Sedro-Woolley, east of Highway 9, and we've included all the way up to the Sauk.

Ms. Ehlers: So it's from the –

Ms. Stevenson: Some people don't include quite that far.

Ms. Ehlers: It's from the pipeline at Sedro-Woolley, which is, I think, just outside the levee system. Isn't it – the pipeline?

Ms. Stevenson: Yes.

Ms. Ehlers: And then it goes up, you're saying, in your definition here, to the Sauk.

Mr. Easton: It goes east to the Sauk.

Ms. McGoffin: So the pipeline is just east of the bridge that goes over for Highway 9. You can almost see it from the bridge. That's where the pipeline is.

Ms. Ehlers: And so that's quite a bit east of the levee, isn't it?

Ms. McGoffin: Yes.

Ms. Ehlers: Okay. Thank you.

Mr. Easton: Can you clarify why you chose to go further than other – you referenced "others"?

Ms. Stevenson: Because there's still quite a bit of floodway there, I guess is the best way to – a lot of people look at the middle reach and it's more for restoration work and things like that, and they're identifying sites for that sort of thing. At least that's what some of the most recent studies have been for. So that's their reference to the middle reach, but we're kind of trying to include most of the Skagit floodway areas in that section.

Chair Lohman: Carol.

Ms. Ehlers: This is the place to reference something that's been concerning me as I read this. On the environmental committee for the flood group are at least two people who are very, very interested in the middle reach of the Skagit River. It seems practical to me that when you're dealing with issues that cross-reference or cross-obligate other things that are being worked on now, that a communication with people would help. Now there's no way *you* would necessarily know that these two people on that committee are deeply interested in it, but now you do because I've made the reference. You could, however, inquire from Kara Symonds if there are people that she's working with that have a devout and knowledgeable interest in this so that we don't take them by surprise.

Ms. Stevenson: Part of the process that we need to go through with this update is preparing a restoration plan, so we will be working with all the different groups,

individuals, agencies and folks who do restoration work to make sure that we're coordinating that effort and we have all that information documented. So that needs to be happening fairly soon, but we're trying.

Ms. Ehlers: I'm glad to hear that, but that's a different group, perhaps, than the flood people.

Ms. Stevenson: But it's the environmental group of the flood group?

Ms. Ehlers: This particular interest that I'm referring to is the environmental group for the flood. But we'll get later to the flood issue and there has to be a relationship in the knowledge and the subject matter because this document can't undercut what they find they have to do.

Chair Lohman: Anybody else have anything on Agriculture? Anything from the Shoreline Advisory Committee? Nothing? Okay. Anything else from – Ryan?

Mr. Walters: I think, in general, our objective here in this Agriculture section is to maintain the status quo.

Ms. Stevenson: Right.

Mr. Walters: You know, to not impose any new rules, and the statute actually makes that relatively easy since it provides a large exemption for agriculture from shoreline plans.

Mr. Easton: I love it as a goal; I just want to feel it come off the page a bit more.

Chair Lohman: Yeah.

Mr. Walters: Well, the first draft, I think we –

Mr. Easton: I don't mean that offensively. I just think it needs to be stronger.

Mr. Walters: No, no – yeah, we're going to make it 3-D. But the first draft, I think, was a little bit more confusing and we cleaned that up before we sent it to you. But we can do more work.

Mr. Easton: Thank you.

Chair Lohman: So we can cross-reference all the DFI/TFI stuff that we did in the flood, too, somehow? Because you follow it through the critical areas and through the flood hazard reduction act, or whatever you want to call it, right?

Mr. Walters: Well, what are you asking?

Chair Lohman: The earlier work we did on the flood hazard mitigation, the FEMA BiOp?

Mr. Walters: Last year's?

Chair Lohman: Right. That's incorporated, correct?

Ms. Ehlers: Doesn't seem to.

Mr. Walters: Well, incorporated into the Shorelines Plan?

Chair Lohman: I didn't ask the question very well. Maybe I'll wait 'til we get to the Flood section.

Mr. Walters: That'd be okay with me since I don't know anything about it.

Chair Lohman: So, moving on, we're going to go to No Net Loss. This'll be in the very front, page 2 of your Discussion package. Page 2. Go ahead.

Mr. Nickel: Thank you. So what I've prepared here for your Discussion Guide really tries to give an idea of, What does "no net loss" mean? And three questions here were posed: What does "no net loss" mean? How is no net loss measured? And does that mean that the SMP must prohibit all development that will result in a loss of shoreline functions. Those are the three questions we were trying to describe here.

And, first off, what does "no net loss" mean? There's three points here that I wanted to make. Some of this material comes from what Department of Ecology is also trying to spell out here as well. We try to craft it in a way that's hopefully a little bit easier to understand.

First off, no net loss – the standard here is designed to halt overall degradation of shoreline functions resulting from new development. Again, it's related to new development, not existing. But this means it's the aggregate development that's occurring along the shoreline that we're looking at in this update. Part of what we're going to be tasked with at the end of the development of the Master Program as we submit it to Ecology is to look out over that twenty-year planning horizon and to attempt to understand, or at least anticipate, what types of development and the extent of development that might occur in our shoreline areas. And then really go back and look at the language in this document and to ensure no net loss, meaning ensure that that development that we anticipate to happen is mitigated appropriately. And we do understand that, you know, development comes with impacts and we're going to allow development to occur in a variety of mechanisms throughout the various uses and structural developments that can occur. But we need to make sure that we do that appropriately, and that's what that no net loss standard is really trying to get us at. We need to look cumulatively across the board for the update, but then even narrower you'll notice that in several sections here in the Master Program, based on the Ecology requirements we do need to have no net loss standards that pertain to development that

occurs. You'll see that in the Ag language that we just reviewed. It had a statement there about no net loss and several of the other sections have similar statements in there. And that is to help us ensure that we focus on that requirement as we go through this process. Because it does relate to the actual developments as they occur – also need to be reviewed for that standard. And in doing that, we're looking at the mitigation principles that are applied to development.

So that's kind of the background of what that no net loss standard – how it's applied, both cumulatively as well as narrowly. How is it measured in this process? It's very difficult conceptually to understand because, you know, if you think of no net loss in the true sense of how a development might take place. And a good example of this is of a new development happening – a residential development, for instance – in which you're clearing land. And one approach to that is to say, Well, you're clearing land; how do you mitigate for that clearing of, you know, the mature trees? You know, you can't necessarily do apples for apples and plant new adult trees. There's different mechanisms to mitigate for that and part of that is to deal with that in the Master Program appropriately. A variety of mechanisms can be implemented there.

To measure no net loss, we need to look at – again, looking at that anticipated development across the landscape, across the variety of uses, and anticipate how does the Master Program mitigate for those. And we'll prepare a – what's called the Cumulative Impacts Analysis document at the end of this process, and that will look across all our environment designations and ensuring that the regulations are built appropriately upon that. So we tend to – when we're going through this and developing a draft that's currently being reviewed – we kind of have our mind looking at that end product to make sure that we're fitting with that no net loss criteria. The last thing we want to be doing is getting down the road and Ecology saying, you know, No, you're way off base. We want to be kind of finding that area where we are balancing, you know, development with mitigation and so we're ending down on the right target.

So does that mean that a Shoreline Master Program must prohibit all develop that results in a loss? No, it doesn't. We are allowing a lot of development to occur in the shoreline. We're just making sure that we provided the mitigating measures that are appropriate. And it's ultimately our task and the County's task to make sure that we show and document that appropriately that we assess those cumulative impacts in the end.

Chair Lohman: Go ahead, Mary.

Ms. McGoffin: Well, my concern with this no net loss is I was envisioning that you have to have a finite number to start with and another finite number to measure it against to calculate no net loss. It's a math number, right?

Mr. Nickel: It's not in the sense that when we – like our approach to looking at cumulatively across the shoreline. We can do some numerical, quantitative analysis, and one of the things that's fairly easy to quantify is overwater structures – docks, in

particular. You can commonly anticipate the level of development for overwater structures that might occur over a ten- or twenty-year horizon, just kind of based on the development that's been occurring in the past, and then anticipating what might happen in the future. You can actually assess with a quantitative number what type of – the amount of overwater cover and the number of structures that you might anticipate. That's something that you can quantify. Then you can balance it out with, Well, how is it mitigated for? That's something you can quantify.

Qualitative analysis, though, is even more common here – where we look at what are the types of development that might occur that impacts vegetation, that impacts the development and increase in impervious surfaces? That is the data that we really don't have very good numbers for. The land cover information that we have is fairly sparse. We have to rely more on a qualitative analysis about how do we mitigate for those types of impacts. And so it is definitely a balance between quantitative and qualitative analyses, and I think there's even more bases on a qualitative sense than there is on numerical values.

Ms. McGoffin: So my concern is that could be debated. People – proponents would debate with opponents about what constitutes no net loss. And, I mean, it has to be there. Department of Ecology's already requiring you to refer to it numerous times, so it's kind of a moot point for me to even bring it up. But I just see it being a real sticking point for interpretation.

Ms. Ehlers: Mm-hmm.

Mr. Nickel: And this is a difference between looking at it at a – cumulatively across the board in a Master Program versus looking at it at development level. A lot of what the text that you see in the draft here relates to the project level. Ensuring that no net loss is achieved at the project level. And much of that has to do with going through mitigation, going through mitigation sequencing. Those are the mechanisms that are utilized to ensure that you're doing things appropriately. And that's where you can achieve that no net loss standard on a qualitative sense.

Ms. McGoffin: It just seems like if you could say, "Ideally, no net loss," or something besides such an incredibly difficult standard to meet. You know, that's my concern. And then my final thought is, you know, Will there be penalties when it's not met?

Ms. Ehlers: Oh, yeah.

Chair Lohman: And from whom?

Ms. McGoffin: And from who?

Mr. Easton: Enforcement? Mysterious enforcement.

Ms. McGoffin: And I'd like to know what the Committee – have you guys discussed the no net loss principle?

Ms. Stevenson: A little bit of something to add to that before they speak to you. They do have microphones in front of you so they should be able to hear you.

Ms. McGoffin: Okay.

Ms. Stevenson: It's kind of a programmatic exercise at this point, too. The no net loss is the whole premise for the Update for the most part, and we're supposed to say, you know, it's kind of like we went through with wetlands years ago. Too many wetlands were being impacted so they drew a line and said, There's no net loss beyond this point. It's kind of similar, and that caused some problems. But what we have to do is as the date of the adoption of our Program, that's our baseline and we should have done our homework with this Update process to show that, Yes, we're still going to allow development the way we've described it in our Master Program; however, we've also addressed all the other issues either by mitigation or through restoration and the restoration plans and all of that – activities that we have to document and go through to show that, yeah, we're going to be up above that baseline here, but we're going to be way down below it over here. So we still are okay. And then the day-to-day work goes about. It's business under the regulations in the Master Program, if that makes sense, if that helps at all. You're right on target. I don't disagree with you at all. Everybody looks at that and goes, What does that really mean? You know, so we have to define it – how we're going to make that work in our Master Program. And, like I said, it is definitely a balance but it's part of the premise and it's programmatic at that level, and if Ecology approves our document then they've sort of approved that. Does that mean somebody may not raise that issue project by project? It's a possibility; however, we do propose mitigation now and will continue to do that on projects, so that part of it should change that much.

I see a lot of these things, at least which what happens with our critical areas ordinance, too, is when you require mitigation, even though you're allowing some additional development, with the mitigation you're really improving the situation there. So we can really make it better, even when you're allowing development on a site. And part of the other thing that went through, too – which kind of hits here – Kevin Ranker's bill that was adopted and passed talked about the no net loss as far as residential development and some of those things, and it does specifically talk about that in there. So at least for residential development we can include that – that is isn't each project has to necessarily look at that individually and be the tipping factor for the whole thing to blow up, or however you want to call that.

Chair Lohman: And some manmade structures actually do increase habitat, so it's not – it doesn't have to necessarily be a natural structure that creates habitat, because we've seen evidence all over the world where manmade structures have provided some pretty unique habitat opportunities, too. So when you were using your dock reference,

maybe that's not necessarily totally a negative, because maybe in the right circumstance there's a habitat provided for something.

Ms. Stevenson: The seals like to hole out on them – the marine docks. So, you're right!

Chair Lohman: Tim.

Ms. Stevenson: Sorry – I didn't mean to cut you guys off. Your turn.

Chair Lohman: I can't address the public, but you can –

Unidentified male voice in the audience: A specific question.

Chair Lohman: No, I can't. This is a Planning Commission work session with the Advisory.

Same unidentified male voice in the audience: I don't under – what'd you say?

Chair Lohman: This is a Planning Commission work session in cooperation with the Shoreline Advisory, but we have public comment at the very end. So, Mr. Hyatt?

Tim Hyatt: First I'd like to ask what was your question that we were supposed to address?

Ms. McGoffin: My question – my concern is about no net loss: How will it be measured? Who will measure it? It requires finite numbers and in ecological functions it's really hard to nail down finite numbers because it's a moving target, minute by minute.

Mr. Easton: So we wondered if you guys have discussed it.

Mr. Hyatt: That was the question I was trying to remember! I think the answer is pretty much "no." I don't remember an explicit discussion of it. It's a fairly common concept in shorelines and in other permitting – Corps of Engineers' permits; WDFW has an entire document about half this size on mitigation guidelines, and the whole point is to try to achieve no net loss at the project level. When it comes to shorelines, they do, as Ann was saying, require an analysis at the end to show overall. I think that's going to be very difficult to show, given the allowances that are in this code. And speaking as someone who used to be a restoration practitioner, I think the restoration community would object to their projects being used to offset the impacts for a lot of individual projects elsewhere. They receive public grant funding to take what is the existing habitat, which is not sufficient to propagate several protected species, and use that money to build the habitat above and beyond – build its quality and quantity. And to have that then eroded away by impacts that are permitted under the Shoreline Plan means they're not achieving what those grants were meant to achieve. And I don't think that that would be – well, a lot of their projects are on lists, a lot of them are not. I don't

think they're really going to want to see their projects used to compensate for somebody else's impact.

Mr. Easton: So it's your – in your opinion, though, as a group you guys never spent time addressing this issue particularly?

Mr. Hyatt: I don't remember an explicit discussion of no net loss. I think we all kind of assumed we knew what it meant.

Mr. Easton: Okay.

Chair Lohman: Go ahead, Brian.

Brian Lipscomb: I had a – actually no loss, I think we referred to it a couple times and I've always – every time it'd come up I said, Where is our net gain? I mean, we always have losses. Nobody ever measures gains. What's the incentive for anybody to do anything if you're getting nailed for every time you do a loss? I mean, you don't want to do anything to help things out unless you can get credit for it somehow. So where you would go and actually do something just because it's a good thing to do, now I – some of my neighbors, and myself included, are not planting trees that we should just because we can use those later when we need a building permit for something. And we'll use that for mitigation.

The inventory's actually in this book. I mean, of where the shorelines are and what the state of them now is. I think a lot of us disagree with really the numbers in there, but it's a start. You're going to have to start somewhere. So that was the inventory of what the shoreline or what the quality of them now is. Where, how you put a number on that, I know we discussed a couple times, or at least I attempted to – was how do you put a value on it? Is 20 square feet worth of knotweed worth one fir tree? I mean, how do you do your comparison to that? It's a very deep subject and I'm sure we could have multiple meetings on that alone, and I would look forward to it.

Mr. Easton: That puts you on a rare list.

Chair Lohman: Carol, go ahead.

Ms. Ehlers: Well, if you're going to talk about loss and gain, those of us who *have* done our damndest to gain look at this and see that all we're going to do is lose from it, and I, for one, think it is stupid for a government to write a document that discourages people. Because once you get something cleaned up the way it's supposed to be, you then dump all kinds of polluting, commercial and other kinds of things in it on the shoreline – not on the edge, not on the land, but in the shore itself, at the same time that there's a consistent blame that residences are the only ones that ever cause trouble. And Anacortes has just spent a fortune – so has DOE – cleaning up the industrial area of Anacortes. And are we talking about putting industry back in the industrial area of

Anacortes? No, we're talking about putting it in the shoreline, where it hasn't been all these years.

So I'm demoralized on this subject. I look at the shoreline designation in my area with the evaluation and I find that somehow or other an area of Jurassic rocks that's impacted by all kinds of storms from Juan de Fuca is supposed to have more dirt on it. You have to recognize what the real conditions are that are natural and then look at the conditions that are what they should not – that are what they shouldn't be where it was damaged, and establish where you want to clean it up first, and make a demonstration of it the way Anacortes has cleaning up that industrial area. That is a gain. It's an expensive one, but it's a real gain. And to imply that all the shorelines of this county somehow or other are negative – they're not what they should be – doesn't encourage people. I think you must encourage us.

I would like an accurate designation of the shorelines. I asked four years ago when it was first done – the inventory – to have the public be able to review it and comment on it and it didn't suit the County government to do that, for whatever reason. So now we have one that has been – not been – reviewed in detail by the public. If you look at the no net loss, I understand "cumulative"; that's a huge issue. I understand "mitigation." I agree with Mr. Hyatt that you don't mitigate for this shoreline twenty-five miles away. If there's a problem on a shoreline, you deal with where that shoreline is and what the problem is if you can, and then you will know whether you've gained something. What really gets to me is when I listen to Senator Ranker, which I did last night, there even to the detail that if there were/could be two eggs from spawning on a site and there's only one that that's a loss. And that somehow or other a project might not be built because somebody thinks that sometime in the past there might have been a spawning ground on this beach or this area, and therefore we have to do what we can to see if we can restore it, and if you can't restore it then you can't use the land.

What I'm also worried about is that by the time we're finished we won't have any positive development. I don't see where you're going to put residential development now, except on Allan Island, and somehow or other you've decided that Allan Island, which is subdivided but doesn't have but one building on the whole thing, that that isn't a Natural site. So I've got a lot of heartburn on it and I would like to find something that makes more sense to someone like me who doesn't have the knowledge of that big, thick book of restoration because we're the ones who are going to have to deal with it. And so my hope is that between now and when you finish you'll get something that we can see: Yes, this is a loss. This has been lost in the last forty years. And we can try to gain it back, as well as whatever is new.

Chair Lohman: I think it's a difference between specifics and being up at the 30,000-foot level. When you talk "no net loss," you're way up in the clouds. And I think a lot of us think specifics – bricks and mortar, rocks, dirt. Are we polluting? Are we running a pipe? Is our septic system putting pollution in the water? You know, those sort of specifics, and that's where we're struggling – *I'm* struggling – to find the specifics. We see a lot of the big picture. Mr. Hyatt referenced that not to use a restoration project as

a mitigation, but I think you have to use the restoration projects and the mitigation projects cumulatively on the asset side of the equation, just like you have to use all the negatives on the debit side. So you have to somehow account for all those projects cumulatively. But how do you get down to the specifics in the code?

Mr. Nickel: So to address that: The Restoration Plan is something that – I mean, ideologically it's intended to be to bring us above that baseline condition. We do recognize that, you know, one, development impacts will be mitigated for. We also recognize there are additional impacts that are occurring on shorelines, both in terms of violations that might be occurring that we don't – that aren't permitted, and continued degradation of conditions that happen in certain circumstances. That is a way that we actually can use the Restoration Plan, which is a fairly detailed plan. It's not a conceptual plan focused on, like, you know, designs, but it's a programmatic look at what type of restoration activities are planned for the future across our county shorelines. And it is a way that we can actually use to balance that no net loss equation and get us above that baseline for those restoration activities. So it accounts for both, in a way. It accounts for that continued degradation, it accounts for those unmitigated impacts, and eventually will, you know, potentially get us even above that line. But those are restoration activities.

Ms. McGoffin: All right, Chair, so I understand that but then there's language in here where it says "must." Like we just finished Agriculture. If you go back to page 46, (4)(a), it says, "No Net Loss of Ecological Functional. Agricultural uses and development in support of agricultural uses must be..." – not "should." But doesn't "must be" – that's like a "shall."

Ms. Ehlers: Mm-hmm.

Mr. Nickel: And that is the standard that is set for us throughout this document. I mean, that is one of the premises that Ecology has built this Update on.

Ms. Ehlers: How do you do it?

Ms. McGoffin: Yeah.

Mr. Nickel: Part of that is ensuring that we're going through the appropriate mitigation. You know, you're siting these uses and activities in areas that are the least impacting; that you're doing that positioning in the landscape appropriately; that you're – when you have an impact that is – you're not able to avoid, you're not able to minimize any further – that you mitigate appropriately. Those are the standards that we're using to make sure that we're achieving that no net loss. The concept – I mean, it's taken me years to try to wrap my head around it and I don't still have it all answered. I try – you know, it's something that is conceptual in idea, but on the project level what we're trying to do is trying to make sure that we follow that mitigation sequencing scenario.

Chair Lohman: But your measuring, your benchmark start date is today, correct?

Mr. Nickel: Right.

Chair Lohman: So you're not going back and basically undoing what is already there.

Mr. Easton: We're getting – we're on the – sorry, Madame Chair – but on the reverse of that. We're not getting credit for what has been done to improve. I mean, the Nature Conservancy just finished a huge project. You know, I mean I think that's obviously a massive impact to shorelines in the valley, and we get no credit for it.

Mr. Nickel: That's correct because _____.

Mr. Easton: And that's just a pure matter of timing of when the grant money got cut and when they finished the project. Because that could just as easily have gotten finished a year from now, when the Update would be in place. You know, I mean, it's – I guess it's that and obviously it's hard because obviously sometimes we seem to look at you like you're Ecology – it's sort of a cartoon and sometimes it feels like Ecology's the name we called you floats above our consultants' heads and – try not to take it personally, but it does seem a bit short-sighted that certain obvious areas of improvement are not – you know – are not accounted for, let alone encouraged.

I mean, it feels like this has got to be a – I mean, far be it from me to put this out here. I know that wetland banking is maybe one of the most controversial things that's ever been discussed in history, but the cumulative effect of everyone planting one tree versus 700 trees being planted in one particularly strategic area to shade Creek x or to help with – whatever – erosion or whatever the equation is is – we're not encouraging people to do that either. And we keep – it's, you know, it's really nice to pat ourselves on the back and keep talking about no net loss like it's this really great conceptual thing, but if it's not actually accounting for when we improve it puts a lot less faith in – it actually really disintegrates my confidence in whether we're actually doing a very good job of measuring what we have at the time that we ask someone to improve, too. If we're not – if we can't defend our ability as a county to account for what they're actually destroying very well, it seems very inappropriate to tell them how to restore it. And so I'm concerned that we've set up a system that you can't get there from here. And I want a solution. I recognize that we are under – look, I would vote with Mary in a heartbeat. I'd do everything I could to get every vote on this board and on the Commissioners' board to take the word "must" out in that section. But we all know in this room that Ecology would reject this draft so fast it'd be back here in a Fed Ex package in twenty-four hours. So, you know, it might make us all feel better to talk about no net loss for a while, but that is sort of the realities we're living in. Right, Dan?

Mr. Nickel: Mm-hmm. So for some clarity, part of what's in the development standards here is always some clarity on what mitigation standards are appropriate for the development type – the type of development action. We do have a section on environmental protection that covers mitigation sequencing.

Ms. Ehlers: Oh, yeah.

Mr. Easton: Sure.

Mr. Nickel: But there are – in certain subsections here we do have information on the types of mitigation that's appropriate for that type of development, and that's where we get into more specifics. It just says, Okay, well, that development action here, you meet those criteria; you've avoided, you've minimized and you've mitigated per these standards. You're meeting that criteria then, at that point.

Ms. Ehlers: When we get to the Forestry section, we'll have an interesting talk about how no net loss applies to how this code, which is – that's the forestry RCW, WAC and manual, and it'll be interesting how this eventually applies to that.

Chair Lohman: Okay. We probably might come back to this. The next topic is Archaeology, Historic, and Scientific Resources, which is 14.26.200 on page 19 of your draft. So the Archaeology.

Mr. Nickel: Okay. The Archaeological, Historic, and Scientific Resources section. In general, this is intended to be very similar to the existing Master Program language. A few additions – one was the Educational Resources, which was formerly within the existing Master Program. We've removed that section. We're now covering Institutional Development. It's covered elsewhere. We cover schools, educational training centers.

The site inspection, evaluation, reporting rules are intended to be consistent with other state and federal requirements as necessary. That's, I think, pretty well stated there.

Exception to adverse impacts: You know, if documented that the resources are recoverable and transferrable, no adverse impacts result.

Adjacent uses and developments must be located, designed, and operated to not adversely affect the purpose and character of such – or values of such resources.

Item f) here: Enhancement of resources may be approved through a conditional use permit.

g): Archaeological excavations may be approved through a conditional use permit.

And then h) is these applicable definitions for archaeological, historic and scientific resources.

I'm just trying to highlight a few of the things that are in that section there for you.

Ms. Ehlers: I'm looking at number 3) on page 4, Scientific resources. Most state colleges/state universities that I know of that have science programs like to have sites that are continuing research projects and they like to have them left as research project

sites so that they can study them cumulatively over time and analyze no net loss or net gain, especially if they try various techniques on this area to see if this technique succeeds in gaining or that it just *looks* like it might gain and it actually loses. And what you've done here is eliminate the possibility of having any of those here in the county. I don't know whether they're existing now, but when I was in charge of research at one of these institutions we had several of them. It was in the state of New Jersey, which also has GMA and a lot of shoreline, and these sites were valuable for doing exactly the kind of research you just said we need to do. So I would like the possibility for them to be recognized to be in the law. You don't have to locate it. You just permit the existence of them, should the scientific world decide to locate. Because it's wrong to take the valley that everyone thinks of as mitigation for Puget Sound and not allow the kind of research to be done that illustrates.

Mr. Nickel: We can look into that language specifically.

Ms. Ehlers: Please.

Chair Lohman: Any other comments?

Ms. McGoffin: I have one. Would you – this is for the consultants. I noticed in your list of sites on the National Register of Historic Places that Northern State Hospital's not there. It is listed. It's on the National Register of Historic Places as of 2010.

Mr. Nickel: Yes, thank you. Betsy informed me today of that question and I went on and looked at that information. It is accurate. You're right. So I've now got that listed as a change to our information. Thank you.

Ms. McGoffin: Okay. Thanks.

Chair Lohman: Anything else on this topic?

(silence)

Chair Lohman: Okay, hearing none – none from you guys? No comments on this section? Okay, the next topic is Flood Hazard Reduction, 14.26.220. It'll be page 22.

Mr. Nickel: So with this section, first off we were trying to make sure that we were consistent with the flood ordinance. First off, item a): New development within the channel migration zone or floodway would be limited to uses and activities listed in WAC 173-26-221(3)(b) and (3)(c)(i). If you look on page 23, item number (4), and that lists the variety of uses that would be authorized. There's a list here that includes actions to protect ecosystem-wide processes; forest practices that are in compliance with the Forest Practices Act; existing ongoing agriculture; mining; various transportation structures; repair and maintenance; modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited; development in incorporated municipalities and urban growth areas where structures

exist to prevent active channel migration; and measures to reduce shoreline erosion, provided that it is demonstrated but that does not exceed erosion rates that exceed normal occurrences.

There's a variety of different listings of those allowed uses.

Chair Lohman: Go ahead, Jason.

Mr. Easton: So I'm a little concerned about section (b), the current policy modified. Does this – and I don't know the answer to this question, but Snohomish County PUD and, I think, Skagit PUD and PSE have shown some interest in tidal as a power source. I'm a little concerned that the way this language is written, at least in my reading of it – and I'm not sure if the utility companies ever viewed it or if you've looked from any input from them at all from a stakeholder's point of view, but, you know, if this going to put them in a position where that may be called into question as being a useful – being allowed, an allowed use, particularly in the shoreline near Deception Pass?

Mr. Nickel: That's a good question. I'm not sure. We haven't been in touch directly with those –

Mr. Easton: I think it would be helpful at least to reach out to PSE. And I know Snohomish for sure has – in that particular area actually, I think. But I'm not sure if reaching out to them is something that –

Chair Lohman: Did you say (d)?

Mr. Easton: Yeah, I'm looking at section (d) under the Natural Resources process?

Ms. Ehlers: Aren't we in Flood Hazard?

Ms. Stevenson: I don't know where we are.

Mr. Easton: I'm sorry. Am I on the wrong page? I'm on page 22, (6)(a) – am I in the wrong spot?

Chair Lohman: Yeah.

Mr. Easton: Oh, disregard that then 'til later.

Ms. Ehlers: Save it.

Chair Lohman: You're in – you need to be in 14.26, page 22, 23.

Mr. Easton: Yeah, I'm in 14.26, page 22.

Ms. Ehlers: Flood.

Chair Lohman: Flood Hazard Reduction.

Mr. Easton: Oh, I'm in Definitions – sorry. I apologize. I'm in Definitions. But if you want to make it –

Mr. Nickel: I was trying to follow you –

Mr. Easton: Yeah, no problem. If you want to make a note of that concern, that would be good.

Ms. Stevenson: So that's the (d) on the same page but right at the very top of the page?

Mr. Easton: Yeah, it's the (d) on 14.26.022 in Definitions.

Ms. Stevenson: Okay.

Mr. Easton: Betsy, I think a quick outreach to the local utilities on that might not be – I would prefer their –

Ms. Stevenson: I've been working with Jeff ___ a little bit. He did ask to review a lot of this stuff, so he has been looking at it.

Mr. Easton: Yeah, I want to make sure that – you might just want to put a tag in your note to him.

Ms. Stevenson: Okay.

Mr. Easton: Have their title guys, whoever they're working with in the title world, take a look at this. And you might consider – actually we're blessed to have one of the probably the most expert guys about – one of the most experts about this in the region – and you might consider cc'ing state Representative Jeff Morris. He may be able to give you some help on that, too.

Ms. Ehlers: And you might also consider the effect of turbines in carving up fish.

Mr. Easton: Well, that's where I'm trying to find the balancing act here. I'm not sure – I'm not speaking in favor of turbines in there. I'm just saying that this – if we're looking for a smooth sailing SMP, we should probably consult with the utilities as it relates to this, because although ten years ago we wouldn't have seen this as a utility-oriented issue, it is today, whether we like it or not. So whether – I'm not saying we have to go with what their recommendation is, but I think we're better off to reach out to them than we are to wait.

Mr. Nickel: Can I just make sure where you're referring to – what section you're in?

Mr. Easton: I'm in Definitions. I apologize. I was in the wrong section. I'm in 14.26.022, under Definitions Amendments.

Ms. Stevenson: So you're actually in the Comp Plan stuff.

Mr. Easton: It's Josh's fault I'm this lost. He's supposed to be keeping me straight!

Ms. Stevenson: Right? You're in the Comp Plan Element stuff?

Mr. Easton: Betsy? That's the only page number it has on it.

Chair Lohman: Does it say – it should say "Element." Yeah, you've got to make sure you're in the code section.

Ms. Stevenson: Okay, now at least I know where you are.

Mr. Easton: Okay. Thank you.

Ms. Stevenson: Thank you. Sorry.

Ms. Ehlers: That's all right, Jason. Last time I was the one that was lost.

Chair Lohman: I have a question. Betsy, okay, if you leap ahead to page 157 in the code, where it talks about Frequently Flooded Areas. Is this part of this chapter, too, or was that a totally different topic?

Ms. Stevenson: That's out of the critical areas ordinance for the Frequently Flooded Areas.

Chair Lohman: Right. So that's – we're going to get to that on Critical Areas?

Ms. Stevenson: Yes.

Chair Lohman: Okay. I will hold that thought.

Ms. Stevenson: Okay.

Ms. Ehlers: Good.

Chair Lohman: Anything else? Jason – Josh?

Mr. Axthelm: I have a question on that. On – I want to say it's (b), but that's – where is it here? It's where it refers to public access. It's "New structural public flood hazard reduction measures such as dikes and levees *must* dedicate and improve public

access.” So I guess my concern there is, again, it’s public access. It seems like it’s forcing that issue. And I don’t think that’s appropriate.

Mr. Easton: If dikes were owned by the government, it’d be a whole other world. But they’re not. I mean, that’s privately held land.

Mr. Axthelm: Yep.

Mr. Nickel: We had – I mean, I think we had a lot of discussion at the Shoreline Committee.

Mr. Easton: That’s why I’m surprised this version came out.

Mr. Axthelm: And it is a public utility, but it’s just like a road in front of a house and an easement.

Mr. Nickel: Right. This is one of the requirements that comes from the WAC.

Ms. Stevenson: Right.

Mr. Nickel: But there is an exception and a very important exception, if you read the list of exceptions here. I’ll point this out.

Ms. Ehlers: Where are you?

Mr. Nickel: I’m on page 24, number (7). It says, “New structural public flood hazard reduction measures, such as dikes and levees, must dedicate and improve public access pathways unless” – and here’s a number of caveats – unless it “would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigatable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the...long-term cost of the development.”

We discussed this quite a bit and I think going over the various scenarios about how this public access requirement plays out, there are a lot of fallbacks to not requiring this public access element. And I think as we discussed it more and more and we went over these exceptions, we became more comfortable with the fact that, you know, there’re certain applications where public access would be required and I think they’re fairly few and far between, if you’d look at these exceptions. And where they do get implemented they may be appropriate in those circumstances.

Mr. Axthelm: Okay. And that’s – it’s just one of those concerns, just like Big Lake, for _____. Big Lake used to have/seemed to have a lot more access before. Now there’s very limited access on Big Lake. And I think if the public wants more land and if they want more access the public should purchase that. I don’t think that they should force it on the landowners to do that. And that’s the concern, is that it just appears to me to

push it, especially when it says “must.” And that could be interpreted one way or the other.

Ms. Ehlers: Mm-hmm. Well, it implies that “public” is free – at the same time the state parks are closing.

Ms. Nakis: Annie?

Chair Lohman: Sorry, Elinor. Go ahead.

Ms. Nakis: I just – I’ll make this comment again that I made before at our last meeting. And I think public access is vital. And like Carol said at the last meeting, she doesn’t know where she can go to just sit and view the beautiful Skagit River that isn’t on private property. And, I mean, there are a few places but there are *very* few places. And so instead of requiring people when they do a development project on shorelines – instead of requiring them to have public access, then just charge a fee. It goes into a bucket, it goes to the County to purchase land for public access. I mean, I just think that that makes sense.

Ms. Ehlers: We can talk about this more when we get to Transportation because it fits very closely with that.

Chair Lohman: Okay, anymore on Flood Hazard Reduction?

(silence)

Chair Lohman: Okay, the next topic is Shoreline Vegetation, page 33. This is 14.26.240.

Mr. Axthelm: Did you find it?

Mr. Easton: Eh, thank you.

Chair Lohman: Carol, let Dan go first to open it up.

Mr. Nickel: So the Vegetation Conservation section here – currently the County does not actually have a section such as this. The County does have critical areas regulations, though, that apply to our shoreline areas. And this section specifically, as you note in item b) here on page 4 of your Discussion Guide: “Vegetation in critical areas and their buffers are regulated through Part V” – which is Critical Areas. This section here, the Shoreline Vegetation Conservation section, applies to those areas that are outside of a critical area buffer but are still within shoreline jurisdiction.

This is specific because there are certain vegetation requirements, as you’ll see on – page 6 of your Discussion Guide actually presents what the performance-based riparian

standards are within critical areas that are currently in the critical areas ordinance. And so this spells out what those vegetation requirements are in critical areas.

And so what the Vegetation Conservation section is doing is dealing with vegetation requirements that are outside of the critical areas or critical area buffers. So that's an important idea to consider. So, for instance, on a – let's take, for example, the Shoreline Residential designation, which has currently a 100-foot buffer to it. These regulations in the Vegetation Conservation section would apply to areas outside of that 100-foot buffer. I just want to make that distinction clear.

Chair Lohman: But it could entirely overlap.

Mr. Nickel: It could. Exactly. So in the case of, let's say, marine shoreline that has – in a Natural environment proposed for a 200-foot buffer, that it completely encompasses shoreline jurisdiction and, thus, the critical area riparian standards would pertain to that section and the vegetation conservation standards would not, because they're completely contained within the critical area buffer.

Chair Lohman: So this county is often then in their – do not include the buffer in the SMP. You're using the critical areas section for the buffer regulation of the critical areas.

Ms. Ehlers: No.

Mr. Nickel: That's what we're looking at.

Chair Lohman: And then whatever is leftover is in the SMP. Right?

Mr. Nickel: Well, no. Because we have to bring our critical areas regulations – we have to deal with critical areas in our Shoreline Master Program. So we're looking at the critical areas ordinance and bringing the appropriate regulations into the Master Program so they're all regulated under the Master Program. And so because the critical areas ordinance was updated very recently, you've been through a lot of the discussion – the creation of buffers and those standards – we're bringing that language in as it is now.

I was going to spell out a few more items here. On page 4, again, of the Discussion Guide, at the bottom: "According to the WAC: Vegetation conservation includes activities to protect and restore vegetation along or near shorelines that contribute to... ecological functions of shoreline areas."

The top of page 5: "Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species."

“Development or uses that require vegetation clearing must be designed to avoid impacts in a preferential order.”

They also identify “Significant trees located in shoreline jurisdiction outside” – again, outside – “of shoreline buffers” and “critical areas...must be retained by” a designated “percentage based on the environment designation” that’s provided – that language is provided on page 33 and 34.

Item g): Must include a tree retention plan for the entire...property within shoreline jurisdiction except” as identified in “areas in which existing vegetation would not be disturbed in any manner.”

And then “Selective pruning of trees for safety” and “view protection is allowed.” This is also one that we discussed quite a bit with the Shoreline Committee about the pruning and trimming of vegetation, specifically trees, for view purposes, for safety purposes. We talked quite a bit about that topic.

Chair Lohman: Commissioners? Anybody want to start? Carol?

Ms. Ehlers: Well, I’m glad that you told us that supposedly the language is the same, because it didn’t appear to be. So I’ll go back and double-check. But on page 34: (6) “Replacement trees must replicate the vegetation historically found on the site...” “A tree retention plan may provide for the retention of fewer significant trees...” – boy, are we going to have an interesting time when we get to Forestry where you don’t have to do – have to do something entirely different – “...only if the trees...are replaced at a ratio of three to one.”

What size? We went through a nightmare back with the critical areas ordinance because people insisted that you had to plant 6-foot trees, ignoring the fact that you have to water a 6-foot tree and that you can’t water a shoreline, and you certainly can’t water a cliff. But if you read this the way it looks, if you have a 60-foot tree you’re supposed to replace it with a 60-foot tree. That’s nonsense. So you ought to say a tree of the same species, if that’s what you mean, because the thing has the opportunity then to grow up to be a 60-foot tree.

There’s a degree of – the fight we had at the critical areas ordinance is a failure to understand that if, in the geological world, a 10 to 15% slope can slide, then a 50, 70 or 90% slope is really likely to slide. And so you have to behave differently on it. We had an awful time with that – several times – in that previous process, and it is not quite clear so far in my reading of this that it isn’t a flat world. And I don’t know very many of the shorelines here that *are* flat. So you immediately get into what is practical, and I can say for myself we have vegetated everything we could think of to vegetate but we’ve done it when it’s this big so that it had a chance of growing up. And that’s where your 20-year scenario needs to be because it will take twenty years for these to get to be a size that you can say, Yes, that’s going to do it.

You've clarified something which is not clear in here, and that is that the shoreline jurisdiction is 200 feet. But I saw something up on the Samish Island. It was a symphony tour that was a marvelous garden tour but it was a marvelous introduction to the Samish. And there was a new building up there – a lovely new house – where the County had required them to build the house 200 feet back from the top of the cliff, and the cliff looked like it was – it's maybe 265 feet high, and there was enough depth between the shoreline and the cliff to put a nice, substantial trail down it that three houses shared – so it looked, from what they said, as though the County had required their house to be 400 feet back. Now this is not an eroding cliff. This is not – this is a stable cliff. And so I want to make sure that when all of this is done that we're not doing that kind of requirement because most of the lots aren't that deep – the few that are left.

Chair Lohman: Okay. Mary? I saw something in this section that – it's on page 36, number (14). You talk about hand removal or spot-spraying of invasive or noxious weeds. Does this mean you can't use a chainsaw or a weed eater?

Mr. Nickel: Yeah, it's usually meant to hand remove by a hand-held device – you're not bringing heavy machinery in to do that.

Chair Lohman: You're not bringing in an excavator.

Mr. Easton: So a hand-held device that could be a chainsaw.

Mr. Nickel: If it's done by hand. That's what this is, you know, intended to be.

Chair Lohman: Maybe we could clarify that language so that we're not precluding motorized hand tools, or mechanized hand tools or –

Mr. Axthelm: The concern I – I mean, there's measures that people can take with power equipment that will go around that.

Mr. Easton: Mitigate.

Mr. Axthelm: No, not mitigate. No – I mean they can make it so it won't damage anything. So I think a no-damage is more appropriate than would be even a restriction. Because to say "hand tools" is totally – there's a lot of equipment out there that will do no damage if you use it properly or take the proper measures.

Mr. Easton: You're going to do more erosion to removing sod near the shoreline by hand than you are with a sod cutter. But the way this is written? I wouldn't feel comfortable taking a sod cutter out there without feeling like I'm in – I mean, being borderline in violation. Because that's definitely not a hand tool. I mean, you don't want your hand anywhere near where that tool's working.

Ms. Ehlers: Why do you want a sod cutter?

Mr. Easton: No, I mean the idea. You try to improve the shoreline there by your house. You want to take your – you know, return it to natural vegetation, take the grass back six feet. I mean, it's a lot easier to remove the sod with a machine, do less damage erosion-wise in, you know, disturbing the soil than you out there with a rake and pick trying to dig out your grass! Is this language straight from Ecology or is this old stuff from our SMP?

Mr. Nickel: I'd have to check on that. It may be language from the existing.

Mr. Easton: I think Annie's on to something. I think it needs to be fixed.

Chair Lohman: Tim, did you have something?

Mr. Hyatt: Yeah, I would agree that the hand removal can be more or potent – that the emphasis should be on how much damage is caused and not the implement using it. I reviewed a permit this morning and – actually in this afternoon, too – in Island County where the consultant had come in and told them to remove the blackberry – invasive, noxious weed – from a very high, very steep, sandy slope. They wanted it uprooted, which would obviously destabilize the slope, and replant it. The emphasis needs to be on the lack of damage and not necessarily on the method. And just because they're not native doesn't necessarily mean – in that case, I think, removing a native plant would probably cause more damage than leaving it intact when you're going to destabilize the slope. So that has to be a consideration.

Ms. Ehlers: Good illustration.

Mr. Hyatt: And then if I could back up a little bit, since I have the floor. Subsection (11) on page 35, on "Selective pruning of trees for safety or view protection is allowed." Dan's right – we did discuss this at length. I don't see where any of that discussion is reflected here. I think I provided some language from – it might have been Island County, it might have been San Juan County, both of whom have been through this discussion and deliberated on it, especially in San Juan County, to an unfortunate extent. I think what the Committee discussed was some pragmatic limits on tree pruning on the percentage of canopy cover that could be removed over a certain period of time – something that's enforceable, something that is – you don't necessarily need a consultant to come out and tell you. But this one, it just says pruning for views is allowed. I think some elaboration is necessary there. This is wide open. What to some people selective pruning might be lopping off a couple of limbs. To other people it could be lopping of the tops of every tree on the bluff.

Ms. Ehlers: Or lopping every – cutting every tree on the site.

Mr. Axthelm: Like in logging.

Mr. Hyatt: It's wide open here. I don't think – I don't think that's what is really intended. I don't think it is going to offer the protection that's intended. I think some elaboration with maybe some limits on canopy cover would solve that for you.

Mr. Easton: Yeah, I would add, too, if we could add a caveat, too, that whatever consultant recommended they climb a steep, sandy slope is added to the list here of people not to hire to do your site assessment for your snags would be helpful. I can't imagine they'd be very good at the arbor stuff, either.

The other thing that I think is kind of confusing about the way this is written is I would recommend that you break "view" apart from "danger." Then it's clear. Because right now it doesn't feel like the rest of the sentence goes with the paragraph, so I would consider another subsection and just clearly stated, you know? There's probably no silver bullet about how to do this, but I would lean towards percentage of canopy as probably the closest thing to measurable you're going to get. I mean, it's not going to be an exact science, that's for sure.

Ms. Ehlers: Well, if you need to, go look at the geologically hazardous section of our critical areas ordinance because it's much more specific. And if that is for the safety of the cliff and the building and, and, and...That's the premise on which it was carefully written. And I would hate to find that this one undercut that protection that our geohazards ordinance provides.

I would also like to commend number (12). I've been critical. It's nice to be able to say something positive. I have two points on my property – two places that jut out – and there's trees on it. And over the years in storms – I live on Windcrest Lane; it's well-named – I watch the trees, and depending upon which way the wind blows one tree bears the brunt and protects the others, and it's not the same tree. If it comes from the west it's certain trees, if it comes from the north it's certain trees, if it comes – whichever direction it comes. When the hundred-mile-an-hour wind came and took trees down all over our area, those trees stayed up because they were protecting one another. It was the trees that didn't have a group that fell over. So number (12) can turn out to be more important for the safety of the place, as well as anything else. So thank you for having it in.

Chair Lohman: Dan, on number (5), at the very bottom of that section it says, "Unless otherwise specified in Part IV" (sic), which is the critical areas, "critical area buffers must be 100 percent." You're talking about tree retention. Is that reasonable and is that doable? Right above item (6) – that last paragraph.

Ms. Ehlers: We've been enforcing it.

Mr. Nickel: _____ because the premise of this is to avoid areas ___ the critical areas are specifically referred to – that this section doesn't pertain to that. Your question about whether that's reasonable?

Ms. Grueter: Yeah.

Mr. Nickel: Yeah.

Ms. Ehlers: Mm-hmm.

Mr. Nickel: I'd have to look into that and see how they – the critical areas. Because there are certain allowances in terms of the riparian standards that are in the critical areas section in terms of retention. Let me look at that and see if _____.

Chair Lohman: Because some of those trees are going to fall landward, outside of the buffer, and some of those trees are going to be damaged by wildlife. So it won't necessarily be *you* who will have done something.

Ms. Ehlers: But you replant.

Chair Lohman: Sometimes it's an effort in futility when the beavers are out there.

Ms. Ehlers: Oh, well, yes. Beavers are another problem.

Chair Lohman: So I'm questioning whether we can actually live up to that 100% standard.

Mr. Nickel: Well, that would be related – this would be related to a development action, right?

Chair Lohman: Right. Okay, anymore? Josh? Matt – sorry.

Mr. Mahaffie: Section 8, subsection (b). Where did that come from, as far as the language, I guess would be my first question. Anybody?

Mr. Nickel: I'd have to look and see where that existing – where that language comes from. Some of the language that we looked at for this section in particular, because it is a new section, we did draw from other jurisdictions that have been going through this. And so my guess is that that language there probably comes from another jurisdiction that's already gone ahead of you through this process.

Mr. Mahaffie: Can I make a comment about it then – something to think about? "Surface coverage" is definitely probably the wrong terminology to be using there. Arbitrary on 85%: You know, I've seen of shoreline areas, especially the farther west you go, where 40% would be high. But you go upriver, you know, I'd fully expect to see 100%. It kind of doesn't seem to fit. It just seems arbitrary at 85%. And ground covers are kind of going out of style for restoration, as far as my opinion. Something to think about that most, you know, restoration plans are calling for just shrubs.

Mr. Easton: I'm a little confused about how this is worded. It doesn't seem – the 85% – doesn't seem to be in any connection to what was actually removed. So at least my first reading of it, you could have removed 15% potentially of what was being – I mean, the shoreline could have been covered in 15% and during your period then you have to replace it at 85%. I mean, it seems like it'd be better to try to connect this to returning it to the original environment – I mean, the *found* environment. It seems like a better connection than –

Mr. Mahaffie: Thank you. That's what I was trying to say.

Mr. Easton: – than percentages. I'm a little – I'm glad that you said "other jurisdictions" instead of saying which other jurisdiction, because we tend to discriminate against other jurisdictions and their language so it's probably best that you never actually tell us which jurisdiction you borrowed it from. Don't say the word "King" in sentences is probably in your best interest as a consultant. But I think that there're some ways that we could rework that. What is (c)? What's the intention of (c)? I'm not sure I understand what a tree bond is. Maybe Matt could answer that for me.

Mr. Nickel: I think what they're looking for is bonding of mitigations.

Ms. Grueter: An assurance.

Mr. Nickel: Assurances that the plantings are successful.

Mr. Easton: Oh, okay. So if you plant six trees, you bond that all six trees are going to be alive in five years? Is that sort of what it's –

Mr. Mahaffie: That's not what it's referring to.

Mr. Easton: It's not referring to that?

Mr. Mahaffie: Right in (8) to me it's implying that you're being bonded to protect the trees. You're putting up a bond saying that you will not harm these protected trees.

Mr. Easton: Oh.

Mr. Mahaffie: That's how I'm reading it.

Ms. Ehlers: Construction bonds don't seem to have much value. I don't know what this would have.

Mr. Easton: See, this is not an actual bonding device. This is more like a commitment. You're not actually purchasing a – there isn't anybody who sells restoration bonds, are there? There might be a business model for Matt in his future. So you're saying basically this is a commitment to not tear out what you just planted, right?

Mr. Nickel: Right, right.

Mr. Easton: Well, I'm pretty convinced the way that this is worded, both in the subsection and in section (8) that most people wouldn't have any idea what that – how that was to be played out.

Ms. Ehlers: Well, and if you do have an idea, it's not very sensible. "Replacement trees must conform to required plant sizes..." What's that?

Mr. Easton: That must be a connection to some sort of site restoration plan, right?

Chair Lohman: Well, you have to jump to that section.

Mr. Easton: Right. That's what –

Ms. Ehlers: No, I'm on section (8)(a). I'm glad you brought it up. Some of these disturbed areas on cliffs – and that's where my expertise is – you couldn't plant anything on it because there isn't any water on the cliff except down at the bottom of the gravel layer. And there aren't very many plants that grown down. And so, frankly, you're lucky if you have blackberries because it keeps the cliff from being eroded in a really – in a huge downpour.

Mr. Easton: I hope those are native blackberries.

Ms. Ehlers: Whatever they are they do a remarkably good job of holding, I have discovered, when nothing else on earth seemed to grow. And I spent thousands with experts trying to figure out what to do. But I go back to my point: Do you want a little tree that will grow to that size? Whenever I see plant restoration work in the newspaper they're not great big trees and they're all in nice, flat areas where there's plenty of water.

Mr. Easton: We're going to need to clean that up. It's got to be – it's just got to be readable by the average person and actually make sense.

Chair Lohman: And is your reference to the 14.26.500 correct? Because I'm struggling to find that. Because subsection (d) only has little (i) and little double (ii).

Mr. Nickel: Let me look into that. It's not referenced correctly. Thank you.

Ms. Ehlers: My golly, this section's long.

Mr. Nickel: I think just to know on this section and the intent of providing mitigation as was indicated, at why we mitigate at a certain ratio or a higher ratio than you're disturbing, and obviously, you know, you're not going to be required mature vegetation be in place at a mitigation site. You know, generally the intent there is to provide additional – a higher ratio so that we acknowledge the fact that you may not have 100%

survival in the end over time and that you're allowing for that vegetation to grow up and in the end when that vegetation *is* mature that you have a very similar condition to what you had before.

Mr. Easton: I think that's great. I think that's laudable. While it's not connected to the reality, though, of what you're replacing it's confusing. So if you're – you know, I mean I kind of go back to the point we made when Matt and I were discussing it earlier that a random choice of 85% of ground cover in two years doesn't account for what was actually there before. And to me – again, dangerous to use this word – but no net loss really actually means no net loss, so a 50% gain is not the execution of no net loss. That's a 50% gain. If the document calls for us to do that then let's make sure we do that in plain straightforward language.

Ms. Ehlers: And while you're at it, tell those of us who have a shoreline geohazard which one of these rules we're supposed to follow. Because the rules that are in the geohazard section of the critical areas ordinance are pragmatic. They're based on the Growth Management Act, they're based on geology, they've been tested, they're practical, and this doesn't read anywhere near as practical. The 85% is a good illustration. While Annie's talking about how difficult it is to find 14.26.500, you just try finding your way through pages and pages and pages with nothing that gives you a guideline as to where you might look. If there were some possible way of dividing this up so that we could find our way, or the public could find their way, it would be a big help when we get there.

Chair Lohman: Matt, did you have more?

Mr. Mahaffie: (inaudible)

Chair Lohman: Go ahead.

Mr. Mahaffie: As far as this section, 14.24 deals with hazard trees and it seems to conflict with this quite a bit.

Mr. Easton: That's the *current* version of 14.24?

Mr. Mahaffie: The current critical areas ordinance. To me you're looking at the same zone on a lot and you have two separate – you know, people can look at two things and see two completely different things. As reading this whole thing, it's kind of been my little bit of heartburn as things are referenced in two different places; sometimes they say the same thing, sometimes they don't. But you have replacement standards for hazard trees in critical area buffers, they're just completely different from what's asked for here. **And allowed ___, which is like control fire.** That's an important one – just for example.

Chair Lohman: Elinor, did you have anything?

Ms. Nakis: No, I found what I need.

Chair Lohman: Okay. Is everybody ready to move on? Oh, Kim, go ahead.

Ms. Mower: I wanted to make a point so you understand that the dust hasn't really settled on this business of a new designation in the middle Skagit. There is quite a bit of opposition on the Citizens Advisory about this and we had quite a bit of discussion on it. We're still hopeful to find new ways – I'm sorry if I'm not speaking loud enough. I beg your pardon. We're still hopeful to find maybe a different way to deal with it rather than a special designation. And for example, I'll bring to your attention on this section we're talking about on page 33, it starts out with the number (5) and it talks about the removal or – how does it say this? – "...a guide and consistent with the following percent based on shoreline environment designation," you'll see that (a) says a Natural must maintain a 90%. Well, the way the designation is now it is Urban Conservancy, and if you turn the page on (c) you'll see Urban Conservancy says 65%; however, this new designation that we still haven't settled on puts it back up at 90%. And this is why people get upset, is because what they have right now is a 65%, but if there's a change made – according to this – there's going to be a different standard. And, again, like I said, I just want you to know the dust hasn't quite settled on all that yet and it's not a completely done deal.

Mr. Easton: Is the – Betsy? Madame Chair?

Chair Lohman: Go ahead, Jason.

Mr. Easton: Betsy, is the SMP folks – is there a plan for them to work through that to get to the place of – time, is time being set for them to work through that and get it back to us?

Ms. Stevenson: We're meeting again on the 12th of July.

Mr. Easton: Is it on your radar for what's going to be on your agenda?

Ms. Stevenson: For?

Mr. Easton: This particular issue – the middle Skagit?

Ms. Stevenson: Yeah. We came to some agreement on how we were going to move that forward and we will have that back to them fairly shortly – yes.

Mr. Easton: For their consideration, end of July, then would get forwarded to us later?

Ms. Stevenson: It's in my memo, yeah.

Mr. Easton: Okay. Sorry.

Ms. Stevenson: So you should still have it in time before you have your meeting, so yeah.

Chair Lohman: But if you go back to the very beginning, number (1), it says the "Vegetation conservation standards do not apply retroactively to existing uses and developments." Right at the top. So maybe that would be a little bit of balm for you. But, you're right. I think you need to have it clarified.

Ms. Mower: Right. Well, my point being is that one particular standard that now exists suddenly would have different standards that would come as a big surprise to the people who are there.

Chair Lohman: Okay, is everybody ready to move on?

Mr. Easton: So I had a clarification question.

Chair Lohman: Okay, go ahead.

Mr. Easton: If your – are soils being regulated on how these are – what soils are used to replace the vegetation? So if you remove a plant from a clay soil, are you being dictated – you know, isn't there some language in here about organic soils being used to be replaced? And so, I mean, could that – in theory, it could be an issue with erosion, right? Potentially?

Ms. Ehlers: Where do you get organic soils?

Mr. Easton: I'm trying to see where I – I'm trying to find that reference. I'm sorry. Do you know what I'm talking about, Dan? There's a description somewhere I saw that actually talks about the specific soils that need to be used for the restoration plants.

Mr. Nickel: Yeah, for restoration purposes?

Mr. Easton: Yeah.

Mr. Nickel: I believe there's a reference in there but I _____.

Mr. Easton: So it's not **actually – it's the reference** that makes it kind of unclear to me: Is it, Do you restore it with the same soil you removed – the same type of soil you removed? Or is it with a different type of soil?

Mr. Nickel: And I'm not sure about that reference in particular.

Mr. Easton: Can you get back to us on that?

Mr. Nickel: Yes, I can.

Mr. Easton: Okay. Thanks.

Ms. Ehlers: Well, again you have a problem if it's a geohazard. And, besides, you can't – just try buying organic soil. Just try buying any decent potting soil.

Chair Lohman: Are you guys ready to move on?

Mr. Easton: Yeah, I'm ready.

Chair Lohman: Okay, next topic is "Fill, Excavation, and Grading," page 60. This is 14.26.380. Thank you, Betsy, for putting all these page numbers.

Mr. Nickel: So for this section, again, I'm going to refer to the Use Matrix that's located on pages 13 through 15. Fill, excavation, and grading are permitted in all upland environments except Natural. Fill and excavation and grading would only be allowed in the Natural environment when part of a restoration or enhancement project, or when associated with trail development. Fill allowed in the Aquatic environment would be through a conditional use permit, but it would be permitted for restoration or enhancement activities. Those allowances are spelled out in subsection (3)(c). And in the Aquatic environment, excavation would fall under dredging requirements – in the Aquatic environment, it would fall under dredging requirements, section 370; however, minor excavation necessary for the in-water, substrate modifications related to other permanent actions such a bulkhead placement or bridge footings would be allowed through other applicable sections.

Mr. Easton: Question.

Chair Lohman: Go ahead, Jason.

Mr. Easton: So this goes back to the barn scenario for me. I'm concerned that – actually I would prefer a blanket ag exception to the fill and grade issues. I think that ag runs too close to – it *can* run close to the definition of fill and grade potentially, and I think it would bring some clarity if ag was exempted, particularly if you have to restore buildings that are currently – would be – that are currently conforming but will be nonconforming when this is passed. You're not going to construct a new barn without disturbing soil. So I think that needs to be investigated. I'm not sure you could – I don't think you can execute on what Ryan said was clearly the intention in the way this is drafted.

Mr. Nickel: I'll look into that.

Chair Lohman: Anyone else?

Mr. Easton: Yeah, I have one more.

Chair Lohman: Okay.

Mr. Easton: Can you remind me what an “OHWM” is?

Ms. Stevenson: Ordinary high water mark.

Mr. Easton: Thank you.

Chair Lohman: Matt, did you?

Mr. Mahaffie: Yeah, shoreline stabilization – fill, specifically. “...must not be located where shoreline stabilization will be necessary to protect the affected materials.” Yet farther down the page here, you know, fill is specifically allowed past the ordinary high water mark. I can’t imagine a situation where you wouldn’t need some kind of stabilization measures if you’re filling water to the ordinary high water mark. The uses are pretty cut and dry, it seems. I think a “should” would be better than a “must.”

Mr. Nickel: I think (d), that “Fill, excavation, and grading must not be located where shoreline stabilization will be necessary to protect...affected materials” is really intended to try to limit those activities where they would subsequently require further stabilization. It may be something where your fill may not be – the intent of fill may not be to stabilize the shoreline. But if you’re placing fill, that further requires shoreline stabilization. That’s where it’s limiting.

Mr. Mahaffie: Say you’re cutting a road along a steep bank and you’re putting fill slightly waterward, and you’re going to have to use riprap as a public use. I mean, to me it seems to preclude that. I’m thinking South Skagit Highway, Highway 20, boat launch on marine waters, a new bridge.

Mr. Nickel: I think we have allowances under the shoreline stabilization section that account for the need for those facilities, those types of uses that would allow that type of fill to be occurring. I’d have to look at the specific reference there, but we did discuss that, as well, about how you can have – you may have certain activities – and the shoreline transportation facilities is one – where you may have the need for such fill to be occurring. We wanted to make sure that was allowed. I believe that is.

Mr. Easton: Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: Section (3), subsection (c), section (i), Water-dependent uses, including aquaculture. Is that *existing* aquaculture or is that *potential* aquaculture would be exempt? Because this is an exemption feature, right? You’re allowed to do fill when necessary to support – and I’m concerned that we aren’t leaving the room for new aquaculture potentially.

Ms. Grueter: (inaudible)

Mr. Nickel: Yeah, I think it's written as either one. It's not saying it's exempt. It's just saying it's –

Mr. Easton: Allowed under certain uses, I mean. Excuse me.

Mr. Nickel: Right. Allowed – yeah.

Mr. Easton: So I think it would be good to clarify: If it's going to be both then it clearly states that it's both. That's all I've got.

Chair Lohman: Matt, does number Roman numeral little 5 on page 62 answer any of your questions or concern?

Mr. Easton: It would address the bridge.

Mr. Mahaffie: No. Partly.

Ms. Ehlers: You know, number (v) is very interesting because it protects statewide roads and completely ignores county roads.

Ms. Stevenson: Number (vii), if you go down a little further, might cover some of those.

Mr. Easton: Number (vii)'s intended to be a catchall for anything that was lawfully developed?

Mr. Nickel: To allow for maintenance.

Mr. Easton: That's a pretty big – what's that?

Mr. Nickel: To allow for maintenance of those.

Mr. Easton: To allow for maintenance?

Ms. Ehlers: How are you going to protect the South Shore Road on Guemes? At this point it's not allowed to be protected. Now it is? The water has come too close to it.

Mr. Easton: I mean the current status is it's not even in use, right?

Ms. Ehlers: Oh, it's still used.

Several people: It's one lane.

Mr. Easton: Well, one lane – excuse me.

Ms. Stevenson: ___ issue at this point.

Ms. Ehlers: But, you see, the older roads in this county – a number of older roads – have become close to shoreline because the shoreline has moved in. I know that the DOE thinks primarily of statewide interests, but I believe the county has to think of county interests.

Mr. Nickel: Yeah, I think that is – this is per the WAC language. I think in the circumstances where you have – where you're maintaining an existing roadway that is in need of repair, that would be allowed.

Ms. Ehlers: Well, it's – you can't repair a road where the land has disappeared from underneath it. Repair of a road means that you fix potholes and you put another layer of chip seal on it.

Chair Lohman: Maybe it would help if on Roman numeral (vii) there, like you did in other places, if you listed some of your examples in the list instead of just referring vaguely to the WAC, that would be helpful. And – you know, the famous phrase – “including but not limited to”? I think that would go a long way for clarity. Any other comments on this section? You know, we can revisit later when we get to the end, or near the end, so this isn't going to be the only time we see this.

Ms. Ehlers: I hope not.

Chair Lohman: Well, when we're all done we hope so. Okay, the next section would be Forest Practices, page 62, 14.26.390.

Mr. Nickel: So here again, I just wanted to point to the riparian performance standards that discusses forest practices within Type S buffers. That's listed on pages 156 and 157. I just wanted to also note, you know, the rules must comply with RCW 76.09, Forest practices. On the Use table on page 15 –

Ms. Ehlers: Where is this 15?

Mr. Nickel: Page 15 of the regulations – so that's where the Use and Modifications Matrix is located. It covers the allowed – the various allowed and prohibited uses as a conditional use permit. It's covered on page 13, 14 and 15. Forest practices are covered on page 14, about halfway down the table. And in the Use table, forest practices would be a conditional use permit in the Natural environment, only allowed to control fire, disease or insect epidemics but also for roads for forest practices, also acknowledging that roads for forest practices are prohibited except when necessary for those controls.

And also noted here, forest practices are prohibited in the Shoreline Residential environment. We discussed this, I guess, in the Committee. The clearing of lands here for development within this designation and the jurisdictional area that it encompasses are anticipated to fall under Class I forest practices, which would not require a forest

practices permit. Because of the small size of those lots, forest practices – the Class I forest practices – allows for a certain number of board feet, which would not – typically – not fall under that Shoreline Residential environment size of lot.

Ms. Ehlers: If that's what you mean, I think you should put it in the regulation and not just in the commentary. And then I think – since I looked it up – what's in front of me is the – are the forest practices WAC, RCW and Board Manual, which I spent the winter reading. It's not exciting. It'll put you to sleep quickly. It is very detailed when it comes to riparian streams that have a fish in it. If it doesn't have a fish in it, forget it. If it has a cliff below it, forget it. It doesn't apply.

Class I is very hard to find in there and when you find it you don't know what you've read. I've always heard it described as one logging truck full of logs, and that is a concept that almost anybody can understand. So if you put number 2) on page 8 in the proper kind of language, define Class I as one logging truck full of timber, then people will be able to follow it. And that, of course, is the intent of the whole discussion.

In number 1), second line, you ought to add “and Forest Board Manual,” since that is utterly essential for everything that has to do with no net loss in terms of the endangered species and the environment. And it applies everywhere, not just in Forestry-zoned, as far as I can tell, unless you have some kind of exemption that appears in one or another of these other sections. And there's a difficulty that arises there between what they think you must do within so many feet of a riparian zone and what you think here in various places has to be done within a riparian zone. And for heaven's sakes, let's get one version. And since forest practices is bound by that set of rules then you have to use that as the basis for the discussion.

Now if you remember my point a couple of weeks ago on the subject of impact to the shoreline from above, not just from the water from the shoreline and the movement of the river and such. If you have a forest practice uphill some distance, you have no control whatsoever of what happens on the shoreline itself because of groundwater. Anyone in the room who hasn't seen a forest practice lately can go out to the Swinomish reservation, go out State Route 20, turn south on Reservation Road, and you'll see a very legal, entirely appropriate in the zone, large clear-cut. And you can see, have a picture for yourself, as to what clear-cutting and forest practices actually mean. That also illustrates – that particular clear-cut – the business of leaving trees on the edge of the road and on the edge of wherever it is. I don't know if they followed the law on that. I haven't memorized all of this. But you should go out and look because it's an example right here and now of reality – almost made in heaven, if you will.

You might mention Class IV in this context because if you have forest and you're going to cut, you don't want them to cut more than one truckload of trees within the shoreline jurisdiction. You might not want them to cut any of those trees on the cliff. I mean, you *don't* want them to cut any of the trees on the cliff. You *don't* want them to cut any of the trees on the edge of the cliff. I'll let Matt speak for wetlands. You know those better – much better – than I do, but it's the trees on the edge of the cliff that hold it and that

protects the rest of the shoreline from surface water. It doesn't do anything for groundwater, but –

Ms. McGoffin: Chair, I'd like to mention –

Chair Lohman: Go ahead.

Ms. McGoffin: I have – I just wanted to point out one thing under section (3), Conversion to Non-forest Uses. That's an allowed use. You can do that. So I'm understanding that correctly? But then at the same time under the subsection it says ensure that there's no net loss of ecological function. I don't know how you can take all the trees off and not have a loss of ecological function.

Mr. Easton: I don't think it allows you to actually log it. It just allows to not use it as ___.

Ms. McGoffin: If you convert it to a non-forest use –

Mr. Nickel: That doesn't necessarily mean that you're clearing it.

Ms. McGoffin: You're taking the trees off?

Mr. Nickel: Right. Right. You're just not –

Ms. McGoffin: You're not harvesting.

Mr. Nickel: Right. You're not part of the forest – yeah. _____.

Ms. McGoffin: Thank you.

Ms. Ehlers: Well, if you – a good way of illustrating it, Mary, is if you have – let's say – 5 acres and you were going to convert one of the acres that was close to the road, that is a conversion but depending on how much you're going to cut it could be Class IV, in which the County would regulate it.

Ms. McGoffin: Okay.

Chair Lohman: But how does it work then if you have a residential lot and you haven't developed it yet, but it's within the Shoreline Residential area. It's right next to a whole bunch of other similar-sized lots. It's just you haven't done anything yet. It happens to have copses of trees on there. And on the vegetation cover you say that you want so much cover, how in the world can you – and residential use is a preferred use in that zone – so how in the world *can* you? You've got two sections that are conflicting telling you you can't do anything with it –

Mr. Easton: Especially if it's on the side – some of the lot sizes _____.

Chair Lohman: – in a way. But yet the zone itself says it's a preferred use.

Mr. Easton: I see your question.

Chair Lohman: And it's the same thing in the Rural Conservancy zone. Residential use is an allowed use, but yet you hamstringing people and won't let them do it.

Mr. Nickel: Yeah, I think this is where we – you know, taking a close look at that Shoreline Residential environment, which we've tried to look at where that applies, you know, focusing on areas where we have existing development, for one. And it's again these small lots. You know, there are some areas where you have vacant land still where there will be some development occurring in those properties. The intent here is really to try to minimize where this – forest practices would apply to a lot of that size. I think most of these vacant lands that we're talking about that fall under that Shoreline Residential environment would fall under that Class I criteria that we talked about, which would allow clearing to occur. There're certain requirements under here. Under the forest practices rules, there're some scenarios here: forest practices involved in cutting less than 5,000 board feet of merchantable timber. And, again, that relates to about – it says about a truck and a half for personal use in any consecutive twelve-month period. So I think the intent there really, as it applies in Shoreline Residential, would be to give those areas a caveat that they can develop as long as they're underneath that threshold. They can't implement forest practices for the harvest of that timber.

Ms. Ehlers: But Annie's point raises a basic thing. You had a reasonable use section in this document, and you've struck it out.

Mr. Nickel: Right. The reasonable use does not apply under SMA. We have to use a variance procedure. So there still can be a variance under such circumstances but it's a different – it's a different procedure, different terminology.

Ms. Ehlers: I think you need some language that says instead of reasonable use you need a variance procedure because what Annie's talking about is the kind of infill that would be much – most of the time – would be much preferable to a new subdivision.

Chair Lohman: I guess my question, to drop back a little bit, is, okay, you've got those intermingled lots that aren't developed. Are they going to have a different buffer requirement than the guys that developed on either side of them? So are you going to have – are they going to have a buffer and a setback?

Mr. Nickel: Not as it's laid out right now, no. Under the critical areas regulations – which again we're bringing forward – it would have the same buffer applied to those lots.

Chair Lohman: Which is?

Mr. Nickel: For Shoreline Residential, it's 100 feet.

Ms. Ehlers: But if the house happens to be, because of the way you've zoned it – in Conservancy, which is deeper – then it wouldn't work.

Chair Lohman: But there's a difference between a setback and a buffer. Isn't it – isn't in the current regulation, isn't it a setback and not a buffer for Shoreline Residential?

Ms. Grueter: (inaudible)

Chair Lohman: Right. So you're changing to a buffer requirement, right?

Ms. Grueter: We're calling them buffers to be consistent with the critical areas requirements.

Chair Lohman: Well, that is a different – a setback and a buffer are apples and oranges.

Mr. Easton: After the Update they won't be.

Mr. Nickel: We have – for clarity, the current critical areas ordinance already covers these areas with applicable buffers. So we're actually – yet the Shoreline Master Program – the existing Shoreline Master Program – deals with setbacks but the critical areas ordinance, as it's written, overrides that setback and applies a buffer to those shoreline areas. We're not proposing to change that buffer criteria. We're just bringing that body of regulations which already applies to those shoreline areas. We're bringing it in to the Shoreline Master Program for consistency.

Chair Lohman: But there's already build lots – residential, shoreline lots. They have a nice, gorgeous lawn or whatever. They don't have a buffer. But the lot right beside them that isn't built yet but it's platted, everything, ready to go, it *will* have a buffer. Correct?

Mr. Nickel: Right. This is – they would both have – technically they would both have regulatory buffers. All those lots would have a buffer of 100 feet. It's the types of uses and activities that are currently ongoing which vary between lot to lot, so the instance where you have the undeveloped lot it has a buffer that has a different state. I mean it's presumably vegetated, in that case. Your other lot that's next door, which has a 100-foot buffer, it might have all sorts of different existing uses – a lawn; it might have patios; it might have development already existing in that buffer. Your 100-foot regulatory buffer is still a buffer but it's got a different type of uses and activities.

Ms. Ehlers: Understand that that 100-foot buffer in the critical areas ordinance was not discussed by the Planning Commission. It was required through threat of a lawsuit. So that comes into the discussion at some point.

Chair Lohman: I guess I'm trying to illustrate: Here you have – in the Forest Practices you said that clearing of land for development within this designation are anticipated within Class I, yet in the Vegetation section it says that you can't. But in the – over in the Shoreline Residential, residential is allowed but they can't. So I'm seeing this almost – the lots could be very small and there just isn't any room to do all this stuff on it. It's not possible.

Ms. Ehlers: Well, even if they're a decent size compared to what used to be permitted – let's say it's a half-acre. That's 100 feet by 200 feet. Once you've take the 200 feet shoreline jurisdiction – well, let's assume that there's some space between – the way there usually is – between the platted lot and the shoreline, you haven't got a lot of space to play around with in some of these permitted, platted, taxed lots, especially when the County insists that even in a side street you have to have 35 feet from the road. This one house where they finally admitted after all these – since 1967 they've kept these people from building because it had to be 35 feet from the road and that put it 10 feet from the cliff. And so now finally the County has agreed it should be as far as possible from the cliff and 10 feet from the road, which is a little lane that's one way and maybe twenty people on it. It's this sort of difficulty that the laws have created over time that I would like to see if I can prevent continuing. Because if you're paying property taxes on some of this property, you want to be able to do something that will enable you to get your money out of it. Of course if you bought it for nothing you're home-free, and it used to be cheap but it isn't anymore.

Chair Lohman: Josh – or whoever down there. Jason?

Mr. Easton: I think we've exhausted this section. I was wondering if we might want to move on.

Ms. Ehlers: Yeah, I think so.

Chair Lohman: Did you have something else?

Ms. McGoffin: I'm ready to move on.

Ms. Ehlers: I am, too.

Chair Lohman: Okay, Mining, page 68, 14.26.430.

Mr. Nickel: All right, this section I wanted to point out the very first note under "Applicability." This section relates to commercial or construction – mining for purpose of commercial or construction – not relates to recreational mining. And that first Applicability section describes that. And there's two other notes: "Mining in shoreline jurisdiction can only be approved when the material proposed to be extracted is only available in" the "shoreline location." So the preference for locating mining when it can be located outside a shoreline location is the preference.

Regulation (3)(c) sets out the stipulations for mining waterward of the ordinary high water mark in rivers and streams. This language is highly similar to the WAC.

Mr. Easton: I have nothing there.

Ms. Ehlers: I do.

Chair Lohman: Go ahead.

Ms. Ehlers: In the critical areas ordinance in our ignoring of the shoreline rules we zoned creek after creek to be mined – just the creek itself. Finney Creek, for example, is mineable – I'm told it would require this permit, that permit, that permit, some other permit, all kinds of permits, which seems to me to be a game. You tell somebody they can mine and then you tell them well, you've got five or seven permits you have to go get which means, of course, you really can't mine it and that seems to me to be unfair. But Finney Creek is designated to be mined, Day Creek, Pressentin Creek, part of the creek that comes out of Lake Cavanaugh – whatever the name of the thing is – Pilchuck Creek in another map there are designated/zoned for mining. Just the creek. Now how we can do that and then have all these other shoreline regulations, including this set – many of those – the upper reaches of Finney Creek I don't think are probably fish streams – but how you can have all this protection of the shoreline and then mine the creek itself has never made any sense to me and I would appreciate being told how it is of no net loss. Because it seems to me – I've got a picture. I can bring it. I gave it to Betsy a month or so ago – a photograph out of the *New York Times* of mining in Mongolia in creek beds. And it looks pretty much like mining in Montana or mining in Colorado a hundred years ago in creek beds. Now they were looking for gold. I think they are in Mongolia, too. And this says you can't do recreational mining but it doesn't say you can't do gold mining.

Mr. Easton: Point of order.

Chair Lohman: Jason.

Mr. Easton: My point being that the Update in front of us is not being addressed by the Commissioner's comments. I believe she needs to address her comments to the Update, not to the mistakes that may or may not have been made with the previous document.

Ms. Ehlers: There has to be consistency.

Mr. Easton: The Chair needs to rule on the point of order.

Chair Lohman: I think you are getting a little astray because it does refer to sand and gravel and you're getting into other –

Mr. Easton: I just want to stay on the topic.

Ms. Ehlers: Why do you have to – with all the sand and gravel there are in this county, why do you have to mine a creek?

Mr. Easton: Again we're – my point of order is that that's not addressing the issue that we have in front of us. I'm not saying it's not a legitimate concern as I would be concerned about, but it doesn't address what we're dealing with tonight.

Ms. Ehlers: So how does *this* deal with all of those other environmental issues?

Mr. Easton: It doesn't mitigate – or exempt any of those other issues. They will have to be dealt with through the permitting process.

Ms. Ehlers: How do you mitigate the destruction of a creek?

Mr. Easton: Excuse me – I shouldn't have said "mitigate." You have to receive approval from a number of other jurisdictions before the Shoreline Master Plan would even come into play on this issue. It doesn't end in an MRO. It does not give people blanket permission to mine. Lord knows if that was the case we hopefully would have taken a lot more time with how we designated where the MROs were.

Chair Lohman: Any other comments on mining? Did the Committee discuss this mining?

Ms. Mower: We did a little bit, but not an awful lot. One of the comments that I did make, although this particular section is in reference to commercial, not recreational, mining. I did have concerns about the Department of Fish and Wildlife's Gold and Fish Pamphlet, which is referenced in (1)(a). Considering the amount of salmon habitat restoration that we've done in this county, I often wondered if any kind of gold panning should be permitted at all, just as a question, because gold panning by its nature, even as a recreational, does tend to destroy habitat. So that's as far as we got with it.

Chair Lohman: Okay, anymore?

Mr. Mahaffie: One more.

Chair Lohman: Okay, go ahead.

Mr. Mahaffie: Referencing the Gold and Fish Pamphlet, it is an updatable document. You might want to reference that any further –

Mr. Easton: Whether the document gets updated?

Mr. Mahaffie: Yeah, it's updated every two years.

Mr. Easton: Betsy, an historical perspective question? When was the last time you saw a gold panning permit come through the County. I guess Tim ___ question.

Mr. Hyatt: Sorry.

Mr. Easton: I'm just trying to get some perspective. Does it happen?

Mr. Hyatt: The qualifier – “the County” – struck me. Yeah, it happens all the time.

Ms. Stevenson: I've never seen one.

Mr. Easton: Okay.

Ms. McGoffin: Commercial?

Mr. Hyatt: But if you go beyond the Gold and Fish Pamphlet, you have to get an individual HPA from Fish and Wildlife, and they come through routinely, especially up in the headwaters above Diablo.

Mr. Easton: I see.

Mr. Hyatt: In other parts of Skagit County, in the south fork Nooksack I had a discussion this afternoon with a biologist from Whatcom County upset about some of the gold – not panning; they're using suction dredges, and those are permitted. There was one on the South Skagit Highway about a month ago.

Mr. Easton: Suction dredging in the main stem of the river?

Mr. Hyatt: No, on a tributary to the main stem between the South Skagit Highway and the main stem.

Mr. Easton: Oh, I know where you're talking about.

Mr. Hyatt: Back in the Dell Creek – one of those small tribs. Yeah, they get issued several times a year.

Mr. Easton: Blame the Discovery Channel!

Ms. Ehlers: So again you have that question of no net loss.

Ms. Mowers: Well – if I may – the reason I brought it up is because in any sports store you go to you can see recreational gold panning equipment. How many people are going to buy that and go worry about getting permits? They're just going to go get their toys and go out and play in the water. I'm not trying to recommend for or against it. I'm just making an awareness, simply because I used to gold pan regularly when I was young, in California, and gold was readily findable. I know the damage that occurs

because of what I did. I had no knowledge at the time of habitat. I was only fifteen. I'm just saying I was just bringing it to the attention, making an awareness.

Ms. Ehlers: You go into the gold field areas of Colorado or Montana. Go to Virginia City, Montana, on a vacation and Nevada City, where they're restored what it used to be like when it was the main gold center, and see what mining does to a creek.

Mr. Easton: It can't be good.

Chair Lohman: Okay, next topic is Transportation and Parking, page 89, 14.26.480.

Ms. Grueter: In terms of the Discussion Guide, on page 9 we also reference page 15 of the regulations to take a look at the Use Matrix. And, generally speaking, there's more limits on aviation and ferries forms of transportation and less on other forms. And they're generally allowed – roads and bridges and trails and other aspects are allowed in just about every environment.

There are a lot of performance standards, though. In the actual section itself with the performance standards, starting on page 89, there are limitations asking for a lot of proof that a new road or expansion of a road can only be located in the jurisdiction, and it's not feasible to locate it outside of jurisdiction. You know, there's exceptions for ADA access and that sort of thing.

We wanted to make a note, too, that a driveway for one single-family home is not regulated by this section. That's considered part of – it's an appurtenance and it would be part of the residential regulations. But private roads and driveways that serve more than one residence would be subject to this section.

The other set of standards that's of note would be for parking areas. They're not considered a preferred use. That's straight out of the WAC. And they're allowed only as necessary to support an authorized use. And so there's a number of criteria to also promote location of parking outside of the 200-foot shoreline jurisdiction area, unless there's no other feasible alternative. And then there's also some screening and vegetation type of requirements.

Mr. Easton: Question?

Chair Lohman: Go ahead.

Mr. Easton: What section calls out for only one – serving only one home?

Ms. Grueter: I think it's in the definitions, but I'm going to take a look at page 76 really quick here. I think it's back in the definitions of appurtenance where we can draw this distinction in that ___.

Mr. Easton: See, here's why I'm concerned about that – here's why – here's my concern about that policy: By dissuading people from shared driveways – I mean, what you're doing in essence is you're discouraging people from doing shared driveways – in my opinion – by limiting – by making the restrictions so stringent that then everyone ends up with an individual driveway instead of one driveway that may serve three or four people. That would be *less* damaging to the environment and the coastline, the shoreline. Dan, am I misunderstanding something? Because if you tell them, Look, you can't get close to the shore unless – you're going to actually encourage people to do more one-person driveways as opposed to – like, you know, Biz Point in Anacortes is an example and there's other neighborhoods around the county that would show you that there's plenty of examples where shared driveways have worked really well to cut down on how many driveways you'd end up with near the shoreline. Because in this example – I mean the way this is structured now – everyone would need their own driveway, and potentially, depending on how the lots jog against the shoreline, that's going to be a lot more impact on the shoreline.

Ms. Ehlers: Well, Jason's right, particularly because each driveway adds to the impervious surface.

Mr. Easton: And with a significant amount of our shoreline – away from the river; we're just talking about the ocean – having slope issues, you're really cutting two things when you cut a road. You're not just cutting into the issues that relate to the actual shoreline but you're actually dealing with slopes that will then sort of roll the problems on. I would really like you to consider – and I don't know; I wonder if the Committee considered anything about this. I'm curious to hear from you guys. But there's got to be a better way to allow for some mitigating circumstances. I mean, if a group of neighbors can show that they're going to do less damage by running a shared road together, why on earth would we not permit that?

Ms. Ehlers: Amen.

Ms. Grueter: I think you make a good point. I think originally we made this clarification because there was a question about, Well, is a driveway considered, you know, a transportation facility? And so we were trying to say, Well, it's covered in the definition of residential appurtenance so it's not really subject to it. So we were just trying to clarify what applies where, and I think you make a good point. We can go back and _____ that.

Mr. Easton: I think you may – again – may find in some other jurisdictions some examples of where that's got to be allowed. I would think some of that's being allowed or encouraged. I would prefer that we structure it in a way where we're encouraging that when possible.

Ms. Grueter: I think that's a fair point.

Mr. Easton: You know, I mean I'm not looking for, you know, two-lane roads with ditches and sidewalks and beautiful covered areas for your, you know, bus stops and stuff. I'm talking about driveways. But I think there's a real possibility there to make things better.

Chair Lohman: And can you check a reference there, too? Because it references section 14.26.510. That's Wetlands.

Ms. Grueter: 450? Are you talking about the Discussion Guide or the –

Chair Lohman: No, item (8). It says, "...subject to the standards of this section 14.26.510..." So you go to 14.26.510 and that's Wetlands.

Ms. Grueter: Oh, I see. Okay.

Mr. Easton: Madame Chair, Tim had his hand up.

Chair Lohman: Go ahead.

Mr. Hyatt: I agree with you: Shared driveways would be a benefit over a lot of individual driveways, especially in a shoreline zone. The converse could also be true, where – well, single driveways may be – why would the code allow a single driveway in a shoreline designation if a better alternative exists outside of the shoreline? I'm thinking of an example that was actually on a creek that may not be a shoreline, and I should probably leave the landowner out of it. But you probably know who it is! It was on a small trip to – a medium-sized trip to the Skagit River along a trail. The landowner – as a violation, without a permit – put a driveway right down the riparian corridor, and when there was a more direct, overland route through a pasture not in the riparian corridor, straight to the house. And the County pleaded that they did not have the authority to force him to move it. If this – and this section would support that. Obviously if you allow a variance if he *needs* to put it in the riparian zone that's much different, but the County retains the authority to protect the riparian area if he's got that option available.

Mr. Easton: Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: I just want to add a caveat to what I said earlier. And thank you, Tim; it reminds me of something. I'm a little uncomfortable with prescribing – how we do this has to be well-juggled verbiage-wise – because I don't want to put ourselves in a position where we're dictating to landowners that they have to have some sort of massive investment in infrastructure that's shared, that's being dictated by the County in addition to all the other things we already dictate to them. So it needs to be an option, but I don't want it to be – I don't want us to be in a position where we're enforcing or requiring.

Ms. Stevenson: I think they should consider sharing _____.

Mr. Easton: Well, I just think the way that it's worded right now, Betsy, it precludes it. It just needs to be allowed and, you know, encouraged where possible, I guess – or where helpful. I just don't want to be in the position where we're dictating land use to the actual homeowner, when it may not be – you know, I mean, I don't want to spend their driveway money when it's not necessary.

Ms. Ehlers: Yes, but let me add to what he's saying. Fire departments may really appreciate this change. Because fire departments issue the addresses, as you know, because out on Fidalgo a nice house was built up on a hill and the garage was built right next to it, only there weren't any topographic lines because, you see, everything's flat on Fidalgo, and so nobody realized that this nice driveway went up to the garage and there was a 200-foot cliff between the garage and the house and there was no way for the fire department to get access. Then the next place was a shared road for three houses. They got up there because the debris fire got out of control. The fire department put it out and then found that because it was rock and the turnaround site was not suitable that they couldn't – they could hardly get the trucks down off the site back onto the regular road. So that's why fire departments now issue addresses for the county. And in this discussion for this, perhaps you should talk to the Fire Marshal because they have to be able to get fire equipment and ambulances up there. And I've heard stories from my fire chief about the people here in the county saying, Well, of course you can get up there. Now just push it and push it and push it and push it, and the fire truck said, I'm not a trained truck driver and I'm not sure how I'm going to get down. So if you had what Jason's talking about, the likelihood of getting up and down could improve. And who knows? SKAT might even be able to get near it for Dial-a-Ride, which they can't most of the places on Fidalgo now because they're connected to the shoreline. Thank you, Jason.

Mr. Easton: You're welcome.

Ms. Ehlers: Now, Ellie, you had something basic.

Ms. Nakis: (inaudible)

Ms. Ehlers: Well, one of the things that you've left out of the Transportation section is something that you talk about in the Public Access section, and Ellie brought it up at the beginning of the meeting. You just try and get a good look at the Skagit River. You can get it down here on Freeway Drive. Once you get way up river, above Concrete, you can see it. But I've never seen a beautiful river like this one before that had so few view points.

Ms. McGoffin: Point of order. Let's –

Chair Lohman: Yeah.

Ms. McGoffin: Let's get back to Transportation.

Ms. Ehlers: That is Transportation because you have to have a way for people to – who are transporting themselves in a car or a bike –

Chair Lohman: Carol, you're getting way off target.

Ms. Ehlers: No, I'm –

Chair Lohman: Okay, anything else on this section?

Mr. Easton: (inaudible)

Chair Lohman. Okay, moving on to the next section is Utilities, page 93, 14.26.490.

Mr. Grueter: Okay. In the Use table for Utilities we distinguish three different types. We have large utilities, small utilities and hydropower. In the Discussion Guide we've provided some of those definitions.

In general, the small utilities are permitted in every environment except conditionally allowed in the Natural and Aquatic. And the large utilities would require conditional use permits. The hydropower would also be conditionally allowed except in the Natural environment, and a lot of the performance standards that we've included for hydropower based on the SMP that's in place today. The County did quite a bit of work not too long ago relative to the original SMP, I think, on that.

Some of the performance standards are promoting joint location in rights-of-way; undergrounding of facilities where feasible; and then some other standards that relate to a particular type of utility.

Mr. Easton: Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: So this would be a better place for – potentially – for my discussion earlier about title issues, and then I would like to re-emphasize that I think it would be probably proactive and helpful, particularly given how dense this document is, to reach out to the utilities prior to. And I just one clarification. I think I know the answer to this, but...If in the case of a small utility now that's currently lo – that would be redesignated into what now would be called "Natural," if that utility failed, replacement is obviously permitted – is allowed, right?

Ms. Grueter: There are some general exemptions in the law that talk about repair and maintenance.

Mr. Easton: Okay. And then the other thing about utilities that I wanted to clarify, too, is that – and forgive me; I don't know if I read this and forgot it or if it's not in here – we do allow for vegetation maintenance in those areas, even we should allow it even in the Natural areas also where utilities exist? Do we give them an exemption for maintenance of that?

Ms. Grueter: So you mean like in a utility corridor?

Mr. Easton: Yeah. Well, I mean, we are blessed with a lot of over the – you know, in the air power lines and my concern is making sure that we've made sure that there's exemptions even in the Natural and potentially Aquatic zones. They should be able to maintain without further – any encumbrance keeping those lines cleared, right? And that's – I don't know – I must have missed it. If I saw it in here I missed it.

Ms. Grueter: Yeah, I don't think we directly address it. We talk about restoration of areas when utilities are installed.

Mr. Easton: Yeah, I'm talking about maintenance.

Ms. Grueter: Yeah, I think, Dan, we might want to take a look at the Vegetation Conservation section in relation to utilities.

Mr. Easton: I want to make sure there's a clear statement in the Utilities section that ongoing maintenance of all existing and/or future utilities that are in any jurisdiction under the Shoreline Master Plan continue to be allowed to be maintained to the industry standard, or some sort of phrase that allows for that to occur.

Ms. Ehlers: Especially since under the FEMA ordinance we insisted that utilities have the right to repair without prior authorization.

Mr. Easton: Right, it's just part of why – it's a good reminder of why I brought it up. Right.

Chair Lohman: Yeah.

Ms. Nakis: Mm-hmm.

Mr. Easton: There's one unique area in the county that I'm aware of – probably two – where utilities are clearly in aquatic areas and those need to be – we want to make sure that we don't put the – they're currently existing in aquatic areas. There's a cable crossing at Washington Park in Anacortes, and granted – I'm not sure – jurisdictionally that's probably the city limits. But the other area that comes to mind is, you know, probably near the – again, probably in the city limits. But some of that land I'm not sure if that's all classified as county property or not in some places, particularly when you get over to Guemes on that end where the lines are going across. So I want to make sure

that we're allowing for pre-existing conditions in – and those are obviously extremely sensitive areas. I mean, they're actual aquatic areas.

Ms. Grueter: One thing we could do is work with County staff on the Use Matrix, because we could add rows that distinguish between maintenance of existing utilities versus new, because right now in the Aquatic environment we've made it conditionally allowed. So we could do some work on that.

Mr. Easton: I want to make sure that maintenance is allowed without further permitting on what exists, and that there's a process when new utilities are put in to any of these extra sensitive areas within the Aquatic environment or the Natural environment that maintenance is included in the language, so that the SMP is consistent in allowing utilities to maintain, whether it's new or previous infrastructure.

Ms. Ehlers: And this is the place to bring back that turbine project in Deception Pass.

Mr. Easton: Right, and I threw a reference out at the beginning of my comments I think needs to be considered. I mean, obviously it's technology we weren't considering twenty years ago but it's here and we need to at least account for it.

Ms. Ehlers: It would be a real pity to spend all the money and effort and time we have on getting fish into the Skagit River and then have them chewed up going through the pass.

Mr. Easton: Yeah, and my bringing it up is not any comments about – it's not an editorial about whether it's appropriate.

Ms. Ehlers: No. His isn't, but mine is.

Mr. Easton: It's a matter of fact. It's an actual – these are ongoing, actual issues that are happening on our shorelines and to be aware of accordingly. One other thing is – sorry, Madame Chair; one more thing –

Chair Lohman: You're fine.

Mr. Easton: – solar. Given the smallness – given the potential for homes with zero – you know, that could actually in some ways actually end up becoming their own power generation or, in some cases, returning power to the grid. Would that change the homeowners' definition to actually sort of trip (trick?) them into being part of a utility potentially? And would we be – I just don't want – I don't want home solar situations to trigger another set of guidelines that are different than they're currently under in relationship to shorelines. Is there any concern about that?

Ms. Grueter: Yeah. Until you mentioned it, it wouldn't have crossed my mind. There's a big, long definition of accessory and appurtenant uses to residential that kind of get –

Mr. Easton: Would be covered in that?

Ms. Grueter: Yeah. And I guess I'm not aware of anybody getting tripped (tricked?) into the utility section because then they're returning power.

Mr. Easton: The only problem is when the exemptions were originally drawn up no one anticipated that people would get to the point where they were returning power to the grid. As long as we're not in a position – I assume we're not, but just – I don't want to be in a position where we sort of triggered that sort of – it seems like a trigger point where somebody may have to be considered a utility in the sense. And that doesn't just apply to solar. That does apply to hydro, too. I know in my work I did some work for a while on the Water Resource Advisory Committee and there were a number of Department of Ecology permits that had been at least applied for and in the process of being considered for micro – what would be considered micro-hydropower. And, again, those would probably go – at times they could go beyond just serving the homeowner to actually re-feeding into the – potentially re-feeding into the grid. So a couple of things that you just – you know, we weren't talking about twenty years ago that need to be considered in the way in which we draft this particular section.

Mr. Hyatt: Madame Chair?

Chair Lohman: Go ahead.

Mr. Hyatt: I'd like to take issue with something Jason said. I agree entirely about the – well, I'm not sure that the hydropower issues are that relevant to shorelines because they're so regulated by FERC, and any structure within the water by Department of Fish and Wildlife. Those aren't that concerning and maybe shorelines isn't the place to regulate. But as far as the new utilities – the power lines, the pipelines, and the maintenance of those – those *do* get shorelines permits and those *do* affect fish habitat. They *do* affect the quality of the environment because a lot of times what they need to do is dig up the creek.

I'd remind you that the Whatcom Creek pipeline disaster was caused by poor maintenance. A guy on a backhoe didn't put it away right, or punctured it and then left the scene and that's what caused that whole thing. We have several pipelines going through the county that cross a lot of streams – not a lot of streams, but several streams – and I don't think –

Mr. Easton: We heard that once at a hearing.

Mr. Hyatt: What?

Mr. Easton: We spent all of last summer on pipeline safety.

Ms. Ehlers: But you're right.

Mr. Hyatt: Okay, so I'll skip over that part but you're well aware that there're a lot of pipeline crossings and they can have some pretty significant shoreline impacts and fisheries impacts. I don't think that's something we want to completely exempt when shorelines might actually be the right place to regulate some of those activities.

Mr. Easton: I just want to make sure of the code. I appreciate your point, Tim, but I'm trying to clarify. If a new project gets permitted through the regular process, let's make sure that our code includes that it's not just post-dated maintenance that's allowed on existing. Because some of our code right now talks about "existing structure." I just want to make sure anything that gets built without us having to update the SMP allows for people to maintain it. You're not going to get a pipeline anywhere in Skagit County – a new pipeline – through without having to go through all the permitting process that's already in place through the state and the DOT and et cetera, et cetera, et cetera – Fish and Wildlife and what have you. I just want to make sure our code includes an option – the opportunity for them to maintain the properties that they end up building, because some of what we had been discussing earlier was date-sensitive moving forward. So it just – anything that gets – that's approved to be build newly – not that we're giving carte blanche approval for anything. We can't approve – this thing can't approve a pipeline.

Mr. Hyatt: Obviously a pipeline would go through lots of multiple, overlapping permitting regulations. It's the maintenance that I'm worried about and exempting that maintenance, when a lot of that maintenance needs to be looked at carefully. Am I missing your point?

Mr. Easton: What I mean by exempting the maintenance is I'm saying allowing the – this is the problem. If you don't give them some ability to actually get in and do the maintenance – which is going to have a neg – could have a negative effect on the environment – you're going to end up with potential problems that are bigger to deal with than – we're talking about life and limb. I mean, we're starting to trump – I'm going to dare say this out loud – I'm going to start trumping fish, when we start talking about punctured pipelines. So, I mean, if they're not clearly marked, if they're not easy to be seen and if those aren't being maintained, you know, it's an issue. I'm also concerned – you know, I mean, it's not just pipelines. It's obviously tree lines, too, that have to be considered. But I think they got the gist of what I'm going after there.

Chair Lohman: But if you dial it back to a smaller scale utility like a private water company, they do go under creeks and –

Mr. Easton: Sure.

Chair Lohman: – some rivers. And sometimes the feasibility of hanging it on a bridge when you're working with DOT, they don't negotiate very well.

Mr. Hyatt: Mm-hmm.

Chair Lohman: And the only alternative cost-wise is to do a directional bore underneath. And I think you can do it with a minimal impact. You don't need to dredge up the whole area to do a repair. But when you dial it back to a small utility – like a water company – they're usually a non-profit community water company. They don't have the budget to go out there and apply for all these hefty permits. So I think there needs to be a little bit of latitude and room and I think we kind of went after that in the FEMA BiOp section a little bit, because a lot of these are in the floodplain area. But I really – you know, there's an awful lot of smaller scale applications that we don't want to lose sight of.

Mr. Easton: Just so you could see language that we already liked, or at least most of us liked, you might have Betsy send that – or have Tim send them that chunk. Because we tweaked it in what we did with FEMA –

Ms. Stevenson: _____ flood ordinance?

Mr. Easton: Yeah, because it was real specific about this issue and we spend significant time wordsmithing it to a place we liked it.

Ms. Ehlers: We had a really good discussion on it.

Mr. Easton: Or most of us liked it.

Chair Lohman: Okay, anymore on Utilities? The agenda says we're supposed to have discussion. I'm assuming that means we've already had the discussion?

Ms. Stevenson: That was for you. _____.

Chair Lohman: I think we had it at the beginning.

Ms. Stevenson: Yeah.

Chair Lohman: Okay. So – Carol?

Ms. Ehlers: Madame Chair, I was criticized on the Transportation. Elinor has just shown me. Look on page 92, number (9). That's what I was getting to. It's much briefer than I was. Read it out loud?

Mr. Easton: Sounds great – yeah.

Ms. Ehlers: "Transportation and parking plans and projects must be consistent with public access policies and regulations per...14.26.300."

Mr. Easton: I thought you were going to complain that you were shut down for saying "Colorado" and you found a reference to Colorado in the plan!

Ms. Ehlers: Didn't need one.

Chair Lohman: Okay. No, we were going to review the agenda for the July 10th meeting.

Ms. Ehlers: Where's that?

Ms. Stevenson: The only thing that I'd ask at least that you consider – based on the memo – is that you give the sub-committee from the Advisory Committee on the aquaculture information a chance to do that. So we would put the Aquaculture discussion off from the 10th until the 24th.

Ms. Ehlers: That's good.

Chair Lohman: Okay.

Mr. Easton: Can we – I'd like to add that at some point – I'm not sure which meeting – no net loss needs to come back up after they all sat with it on the 12th.

Ms. Ehlers: Yes.

Chair Lohman: Can we put it – Jason, can we then add it on July 24th, no net loss again?

Mr. Easton: That makes the most sense. That makes the most sense to me. It's just – I know it's repetitive, Betsy, and I know we've got a lot to try to cover. I'd rather let some other things fall off, if we have to, because it's just – it's sort of a better ___ to the way the Plan's developed.

Chair Lohman: I think the Nonconforming Uses on the 24th is going to take up a ton of time.

Ms. Ehlers: Oh, yes.

Mr. Easton: Between Nonconforming Uses and No Net Loss, that's a pretty good size meeting.

Chair Lohman: Well, and then you've got the Critical Areas in there. Those are three really large topics.

Ms. McGoffin: So maybe we should move one up to the 10th.

Mr. Easton: I don't think they're ready. Are the other ones – I don't think any of them are ready. Is the Critical Areas Ordinance ready?

Chair Lohman: Can we move Critical Areas? Can we move Critical Areas in place of Aquaculture?

Ms. Stevenson: Sure, if you want to.

Chair Lohman: Is the Committee ready? Have they – do we need a motion for that?

Mr. Easton: No, I don't think so. The Chair can direct traffic on the future. It's because we're not talking about an actual document that we already approved or needs approval.

Ms. Stevenson: We'll need a revision posted to the webpage if people are following and want to come. If people want to come for one of the discussion items, we'll get something posted on the website so that they can see it's a revision, and if there're some changes then we'll send that out to our listserve, too, so people can see that.

Chair Lohman: Okay.

Ms. Ehlers: Betsy? I got today's discussion three hours before the meeting. I think the public would find that – your discussion – useful if there were some way that it could be done a week in advance and put on the net. And then the public could be thinking of what we're thinking and get more out of the meeting. Because I'm hoping that the people who've sat here will eventually comment. And they, having sat here, would be much – I'm hoping they would be less likely to rant and more likely to be constructive.

Chair Lohman: So, Betsy, the date for the submittal to DOE?

Ms. Stevenson: 31st of July.

Chair Lohman: So we would have something updated by the July 24th meeting then – up to that point?

Ms. McGoffin: Boy.

Ms. Stevenson: I don't think we were proposing that. We were going to try to take your stuff, incorporate it, and send it to Ecology. I don't see how we can do that – I'm sorry – in terms of time. I just – I can't promise that now. It's not something that we –

Ms. Ehlers: Can you send the discs of these discussions with it?

Mr. Easton: To Ecology?!

Ms. Ehlers: Well, it would give them an idea of our thinking.

Mr. Easton: They can use them as Frisbees, if they want.

Ms. Ehlers: Think about it.

Chair Lohman: Okay. So do you guys all – we've kind of rearranged the order. I did not catch that the discussion outline differed from the agenda. So we should make sure that they match. I'm not chastising anybody because I never looked either! And this is a lot of work and I appreciate all that everybody's been doing.

Ms. Ehlers: Critical Areas is not on page 181; it's on page 98. At least that's where I found it.

Ms. Stevenson: Yeah.

Ms. Ehlers: And may I request that when this – when you send this off to Ecology that you start with the definitions so that when we finally get the plan we start with definitions the way this old one does? It's much easier to read a document if the definitions that you're using come in the front, because people then bump into them and they might have an easier time understanding.

Chair Lohman: Okay, the next section is Public Comment. So if members of the public want to comment they need to state their name and their address. And I need to remind you that this is not a formal hearing, so while you'll be televised, it will not be part of the public record.

Howard Gulley: _____ . First question: In our community we have –

Chair Lohman: Introduce yourself.

Mr. Gulley: Howard Gulley, 15815 Yokeko Drive. In our community there on the south end of Fidalgo Island there's two shoreline lots that are not built on. Will they be able to build on them after this is passed? Particular since at the current moment it's a critical area.

Mr. Easton: How wide are the lots?

Mr. Gulley: Which brings me to the second question which I address to the board. The reason that's a critical area is because we had septic problems and we opted for designation of that in order for some of the residents there to get interest-free loans and help in designing systems. That problem has **virtually** gone away and it sounds like we should probably be requesting to have that thing lifted. What's the board's thought on that?

Chair Lohman: It's their turn.

Mr. Easton: We're not supposed to answer the questions?

Ms. Ehlers: Howard, I think that's a very good question to address to the Health Department, since they're the ones that are the mechanism for all that.

Mr. Gulley: Well, I know that would be the mechanism, but as far as this shoreline activity goes, it sounds like we'd be better of getting that lifted. Because I hear 100 versus 200 feet?

Ms. Ehlers: But, you know, that *would* be an example of net *gain*.

Mr. Gulley: Say again?

Ms. Ehlers: It would be an example of net gain.

Mr. Gulley: That's true. The point you made on the power production, absolutely. And the clock's ticking. We have to go to that or change the law.

On the subject of vegetation, being in a critical area and on a shoreline, do I have to have a permit to cut down a tree? And the question I have in there is, If a tree is on my property by law and it falls down – and it's in good health – it falls down and cuts the neighbor's house in two, he'd better have a good homeowner's policy. But if that tree is – that I know that tree is starting to age, or I *should* know that it's starting to age, then it becomes my liability. How does that fit into this thing there? Because I just had to cut down a tree last year because it started shedding more, and I went over and tapped it. Instead of getting a knock I got a thud. So we had to cut that tree down.

You know, and shared driveways – in our area there's five of them. That's all I have. Thank you.

Ms. McGoffin: Thank you.

Chair Lohman: Thank you.

Mr. Easton: Have him spell his last name for the transcript.

Mr. Gulley: G-u-l-l-e-y.

Chair Lohman: Thank you.

Mr. Easton: Debbie will send us a thank-you note if we do that.

Chair Lohman: Anybody else?

Tom Stowe: I hope you can hear me better than we've been able to hear you. The microphone system in here apparently is not such that it carries throughout the audience. You appear to be hearing each other, but the audience is not hearing you

very well. All of you, with some exceptions. One gentleman over here in the purple shirt has a good carrying voice.

Chair Lohman: Can you say your name and where you're from?

Mr. Stowe: My name is Stowe, S-t-o-w-e, Tom Stowe. I reside at 15780 Quiet Cove Drive, Anacortes, which is on the south side of Fidalgo Island in the county area, not too far from Yokeko.

I have several comments. First, there was no introduction of anybody here today, so I want to make sure that I understand. I'm guessing that the three people in front are part of the Citizens Committee. Am I correct?

Chair Lohman: Yes.

Mr. Stowe: And the people on the far side, I recognize the two on the end are the hired people from Bellevue who are doing your study. Ms. Stevenson I know. The gentleman on the end, I presume is City Attorney – County Attorney?

Dale Pernula: No, my name is Dale Pernula. I recently took a job as Director of the Planning and Development Services Department.

Mr. Stowe: I see.

Mr. Easton: And the gentleman who was here earlier is one of our District Attorneys.

Mr. Stowe: He was. I recognized him, but he's gone.

Mr. Easton: Right.

Mr. Stowe: He left early. I have several comments, one I pretty much duplicate everything that Howard said. I would add that to my comments. This issue of no net loss and mitigation – I'm extremely concerned that Ecology has a lot of ways in which they, in effect, blackmail the public. One of those is evident in the recent decision by Ecology on the peninsula to decide to – you cannot use your well, your private well, unless you are constantly in use of it. If you're a person who uses his well once a year, you lose your right to use the well. And that, they're offering, however, a solution to that: You pay them \$3500 and you'll get your permit back which you already have for the well that you already have. Now whether that's going to stick or not – this was in the paper; this is not something I made up – I would hate to see that sort of mitigation applied here: a dollar mitigation, if that's what they're talking about. I don't know.

The public access issue: I own a very large waterfront home on a large lot. There is no public access to the water in my area and I presume that none would be established to create public access to the water. And I would like it clear – all of us would like it clearly understood just what is being planned. You are all reading through this thing that

reminds me of Webster's unabridged dictionary or perhaps the Manhattan telephone book. I don't know which, but it isn't something that I've seen ready for the public to review. When will it be ready for the public to look at? You're discussing it. You're asking us to discuss it.

Chair Lohman: It is now.

Mr. Easton: It's a draft.

Mr. Stowe: But you're not showing it to us.

Chair Lohman: It's posted on the website.

Mr. Stowe: It *is* on the website?

Chair Lohman: Yes.

Mr. Stowe: That whole thing?

Chair Lohman: Yes.

Mr. Stowe: I have to create a tree and cut it down to make the paper to make it with. Okay.

Mr. Easton: You can still cut that one in a critical area.

Chair Lohman: It *is* on the website, on the County website.

Mr. Stowe: Pardon?

Chair Lohman: It's on the Planning and Development Services website.

Mr. Stowe: When did it go on?

Ms. Stevenson: May 23rd – just after your joint meeting with the Advisory Committee.

Mr. Stowe: So it's been on about a month and a half.

Ms. Stevenson: 23rd or so. I'd have to double-check.

Mr. Stowe: I looked for it earlier on, after the meeting that we had in Anacortes. I haven't been able to find it. I presume that you have now put it on. Okay.

The issue was brought up of danger – tree removal danger. I'm well aware of that danger. I had seven trees in excess of 125 feet fall on my house in the last large wind storm a few years ago. Fortunately, I built my house in such a manner that it did no real

damage. Other houses in our area were cut in two with trees that fell, and they looked like good trees before they fell. But our shallow root system here means that you have that issue constantly of tree danger. And I will cut down a danger tree. You may want to sue me, but I will cut it down if I feel it's a danger to my house or to one of my neighbors. And I believe that most of us in our area would feel the same way.

Pipelines. The gentleman here in the green who I thought was, perhaps, part of Evergreen Island from the way he was talking, but – whatever. We have water lines, 24-inch water lines that serve the city of Anacortes and serve Whidbey Island and the Oak Harbor and the Navy base. All cross under the channel, the Swinomish Channel. If anything happens to those lines, they're going to be fixed. Nobody's going to go looking for a shoreline permit or any other little goody piece of paper. They're going to have to be fixed now. They would represent the water service to about 70-, 75,000 people. These issues have to be resolved. They cannot be – you cannot make your document so severe that it prevents things happening that have to happen.

I think I've said enough. Thank you.

Ms. Ehlers: Mm-hmm.

Ms. Stevenson: Thank you.

Chair Lohman: Thank you. Next?

Kathy Mitchell: Kathy Mitchell, 115 Chuckanut Ridge Drive. I appreciate a lot of the questions and comments that you had and clarifications that you asked for. One of the thing I'd like to ask you to consider further, and especially for the folks that are with consulting groups to take back – *and* the Committee members that were considering things – back to the practical real world

We have 24 acres. We went through the Forest Stewardship Program. I went through the Master Gardeners Program, Tree Farm status – everything we could to try to do things right. And one of the things I'd like for the folks to consider as they're putting these things in place for happening in writing, what sounds fine in general for scope all over is not good for practice. Any landowner that's worked on their land and worked with their properties and tried to do the things right with their trees – replacing trees, for instance – I've gone up and down the hill with buckets of water to try to get new trees to grow to plant. Anybody that's worked on their land also knows that there's different soil compositions all over. We've got 24 acres and it's very different from place to place. You've got rocks, you've got plates, you've got places where it's a little deeper, you've got places where you do not have water that are Mediterranean environment and you've got other places that are really quite lush.

So the varieties that can be from place to place are all over and so you really have to understand that when you do put these rules in place, regulations in place, you have to allow for flexibility. For instance, we worked really hard at replacing trees when we

were building as time went back on, but you have to understand it's very difficult to get trees to grow again in different soils and different places.

We followed forest practices. We used the – everything that you could possibly can. And, quite frankly, when you are talking no net loss you have to be very careful with using those terms for what's going to happen in the real world, unless the basic intent from the start is to stop people from using their property. The reason I say that is with you – because I remember, Dan, I had asked you at the Shoreline Management – I went to two of the Shoreline Management workshops, and I asked you guys in good faith and got a decent answer but not a good enough answer at the time. Nobody seems to understand what no net loss is going to look like and be.

Now when it comes down to practicality, if we're going to have to replace the 120-foot trees someplace anybody that's worked with trees, especially when you're looking in forests, knows you cannot replace a large tree with a small tree. What you have to allow when you write these things is to have leeway over time. And the DNR has really good forest practices for replacing trees and allowing people the time and the wiggle room, because every year is different for amount of rainfall and water; every year is a little bit different for what can and can't happen as far as when there's competition with other kinds of trees that are coming up over time; every year's different as far as what little bit (of) disease might come through or come out in others. There's funguses and other things out there that we're dealing with, as well, in the soils.

I understand that's a lot of information to absorb, but please understand from people that have been trying to do it right for a very long time, you have to allow for a variability and you have to allow for time. So when you are discussing for no net loss, please understand you have to allow the homeowners and the landowners to have the flexibility for replacing things and doing things *well* over time. Thank you.

Ms. McGoffin: Thank you.

Chair Lohman: Thank you. Anybody else?

Ellen Cooley: Ellen Cooley, 16340 Lookout Lane, Bow. I'd just like to echo what Tom said and what Kathy said about the no net loss. It's basically an unachievable goal as long as humans are in the cycle. And I'm hoping that this word salad is going to be boiled down to something that a citizen landowner can understand without having to hire a lawyer. That would be appreciated. Thank you.

John Ravnik: Good evening. My name is John Ravnik. My address is Post Office Box 361, Burlington. I'm going to use your handout that you have from this evening in the event you want to jot down any comments. I've been really, honestly hoping – I'm not an attorney – that you would not have created a document here that tries to avoid or side-step the legal rights-of-use doctrines that exist in the state of Washington. Somebody will use it against you, so just keep an eye on that.

On page number 2 you have a section that's titled "How is no net loss measured?" And the first sentence: "No net loss is measured from a County-wide, cumulative perspective, but met by" – are you missing a word? Should it state, "No net loss is *not* measured from a County-wide," since otherwise you've reversed your position? If the word "not" is supposed to be in there, then the sentence isn't very well-written.

Mr. Easton: You're talking about the Discussion Guide, right?

Mr. Ravnik: Yes, sir. A clarification for section 2 regarding Archaeological: On item number f) it says that an "Enhancement of resource areas may be approved through a" conditional use permit. Now the only resource area that I thought one might ever undertake improving might be a scientific resource, but the definitions there are so wide it could be almost anything. But if someone's going to try to enhance a resource, why would I spend \$10 – 20,000 to prepare the application and spend \$10,000 in combined application fees and project representation simply to do an enhancement? I've spent all my money on the damned permit before I can even do the enhancement.

Shoreline Vegetation, section 4, page numbered 4: Having done quite a few shoreline permits on Samish Island, the requirements of planting trees in some areas, particularly steep slopes, is beautiful on paper and absolutely, totally functionless on the ground. There's many shorelines on Samish Island and even on banks of the Skagit River where the terrain is steep, there is no organic soil present at all, and if you want to go out and try to plant something you'd have better luck putting up a plastic tree because whatever you plant's gonna die. So (if) you are trying to create the ability to grow plants and trees and shrubs, you'd have better luck growing them in your driveway and driving on them. They might root. That's a practical fact right there.

Page number 5, section f): Would you mind clarifying to me right now the definition of the word "significant" used as an adjective prior to the word "trees"? You wrote it. What is a "significant" tree?

Mr. Nickel: I believe we have –

Mr. Easton: Matt thinks he has an analysis report.

Mr. Ravnik: **Note issues back**, but there is an awful lot of ambiguity in here and ambiguity leads to subjectiveness by staff.

Mr. Nickel: We do have a definition.

Mr. Ravnik: Okay.

Mr. Nickel: I'll go ahead and read it: "Significant" trees mean existing trees over 8 inches in caliper, as measured 4 feet above grade."

Mr. Stowe: Say what? Say it so we can all hear you.

Mr. Nickel: “Significant’ trees mean existing trees over 8 inches in caliper, as measured 4 feet above grade.”

Mr. Ravnik: Would you like me to repeat that for you, sir?

Mr. Stowe: What’s 8-inch in *caliper*? Is that what he’s saying?

Mr. Ravnik: Yeah. Call it “diameter,” if you want.

Mr. Stowe: “Diameter’s” a better word.

Mr. Ravnik: At 4 feet above the ground.

Mr. Stowe: 4 feet above the ground.

Mr. Ravnik: Yeah, roger that. Okay. So one can clear and trim properties for that. If I have trees smaller than 8-inch, I can trim ‘em and I’ll clean up and remove ‘em.

Mr. Nickel: Right. They wouldn’t fall under that significant tree category.

Mr. Ravnik: Good. Notwithstanding the shoreline damage that might occur by pulling the stumps out, but that’s irrelevant.

Section 7 – or page 7, section 5, Agricultural Activities: Part of my comment is directed to Mr. Pernula and also part of it is directed to the staff. Subsection c), item number 2): Conversion of agricultural lands to other uses. I have an active project right now where a party owns a 1400-square-foot barn that is near a road that is an Agriculturally-zoned property that in the past has been used as a storage barn. And in an effort to promote the sale of their own products, they wanted to do a seasonal roadside produce stand. Now notwithstanding *your* codes – or your proposed codes – the permit process through Skagit County is \$10 – 15,000 to prepare applications, \$5,000 in permit fees, simply to promote the opportunity to sell potatoes and pumpkins and corn. These people should be able to come in to Skagit County and be given a pat on the back and a congratulations for the effort to undertake an agriculturally-based business, and not go through a \$15,000 permit process that now takes six months, sir. That being said, I would now also have to get a substantial development permit to do the same thing. So any opportunity for farmers to create businesses in existing structures is being squished quickly.

Section 7, Forest Practices permit, something that you might want to look into a little bit further. If you own a piece of property and you hire a logger to come in and cut down three trees and they had to take them to a mill, the export of one commercial log triggers a forest practices permit. Now the homeowner can take down not exceeding 5,000 board feet, correct? The term “merchandable” is not recognized by either Skagit County or Department of Natural Resources. Any tree that’s laying down, standing up,

leaning, dead, diseased could possibly be used for a wood product and falls into the category of 5,000 board feet. Besides that, if you don't know what the term "biomass" is, if you do a land-clearing on a piece of property and create more than about 20 cubic yards, you also have to get an FPA. So...and Mr. Pernula, sir, it would really be appreciated if Skagit County would take over the processing of forest practice applications, because right now for the one that I have I have to go through a three-week processing of public advertising period because Skagit County staff won't take it over, and then I have to replicate the exact same process immediately thereafter through DNR. So it's repetitive, it's time-wasting, and it's expensive, sir.

Section 8, Mining: Upriver on the Skagit River there's a lot of properties that have Mineral Resource Overlays. What shall you do when you call the people to tell them that they have a gravel pit that they've eventually planned on expanding that they now don't have the right to do so?

Private driveways – section 9, Transportation, page number 9: The comments about having shared driveways from the Commission was very respectful. Per Skagit County standards, if I have a private driveway that serves more than two lots it is now a private road – by code. So your assertion of having – you can only have one single-family driveway is going to create more impervious surface, without a doubt. And there is properties up by Concrete that I developed on the South Skagit Highway that you would have had a multitude of private driveways if you couldn't have a shared private road.

Mr. Easton, in your statements on utilities about maintenance of utilities, would you also mind including the term "upgrade-slash-upsize"? Because a utility replacement in the same corridor is still a utility replacement. But if you can't allow a utility company to upgrade or upsize a utility, you've then throttled the extended development that utility can serve.

You might keep in mind that anytime that any public utility extends a water line – and I'll use Skagit PUD as an example because their water lines do serve a variety of communities and neighborhoods – that if I cross a stream I now have to get a conditional use permit from Skagit County as a shoreline permit simply to install a water line down a road corridor that crosses a stream. So there is another extensive level of bureaucracy. You might think about some exceptions to the extension of public utilities in already-developed corridors.

I don't exactly know how you're going to handle regional detention ponds near rivers, because a lot of land slipped down towards the river and their detention ponds have outfalls into the river, but I'll leave that one for your fun. Thank you very much.

Chair Lohman: Thank you. Anybody else?

(silence)

Chair Lohman: Okay. We've come to the end. Do we have a motion to adjourn?

Mr. Easton: So moved.

Ms. McGoffin: Second.

Chair Lohman: (gavel) And we're adjourned.