

Skagit County Planning Commission
Work Session: Shoreline Master Program Update
July 10, 2012

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

Staff: **Betsy Stevenson, Senior Planner**

Consultants: **Dan Nickel, The Watershed Company**

Advisory
Committee: **Tim Hyatt**
 Brian Lipscomb

Chair Annie Lohman: Okay, I call (gavel) to order the Skagit County Planning Commission, July 10th, 2012. This is a work session on the Shoreline Master Plan Update – Shoreline Master Program Update. So we have Commissioner Ehlers, Commissioner McGoffin, Commissioner Lohman, Commissioner Hughes, Commissioner Nakis and Commissioner Mahaffie present. So any changes to the agenda?

(silence)

Chair Lohman: Seeing none, we're just going to jump right into number 2, the Work Session, and the first topic is General Provisions Waterward of the Ordinary High Water Mark. And it starts on page 42 and I'm going to turn it over to you, Dan.

Dan Nickel: Great. Thank you. So as we've done in the past, I'll kind of go over this Discussion Guide that we have in front of us. I'll try to hit the high points of each topic area and then turn it back over to the Planning Commission for discussion.

The purpose of this first section, the general provisions for areas waterward of the ordinary high water mark, is – the reason we've done this and separated out these general provisions for the waterward activities and the general provisions for upland

activities is to try to encompass what things are applicable across all uses and modifications.

So a few things to point out here – again, these apply to areas waterward of the high water mark, so the Aquatic designations. Many of these provisions in this section are designed to prevent construction materials from entering the water during construction or over time.

Modifications and uses in the Aquatic environment: They must be sited and designed to avoid the need for future shoreline stabilization and dredging, and must be the minimum size necessary for the proposed development. That's a pretty common theme throughout Ecology's guidelines – minimization.

Carol Ehlers: Dan, could you speak up.

Mr. Nickel: I will try to speak up just a little bit louder – sorry.

Ms. Ehlers: Much better. Thank you.

Mr. Nickel: In terms of siting development and uses to avoid future shoreline stabilization, that's also a fairly common theme with the Department of Ecology.

The third one there: Natural features – natural *in-water* features should be retained when possible.

The fourth one down: Flotation material must be encapsulated within a commercially manufactured shell approved for use in Aquatic environments – really trying to avoid unencapsulated Styrofoam, foam materials, things that might actually harm the Aquatic environment if they break down or come loose.

And then lastly, lighting – lighting associated with overwater and in-water structures is intended to be the minimum amount necessary for safety and be designed to avoid glare on adjacent properties, as well as the water bodies themselves.

Chair Lohman: Any questions from our Commissioners?

Ms. Ehlers: I do.

Chair Lohman: Carol.

Ms. Ehlers: Page 43, (8), "adjacent." "Adjacent" has no meaning in this county. It has a meaning in the Coordinated Water System Plan of "within a half-mile." It has – sometimes it means "next to," sometimes it was "within the half-mile," sometimes it's "within three miles." We have learned that we have to use another word because this doesn't give you any ___, and I'll give you the best example I can in terms of adjacent – the worst example, I guess. There is an island in the middle of Burrows Bay called

Allan Island. Several times people have tried to put master planned resorts on it. One of those times the City of Anacortes voted to annex it on the grounds that it was adjacent to the city. It's about two miles away. There's a big island between it and the city. That is what clued me in years ago about how risky the word "adjacent" is when you have it in a legal document. So whatever word you intend to mean, whatever distance, use it, please.

Chair Lohman: I have a question. Does this include access structures, like maybe a stair to get down to the beach?

Mr. Nickel: Yes, it would.

Chair Lohman: So I can't figure out how it would accommodate you to provide yourself access.

Mr. Nickel: Right. Betsy corrected me. This applies to the areas waterward of the ordinary high water mark. So I stand corrected there. You know, the intent here is to really avoid the glare from the water as it affects the Aquatic environment. I mean, the same kind of principles do apply in upland lighting along the shoreline. It doesn't necessarily apply in this section, but the intent there is to avoid lighting impacts to the –

Chair Lohman: But stairs don't have lights.

Mr. Nickel: Right. We're not saying *not* to have lights. You need lights for safety, you need lights for access. The intent there is to avoid the –

Chair Lohman: I'm thinking of a regular guy who wants to get down to his own beach with no lights. I'm talking about physically stairs or a ladder or some kind of thing, because not all beach access is – I mean, are you going to have to jump or –

Ms. Ehlers: Well, isn't the word –

Chair Lohman: I just want to make sure that we don't cut people off from accessing their own beach because we say you can't build something waterward of the ordinary high water mark.

Ms. Ehlers: Well, what is "waterward"?

Chair Lohman: Because not all beaches are, you know, accessible easily.

Matt Mahaffie: Low bank.

Chair Lohman: There! I couldn't think of the word!

Ms. Ehlers: Does this mean that if your staircase ends on the dry side of the ordinary high water mark it's okay, but if it ends on the wet side – as in a dock – it is not?

Mr. Nickel: If it is part of an overwater structure for like a dock or a pier to access the water, I mean, stairs will be allowed to access your shoreline. If it's – you know, it can be part of an access point to a pier or a dock, which would be covered under "Boating Facilities." But those would be allowed under these regulations.

Josh Axthelm: But what about access to your beach?

Chair Lohman: I'm just talking just general foot traffic.

Mr. Axthelm: Yeah.

Mr. Nickel: And the same would hold true.

Ms. Ehlers: Well, doesn't "waterward" mean on the other side of the ordinary high water mark?

Mr. Nickel: "Waterward" means on the water side – right.

Chair Lohman: But the tide goes out, is my point. I mean, so it could at times be submerged.

Mr. Nickel: It's based on the ordinary high water mark, so that is something – actually the ordinary high water mark in the marine environment is above – generally it's above the mean high high water mark. So you're generally talking about situations where you're in the dry environment.

Ms. Ehlers: Is the definition of "waterward" in this list of definitions?

Mr. Nickel: I don't know. I can check.

Ms. Ehlers: Please check and make sure it's clear so that it – that the word "dry" is in there.

Chair Lohman: I just want to make sure that we can get to your own beach, because a lot of the beaches here are privately owned, and it just seems arbitrary that you could possibly cut somebody off.

Ms. Ehlers: I agree.

Chair Lohman: And I want to make sure that we're not doing that and that we – and I – when we get to the next topic, Shoreline Stabilization, it talks about stairs there too. So I just want to make sure because not all circumstances are identical.

Ms. Ehlers: Mm-hmm.

Chair Lohman: So anything else on this section? Anything from the Committee?

(silence)

Chair Lohman: Okay. We're going to move on to Shoreline Stabilization. This is section 14.26.470, page 79 in the draft.

Mr. Nickel: Okay. The Shoreline Stabilization Regulations are – these address hard, structural stabilization measures which are traditional bulkheads, revetments, armoring of shorelines. Those are – hard structural stabilization is typically rigid, concrete, vertical walls. We also define soft structural stabilization as an alternative form of stabilization. That soft structural stabilization involves the use of vegetation, rocks, wood, just stabilize for like bioengineering techniques.

So we try to define both of those types of armoring, and those are allowed armoring along shorelines. We just have these provisions here describe, you know, what you need to show to either justify having hard armoring or steering into soft armoring techniques. The WAC at the bottom of page 2 here on the Discussion Guide, WAC 173-26-231(3), it lists several adverse impacts to ecological functions that may result from shoreline armoring. I'm not going to go through those. You have those in front of you. That kind of describes what the various impacts are from hard armoring and why there is a general push by Ecology to try to look at armoring in a different perspective.

So I'll go through here the top of page 3 some of the provisions. Under a), Consideration must be given to using soft measures first. So it'd be prior to actually getting hard armoring, whether it's new or expanded armoring, you want to look at, Do you have soft armoring, the ability to provide soft armoring?

Second, use and modifications under the permit matrix. You'll note that *new* hard shoreline stabilization is proposed as a conditional use, which that differs from the existing Shoreline Master Program.

Under c), New shoreline stabilization here requires a geotechnical analysis as a measure of demonstration of need. So a new shoreline stabilization where you didn't have any armoring before, you need to demonstrate through a geotechnical analysis that you indeed need to protect your primary structure with armoring before you can go forward with either hard or soft armoring.

d) Increases in the size of an existing structure – an armoring structure – are considered new structures. So if you have an existing – let's say a bulkhead, for instance – if you have an existing bulkhead and you wanted to expand it, make it larger, that expansion would be considered a new structure.

And lastly, under e), this includes – this section includes thresholds to describe when a repair of an armored structure would be considered replacement, and there're specific requirements for replacement stabilization measures. This is – one of the requirements

that Department of Ecology will require us to define is when is a repair a repair, and when is it actually a replacement of an armored structure. So we have those provisions in the code there. We discussed this at quite some length with the Shoreline Advisory Committee, going over some scenarios about when is it truly a repair, and making sure that something that is replaced in its entirety doesn't get called a repair; it truly is a replacement. And the reason for that is to try to look at again. Looking at soft armoring: Is it possible to do a softer form of stabilization as opposed to recreating a vertical or a hard armored structure?

I do want to make two other notes here that aren't on this list, one of which is that in creating a soft or even a hard armored shoreline we can allow some fill waterward of the ordinary high water mark. Now that's not fill to create new dry land, but it might be fill to create a more gradual sloping environment for the water and shoreline interface. This is something that the – both the federal and state agencies are allowing to occur. This is something we want to make sure gets allowed in these regulations.

And the last point I want to make was for replacement structures if you have an existing armored structure you'll note that again, under c), we had a requirement for a geotechnical analysis for a new structure. If you need a replacement of an existing armoring, you're not going to be required to go through the geotechnical analysis. You will want to show demonstration of need but it's a bit easier than actually going out and hiring a geotech to demonstrate that.

Chair Lohman: Any questions? Carol?

Ms. Ehlers: I have a comment for those who are listening and those who are present. Back when we discussed this subject in 1996 with the critical areas ordinance, there were some Department of Ecology publications that were given to the Planning Commission so that we had the science in front of us and the information in front of us to know what we were talking about. We weren't being told we had the evidence. And I'd like to tell people about it because it's still available, I think. Isn't it, Betsy?

Ms. Stevenson: I'll have to check. I think they're still available.

Ms. Ehlers: Because of the catastrophe of 1990 which not only destroyed rivers and streams all over the county and elsewhere, but destroyed the shorelines of the islands, a law was passed in the legislature to stimulate research on the subject of shorelines and their behavior and what you could or couldn't do. The federal government was going through a coastal zone management process in those days and the Department of Ecology – this is why it's useful for us – the Department of Ecology got grant after grant after grant with Doug Canning, the geologist, to do something called "coastal erosion management studies." There's nine volumes of them. Volume 8 is a godsend for people like me who aren't a professional, have knowledge of a cliff, and want to know what somebody's telling me I have to do or what the government's telling me I can't do. And it is loaded with – these nine volumes are loaded with examples of soft stabilization and alternatives for hard stabilization, from awful to might work to could

work. The one I tried to tell you about a couple of weeks ago in Ireland is on their documents as one of the ways in which you could do it, if that was the only thing that worked to save something important, like a road.

There are three other things which were done by the same department, Ecology, by Doug Canning. There are three pamphlets which are given out to many people and I'll give you – Betsy has the fronts of each of these three, and she has that because I gave her a copy. These need to be put into the bibliography so that anybody who wants to read this stuff has a hope of finding out what it is someone's telling them. And those who are interested in negotiating, know that it was proposed by the Department of Ecology and therefore it is not necessarily as evil as somebody might think it could be. It's all part of a game and we need to be honest about the game, but it's very useful to know what you're dealing with.

The number of soft stabilization methods that's in these books is astonishing. And if you look at shorelines in many places you'll see that not only do they work but some of them are cheap. You don't have to spend a fortune on it. And that's all I wanted to say on that except it would be really useful if a topic – in this case, shoreline stabilization – could be in one spot in this document. This one is on page 79 and 80. There's also more of it on page 153. Now, again, I'm talking about people like us. How do you know that you have to read a hundred pages in order to find all the references to a topic that someone's going to hold you to dealing with? So I don't know how you do it. I know the County's averse to cross-referencing, but have a heart.

Chair Lohman: Well, 153's in the middle of the critical areas ordinance.

Ms. Ehlers: Right, but it's –

Chair Lohman: But that's because it has to be incorporated and so it – that's why it's in two places.

Ms. Ehlers: But it's not exactly the same and it's that that makes it difficult for the amateur or the property owner. And I think this Planning Commission has tried for all these years to make things comprehensible for the amateur who happens to have a piece of property and wants to know what they ought to do.

Chair Lohman: Matt?

Mr. Mahaffie: I just had a little bit of a turn about that geotechnical analysis portion. To me it's totally understandable on a high bluff, you know, high bank situation. It makes perfect sense. Low bank – lake, river, marine, any one of the three – perhaps it wouldn't be appropriate. Is it going to be a geologist doing the geotech report? That's how it's normally done. That wouldn't be the appropriate person. A ____ geomorphologist might be more appropriate. It just seems kind of rigid. But then it says "without a scientific or geotechnical analysis," so it kind of opens it wide back – wide up again. A little clarification in that section might help make it a little more palatable to me.

Mr. Nickel: Sure, and I agree with you. This is one of those that I think there is some flexibility in the terminology about what's required and who does – who performs the work. You may have a coastal geomorphologist is more appropriate to do. Something in the marine environment you may have somebody, you know –

Mr. Mahaffie: What I foresee happening is a civil doing it and not wanting to take the liability and just putting a stamp on saying it's required, just for pure liability reasons.

Ms. Ehlers: I agree with Matt.

Mr. Mahaffie: I mean, to me, you know, in a low bank environment it's pretty standard for even a homeowner to say, The bank has receded 22 feet in three years. I need to do some soft armoring here. I don't see dropping \$1500 on a geotech for something like that would be appropriate. High bank? Totally different.

Mr. Nickel: It is one of those items that is – Ecology is very adamant about making sure that this provision is included, that requirement that a professional that's qualified performs that work. I think there is some flexibility in how we define that term. Because, like you said, there're certain professional(s) that may not be appropriate given the situations so we would take a look and see what we have in terms of flexibility there. But it is something that will be required to look at for new stabilization, to have a professional review that.

Mr. Axthelm: Would there be a possibility of an alternate there? Because it seems to me professional in a small homeowner situation in a small beachfront would be too much. An option for – like the books that she has have some suggested methods of stabilization. I mean, so many of the shorelines are alike, why couldn't you have a suggested method of stabilization or acceptable methods of stabilization without having to use a geotech?

Mr. Nickel: All right, the geotech – the intent of a geotech is really to determine: Do you need stabilization or not? That's the key question that they're asking or need to be asking. Beyond that they need to be asking, Can you do soft before you do hard stabilization? Those are two components that they would be looking at.

Mr. Axthelm: Okay, so let's say the geotech says, Okay, you need stabilization. Now what do you do?

Mr. Nickel: And at that point you wouldn't necessarily need to use a geotech to design a stabilization method.

Mr. Axthelm: Okay.

Mr. Nickel: You could use another type of professional.

Mr. Axthelm: Okay. It seems to me there should be a better method than that because that's – using a professional is important and I'm all for that in a lot of cases. But in some situations it's not. It's overkill.

Ms. Ehlers: Mm-hmm.

Mr. Axthelm: And I think that this situation in a lot of situations – especially like lakefronts – might be overkill for that situation.

Chair Lohman: Matt?

Mr. Mahaffie: One more?

Chair Lohman: Go ahead.

Mr. Mahaffie: As far as that goes, there's already at least – if it's a new one, you're still going to have to have a Fish & Wildlife Assessment, too. So oftentimes you have a civil designing it, you have a Fish & Wildlife professional doing it, and now you're adding a third layer, a professional. It's not like I'm saying that, you know, a homeowner's just going to go out and go get a permit and do it. There's already usually two, if not – at a minimum – one professional looking at it anyway. You know, that can get quite expensive for folks to do. I really have a hard time – I've seen so many just get rubberstamped, that nobody wants to take the liability. It's going to get "yes" from a geotech anyway.

Ms. Ehlers: I want to agree with Matt. I found when I had a problem – and it wasn't on the shoreline so I'm not telling anything – the geotech wanted to spend \$25,000 to do something that by using these documents and another one I found in the college library that was developed in the 1930s to deal with the erosion problem in the Midwest, I solved the problem for \$500 by using soft methods. There's a financial reality in a lot of this that we aren't paying attention to. But I'll go back to something you said earlier. If the Department of Ecology is so insistent on having professionals, why did they leave the geologists out of the discussion of the Stormwater Management Manual?

Mary McGoffin: Point of order.

Chair Lohman: Carol.

Ms. Ehlers: I'm sorry. If they want professionals they use it consistently.

Chair Lohman: I have an observation. I think maybe if you guys could consider a little bit of reordering in this section. You're talking about expansion, replacement and repair and then you're talking about new, and they're somewhat co-mingled. If you could tease them out a little bit – talk about new, talk about the other ones – and have them grouped a little bit more efficiently. Because it is confusing because on the first page you talk about new and how you have to have a geotech analysis, and then you talk

about replacement and how you don't, but yet they're somewhat co-mingled. And you have to read all the way to the end to capture everything if maybe all you want to do is a little repair. So I think if you could reorder it a little bit...

The other thing that I saw in here was on page 83, item (e)(ii), you talk about planting native riparian vegetation as necessary along at least 75% of the lineal frontage, et cetera, and then you go on and talk about three trees per hundred lineal feet. Where did you come up with that? That's pretty prescriptive.

Mr. Nickel: Much of that language comes from state and federal guidelines.

Chair Lohman: And there's no leeway on that at all?

Mr. Nickel: Well, they're looking for re-vegetation along shorelines for where you actually install new armory as a form of mitigation. And those numbers come out from some of those guidelines. There may be some flexibility in the way we define that, but we're trying – again – to add consistency where we can.

Ms. Ehlers: But it isn't. You've got one set of instructions in the geohazard, you've got another set of instructions here, you've got another set of instructions under the hazard tree, you've got a fourth set. There's four different sets that I have found of dealing with pretty much the same problem which is, How do you make sure that this bank is vegetated?

Chair Lohman: I guess I think back at the other chapter that we reviewed earlier at another meeting where you talked about how you had to have 100% of success. And later on it talks about 100% success and I'm questioning, Okay, now you're really getting pretty prescriptive on what you're making people do, and all they want to do is save their property. I guess I'm wanting to say it's almost like heaven help you for owning property.

And then the other question was where you're talking about stairs. It's over on page 84. This is where I want to clarify that you are allowed to – is there ever a circumstance where you can maybe extend your stairs down to the beach? Because –

Mr. Nickel: Just for clarity, you're wondering if stairs can be extended further into –

Chair Lohman: Yeah.

Mr. Nickel: Well, the intent here –

Chair Lohman: You take like item (h) on page 84, because it says, "...but must not extend waterward..."

Mr. Nickel: Well, the intent there is to try to keep those structures out of the water and not intrude those further into the Aquatic environment. So at the ordinary high water

mark you've reached your – you know, you've reached that point. And so the intent there is to try not to have those structures go any further than necessary.

Mr. Axthelm: I think there's a situation of nature versus man. And I'm not saying that man should come in and push nature out of the way, but we have to have the ability to access it and use it. I think to let nature totally rule everything is not correct and we have to have the ability to get down to a beach. Let's say you have a situation with a beach where the water comes up on high tide and then goes back down, and there's a shelf there. I think as public and for public safety we should have the ability to put a stairs in and to access that beach. I mean, to not – that's – we've got to have the ability to use what we have.

Chair Lohman: Go ahead, Matt.

Mr. Mahaffie: Can I just comment? I think it's getting confused a little bit – stairs separately from stairs as part of a bulkhead. When you think of a bulkhead, like a concrete bulkhead with stairs, you know, they're inset and they terminate at the face of a bulkhead. That's different than if you're permitting a set of stairs going down a bank that might possibly go past the ordinary high water mark. It's just different things.

Ms. Ehlers: Yes, there's still the stabilization.

Mr. Axthelm: If we're talking stabilizations, yeah, that's fine then, but as long as we have the ability to get the stairs now.

Mr. Mahaffie: That's totally different than the stabilization. It's just commenting on building stairs into your stabilization measure, not as a separate entity as it's spoken to elsewhere.

Mr. Axthelm: Okay. And Tim.

Chair Lohman: Go ahead.

Tim Hyatt: I don't know if it's time yet for me to speak out.

Chair Lohman: Oh, go ahead.

Mr. Hyatt: I think I can add a little clarity. I walk a lot of these beaches. I pay attention to a lot of these things. What you usually find – the stairs down the bank are covered in another section, and Betsy can refresh our memories as to which section that is. To get from – but they usually terminate at the base of the bluff, uphill and behind the ordinary high water mark. And then there's a trail. Or what's often done is a set of large logs, 24 inches in diameter, that are stepped down to the beach but is not part of a stairway. There are ways of getting from the base of your stair down to the beach, and what's – as Matt's identified – what's being identified here in part (h) is if you have a bulkhead

you don't put your stairs waterward of the bulkhead. You build it into the bulkhead so it's actually recessed. That's all. I hope that provided some clarity.

Ms. Ehlers: Mm-hmm. That does help.

Chair Lohman: Yeah, it does. I just wanted to make sure that we didn't cut people off.

Mr. Hyatt: Well, that's in another section!

Chair Lohman: I found the reference to where I said "100% survivable." But when you're talking – on page 89, you're talking about projects that include native vegetation. You're requiring people have a detailed five-year vegetation maintenance plan and then you have six items that they have to do. And one of them is a performance standard of 100% survival for the first year of growth post installation with no less than 80% survival at the end of the third year. And then you require bonding to have that.

I think that trying to get 100% is, first off, unachievable. Because I've watched some of these buffers that they've installed and that does not happen on the first year. I just don't think you can get 100. Go ahead, Tim.

Mr. Hyatt: What you do – I used to do a lot of restoration – you take their standard and the standard for planting density is usually four- or fivefold higher than what's being specified here, and that's probably what's going to be required by WDFW and several of the other agencies. We were usually held to riparian plantings on three-foot centers and usually a much wider buffer – and I can return to that, the width of the buffer. But usually whatever their standard is, you add a bunch more because you know you're going to get mortality. You do your best to maintain them but you make sure that at the end of three years you've got enough plantings to have a healthy riparian zone. You don't plant three trees for 100 feet and call it good. Any ecologist is going to tell you that you're not – you know, you plant ten trees and you might have three left over survive to maturity.

Now as far as the width of the buffer – I don't know if it's my turn to speak up.

Chair Lohman: Go ahead.

Mr. Hyatt: But that seems inconsistent with the critical areas.

Chair Lohman: Yeah, it is.

Ms. Ehlers: Mm-hmm.

Mr. Hyatt: Very inconsistent and highly inconsistent with just about all the other riparian leave areas that I've seen – certainly the WDFW mitigation guidelines. I'm not as familiar with what the Corps requires, but I'd be shocked if it were this few trees. You're already exempting 25% of their shoreline area. Okay, that's their view. But then to

leave the other 75% at only 5 or 10 feet wide, that's really not much buffer at all and it certainly isn't going to get you much of an ecological benefit. So I would strongly recommend that that got beefed up to be a little more internally consistent with the rest of the regulations here.

Ms. Ehlers: Can we talk about buffers as a topic a little bit later, because there's – it's like everything else – it keeps coming up, doesn't it?

Chair Lohman: Well, I guess I'm hesitant to put down 100% survival. I just don't think we can get there.

Mr. Hyatt: So how about –

Chair Lohman: I think if you can get, you know, a 95, that's pretty dang good.

Mr. Hyatt: How about a performance standard that says, Thou shalt have x-number of trees and y-number of shrubs per hundred square feet at the end of three years?

Ms. Ehlers: Well, remember you can't –

Mr. Hyatt: Then they can plant extra and a few of them are going to die.

Ms. Ehlers: You can't water these things remember.

Chair Lohman: Carol, you have to wait your turn.

Mr. Mahaffie: 100% is pretty – I put that in everything for first year. It's 100%. It's pretty standard industry-wide.

Ms. Ehlers: Yes, but how do you get it to do it?

Chair Lohman: I've watched – I've seen –

Mr. Mahaffie: Replant, if necessary, and overstock.

Chair Lohman: But I've seen some buffers just get mowed down by voles and everything else year after year.

Mr. Mahaffie: Again, that's just kind of the nature of the game, though.

Ms. Ehlers: I don't like a game that you can't honor.

Mr. Mahaffie: I mean, if they get mowed down you just keep replanting until – I mean, if you have to switch things around, if you have to find different species, if you have to find something voles won't eat – I mean, there's contingencies in a well-written plan to – it's

not like somebody's going to get dinged for it. But 100% is a normal standard for the first year.

Chair Lohman: Mary?

Ms. McGoffin: I was just going to say maybe because you're a farmer you never get 100% on your crops, you know? So I think from the industry standard, Matt is right. You just keep working it until you can get enough coverage. And I like your idea of it more being about coverage, you know, per square foot than about whether the plant dies or not. It's like, yeah, you covered the soil.

Mr. Mahaffie: What I tell people a lot of times – you know, say you've got to plant ten plants. Well, the Conservation District sells them in bundles of twenty-five. You're buying them all already. Plant them all. Some are going to die. And that's kind of usually how I approach things like that.

Can I – one more comment?

Chair Lohman: Go ahead, Matt.

Mr. Mahaffie: On that (e)(ii) it says, "An alternative planting plan or mitigation measure in lieu of meeting these requirements may be allowed if approved by other State and Federal agencies." Shouldn't the County be one of those agencies, too? You know, a lot of these projects don't get reviewed by federal, and if they're the state, it's only a portion. They don't review oftentimes the mitigation requirements. So the County is the one reviewing the mitigation requirements.

Elinor Nakis: So take out state and federal agencies?

Mr. Mahaffie: No, just put a "County" in there. You know, if you get an HPA they're not necessarily reviewing the mitigation requirements the same as the County would be. And the federal government surely wouldn't for most bulkheads.

Mr. Nickel: I can respond to that. They actually – for HPAs, especially for armoring under newer, expanded bulkheads, for instance, they will certainly comment on planting/plant mitigation.

Mr. Mahaffie: But they're not the *only* ones.

Mr. Nickel: They're not the only ones, right. This is intended to allow some flexibility that if an alternative plan that's different from what would be required by the County is actually approved by those agencies, that holds some leverage because of who's reviewing it, especially if it's the Corps of Engineers, for instance, and they have to go through review by NOAA fisheries in a marine environment, that holds some weight in terms of the scientists that are reviewing those applications. And so if you get an alternative plan approved, this allows some flexibility there.

Mr. Mahaffie: But usually in the process the state won't review it until the County's approved it. It's catch-22. So if you have an alternative plan it can't get approved because you apply for an HPA without approval from the County they will just send it back to you and say, Send this when it gets approved. So if the County can't approve it, it can't get done.

Mr. Nickel: Yeah.

Mr. Mahaffie: So, I mean, if the County was a reviewer in this section it would make a little more sense to me.

Mr. Nickel: It wouldn't – having the County review the plan doesn't – the purpose of this section allows some kind of concrete requirements by the County. If we stipulate that the County can approve an alternative plan that doesn't really apply any requirements on the County's side. I mean, the state and federal agencies might at least have some internal guidelines that they look at for their planting plans, for instance.

Mr. Mahaffie: So if the County gets an alternative plan that has much more in it than this – it requires, they can't approve it?

Mr. Hyatt: I think I see the disconnect here.

Ms. Ehlers: Mm-hmm.

Mr. Hyatt: I think what Matt is saying is the County should be able to approve alternative plans also.

Mr. Mahaffie: Yes.

Mr. Hyatt: Because, otherwise, they're tying their own hands. They're not allowing themselves to accept an alternative plan that might be superior. I would – not to change the subject – I would make the same comment about triple *i*, the next paragraph below – page 84 – where removal of existing armoring is considered a mitigation measure if suggested by state or federal agencies. I would like to see that more of a requirement. It is certainly strongly suggested whenever feasible by state and federal regulators. The first option – as you run through the mitigation sequencing, first you try to avoid and minimize. If there's still unavoidable impacts, then you try to mitigate by compensating in-kind. And that's not in this mitigation-forced bank stabilization at all. It's something I tried to emphasize when we discussed this at the Shoreline Committee – in-kind mitigation. I actually submitted a fairly detailed mitigation plan that had a lot of guidance on in-kind versus out-of-kind mitigation. It hasn't been adopted yet. I wish I'd brought it; I failed to. But I think under these general design standards, section (6) starting on page 82, a lot of this deals with mitigation, and there're several places where it really doesn't conform to a lot of the industry standards, particularly on – as we said – (e)(ii),

on the riparian planting, and no mention of in-kind mitigation, or certainly no emphasis for it. I think those are a couple of weaknesses that wouldn't be that hard to fix here.

Ms. Ehlers: Can you illustrate –

Mr. Hyatt: And I'm sorry, Matt, I did change the subject. I kind of didn't mean to.

Ms. Ehlers: Can you illustrate "in-kind"?

Mr. Hyatt: Like for like. Apples for apples. If you're going to put a new bulkhead in and there's a publicly-owned property next door with a failing bulkhead, there's your mitigation. You pull that out – with their permission, of course. I've got examples where I tried to get that done on Samish Island. Got turned down. Really wasn't a lot of – didn't have a good foundation; didn't have a good toe-hold to make that happen. I've got a little more experience. This comes up a lot more on Whidbey Island, where there's more beachfront property. But it does happen a fair amount where you've got a good, you know, mitigation project in your pocket but the owner says, No, I don't want to do that. And that really is kind of what it's going to take to get to no net loss: if you're putting something in, taking something out. We did get something like that up on the Sauk River recently, with a very hard fight.

Ms. Nakis: So can I ask a question? What you mean is, for example, there's property next to your property on the beach and they have a bulkhead that's fallen down and it's just an ugly piece of –

Mr. Hyatt: Junk.

Ms. Nakis: – junk that's going to stay there forever, and you offer – as part of mitigation for your property – you offer to remove that?

Mr. Hyatt: When it's available. Often it's not available.

Ms. Nakis: Right. Right.

Mr. Hyatt: You know, if I want to put a bulkhead in and I don't know of anybody around who's got one who's willing to have it taken out. But if the regulators or – this is something that I try to suggest when I come across something like this – if somebody comes up with one and it's feasible and there's a willing party willing to let theirs go, it would be helpful to have the language in the plan that would encourage that where it's feasible.

Ms. Nakis: Oh, absolutely. And a lot of times people think that they can't remove it because it's – there's nothing in the plan that allows it or doesn't mention it so they think it's an impossible thing to do anyway. They give up before they ask.

Mr. Hyatt: A lot of people just would rather not bother.

Ms. Nakis: Right. But some people would like to bother –

Mr. Hyatt: Sure.

Ms. Nakis: – but they think it's prohibited.

Chair Lohman: Anything more, Matt?

Mr. Mahaffie: No.

Mr. Hyatt: It would be an easy thing to permit.

Ms. Nakis: Right.

Mr. Hyatt: The removal. You could maybe even get grant money to do it, if it's not mitigation.

Ms. Nakis: Yeah. No, I think language needs to be in. Thank you.

Chair Lohman: Go ahead.

Mr. Mahaffie: I'm in total agreement with Tim. And just to re-emphasize, that if you just put "and/or Skagit County" as approval under alternative planning or mitigation measures. Betsy, what?

Ms. Stevenson: I kind of agree with Dan a little bit. It kind of depends on how you word it, because then if somebody doesn't want to meet the standard – Oh, well, hey, we've got this alternative – and it ends up being less or something, then we get put on the spot of trying to figure that out. I'm usually all for some flexibility so that we have the authority to approve something that's an alternative, perhaps. But we might _____ the whole thing.

Mr. Mahaffie: And you're going to have – I mean, it's not normally just the landowner just saying, I want to do something different. I mean, there's documentation behind it. I'm just worried that somebody on a lakefront wants to do something a little different, they're not going to be able to even apply for their HPA until the exemption is issued from Skagit County. So how do you get through this paperwork catch-22?

Mr. Hyatt: Could there be a phrase saying, "It must meet or exceed the standards elsewhere in this code"? Equal or better?

Mr. Mahaffie: When I – sometimes when there's creative solutions then you should be able to –

Chair Lohman: Aren't you after results?

Mr. Mahaffie: Yeah.

Chair Lohman: I mean, so how you get there sometimes doesn't really matter. I mean, that's not 100% true, but – so you're after results at the end of the day. So if somebody has a plan, I agree with Matt. It seems like we preclude them from thinking out of the box.

Mr. Hyatt: Yeah, I agree.

Ms. McGoffin: You can use Department of Ecology's favorite phrase: no net loss. If it's an alternate plan, the County approves it, they can prove no net loss: Let them have it.

Mr. Nickel: I'm agreeing with you and I see your point. I'm looking from the County's perspective, having seen alternative plans come in the door saying, This is better, when it's really not.

Mr. Mahaffie: I understand the rocks –

Mr. Nickel: The County have the authority to –

Mr. Mahaffie: – the County gets put between in trying to, you know, work with landowners and it kind of puts them in a bad spot. But I think it can be worded a little differently to give them some teeth –

Mr. Nickel: We can look and see what we can do when we get to that ____.

Mr. Mahaffie: – yet give them some options, too.

Ms. Ehlers: May I suggest a parallel? About thirty years ago the County was not authorized to accept alternate ways of dealing with septic on the shoreline if there was not a good septic field site. And a neighbor had to sue the County and the DOE to get the right to try something to create a legal septic system instead of having the septic go straight into the bay. There was the same impasse that the state wouldn't accept, the County wouldn't – so you might look to see what language was used for the septic issue because it's a parallel situation in terms of permit. And after a while, of course, everybody got around to finding ways in which you could deal with septic on the shore if it was a hard rock base.

Chair Lohman: Anymore on Shoreline Stabilization?

Mr. Nickel: Can I actually ask a clarifying question?

Chair Lohman: Go ahead – yeah.

Mr. Nickel: Relating to the mitigation sequencing that we were discussing – I want to make one point and then also maybe some agreement about what we need to do.

There is on page 83 at the top under (c) a mention of a reference to our section on the Environmental Protection. You'll see this referenced throughout the document. This refers to the kind of a general mitigation sequencing that we apply in these regulations in all these sections. Tim's point is a good one in that the mitigation sequencing doesn't point directly to, you know, this in-kind mitigation as much as it probably could, in this section in particular. And so I guess my question being if we're looking at making a change here, should we make that specifically in either (c) or maybe the one reference on page 84 under (iii)? Should we make that change to specifically call out the in-kind removal is a preferred method under mitigation sequencing?

Ms. Ehlers: Well, it sounds like it belongs on page 84, (iii). That's additional and seems to me to be including different.

Mr. Hyatt: I think what I submitted I intended to go in an overall, general section that Dan's referring to, 14.26.210. I don't think it's gotten there yet. I don't know if we should – we haven't gotten to that section with the Planning Commission, correct?

Chair Lohman: What's the title of that section?

Mr. Hyatt: Environmental Protection in Part V. It's referenced here at the top of page 83, (c).

Chair Lohman: Right. We haven't gotten there.

Mr. Hyatt: I don't think we've gotten there, but that would be the place if you want to have a broader discussion – I mean, in the regs – about how to do mitigation and how not to do mitigation. I think that would be the place to do it and that was my intent in submitting it.

Chair Lohman: But is it 210 or 510?

Ms. Ehlers: 510.

Chair Lohman: Is it 210? I don't think the reference is correct. Am I –

Mr. Hyatt: Isn't 510 critical areas?

Mr. Nickel: It's section 210, Environmental Protection.

Chair Lohman: Is it 210?

Mr. Nickel: It starts on page 20.

Chair Lohman: Oh.

Ms. Ehlers: 20?

Mr. Nickel: We haven't covered that section yet. We'll cover that at the next meeting.

Ms. Ehlers: Oh, there should be a comma after "Environmental Protection" before the end. Is that what you mean?

Mr. Nickel: Yeah, section 210 is titled "Environmental Protection."

Ms. Ehlers: So there should be a comma there, separating it from Part V. A good example of the use of one.

I have one more comment in terms of unstable slopes and stabilization. Our experience out west is that it's not a good idea to put a staircase down an unstable slope because you may find that it collapses and you have to rebuild it, and you have to rebuild it, and it can cause damage to a slope that's kind of iffy in its conditions in the first place. So I really agree with Matt's comment that for a high bluff you do need a geotechnical report.

Chair Lohman: Okay, is there anymore on this section?

(silence)

Chair Lohman: Okay, we're going to move on to Dredging and Dredge Material Disposal. It's section 14.26.370, page 55. Actually it's on 56; it's just the title on 55.

Mr. Nickel: All right, this section – I've got to go through the first few items on page 3 of the Discussion Guide. "Conditions may be imposed for the period and hours of operation, the type" of machinery being "used, and visual impacts." That's in regulation 3. Specifically new development – under regulation 5 – new development must avoid and minimize the need for new and maintenance dredging. The intent there is to really avoid future impacts where they're not necessary and to, again, site your developments in places where you don't need to have continued dredging in the future.

c) "Regulations addressing what dredging activities are allowed and where dredging is prohibited are listed in" regulations (6) and (8) "respectively."

And then lastly, d) is "Land disposal is preferred." I want to also point to the note there below that Betsy has added. The staff has not completely reviewed this section yet and there was a couple of points being made here. One of the concerns with this was that there were such limitations here that probably were more than necessary. Specifically, an example was given on page 56 of the document. It says, "Dredging may only be permitted for the following activities:" It goes on to list those activities and there was some concern that it might prohibit new development, new irrigation and drainage ditches, in particular. I do want to take another look at that. I think we may have – that

might be actually covered under Excavation. If it's not actually in water at the point of the new development, it might be covered under excavation for new drainage ditches and channels. So I guess under those allowed activities we'll take a look at those activities specifically with the County.

It also – lastly – it also doesn't seem to address dredging that may be necessary for sediment removal as needed for drainage or flood control and surface water management, so we do plan on taking a look at that to make sure that that is covered.

And then we're just trying to take a general look at the language written in this section to make sure it's not too vague, making sure we have specifics where we can.

So I just wanted to point out that we're not quite there yet with this section but it's here in front of you.

Chair Lohman: Any questions on this section? I have a question for you, Dan. On page 59 where you talk in number (13)(c), what would trigger you wanting to do that? Is there – because if you're just – you're talking about requirements for all dredging applications, you're talking about physical analysis of the dredging materials, chemical analysis and a biological analysis. Is there a threshold that that would be required?

Mr. Nickel: Well, there is a dredge volume threshold. Much of this language, in terms of the analysis of dredge materials comes from, again, from the Corps of Engineers and their dredge material management office. They have a lot of pretty detailed requirements that you need to look at. So, again, this is trying to be consistent with what some of those requirements are and make sure that we're looking at those appropriately. But there is actually a threshold at which something gets reviewed by that agency. And I don't have that volume off the top of my head.

Chair Lohman: Because, back to the ditch example, you might have a lot of material that would make you read that, and then here you are.

Mr. Nickel: I'm sorry. I missed the question.

Chair Lohman: You said that maybe it would be a quantity that would be the threshold.

Mr. Nickel: Mm-hmm.

Chair Lohman: So back to the ditch scenario when you said the plan was rather vague and whether it would preclude you from digging a new ditch.

Mr. Nickel: Right. I wanted to clarify what was allowed – what was – where we actually specifically on the list what, I think – the question that Betsy was posing was with maintenance of drainage channels, and there really wasn't a specific allowance for the development of new drainage channels and irrigation canals. I think – what I was trying to say was I think that would be considered excavation. If you're trying to create

something new where there's no water existing it's technically not dredging. It's excavation of ___, which would have a different threshold under the substantial development requirements.

Chair Lohman: And then on page 60, the plan for the disposal: You're talking about the disposal area and you're talking about a fifty-year period? Where did that fifty-year period come from? How did you arrive at that criteria?

Mr. Nickel: I'd have to look and see. That might actually be from some of the existing language, but I'm not sure. I'd have to check.

Ms. Ehlers: I have the answer. This section deals with where you're going to dispose of the dredged soils.

Chair Lohman: Right.

Ms. Ehlers: If you're going to dispose of the dredged soils on land, then that's one set of criteria. If you're going to do it into the water, you have to guarantee that there are no toxic materials in that dredged ___ material because it will be dumped into the south end of right at the – about a mile from the south end of Cypress Island in Rosario Strait. And it's part of a –

Chair Lohman: But it's land. It's land disposal. It's not water.

Ms. Ehlers: Where does it say that – where does it say none of this will be – "Soil disposal" – number (11) – "Soil disposal in open waters..."

Chair Lohman: It's number (13), Carol.

Ms. McGoffin: What number?

Chair Lohman: Number (13)(e) –

Ms. Ehlers: Well, whatever – maybe it's an organization but these are the requirements that are necessary for water disposal because I've gone to the hearings each time.

Chair Lohman: It says, "Item (e)" – little (e) on the bottom of 59 – "Detailed plans for dredge material disposal, including the specific land disposal site(s)..."

Ms. Ehlers: Well, then where do you have the criteria for the open water disposal? Because that's where the Swinomish –

Chair Lohman: (11).

Ms. Ehlers: The requirements under (11) aren't nearly as difficult as the requirements in (13)(c).

Chair Lohman: No, (13) is an addition.

Ms. Ehlers: Well, wherever it is, the disposal permit requires that you know exactly what chemicals are in that disposal area because if it's a certain level of it it cannot be dumped in the water; it must go on land. There's no sense having all the rest of this stuff and then dumping chemicals into Rosario Strait.

Mr. Nickel: I think this does apply under (13). It applies to all activities, land and water.

Ms. Ehlers: But please write it so that it's clear. And John Cooper is the current person who is responsible in the County for honoring that section of –

Chair Lohman: Carol, it's pretty clear. It says, "In addition to other application materials, the following information is required for all dredging applications."

Ms. Ehlers: Okay.

Chair Lohman: It's right at the top. It's pretty clear.

Ms. Ehlers: Okay. Just as long as it's –

Chair Lohman: Any other questions in this section? Okay, we're going to move on – Breakwaters, page 53. This is section 14.26.350.

Mr. Nickel: For this section, actually, and the next section, as well, I'll refer first to the Use Matrix, which is on page 15. I apologize – page 13. And you'll note here in the Use Matrix, breakwaters are prohibited in lakes and the Natural marine and river shorelines. They'd be permitted waterward in the high intensity environments but otherwise allowed as a conditional use.

Back to the regulations on page 53, they would be allowed for water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

Design regulations emphasize the consideration of impacts to substrate movements and other processes.

And then lastly, similar to the existing SMP, solid breakwaters are discouraged with preference given to floating breakwaters instead.

Ms. Ehlers: Where do we have one?

Mr. Nickels: Hmm?

Ms. Ehlers: Where do we have one?

Mr. Nickel: I'm not sure where there's a – I know in Anacortes there's a breakwater in the marina off of Anacortes at this point.

Ms. Ehlers: At Cap Sante?

Mr. Nickel: Correct.

Ms. Ehlers: Thank you.

Mr. Hyatt: It is not in our Shoreline Plan, but Anacortes has an exposed one outside of Cap Sante. They also have a new, submerged one just off of the small recreational dock.

Ms. Ehlers: It's always useful to know an example so that you can go look at it and say, "Aha." Thank you.

Chair Lohman: Anybody have any comments on this section?

(silence)

Chair Lohman: Okay, then we'll move on to Jetties and Groins. This will be page 67, 14.26.420.

Mr. Nickel: So this section again I'll refer you first to the Use Matrix. For Jetties and Groins, that's on page 14. And the Use Matrix here – again, jetties and groins would be prohibited in lakes and the Natural environments in marine and river shorelines. They'd be permitted waterward in the High Intensity environment but otherwise allowed as a conditional use permit. They would only be allowed for water-dependent uses or allowed only for water-dependent uses, public access, shoreline stabilization or other publicly benefitted beneficial purposes.

It'd be prohibited in critical fish and wildlife habitats, where the purposes are particularly sensitive and where they would result in a net adverse impact upon adjacent and nearby properties and shorelines.

Ms. Ehlers: "Adjacent" again.

Mr. Nickel: Again "adjacent." And here a detailed cumulative impacts analysis, or ___ analysis would be required for any new jetty or groin proposals.

Ms. Ehlers: Where do we have one? Isn't there one out of La Conner someplace to the south?

Ms. Nakis: The south end of the slough there?

Mr. Hyatt: The end of the north fork.

Ms. Nakis: The channel, I mean.

Ms. Ehlers: The end of the north fork and then it goes into La Conner and it's accused of accumulating sediment?

Mr. Hyatt: Mm-hmm. And Flounder Bay, the harbor over in Anacortes. I think that's a jetty that separates what used to be an old pocket estuary. What's the name of the marina?

Ms. Ehlers: Cap Sante?

Mr. Hyatt: No.

Ms. Nakis: Skyline?

Mr. Hyatt: Skyline Marina.

Ms. Ehlers: Skyline – okay, yeah.

Mr. Hyatt: A jetty separating that?

Ms. Ehlers: That wasn't a pocket estuary.

Mr. Hyatt: It wasn't?

Ms. Ehlers: No.

Mr. Hyatt: Before my time.

Ms. Ehlers: I can't think of the exact term for it but an estuary has a river going down to it –

Mr. Hyatt: Right.

Ms. Ehlers: – that's opposite of it and there isn't such a thing – not since the glacial era.

Mr. Hyatt: Right.

Ms. Ehlers: So it might be an ancient.

Chair Lohman: Any other comments on this section?

(silence)

Chair Lohman: Okay, we're going to move on then to In-stream Structural Use Regulations. This is 14.26.410, page 66.

Mr. Nickel: So this section for In-stream Structural Use, I just want to kind of go over the definition here real quick of where this applies or what's considered an in-stream structure. In-stream structures – they'll be waterward of the ordinary high water mark that either cause or have the potential to cause water impoundment or the diversion, obstruction or modification of water flow. These may include such things as hydroelectric generation, irrigation structures, structures for water supply, flood control, transportation, utility services, habitat enhancement projects, or other purposes. So a pretty wide variety of applications there.

Specifically this section does not regulate docks, floats, marinas, boat ramps. Those would be covered under Boating Facilities.

In-stream structures must be compatible with a full range of public interests such as public access, flood protection, preservation of historic and cultural resources, and protection of ecosystem-wide processes.

And lastly, in-stream structures must provide for adequate upstream and downstream migration of anadromous fish.

Ms. Ehlers: Am I correct in assuming this is a fresh water issue?

Mr. Nickel: That's correct.

Chair Lohman: Any comments from the Planning Commission?

(silence)

Chair Lohman: Okay, we'll just move on.

Mr. Hyatt: May I?

Chair Lohman: Go ahead, Tim. I'm sorry.

Mr. Hyatt: I've got a couple of points on this one. First, you may have a more updated version than I, but mine doesn't have a definition of what in-stream – was is and is not included in in-stream structures. I made a margin note that this does not include engineered logjams, but I just heard that it does or could include restoration structures. I think there's a fair amount of – this is a very large group of things that could be here. It could be as harmless as a restoration structure. It could be a hydroelectric dam. It could be a weir across the channel that blocks all fish migration. It's pretty wide open.

So my two comments are: first, it needs to be defined what is and is not included. I'm big on definitions. Second of all, if we don't really know what it is, it's really difficult to

design effective regulations. You run the risk of over-regulating out of not knowing what it is or under-regulating because you don't know what it is. At the point of digression, I had an economics professor a long time ago who taught Comparative Economic Systems. He was about as conservative a free market economist as you could get, and he said in economics you can – no, he had an analogy. He said he had an old car, a Hudson, that had terrible brakes. And he was talking about economics, but he said you can go a lot faster if you have good brakes, meaning if you know how to stop something then you can kind of let it rip a little bit and you can be a little more lenient. We don't have that here, but I think a conditional use permit would allow a review of anything that falls under this category to make sure that we don't meet some sort of disaster or catastrophe under this category. But if it is going to truly be harmless, then the permit is basically – it's the same application process as a substantial development permit.

Chair Lohman: So would you require that for an off-stream, cattle-watering device?

Mr. Hyatt: I wouldn't. That would be ag.

Chair Lohman: Right. But would that fall under the same thing? It's not defined.

Mr. Hyatt: I don't think – I wouldn't interpret it that way.

Chair Lohman: I wrote a note and I've asked that question: Does this include up-channel cattle watering? You know, one of those devices that you can – I don't know what they're called.

Mr. Hyatt: I would assume that would – well, doesn't matter what I –

Ms. Stevenson: A couple things that we just said: It is defined. The definition that's in your Discussion Guide is the definition. It's also in the definition section for In-Stream Structures, and that's word-for-word. And conditional uses in shorelines and substantial developments are not the same permit classes. So a substantial development is something that's approved.

Mr. Hyatt: It's the same application – or similar application – process, not the same permitting process.

Chair Lohman: "In-stream Structures," Tim, is on page 201 – the definition.

Mr. Hyatt: My mistake. I looked for it and did not find it. Oh, I go from "Industrial" to "Water" and stop there. I see that.

Chair Lohman: Because when I saw "water supply," it made me write my note, "Does this include cattle watering?" And then you made the suggestion, Tim, that using a conditional use permit – and I'm thinking, Oh, my gosh, that thing's going to cost way more than it probably needs to.

Mr. Hyatt: Is there a price difference between different fee costs for the CUP versus the substantial development permit?

Ms. Stevenson: According to our existing code, at least we're supposed to be charging the same –

Ms. Ehlers: Excuse me?

Ms. Stevenson: According to our existing code, what we charge for those permits should be the same. But it's a whole different process. To say that they're the same or similar is kind of misleading, I think.

Mr. Hyatt: I didn't mean to mislead. I meant to say that the application, it's basically a JARPA and you're going to – depending on the complexity of the project, you're going to need probably site assessments and similar materials. But I think the criteria – and, Betsy, you can help me out – the criteria for approval allow a little more flexibility to make sure that other instream resources are not damaged.

Chair Lohman: Anymore on this section?

Ms. Ehlers: Yeah, I have a question. As I've reviewed my old documents I have a whole set of regulations for small hydroelectric projects which were included in the shoreline regulations in the '90s, I think it was, and then I have an article which says that they were not permitted, so I was wondering what the status of that hard work we did. The small electric projects don't seem to have any technical relationship to the big ones like Baker Lake, Baker and Ross Dam. They were for little ones on streams which I now know are fish streams, some of them. So what's the status of that, Betsy? I haven't found it in here but there's an awful lot in here and it's hard finding. I'd love an index.

Mr. Nickel: Are you referring to the hydropower? We did discuss hydropower facilities under Utilities at the last meeting. Now that's under the utility as a use. Here we're talking any structures that might be associated with that use would be considered an in-water structure. It would be –

Ms. Ehlers: Well, a dam is an in-water structure.

Mr. Nickel: Right. There's a difference between the use of that facility and the structure itself, which is the development.

Chair Lohman: Okay, we're going to move on. Shoreline Habitat and Natural Systems Enhancement Project Regulations. This is 14.26.460, page 78.

Mr. Nickel: On page 5 of your Discussion Guide – examples here of these types of projects, they include floodplain restoration projects, fish passage barrier removals, projects that generally increase habitat complexity. One of the concerns voiced by the

Advisory Committee was that stabilizing – stabilization of eroding banks, while they may be considered under this section, those projects to be considered under this section need to be for the sole intent of restoration. They might have a stabilization component to them but in order to comply here under this section it would need to be for the intent of restoration, not for the purpose of stabilization. And that was one of the items we talked quite a bit about at the Advisory Committee level.

Chair Lohman: Can you maybe write an intent statement for this section to clarify that? If you're going to be that specific – because you're going to catch more than just what you caught at your advisory meeting. I'm questioning that.

Mr. Nickel: Yeah, we have a statement in here, I believe on applicability, which I think is the same statement that you see under the second sentence there, about midway down the paragraph under "Applicability." So we do have that statement in there.

Chair Lohman: Okay, I see it.

Mr. Nickel: I think we can bring it maybe to the forefront.

Ms. Ehlers: Well, that's clear. Okay.

Mr. Nickel: Yeah.

Ms. Ehlers: Thank you for including an RCW. It's much easier to know what connection to make if you specify. And then if it changes, you see, it doesn't take a whole research project to make a correction.

Mr. Nickel: A few items to note here: These would be allowed in all shoreline environments. It must be in accordance with an approved shoreline restoration plan. Now that's – I want to make clarity here – that's not the restoration plan that will be developed for this Shoreline Master Program. It's a specific project restoration plan. It includes long-term maintenance and monitoring – would be required, minimum three years. We did have some discussion at the project committee about that requirement specifically because a lot of the projects that fall under this type of work are funded by grants that may not have funding for maintenance in the long term. So this was some concern about actually having this requirement in this section where the funding may not be there to actually implement maintenance and monitoring. I think it's important that you have that language in there because I think it's important to make sure that these – whether it's planting, for instance – that they're successful. But there is some concern, though, I guess, from the Advisory Committee.

Ms. Ehlers: A question in that regard. If it said in this law that you have to have maintenance and monitoring, that would enable you to press the grant organization for monies to provide for that maintenance and monitoring. If you left it out then you wouldn't have that lever. Now I don't know whether these grantee organizations

understand the concept of maintenance and monitoring, and that's very sad if they don't. But would it help?

Mr. Hyatt: No. The biggest funder of instream restoration projects around here is the state Salmon Recovery Funding Board, and although every practitioner in the state would prefer – some actually try to insist – on doing their own monitoring – everybody's in favor of it – the SRF Board will not fund it. So they will fund you to plan it and build it but not for monitoring. So that aspect of it either has to come from a separate grant, which is extremely rare, or it doesn't happen. So there's really no funding for monitoring and maintenance unless you've got some sort of institutional support separate. And so this is kind of an unfunded mandate, and if it's a requirement it might actually result in some projects not getting built.

Ms. Ehlers: Isn't that a good example of blindness?

Mr. Hyatt: Talk to Dr. Ruckelshaus.

Ms. Ehlers: Is he one of those who are blind? Well, if that be the case, then we take it out because you don't write laws that you can't honor.

Mr. Hyatt: It's not required for the other folks who are doing – in *some* of the sections – for the other folks who are doing riparian planting.

Ms. Ehlers: Well, except that if it's on some of these sections and you have to make sure that the vegetation survives one year, three years, five years, it *is* required.

Mr. Hyatt: It's often required for mitigation, but it's often not required for restoration.

Ms. Ehlers: And there's a technical difference?

Mr. Hyatt: Mm-hmm. Mitigation you're required to do as a permit condition. Restoration is voluntary.

Ms. Ehlers: I thought mitigation sometimes restored.

Ms. McGoffin: So would you be able to leave out number (5)?

Ms. Stevenson: I have a bit of a problem with that because some of the restoration work requires a lot of instream kind of things and a lot of those things don't really survive and can become a problem if somebody's not paying attention. They put a bunch of _____ engineered logjams in some place and nobody's responsible for it once it's in there. And we're, Ah, I'm sorry if the grants are written in such a way that it doesn't have any kind of responsibility or requirements to kind of take a look at it along the way and at least be watching it for the first couple years. I'm not comfortable just taking it out without some additional thought and discussion, I guess.

Chair Lohman: Doesn't it kind of dovetail with the item (4) above it where it can't impact other natural resources that may be adjacent, such as agriculture, drainage? Is that what you were trying to do, is to make sure that it didn't?

Mr. Nickel: Yeah, I think the intent there is to protect the long-term viability of such a project and its neighboring areas. I mean, I agree that we could look at some flexibility here in this language, but I don't know if striking it out is necessarily the answer here. Because Betsy's right: From the County's perspective, you want to make sure that those – you know, whatever's installed, whatever's being built, is successful.

Chair Lohman: Well, and it can't harm its neighbors.

Mr. Hyatt: But monitored maintenance – okay, never mind.

Ms. Ehlers: Do you want to change the verb "must" to "should"? We want those logjams just sitting there. I'm troubled by the assumption we're supposed to require something to be done but we aren't supposed to make it work. That seems absurd.

Chair Lohman: Did you have something?

Mr. Mahaffie: Sort of.

Chair Lohman: Go ahead.

Mr. Mahaffie: As far as – I get really tired of people saying it's grant money and it's just like it magically appears. Most of this grant money is my money. And I'm tired of driving by – I drive by one every day that got done, planted, was very expensive, and it got walked away from six months later and has completely failed. Thousands and thousands of dollars. If it can't get written into the grant and if it doesn't get done, so be it. I mean, it needs to be monitored and maintained. I'd personally like to see it longer than three years, but I understand the flip side, too.

Chair Lohman: Anything else on this?

(silence)

Chair Lohman: Okay, we're going to move on to "General Regulations for Critical Areas in the Shoreline Jurisdiction." This starts on page 99. It's section 14.26.500.

Ms. Ehlers: Annie, may I have a general request to begin with? Please make a table of contents for this thing. There's – there's – this goes from page 99 to 181. There's no way that you can tell – and I'm thinking of the Internet version – there's no way you can tell which one of the code sections you're in until you bump into the next one ten or twelve pages later. A table of contents – I've made one for myself, but it would help, I think, in your presentation to the Department of Ecology and it might make them a little

– unless you *want* to cause them a lot of time – might make it a little easier for them. Just a request.

Mr. Nickel: All right, the critical area section. I guess briefly, for kind of a – where this discussion met with the Shoreline Advisory Committee and the intent here was to take the critical areas ordinance, which was approved several years ago, and weave that into the Shoreline Master Program. We tried to take as much of that language completely as we could. We had to make some changes, but you'll see that this is the one section that actually has track changes in it – in the language. You can see where changes were made to the language specifically from the critical areas ordinance.

Some of those are based on differences between the Growth Management Act and the Shoreline Management Act. There're certain requirements, there're certain allowances, exceptions we cannot use that language under the Shoreline Management Act requirements, specifically, you know, one of them is the reasonable use exception. It's one of the most clear. The reasonable use exception, that's allowed under the critical areas ordinance. Under the SMP we needed – that will be a shoreline variance. So it's a different type of review process. But those are the types of changes that we tried to make.

The critical areas ordinance, as it stands now, already has addressed a lot of the shoreline buffers and specifically for the marine environment, for the rivers and streams we're talking about under shoreline jurisdiction. So we decided we'll just roll it into the document we have here. We didn't change any of the buffers. We did look at, specifically in the marine environment, you'll notice there's a difference between rivers and streams get a – they have a buffer system that's based on the DNR water type – Type S, Type F – system. In the marine environment, in the lake environment, is the – the environment designations are used to categorize the various buffers and so you see those two distinctions there. I think at the Shoreline Advisory Committee level we spent quite a bit of time actually talking about kind of where this/how this document should be integrated into the Shoreline Master Program – whether it should be an appendix, whether it should be embedded, like you see here. I don't think the County – we haven't really resolved how that will finally play out. And that's about all I have here.

Ms. Ehlers: Annie?

Chair Lohman: Go ahead, Carol.

Ms. Ehlers: Since reasonable use has been brought up, in April of this year we were given a document from the DOE, publication 09-06-029. On page six it said, "And do not deprive the landowner all reasonable use of his property." So somewhere you have to have reasonable use.

Mr. Nickel: Correct. And this specifically, we have a – if I could find it with the notation here. There is a section in here that actually addresses the reasonable use and the fact that we're using a variance process instead of the reasonable use exception process.

Ms. McGoffin: Is that on 111?

Mr. Nickel: I'm sorry?

Ms. McGoffin: I think it's on 111.

Mr. Nickel: 111?

Mr. Hyatt: Not 122?

Ms. McGoffin: 122? It's mentioned more than once.

Mr. Hyatt: 122 is variances.

Ms. Ehlers: Well, there's a reference to reasonable use on page 111, but it's struck out. So if it's struck out on page 111 and it's struck out on page 125, and variance is struck out on page 124, I don't see where you find it. But it's a long document and the print isn't very large, so I'm trying to give you some leeway as to why it can't be found. But there's got to be somewhere. 122?

Chair Lohman: I think it's (11)(a) on 122, Carol – possibly.

Ms. Ehlers: Well, I'll see if I can – in the course of time – I'll see if I can actually make it work that way. Thank you, Tim.

Mr. Hyatt: I have a question – page 123(c) – the new language says, "Shoreline Administrator or Hearing Examiner, consistent with the review criteria in" Skagit County Code "14.26.770..." Is that a typo? I couldn't find anything like that. I think the table of contents says it's Applications and that doesn't compute, but I couldn't really find the section.

Mr. Nickel: Well, it should be part of our administrative criteria section that hasn't been built yet. It's in process. The reference there, 770, you're right. I believe you're correct; it's probably *not* the permit application reference.

Mr. Hyatt: And just below that on the next line, I found this one: "...in subsections (3)(a) through (h)..." That's actually now (i) through (viii) that are immediately below in the next paragraphs down.

Mr. Nickel: Okay. Thank you.

Ms. Ehlers: Repeat that, would you please?

Mr. Hyatt: In section (c) on page 123 –

Ms. Ehlers: I found that.

Mr. Hyatt: Okay. "...review of the requirements listed in Subsections (3)(a) through (h)..." there is no (3)(a) through (h). What they're now referring to are the subparagraphs immediately following that are labeled (i) through (viii) on the next page.

Ms. Ehlers: Yeah.

Chair Lohman: But there's a lot of that they're going to have to –

Mr. Hyatt: Yeah.

Ms. Ehlers: Now I have a question to raise before we get any further into this and it's an essentially a please-clarify-which-one-of-these-you-really-mean. On page 122, number (10) talks about hazard tree removal. On page 142, 520(4)(a)(vi), Existing vegetation... Have you found it? (vi) on 122?

Mr. Hyatt: Mm-hmm.

Ms. Ehlers: It makes an awful lot more sense than what's in number (10) on page 122. There's another version of what you do with the trees, too, but when I've said before you need one version of what you're supposed to do because, otherwise, somebody says, Oh, but you haven't done version such-and-such. And then someone'll say, Oh, you have to do something else, and eventually – very quickly – you'll say the hell with it, and that isn't what you're supposed to do.

It's rather like those damned 6-foot trees I was supposed to plant if one blew down five years ago. And we already have talked about earlier in this document where a 60-foot tree was supposed to be replaced, and it was difficult to know – literally it would be with a 60-foot tree, but you know that isn't going to grow. You know you can't physically get it there. And et cetera. It's a situation where I think you need to look through all of it and find something that we're supposed to do that makes sense, that's practical, and then tell us what it is.

Ms. Stevenson: Is it in the existing code as it is now?

Ms. Ehlers: I think it is.

Ms. Stevenson: _____ section that talks about hazard tree removal?

Ms. Ehlers: Mm-hmm.

Ms. Stevenson: And the section that you're referring to is actually in the geohazard section where it's talking about specifically geohazard areas and maintenance and the vegetation on those unstable soils?

Ms. Ehlers: Mm-hmm.

Ms. Stevenson: So it's too very different things.

Ms. Ehlers: But a hazard tree appears also in an unstable slope or even a stable slope. It can make a stable slope unstable. That's my problem.

Ms. Stevenson: You still need to have some sort of a process for somebody to take down a hazard tree.

Ms. Ehlers: I don't disagree at all. I'm just saying find it so that you can see what you're supposed to do.

Chair Lohman: Anybody else have something? Go ahead, Dan.

Mr. Nickel: I'm sorry. I was looking back for the reasonable use _____. Page 148. And this may be something that I think you want to bring forward. This is page 148, letter (e). This is where we explain reasonable use.

Ms. Ehlers: 148? Not on my copy.

Mr. Nickel: Okay, so let me refer to –

Mr. Hyatt: 125? Are you looking for 125?

Mr. Nickel: I'm looking for 151.

Ms. Ehlers: 151.

Mr. Nickel: Letter (e). I apologize. I have a different version.

Ms. Ehlers: Well, that makes it hard for you.

Mr. Nickel: So here is – this is where we describe "reasonable use" and the difference between what we're trying to use now is a shoreline variance term. And it tries to set the record straight there. We might want to look at bringing that statement forward under the General Discussion so it's really clear right up front.

Ms. Ehlers: Mm-hmm. Mm-hmm.

Chair Lohman: As a separate bulleted –

Ms. Ehlers: As itself in the General Regulations?

Mr. Nickel: In the Critical Areas section. So Critical Areas starts on page 99 and goes with the general items. We'll move that statement there for reasonable use to that section.

Ms. Ehlers: Okay.

Ms. Stevenson: Can I ask a question before you move on?

Chair Lohman: Sure.

Ms. Stevenson: Since it sounds like you don't have too many comments here. I'm trying to get other people's perspective on how they feel about just dumping the whole critical areas ordinance in here or somehow having it as an appendix. It seems like we're just making the code another 100 pages longer when it's just two sections or so in front of it. It seems crazy. We put it in here now for you guys. We put it in here for the Advisory Committee so that they could see what it looks like and get their hands around it. But if we're going to have the code book and this is going to become part of that then we're going to have 200 pages that say pretty much the exact same thing.

I don't know. How do you guys feel about it? A lot of people like it so that they can find whatever they want in whatever section they're wanting. We had that discussion but I'd kind of like to poll you guys and just see if you have any thoughts about that. I thought I'd put that out there in a way that makes you know what I'm kind of thinking, but I'm torn.

Chair Lohman: Matt?

Mr. Mahaffie: That's been my thought since I opened this: Dump it.

Chair Lohman: Well, we need it, though, for review.

Ms. Ehlers: What would you do?

Mr. Mahaffie: I don't like reading things twice in two different places.

Ms. McGoffin: Agree.

Chair Lohman: But you are also fairly versed in the code.

Mr. Mahaffie: I think it makes it unwieldy and confusing.

Mr. Hyatt: And for those that aren't so versed in the code, it actually makes it simpler because there's not as much redundancy.

Ms. Ehlers: Yes, that's why I keep asking: Have something in *one place* so that you know – and you can cross-reference it. If you find something necessary to put in one

section, put the original in in that one section. You can make a cross-reference later saying, See 14.26 such-and-such.

Chair Lohman: Well, I think before you ask that question, you have to – we have to know, Is the County regulating the entire critical area buffers under the shoreline or are you only regulating that part that falls within the shoreline jurisdiction? Because you have the option of doing either/or or some other scheme. So what is it that you're trying to do?

Ms. Ehlers: That's a good question.

Mr. Nickel: Under what we're proposing, we're only regulating under shoreline jurisdiction. So, for example, associated wetlands are automatically included in shoreline jurisdiction. Okay, so if you have a large wetland, for instance, that goes 500 feet away from the shoreline, the wetland itself would be considered a shoreline of the state still and would be regulated under the Shoreline Master Program; however, its buffer would not necessarily be regulated under the SMP. The buffer would be regulated under the CAO. And the reason why that is actually a – I think – is actually a good thing for the County or other jurisdictions is because if you included the buffer, as well, that's outside of that 200-foot jurisdiction – so if you included the buffer you're – those are – most of your development projects are going to deal with buffer impacts, not necessarily the wetland itself, or the critical area itself. So most of the applications you might have are going to be dealt with under your CAO. If you bring the buffers wholly into shoreline jurisdiction, all of a sudden all those development projects become regulated under your Shoreline Master Program, which you might want to avoid.

Mr. Mahaffie: But you're saying you're keeping it on a local level instead of having to go to the state.

Mr. Nickel: Potentially yeah, you're right – keeping most things at a local level under the CAO and not by chance having something go to the state for review if it's that type of project. There will be – I mean, it's almost easier to draw this on a board, but there are circumstances where you have – let's say you have a very small wetland and it's entirely within the 200-foot jurisdictional area. That wetland still has a buffer to it. Let's say it's a 50-foot buffer. If that buffer is within that 200 feet that's when the critical areas that are in your Shoreline Master Program will apply. And so you may have situations where you have a development – a residential development, for instance – that impacts a wetland buffer and you do have to use the Shoreline Master Program regulations. And that's why we have included the critical area regulations in the document as you see it now.

So there's – it's confusing and I get confused about it all the time too.

Chair Lohman: So are you including then – by reference – then to the hundred-year floodplain? Or are you *not* including the hundred-year floodplain?

Mr. Nickel: The hundred-year floodplain is not part of jurisdiction. Part of it will be part of jurisdiction because we have to include the floodway, and where there's a floodplain present you have to extend it 200 feet, or up to 200 feet. But it's not the entire floodway.

Ms. Nakis: Floodplain.

Chair Lohman: Plain.

Mr. Nickel: Sorry. It's not the entire floodplain.

Ms. Nakis: It is the entire –

Ms. Ehlers: So the shoreline jurisdiction – well, this seems like the time to bring up something I was wondering. It's on page – what triggered it was on 149. What's the difference between a buffer and a setback? Where do I find it clearly described in here? Most of the time I'm reading "buffer."

Mr. Nickel: And the buffer, the use of the term "buffer" is what's used in the critical areas regulations and that's what we're – that's what we'll be – this is currently being regulated as a buffer in shorelines. Because the critical areas right now already addresses shoreline – you know, marine environments, lake environments and riverine environments. So we're using the term "buffer" to be consistent with the critical areas ordinance.

Ms. Ehlers: When people talk about – when we did the critical areas ordinance, we didn't talk much about setback because that hadn't been highlighted in public discussion and we said we would talk about it when we got here for the shoreline. But when the critical areas ordinance was finally approved by the Commissioners, it was stated in the ordinance that the Swinomish had required that the setbacks be increased or else there would be a lawsuit. And that is where I am lost in the issue of setback versus buffer. If you talk here on – let's use 149 as an illustration. According to this, if you have a Natural shoreline you have a 200-foot buffer. If you have Rural Conservancy it's 100 feet. If you have Rural Residential it's 100 feet. Let's take that 100 feet down on a beach. If you have this beach, does that mean – because this is one of the issues the public was asking – does that mean you have to plant the 100 feet between the ordinary high water mark with trees between that and your house? Because that's what a buffer would be. A setback means that you leave it as it is and you don't build any closer to the ordinary high water mark than you currently have built. Now you might not want to answer that until next time we meet, but it is the crux of a whole string of issues.

Ms. Stevenson: And buffer widths, I don't think, when we did this – you can correct me if you think I'm wrong – but when we put into place our buffer widths and part of the discussion was that they would not necessarily be fully vegetated buffers. We did not make that assumption at the beginning.

Ms. Ehlers: It's not clear enough yet. And it's my understanding that a natural buffer is something you retain; it's not something you must create. But that's not quite clear. A lot of what you're talking about here naturally must deal with new development – new houses, new subdivisions and things like that. The fear of those who have current houses in current subdivisions is that the new criteria will be made retroactive. And that isn't going to work.

Mr. Nickel: Yeah, and I think that's something that has to be clear up front.

Ms. Ehlers: And next time is a good time to do it because that's non-conforming and no net loss.

Mr. Nickel: Right, but I think it's a good message to understand that this applies to new developments and new uses. It does not apply to existing conditions. Existing conditions can remain. Existing uses and existing developments can remain as they are. They're grandfathered.

Ms. Ehlers: But what do we do with the shoreline? The shoreline exists whether the development is new or not.

Chair Lohman: Carol, look over to page 157. This is where they tell you what your performance standards are for the buffer on marine and lakeshore ____.

Ms. Ehlers: Yeah, that doesn't make any sense. That's another set of so many trees per hundred feet and – where did these performance standards come? You tell us they're not new. I appreciate that.

Chair Lohman: Well, they are new. They're red.

Ms. Ehlers: Yes – excuse me – that they are new.

Mr. Nickel: I think the items you're seeing in red are very similar to the performance standards you see for the riparian section immediately previous to that. Because the buffers were made – you know, there's a difference between a riparian stream and river buffers versus marine and lake buffers. We've done the same thing here with the riparian standards. We only had riparian standards listed for the streams and rivers. Actually all it said in the __, "the stream and river riparian buffer standards." We recreated that to also apply to the other environments.

Ms. Ehlers: Well, 156 clearly applies to stream and riparian. 157 seems to apply to saltwater and lake, because marine environment to me is the saltwater. So this says that we're supposed to maintain 95% of total expected large woody debris recruitment to the marine or lake shore from a mature stand. You're supposed to cut down a tree so you have large woody debris coming into the ocean?

Now if you have an eroding shoreline you're going to have plenty of large woody debris coming into it, at which point you're going to want to stabilize the thing.

Ms. McGoffin: Dan?

Ms. Ehlers: I'm not trying to be difficult. I'm trying to figure out how to follow an ordinance in the conditions I see among myself and my neighbors, and to have it so that it's –

Chair Lohman: Well, Carol, I think part of it, you need to be in the right environmental designation – because you're in the Natural designation?

Ms. Ehlers: No, I'm not. I'm not public owners.

Chair Lohman: No, you see you need to drop down to Shoreline Residential or Rural Conservancy. Right?

Ms. Ehlers: We need to be Rural Conservancy because the – I mean we need to be Rural Residential –

Chair Lohman: Matt has an idea.

Mr. Mahaffie: This is specifically for timber harvest – this table. It's not for development standards. Timber harvest only.

Ms. Ehlers: Where does it say that? I'm not trying to be difficult.

Mr. Mahaffie: It should have a heading on it but that's what – if you're reading it, that's where it is. That's where it's from.

Ms. Ehlers: Okay.

Ms. Stevenson: _____. It's very confusing. They asked us to put it in and leave it there. They don't use it very often but they wanted it as an option _____. I'm not sure it does necessarily, the use of it for marine and lakeshore. It may not work.

Chair Lohman: But it gets people get calling us when they see that.

Ms. Ehlers: Yeah, you have to label these things right.

Chair Lohman: Because I've gotten a few phone calls from people about this SMP.

Mr. Axthelm: So what I understand is you've got critical areas – the whole critical areas ordinance is here, but it's also, you know, sections of the code. Is that still – that's what you're asking to do, or you're not wanting that?

Mr. Nickel: So what we've done is we've taken the critical areas ordinance, which is a separate ordinance –

Mr. Axthelm: Yeah.

Mr. Nickel: We've taken it and placed it in here starting on page 99.

Mr. Axthelm: Yes.

Mr. Nickel: I guess the question really was – that was being posed was, Do you want to see it – as it is here, it's embedded in the document. We could take that section out and include it as an appendix so it's not necessarily part of the SMP as an appendix to the SMP. I think, you know, I don't have a strong opinion whether it's embedded or whether it's an appendix. I think that kind of comes to a decision based on your input and staff input as far as what works. But I think it's – from my perspective I think it's important that you have something attached to your SMP. Other jurisdictions have actually referenced the critical areas ordinance. But then you have to come and include all the – you have to make another specific section for critical areas in your SMP that includes all the changes – you know, reasonable use doesn't apply and these things don't apply. To me it makes more sense to either have it embedded or have it as an appendix so it's all right there for you to use.

Mr. Axthelm: And it's exactly the same as what the critical areas ordinance is otherwise the code.

Mr. Nickel: If we have it as an appendix, it would be as you see it here. It would just be an appendix. It wouldn't a part – it wouldn't be embedded in the document.

Mr. Axthelm: No, no, I understand that. But as an appendix to it, but then you also have critical areas ordinance somewhere else in the code.

Mr. Nickel: Not in the SMP.

Mr. Axthelm: No, I'm talking –

Mr. Nickel: In the code, yes.

Mr. Axthelm: Okay.

Mr. Nickel: But they would be two separate bodies of regulation and you wouldn't – if you have something in shoreline jurisdiction you use your SMP. If you have something outside of shoreline jurisdiction you use your CAO. There wouldn't be any more overlap.

Mr. Axthelm: Okay. And it's confusing because it says critical areas. You have critical areas ordinance here and you have critical areas ordinance there.

Mr. Nickel: Right. It would not be – it wouldn't be a critical areas ordinance in your SMP; it would just be critical area regulations. It would be what we typically call “shoreline critical area regulations,” to be clear that those are under shoreline jurisdiction.

Ms. Ehlers: So if you have a situation where there is a cliff that's within 200 feet of the water – horizontal feet of the ordinary high water mark – it comes under the shoreline critical areas ordinance. And if that cliff is 500 feet from the shoreline, it doesn't come under the shoreline ordinance; it comes under the ordinary ordinance.

Mr. Axthelm: So is it going to be either/or in that situation?

Mr. Nickel: Right.

Mr. Axthelm: Okay. That's not so bad if it's either/or, though when it becomes both then you have a conflict.

Mr. Nickel: Right. Right now we have overlap and we're trying to separate that overlap.

Ms. Ehlers: Well, I'll give you an example of where there is a difficulty, and that's in the aquifer recharge area. That starts on page 165. There's two kinds of aquifer recharge area. I have found that you have to – they don't give us the map. You have to go buy it in order to see what it really means. Category I is what the DOE decided is essentially the low flow stream area, and certain protected lakes: Lake Erie and Lake Campbell, for example, on Fidalgo. Category II is everything else. Lake Cavanaugh is Category II and there's a problem. I raised it before and I'll raise it until I die if I have to. On page 196 – 166 and 167, in Category I – and it starts over on 167 – cesspools, radioactive wastes and industrial injection and all kinds of horrors are forbidden in Category I, and there's no mention of Category II which means the County must accept an application. There's all sorts of things that you do in order to stop it once you've accepted the application and you've created the public uproar, but apparently in Category II these things must be permissible. So all of Fidalgo Island is Category II. How it makes any sense to permit any of these things in Fidalgo Island is beyond me because it's completely surrounded by saltwater that's to be protected. Why it is considered okay to have it up there at Lake Cavanaugh is beyond me. And I have an easy change to make. On the bottom of 166, (2), where it says “Aquifer recharge areas prohibited activities. The following activities are prohibited in Category I” and Category II. It's the only change you'd have to make to protect the whole county from these horrors. Supposedly the Department of Ecology mandated that every county have a place where you can put radioactive materials and hazardous waste landfill, but no one could ever give me the piece of paper that said it, and I cannot believe that Ecology is that completely inconsistent.

So if you added “Category II” to that line you would really protect the aquifer on the inland or on the edge of the land, and in the sea. And that is my real hope – that you might make that change.

Ms. Nakis: Excellent.

Ms. Ehlers: There are other areas in the county that are vulnerable, but you have to see the aquifer map in order to understand what the dimensions of the problem are. I have given you here only the shoreline aspects of it.

Chair Lohman: Dan, can you flip back to page 99, the very beginning? I've had several people call with concerns about this jurisdictional substitution statement, so can you go over that?

Ms. Ehlers: Where's that, Annie?

Chair Lohman: Page 99.

Ms. Ehlers: Yeah, but where?

Ms. Nakis: (b)

Chair Lohman: Right at the top. Go ahead, Betsy.

Ms. Stevenson: Yeah, this is in the existing critical areas ordinance, and it was a way – and, Matt, if you have any support you can lend it at the end if it does work for you. What it allows us to do, a lot of times when people have to go through our critical areas processes they're also having to get state and federal permits as well. And there was a time when what we required in terms of wetland rating requirements was different than maybe what the state or the federal requirements were. So by allowing people to use – or us to step in and do jurisdictional substitution it allowed us to accept whatever rating and whatever work that they did for their state or federal requirements and not having to go through a separate process because our codes were different in terms of what we required. It also allows us to accept the permitting conditions from either a state or a federal agency and their permit without them having to get a separate permit from us.

So I know I've gotten some comment letters that say, Wait a minute – what are you doing? You can't do that kind of thing. And it's like, well, actually it's to keep from imposing another layer of regulation on something that's already covered by a state or federal agency. So as one of our Advisory Committee members so eloquently said, “We don't want to regulate regulations.” So that's what that does: It gives us the opportunity to do that and accept somebody else's conditions and use them as our own.

Mr. Hyatt: I've read the letters myself and the way I read the letters is that they're reading this as saying that we would be able to take those state and federal regulations and enforce them. That's not at all what we're proposing to do. We're just – if they

have a state permit we would accept that in lieu of our own permit and make it much easier.

Chair Lohman: Then why in an earlier section you said you couldn't do that – when we were talking about HPAs.

Mr. Mahaffie: No, that was backwards.

Ms. Nakis: A lot of mitigation?

Chair Lohman: A mitigation standard.

Mr. Mahaffie: That was backwards from what they're saying. And if you're applying first to the County, that's my problem. But if you apply to the Corps for a 404 or something, the County should be able to take those permit conditions. My comment was if you're applying for an HPA normally you have to have a SEPA determination or exemption before they'll even process it. If you had an alternative plan, the County couldn't approve it – *first*, was my issue. So this is exactly the opposite, if that makes any sense. That the County can come back and accept other jurisdictions' determinations. My problem was that the County couldn't make their determination first.

Chair Lohman: Oh, okay. The light/bell timing went on. And this is currently in code, other than you added –

Ms. Stevenson: We actually use it quite regularly and it saves people a lot of time and grief and headaches. Because if they can get through some of the other processes, by the time they get to us it's like, Oh, wait a minute. We've kind of been through all that.

Chair Lohman: Isn't that what we did with our DFI and TFI, the Tidegate Fish Initiative and the Drainage Fish Initiative, in a way?

Ms. Stevenson: No.

Chair Lohman: Because they have all of those players in the list.

Ms. Stevenson: This would be for a specific project, though.

Ms. McGoffin: I think where it gets sticky is where one jurisdiction may say "yes" and another says "no" – you know, if you have conflicting people out there, which is what's happening currently out in Carpenter/Fisher basin. You have conflicting jurisdictions on what is allowed out there. So I don't know how you're going to resolve that. One jurisdiction, a permit said they could do it and then somebody else objected that they couldn't do it.

Ms. Stevenson: Okay, this is just for critical areas requirements.

Ms. McGoffin: Okay.

Ms. Stevenson: So if you're talking Carpenter/Fisher, I'm assuming you're talking water.

Ms. McGoffin: Yeah, I've just seen that as an example where I see jurisdictions, you know, going like this.

Ms. Stevenson: Okay. For us, it gives us the option. We don't have to. We can require it but it's kind of our choice to do that.

Ms. McGoffin: Okay, perfect.

Ms. Stevenson: People can look at the other things and they can bring their permits to us and show us the conditions or whatever that they're going to be required to do. We could say it looks like they've covered all the issues that we would want to address with our critical areas review.

Ms. McGoffin: Okay.

Ms. Stevenson: So we'd require critical areas review so they would have to turn in an application. We can take those conditions or we can just approve it based on these other permits that they already have. Does that make sense?

Ms. McGoffin: Mm-hmm.

Ms. Ehlers: I thought I saw a list in here – yes, I have; here it is starting on page 175 – 174 actually – a whole flow-sensitive basin issue. It's in the County list. And I've heard stories that if you have a piece of property that because of the way land is divided in rectangular or square or whatever it is, and part of your property is on – and it's over a ridge – and part of the property's on one side of the ridge and part of the property's on another side of the ridge, and one side is closed and the other side still opened that somebody has claimed the right to be able to say that you can't build on the other side of the ridge and the creek that's still open because your property crosses the ridge. That was raised about five years ago and I've never heard how it continued, but these low-flow streams, that Carpenter Creek thing's in here.

Ms. McGoffin: I shouldn't have brought that up because that's irrelevant. So let's move on.

Chair Lohman: I do have a question. Under the shoreline, can an activity occur then in the buffer? I was reading the guideline manuals that you had directed us to in the very beginning of all this, and I was questioning what that meant. In the shoreline you can basically penetrate the buffer. Is that correct or not? I didn't understand that dialogue in there.

Mr. Nickel: Yeah, I think generally the answer is "yes." Because we have – this is where the Shoreline Management Act differs from the Growth Management Act in terms of use of the term "buffer." Because under the Shoreline Management Act you have the conflicting uses of public access as well as water-dependent uses, which need access to the water. And so there're certain allowances under the Shoreline Management Act that allow you to go through buffers and allow you to use land inside of buffers, which really aren't allowed under Growth Management. Growth Management is there to protect buffers as almost a no-touch zone.

Chair Lohman: Right.

Mr. Nickel: Where under the Shoreline Management Act at least we have the flexibility to access our shorelines and to utilize our shorelines, although there're certain – I guess what I'm trying to say is there's flexibility in the use of the term "buffer" and what goes on in there. The same principles still apply, I mean in terms of protecting vegetation, protecting the habitat value of the buffer itself. But at least there's the flexibility to allow certain uses and access to get through your buffer.

Ms. Ehlers: Could you then explain to us how under the Forest Practices Act buffers are not required outside of the site unless there's a fish stream involved? It's very clear into the Forest Practices Act that if there is a geologically hazardous area within the site it must be paid attention to. It's very clear – ages of clarity – that if there is any kind of geohazard or edge of a stream or a cliff that has a fish on the other side of it that you must do almost everything you can think about for, and we've got illustrations in here about 95% of wood, et cetera. But it's equally clear under Forest Practices that if the site ends at a road and on the other side of the road there's a cliff, as long as there's no fish there you don't have to pay any attention to it. And it's that lack of recognition – and I understand why; I don't think they *can* pay attention to it. You cut the trees, the water flows. But it would be useful to understand how buffer could be construed to apply if there is no fish. That's something for you to think about.

Chair Lohman: Is there anything else on critical areas? We're going to be seeing this more, especially when you kind of refine the draft? So, if I may, I'd like to move on to item number 3 on the agenda, which is comments received about the working draft. Betsy, did you guys have some opening remarks on that or not?

Ms. Stevenson: No, I haven't contacted too many of the people who have submitted letters yet. I intend to do that – to have some just one-on-one discussions about the comments and just make sure that we can clarify places where they're seeing things or feeling that that's what is being said. Some of the comments I think, you know, I can respond to but I haven't yet in writing. But in terms of opening comments I probably – you know, we accept whatever comments we received so I wouldn't want it to be perceived as, you know, trying to rebut that or anything. So I'd rather have you guys just talk about it, ask questions. If there's something that you want to follow up on with us we can do that.

Chair Lohman: Does any of the Commissioners – Mary?

Ms. McGoffin: I don't know if you'll have time to do this, but sometimes you prepared a response sheet that we got to read. Because it seemed like there were some errors in what they were saying from what I had read, and I want to stick with the facts.

Ms. Stevenson: I'd be glad to put together a formal response.

Chair Lohman: I thought that the Forest Advisory group had some interesting questions that I think we would be – it would be helpful if we had a response to.

Ms. Ehlers: I would like to add something to the at-large collection you have on the Internet because I think it would be useful.

Chair Lohman: Is this about the comments letters that we got?

Ms. Ehlers: I haven't seen them until tonight, so of course not.

Chair Lohman: Because we're going to – that's the agenda item so let's stay with that for now.

Ms. Ehlers: Okay.

Mr. Axthelm: I have a __ with the comment letters because we don't have a response from the County. Should we wait on those comments? I mean I would like to see the County's response before I address everything.

Ms. Ehlers: I would, too.

Mr. Axthelm: It seems like we're going to be spinning our wheels without that.

Ms. Nakis: Right. I agree.

Ms. Ehlers: I agree.

Chair Lohman: And were you going to – I know there were some holes in the – there's like place holder pages that say "under development. Some of it was like the dimensional setbacks and those sort of things. Are they moving forward or is there something –

Mr. Nickel: We are moving forward on some of those materials. Some of those are currently being drafted with staff.

Chair Lohman: Because what's confusing to folks – and myself, too – is in the critical areas ordinance you have some distinct buffer widths and then you have an additional setback, and some of those setbacks are on the buffer. So folks want to know, Okay,

here's your piece of property within the shoreline. So is there a buffer or not a buffer? If there is a buffer, okay, what is it? And where's the setback then? Because they want to know, Okay, where does my property actually begin after I've set everything aside?

Ms. Ehlers: That's the same thing I asked.

Ms. Stevenson: I guess we're kind of moving from the term "setback," the shoreline setback, to using the term "buffer," because we're integrating the critical areas requirements with the shoreline requirements.

Chair Lohman: In the Guidelines it talked about the pitfalls of comingling those phrases interchangeably and they preferred that you – if you're going to talk about a buffer, this is a buffer because has a totally different set of requirements and connotations, and if you're going to talk about a setback, it has a heck of a lot more freedom and flexibility, and it's not a buffer. So they wanted you – I was under the impression that there should have been a bright line. You know, I'm a layman reading those guidelines, but –

Ms. Ehlers: I have the same impression. And, besides, what do you do on a beach? Are you supposed to plant that whole front yard you've got that you're paying that fantastic price for? You're supposed to plant big trees on it?

Chair Lohman: I guess that's the confusion, is when you whip over to the critical areas it says in the Shoreline Residential, for example, I think it was – Shoreline Residential: It says 100-foot buffer. But yet in another place it said 10 feet, as you pointed out, and then in another place it says you have to have shoreline stabilization and it has all this prescriptive thing. So there's a lot of confusion. Okay, if you're talking about the buffer, then what are the requirements for the buffer?

Mr. Nickel: Yeah, and part of that is the difference between mitigation requirements which might be specific to a certain portion of a buffer. And, in particular, that 10-foot requirement was related to shoreline armoring which is along the immediate shoreline so your mitigation is being focused there. It's a portion of the buffer. The buffer itself is – you know, taken again, as Betsy mentions – is taken from the critical areas work that was done already and is currently being regulated as such. And so we're trying not to change those buffer requirements. We're trying to just be consistent with how it's being regulated now.

The – understandably, the existing Shoreline Master Program has a – uses the term "setback," though. And so we've already gone to the use of the term "buffer" in the critical areas ordinance and so we're just trying to maintain that consistency. I think under the Guidelines that you're referring to where we talk about the term "buffer" – and again this goes back to my point – the term "buffer," in essence, under shoreline management is different – in my mind – is slightly different than the term "buffer" in Growth Management because you have those uses of shoreline areas; however, a lot of the principles still apply, in terms of protection of existing conditions. So you may have allowances for access, for, you know, accessory uses, or, you know, various

activities that might go on in a shoreline area that might be an existing buffer. But you still have also the notion of being able to protect or trying to protect those areas, as well, as a buffer should be protected.

Ms. Ehlers: It's not clear who, whether you only want to protect the native habitat at the total expense of the guy who owns the property. There's a big difference between where you have a cliff or anything that you have to make sure stays up there, both for the environment and for the protection of whatever is built anywhere around it. That's clear in this use. But there are a number of people who have beach property. You don't need groins and you don't need something to stabilize a beachfront property. Most of them that I know of have big logs there that do what needs to be done in terms of storms. But what was a setback was so many feet back from that ordinary high water mark was the house. And if you say it has to be a buffer and that the buffer has to be vegetated, that is a complete change of condition – a devastating change of condition – and actually, in many ways, kind of useless because you're not protecting the environment per se. You're just putting in a requirement.

Chair Lohman: So the next item on the agenda is wrap up and review of the next agenda.

Ms. Ehlers: May I add something to this discussion before we go on, Annie? This is an official County document done by Oscar Graham under grant money in response to the catastrophe of November, December, early January 1990, '91. It's called the "Coastal Zone Disaster Mitigation." It gives a good description of current conditions – well, what was current conditions – on the shorelines, marine and instream. And I'd like to recommend that pages 1 to 12 and 22 to 28 be put onto the website so that there is a background to all this development of the critical areas ordinance and the other discussions that occur regarding shorelines. It's a nice, concise description of the disaster of 1990 that those of us who took part in it will never quite forget.

Chair Lohman: Okay. If you guys have your proposed topics schedule, the next work session would be July 24th, right, Betsy?

Ms. Stevenson: Yes.

Chair Lohman: And we have tentatively on there Boating Facilities, Nonconforming Uses and Structures, Administrative Prohibitions, Environmental Protection, Water Quality – and then I have No Net Loss written in. Were we going to discuss No Net Loss a second time or not?

Ms. Ehlers: Well, I don't know that we did a good job with it. How about Nonconforming?

Chair Lohman: Oh, excuse me, and I forgot: We moved Aquaculture also to that.

Ms. Stevenson: Yeah, and also I think you wanted to take another crack at the Ag section. If I understood, Ryan was going to do some rewrite on the Ag.

Chair Lohman: So the Ag section. Was No Net Loss on there, or is that my mistake?

Ms. Stevenson: Oh, no. I think you did ask to revisit it again.

Ms. Ehlers: Yes, we should. And Nonconforming.

Chair Lohman: You guys, just one at a time – who's speaking?

Ms. McGoffin: Well, Chair, I think it should be time-permitting on those. I don't think it should go past nine o'clock. And if we don't get to all of them, then so be it.

Mr. Axthelm: I think the comments are going to help out with some of those items because the general public is looking at these. There're some really good comments here that are addressing some of those items you're talking about.

Chair Lohman: So are we going to get the actual revision, because we don't have it now?

Ms. Stevenson: Yeah. We switched it so that the Advisory Committee could consider it again at their meeting on Thursday night. I know we are working on it. I know some of the people who have been working on it have not gotten feedback on some revisions. So we will have something there or we will hold it aside and say we aren't quite finished with this portion yet. We're working on it and we will get it to you by a date, and see if Ecology is amenable to something like that. If they know that we're working on it and the people involved that are working on it are the people who need to be a part of that discussion. I don't know. I haven't talked to them yet. I'm going to plan to do that next week and just see if that's a possibility. I know that you guys are going to want to see that before they get it so it would have to factor in probably bringing it so that you can at least see what it says.

Chair Lohman: Okay.

Ms. Ehlers: Betsy? There was a very good letter written by Bob Scofield in December of 1987. He wrote it in regard to the criteria that people should look at for the nori process. Scofield had been the Chair of the Planning Department when the original Shoreline Management Plan was done. He had been Hearing Examiner. And the time he wrote it, he was on the Shoreline Hearing Board – had been for a number of years. So he had real expertise on aquaculture far beyond the Skagit County experience and criteria. He wrote a two-page letter, which I haven't yet found, as I say, dated in I think it's November – late November, early December of 1987 – and it was a very fair assessment of the criteria that were necessary for the proposer so that the proposer knew exactly what needed to be done and so did everybody else. It was a game-free

description. And when the aquaculture amendments came to the Planning Commission

—

Chair Lohman: Carol, can you hold that for when we talk about the aquaculture?

Ms. Ehlers: Yes.

Chair Lohman: Because we haven't read a thing other than the placeholder page in the book, and so I think you're talking a little bit prematurely.

Ms. Ehlers: Prematurely? That's okay. I'll be quiet on it, but it's a very good – and in the current critical areas ordinance section on Aquaculture – well, I guess it's the Shoreline Management section on Aquaculture – some of Scofield's ideas are in there.

Chair Lohman: Okay, then the next item on the agenda is public comment. Okay, seeing none, do I have a motion to adjourn?

Ms. McGoffin: I move that we adjourn.

Chair Lohman: A second?

Mr. Axthelm: Second.

Chair Lohman: And a motion to adjourn (gavel).