

**Skagit County Planning Commission**  
**Work Session: Shoreline Master Program Update**  
**July 24, 2012**

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

**Staff:** Dale Pernula, Planning Director  
Betsy Stevenson, Senior Planner

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

**Advisory  
Committee:** Kevin Bright  
Tim Hyatt  
Brian Lipscomb

**Public  
Commenters:** Kathy Mitchell  
Ed Stauffer

Chair Annie Lohman: Okay, I call to order this work session of the Skagit County Planning Commission. It's almost about eight minutes after six, and we'll turn it over to you, Dan. We're working on the Shoreline Master Plan Update.

Dan Nickel: Great. Thank you. I guess first of all you'll see from the agenda there's a number of items on the agenda. Some of the materials there that you do have in your packet – the sections on Environmental Protection and Water Quality, Stormwater and Nonpoint Pollution – those were in the version of the Shoreline Master Program that we're currently working on. I understand materials were just sent or are in your hands now regarding boating facilities, for one. This is material that the County staff and as the consultants, as well as the Shoreline Advisory Committee, have been working on and we wanted to kind of give you an idea about where things were at prior to, you know, the end of this meeting. So I apologize for the last minute materials in front of

you, but I thought what I'd do is kind of walk you through in the Discussion Guide what are some of the issues at hand that we're trying to address and kind of how it's framed.

Chair Lohman: Before you move on, is this anticipated to be the last work session or you going to have some more, because you've still got the Aquaculture chapter and a couple of other holes in the plan?

Betsy Stevenson: Yeah, we were going to talk about that a little later in the agenda but we can talk about it now.

Chair Lohman: No, no – that's fine.

Ms. Stevenson: We are planning to come back to you when that stuff is all ready to go.

Chair Lohman: Okay, we can hit that later then.

Ms. Stevenson: Yeah.

Chair Lohman: Okay.

Ms. Stevenson: Thank you.

Mr. Nickel: So let's just go ahead and jump into this Boating Facilities section, and I just want to go over the Discussion Guide at this point to kind of give you an idea about the pieces that are in this Boating Facilities section.

Carol Ehlers: There isn't anything in the Discussion Guide we got on Boating Facilities.

Mr. Nickel: It should be on page 2 of the Discussion Guide.

Ms. Ehlers: It says "Boating Facilities" on page 51. There isn't a thing on page 51, there is nothing on the – well, okay, there's this. Sorry.

Ms. Stevenson: I just sent – you've got a hard copy in front of you of that section.

Mr. Nickel: So in the working draft of the Shoreline Master Program that we originally had given you, there was a number of sections that County staff and consultants and the Advisory Committee were actively working on and we definitely didn't feel comfortable passing it on for your review at that point. It was still really, really a work in progress. This is one of the sections that we discussed a couple of times with the Shoreline Advisory Committee and we've been working on making revisions to it throughout the past, you know, couple of months. So I think at this point I would like to just kind of go over what's involved with this section so that you have an idea when you do review this, an idea how it's formatted. Because it's a little bit – it's a little bit complex. When you look at this section it's very – it's a rather long section. There's a lot of material in there. And one of the major reasons for that is because boating

facilities, we've encompassed not just major industrial uses, water-dependent uses, commercial uses in here for different types of boating facilities and marinas, but we've also lumped in here single-family residential piers, docks, and all of those issues related to overwater structures are in this section. This was a decision that we made so we could eliminate the duplicative material that might be if we had this separated out into two sections, one being single-family or joint use piers and docks and another being, you know, larger commercial, marina-type of boating facilities. So we have that option of still splitting those two sections out to make this section smaller and more concise. You would have a lot of duplicative material if you did it that way. But that's one of the – the rationale for the size of this document that you see in front of you.

So let me just step through the comments here under this Discussion Guide. I'm going to skip down. So a) – a) really deals with the fact that we are having a variety of different types of overwater structures in this section.

b) Identifies Boating Facilities that serve – four or fewer single-family residences are viewed differently by Ecology, and that's – Ecology's recommendation would be to split this out into two sections; however, they do accept Boating Facilities to encompass all overwater structures that we're talking about in front of us.

Under c), a priority for shoreline location should be granted to facilities which provide public access.

You know, the existing Shoreline Master Program under item d) here – the existing SMP sections for marinas, boat launches, piers and docks, we've used that material as much as we can to bring that together. We've made a number of additions to that. Under e) here you'll note that we have a lot of dimensional standards that are in place, and much of that comes from state and federal regulations regarding overwater structures. When Ecology reviews these particular sections, they refer or defer to Department of Fish and Wildlife as their input on kind of what types of regulations, what types of standards should be in place. And so we've used that state and federal guide as a means to incorporate that into the document here. The Corps of Engineers, for instance, has regional general permits that they've used for marine and freshwater applications of overwater structures and that has a fairly detailed guide. And so here we're trying to be consistent with those regulations. We don't want to give them misin – you know, the wrong impression to folks that they might be allowed to do something different when at the state and federal level they simply wouldn't be able to. So we're trying to be as consistent as we can.

Let me keep going here. Under f), covered moorage – the allowance is limited here. The existing Shoreline Master Program allows covered moorage only for marinas. The proposed SMP allows new covered moorage only when necessary for operation of water-dependent use at commercial, industrial, or transportation-related facilities. So it would not allow covered moorage for residential use. You would be allowed to have a cover on a boat lift, for instance. You could have a translucent cover on a boat lift, but you wouldn't be able to have a hard, structural, covered moorage on a residential use.

Under g), the proposed Master Program includes specific standards for buoys, which are currently lacking in the existing Master Program. It also includes general design standards for boar launches, which are also lacking.

And under i) of the proposed Master Program, it includes more prescriptive and general guidance for compensatory mitigation. And this is one of the items we discussed quite a bit with the Shoreline Advisory Committee on mitigation for overwater structures. And you'll note in the latter part of this material is a section on mitigation standards, and we tried to be as specific as we could that mitigation first should occur in like kind. So if you have overwater cover you should try to take out overwater cover somewhere else. That's not always possible. We understand that. You know, if you want a new pier, for instance, you may not have the opportunity to take out a pier from somewhere else because you just don't – may not have the – the property may not exist for you. So we have a number of priorities in there that look at one, first, you know, in-kind mitigation. Eventually you might have to do some out-of-kind mitigation. Planting is one of those. And we've tried to make it clear that there's a certain priority there but we also have to acknowledge that planting – shoreline plantings – might be a form of mitigation that eventually does need to take place.

Ms. Ehlers: When we talk about mitigation in this case, are we talking about mitigation onsite or – your mention of another dock makes me leery – or are we saying that you can do what you can do with wetlands? You have a problem on a wetland here and you can create a wetland mitigation bank twenty miles away.

Mr. Nickel: Right. In this instance we're talking first and foremost onsite.

Ms. Ehlers: Thank you.

Mr. Nickel: So onsite mitigation is the top priority.

Last, under j), for boating facilities other than residential single- or joint-use docks, the proposed SMP includes a process for demonstrating that the project is designed appropriately based on projected demand and types of use.

Ms. Ehlers: My community has a joint-use dock. You can't lift your boat down into it. We call it the "boat harbor." It starts on our property on the shoreline that we own and extends out into a protected area. It serves 300 people but not always at the same time. There's only – there's very limited space. You say that four people could combine. What's wrong with more than four people combining?

Mr. Nickel: So more than four residential lots that use an overwater structure, that structure in Ecology's terminology would be considered a marina.

Ms. Ehlers: No, a marina's a very specific thing. It has all kinds of facilities that a simple boat dock doesn't.

Mr. Nickel: Right. Right. So I think what you're describing is a community dock.

Ms. Ehlers: Yes.

Mr. Nickel: I mean, I guess my question would be, Does it have moorage for – I mean, it's really related to moorage and how much that dock can moor.

Ms. Ehlers: It should be.

Mr. Nickel: And so that's – I guess that's – is this a moorage facility for more than four boats?

Unidentified male voice: Not at the dock.

Ms. Ehlers: They're not at the dock. They're moored in the cove and they're moored with two anchors, one at each end, which is not the way the DNR describes it. The DNR wants just one and wants the boat to swing around, and has serious depth requirements underneath, which says to me they really want really big boats out there. But instead of having docks on every residential site on Burrows Bay, it's always been kept. The boat lift and the fancy marina stuff has always been in a professional marina in Anacortes and the little community cove, there's no gasoline, there's no most of the things that you think of as a marina. It's simply a place you can get down and get into your boat – and they're most of them small.

So that sort of thing seems to me – if you have something protected, it's much better to have them located in one spot where you have someone managing it – managing the buoys, managing what goes on, managing the fact that things don't happen, don't belong there on the shoreline – than it is to simply have a whole string of docks all the way along Burrows Bay, each one with a staircase that'll destroy the cliff, each one with a dock, and each one with a buoy that goes swinging around. We've been doing it for sixty years. We were given free through the last Shoreline Plan. And it seems to me that we're probably not the only group that has done this in an attempt, as I've said again and again, to protect Burrows Bay we've done all kinds of things and we've succeeded. And this is the kind of thing that I hope we can have because it's worked.

Mr. Nickel: There are preferences here for, you know, trying to avoid single-use, single-family residential dock and move to either, you know, a joint-use dock or a community-use dock.

Ms. Ehlers: Yes. Yes, the DNR seems to prefer the single-family docks but I think it has a potential for a good deal of net loss.

Chair Lohman: I have a question. Did you have a question? On your recreational floats, why did you make it a conditional use in the Rural Conservancy area, where in the other uses, excluding Natural, it's potentially allowed?

Mr. Nickel: And I'm not sure. That might be inaccurate. I don't think that necessarily *should* be a conditional use.

Ms. Ehlers: Where is this?

Chair Lohman: I'm looking in the chart on page 1 –

Mr. Nickel: You're looking at the Use Matrix?

Chair Lohman: – of the Use Matrix. Right here.

Ms. Ehlers: Ah!

Chair Lohman: I guess I would urge you to reconsider maybe? Does the Committee have any comments on that?

Tim Hyatt: I'm not sure if I want to comment now or later when we get to Environmental Protection. But as Dan mentioned, we discussed the mitigation section at length in this section, not because of any – not *only* because of the particular provisions here but because there're several of these provisions that I think belong in other sections of the document, as well. And what I proposed was a more filled out mitigation section for the Shoreline Plan as a whole. And I think that's properly in the Environmental Protection chapter, which we're going to discuss next, so I think I'll just hold my comments for now and make them in ten minutes. Is that clear?

Chair Lohman: Mm-hmm.

Ms. Ehlers: It is to me.

Chair Lohman: But you didn't have anything about the conditional use for floating recreational –

Mr. Hyatt: Oh, no, not about your comment. No.

Chair Lohman: Okay.

Mr. Hyatt: I thought you were asking more generally on do we have comments on boating.

Chair Lohman: But we got a two-fer!

(laughter)

Chair Lohman: I did have a question. On your designation map there's a couple of state parks or County parks or something that – how do you have those designated?

Are they designated – because the map is so tiny, and I was struggling to see. Like, for example, Padilla Bay and the park across the road from it – I’m blanking on what it’s called.

Ms. Ehlers: Bay View.

Chair Lohman: Bay View. How is that designated on your map? Or any other County park?

Mr. Nickel: I apologize for the resolution of the maps. I mean, they’re intended, one, to look electronically at a PDF or –

Chair Lohman: But when you make it bigger, there isn’t enough landmarks so you can – sometimes to figure out, you know, where is the break?

Mr. Nickel: Street names?

Chairman Lohman: Yeah.

Mr. Nickel: It looks like it is in Rural Conservancy, though.

Chair Lohman: I guess I want to make sure that we don’t hamstring ourselves on current public recreational facilities by – are we going to do that when we call them “Natural,” if we call them “Natural”? And this section on Boating and docks and recreational access made me think of that and made me go back and look at that map and question that.

Mr. Nickel: Yeah, we’ve tried to take a pretty close look at the park areas. I think we’ve gotten – we’ve received comments from state parks, for instance, that really puts caution to what we’re doing in terms of creating environment designations for their parks systems that don’t allow for the proper use and future use of the parks so that – state parks has really made it a – made us very aware of their concerns. And so we’ve tried to take a look at the various state parks and, you know, the land uses that go on in the state parks to make sure that something like this, like this recreational floats, for instance, is a good example of that application. There are certain areas, I think, where there are state parks where you don’t have those same types of potential future uses and so I think it’s something that we want to be talking to state parks throughout this process to find out where those areas are more appropriate to be Natural, for instance, because there *are* some. You’ll notice on the environment designations maps there *are* some areas that we still have questions about. We’re still working with those property owners or whether it’s the state Department of – the Parks Department and trying to clarify and finalize where those designations are appropriate.

Chair Lohman: Because I would hate for us to all of a sudden – our parks and our recreational facilities that we’ve all been enjoying all these years – all of a sudden has

handcuffs and we can't do it or potentially develop it even more as, you know, time goes on and our population changes. Carol?

Ms. Ehlers: I'd like to add to what Annie's talking about. Deception Pass State Park has docks, Bowman's Bay. There's an extensive use of the public – well, at least there was before it was no longer free – there was an extensive use of the public going out there launching boats, tying up, connecting. This would say that there couldn't be a public dock there. If we assume – and my impression is that if it's owned by the government it's Natural, then this would say you couldn't do any boating in connection to Deception Pass Park on our side. That makes no sense.

Ms. Stevenson: I think to clarify what he just think I don't think just because it's owned publicly it's Natural, but I think the Advisory Committee talked long and hard about this and their recommendation, as I recall, was that it had to *be* public lands in order to be considered for Natural, but all public lands weren't necessarily going to be Natural. There's kind of a distinction there.

Ms. Ehlers: Okay. Well, looking at this chart it doesn't make any difference – well, yes, it might.

Chair Lohman: Well, that's why you have to jump to the map.

Ms. Ehlers: Yes.

Chair Lohman: And that's why – what I did. Because when I saw the floats it made me think about my childhood in Maine – kind of like “On Golden Pond,” the place that we used to go to – and so then I sort of looked at the map and said, Well, what in our county would be affected? It made me think of the question is all.

Ms. Ehlers: Well, and I think of the visit I made to Connecticut a couple of years ago where there wasn't any place anywhere anybody could take me to the shoreline because it wasn't public.

Chair Lohman: Matt, did you see anything else in this chapter that caught your attention?

Matt Mahaffie: Yeah, a little bit.

Ms. Ehlers: Maybe they didn't know all the places, but they couldn't take me.

Chair Lohman: Go ahead, Matt.

Mr. Mahaffie: 344, or “(4) New boating facilities are prohibited in the following shoreline habitats...Marshes, estuaries or other wetlands;” I'm kind of curious about “other wetlands.” I see a lot of lake environments – you know, a narrow ring of wetland where – or whatever you'd call it – you know, the critical areas ordinance would allow a

boardwalk kind of situation and it would be an allowed use. Now it's kind of getting shoved into a conditional use. Is that really how it was foreseen? To do, you know, a boardwalk as a conditional use?

Mr. Nickel: Yeah, I think obviously the intent here is to really avoid, you know, the impact to large wetland areas. You're right. A lot of the lakes have fringe wetlands along them that you might be able to span.

Mr. Mahaffie: I totally understand marshes and estuaries. But, yeah, pretty much every lake in Skagit County is technically is going to have a ring of wetland around it so pretty much every dock would fall under that, as far as I'm concerned. Is that – I kind of wonder if that's really written intentionally?

Mr. Nickel: No, it's not intentionally written that way so we can maybe reword that to be more clear.

Ms. Ehlers: Yes.

Mr. Nickel: And it excludes those types of fringe environments that would be necessary to cross to access the water.

Mr. Mahaffie: Not implying, you know, paving it or filling it or –

Ms. Ehlers: There's no sense saying that every four houses has to provide a 20-foot space for public access if you can't use the public access to access except in a kayak, and most of us aren't very good at that.

Chair Lohman: Okay, I think we're running out of stuff. We'll be seeing this again when we get to it, so let's just move along to the Environmental Protection section. This will be 14.26.210, page 20.

Mr. Nickel: I'll step through the Discussion Guide here. You have the Environmental Protection sections in the materials starting on page 20. The intent here, as a) identifies: "The intent of this section is to address general requirements aimed at meeting Ecology's no net loss" criteria. That's – it is one of the required areas in the Master Program from Ecology and it's designed to meet those requirements at the project level. It requires the various uses and developments to be designed, located, sized and constructed to maintain ecological functions. That's a main premise of this section, is the protection of ecological functions.

And I wanted to point out that the question of no net loss – which we discussed earlier, but I want to kind of bring it up again because this is really the crux of where it's dealt with, at least where it's addressed. You'll see "no net loss" mentioned in a lot of the sections but it really comes down to this Environmental Protection section in terms of the emphasis overall.

But I wanted to make the distinction between looking at no net loss at the project level, which is what this section does, versus looking at no net loss at the whole Master Program level. And, you know, first for the process that we're currently going through, at the completion of our SMP we need to make sure that the implementation of the Master Program – the future anticipated implementation of it – we anticipate it to achieve no net loss. So as we look at future development twenty years down the road we need to be able to look at the Master Program and say, Well, for these types of activities we anticipate this level of development to take place and does the Master Program fully mitigate for those impacts that we anticipate? That's the no net loss evaluation that we'll do as part of what's called the Cumulative Impacts Analysis at the end of this process.

But at the same time, or in the future, once we have an approved Master Program at the project level we still need to look at no net loss, and that's what this section is emphasizing at the project level – that you're looking to making sure that you mitigate for your impacts appropriately. And one of the main emphases here is mitigation sequencing, and it's actually described in item 4 on page 21. And this comes from the WAC, 173-26-201(2)(e)(i), and it's very specific. And this is going to be required verbatim from Ecology, that we, first, avoid impacts. Then if we can't avoid those impacts we minimize those impacts. Third, if we can't completely minimize we rectify the impacts by repairing or rehabilitating or restoring the affected area.

We then reduce or eliminate the impact over time by preservation or maintenance operations. And if after all that is said and done and we haven't completely mitigated or, you know, resolved those impacts, we have to compensate by mitigation. And then, furthermore, monitor that mitigation.

So this is the mitigation sequencing activities that throughout the Master Program help us to achieve no net loss. And so at a project level, you look at that criteria as a means of achieving and showing no net loss at the project level.

I do want to point out in item (3) on page 21, under (a) –

Ms. Ehlers: Page 20?

Mr. Nickel: I'm sorry, page 20 – you're right – item (3)(a). What it's saying here is if a proposed shoreline use or modification is entirely addressed by specific, objective standards. So if you're meeting a buffer requirement, if you're meeting a setback requirement or dimensional standards that are prescribed in the Shoreline Master Program already you don't need to go through the documentation of mitigation sequencing. That's what this Master Program does for you. So if you meet all the dimensional criteria, you don't need to go through the mitigation sequencing scenario; however, you know, if you're not meeting those dimensional standards or if you have some situation where you have a discretionary standard that's being met or you have simply a requirement in a Master Program that you must go through mitigation sequencing, those are where you'd have to document that.

So I just want to make it clear that, you know, not all situations go through this if you meet the general standards in the Master Program.

Ms. Ehlers: Before you go any further, at which point in this document is a cumulative no net loss discussed?

Mr. Nickel: So the cumulative no net loss is not discussed in the Master Program, but it is part of this overall process. And so once we have a completed draft done – and I mean a completed draft, which means we have to address pre-existing structures and issues of potential nonconformity – what have you. Once we have that information at hand we can then complete a Cumulative Impacts Analysis on that document, at which point we'll be doing some forecasting of what the future development might be and how does that – how does the SMP address those impacts. And that is a separate document that will be handed to Ecology at the end of our process next June and they'll use that to help *them* evaluate, Did we achieve no net loss?

Ms. Ehlers: And what is your benchmark for the loss to be determined on?

Mr. Nickel: We measure that from today's existing condition.

Ms. Ehlers: All right. This pile in front of me is a collection of studies that Skagit County did, mostly in the 1990s – the Samish Watershed Study, the Nookachamps Study, the Padilla Bay Study, the Lower Skagit Study. There's a whole group of them that are not in your reference list that provide benchmarks of what was intended essentially sixteen years ago. I don't know of anything – that doesn't mean there isn't, but I don't know of anything that gives you a scientific benchmark now anywhere near equivalent to these things. Now these are the riverine benchmarks. There is no reference anywhere in your document – your document where you talked about the shorelines in detail – there is no reference anywhere in that to any geology whatsoever of the marine environment.

The paragraph that describes it is inadequate. There are no geologic references. I don't know of any topographical maps. So I don't know what possible benchmark you can be looking at from a scientific basis, which is what we must look at. We're supposed to look at best available science and at this point I have boxes of available science at home but I don't see any in this process and there must be. And so it would help, I think, if 14.26.210, Environmental Protection, said somewhere in here that this is a project level discussion, because it's all too easy for the rest of us to think that this is the big thing and that somehow or other you're going to do the big thing on the basis of this. Because however important this is and the mitigation process is, that's cut in stone. But there's all too much that can happen that will damage and create loss.

I'll give you an example. This is a shoreline document. It talks about everything within 200 feet. Skagit County finally admitted in 2008 that Fidalgo wasn't flat and they finally did a stormwater plan, which was issued in July of 2010, which demonstrated quite clearly that Fidalgo wasn't flat. If you're going to do something uphill – 300 feet, 500

feet, even a mile according to Fish and Wildlife – you can damage that bottom 200 feet severely. You can destroy it, eliminate it. You can blow it out the way Jones Canyon blew out in 1990.

So how can – I guess what I'm getting to (is) you can't base no net loss purely on the last 200 feet. And I don't know how the County's going to do it, but we have critical areas ordinances that have existed for a long time that were based on science in the '90s – very carefully based on it – and that has to be connected to this one. You said at the last meeting that this critical areas ordinance is the last 200 feet and that if something was under question 500 feet back the other critical areas ordinance covered it, and so there is, in some ways – and I'm experiencing it – a dichotomy between the 200 feet that's down there and the 500 feet that's up here, and that's how I realize a problem. And I don't expect you to deal with the problem today but I think we need to deal with the problem before we turn this into law. Because the last 200 feet can't do it all.

Mr. Nickel: Yeah, I think to that regard I don't disagree. I think we have somewhat – we are definitely bound by the legal issue of having shoreline jurisdiction only cover that first 200 feet, unless you have an associated wetland or other floodway issues.

Ms. Ehlers: I realize that, but I –

Mr. Nickel: I was just going to say that the one item (is) that you really can't stretch your regulations beyond shoreline jurisdiction. The one thing that Ecology does emphasize, though, is that your policies and other aspects here, like a restoration plan, can point to areas outside of shoreline jurisdiction.

Ms. Ehlers: Wait a minute. A private landowner cannot control somebody else's property, and you can't expect them to buy it or do something else. You do what you can, and there are a lot of things people don't do right. I watch them. But one of the things which you can use this is to influence certain aspects of the rest of the law that make it difficult for the last 200 feet. And I have a very specific illustration. Ecology thinks that there should be a maximum of 10% lot coverage. Take those areas of the shorelines where there is – where the 10-acre zone – the Rural Reserve – goes down to the shoreline. Every one of those 10-acre lots can have a 3 ½-acre building on it. That's a recipe for failure.

The lot coverage that's in – it's in the Rural Intermediate; Rural Residential, I'm not worried about; I'm talking about Growth Management size. But in the 2 ½-acre lot you can have 35% lot coverage. That's building. That's not driveway and parking lot. That's just the building. In the 10-acre zone you can have 35%. In the Rural Resource you can have 10,000 square feet buildings. If you have those, that kind of lot coverage 300 feet from the shoreline, what can the last 200-foot owner do? Nothing. Now it used to be the law before September 1, 1990, the law was that that last 200-foot person had to suck it up and deal with it because that was his problem. But as of September 1, 1990, the law changed and geologic hazards became something you protected and

paid attention to, and almost every shoreline in one way or another is a geologic hazard. It may be a *little* geologic hazard because of the migration, but it comes in that category.

And where I'm coming from and any of us who were here in November, 1990, is that we got scared spitless of how much water came from nowhere down onto us on the surface and subsurface and blew things out. Betsy sent a notice out for the Fidalgo Island visioning process. Down in the bottom of that notice is Jones Canyon. The head of Jones Canyon is 600 feet in. It blew out this plume of rock and dirt – there was already one there so we knew that there had been a previous blowout of rock and dirt – and scared us spitless.

There was a planning subdivision right uphill from it that was being approved. It came to the Planning Commission right after that awful, awful month and the Planning Chair and the Planning Commission said, Hearing closed; go jump in the lake. And so we all had to go to court and raise Cain and we got a drainage utility and all sorts of things happened. That should never be repeated.

Chair Lohman: Let's bring it back to the –

Ms. Ehlers: I'll bring it back. I'm trying to illustrate again and again that the last 200 feet can't be responsible completely for what goes on. And there are some things you can't mitigate for. And that's the basis of what I think needs to be understood in how you draft this stuff. Thank you.

Chair Lohman: I do have a question. On page 21, where you're talking about monitoring the impact, how – do you have somewhere where you're telling us how that's going to be accomplished? And is there a period? Is it perpetuity? Is it incumbent upon the property owner or the project owner? Some of these projects are going to be developed probably by somebody else and they're going to move on and somebody's going to inherit it. So how do you propose to handle that inside a map?

Mr. Nickel: Right. Some of that, if there're specific details, we allow – we don't get too detailed in this section. You know, we monitor – a mitigation plan needs to be developed. It's going to be a required element here. With that mitigation plan will come specificity on the type of monitoring that would be required, and hopefully – in certain sections here we have performance standards that identify fairly specific monitoring requirements. But I think that there's some discretion there in terms of what would be required.

Chair Lohman: And the WAC reference then is actually that whole section, correct? So maybe it's in the wrong spot – the reference?

Mr. Nickel: In terms of (f)?

Chair Lohman: Yeah. Is that WAC – isn't it referring to the mitigation sequencing in itself?

Mr. Nickel: Right. That does come from the WAC – the monitoring element.

Chair Lohman: Okay. Is it –

Mr. Nickel: It doesn't get specific.

Chair Lohman: Okay.

Mr. Nickel: In that WAC reference, it does not get specific. The point being is that monitoring is necessary in order to ensure the mitigation is successful and that's really where the emphasis is at. The specifics about that monitoring is left for other sections or left for interpretation.

Chair Lohman: Okay. That answered my question. Anymore on this section?

Ms. Ehlers: I don't think so. It's the next section.

Chair Lohman: Okay, we're going to move on to Water Quality, Stormwater, and Nonpoint Pollution. This is 14.26.250 on page 36.

Mr. Hyatt: Madame Chair?

Chair Lohman: Go ahead.

Mr. Hyatt: I did have some comments on the Environmental Protection section.

Chair Lohman: Oh, sorry, Tim. Go ahead.

Mr. Hyatt: The mitigation that we kind of skipped over back in Boating Facilities is something that I'd like to address here. The Environmental Protection section is good as far as it goes, and it is in many sections verbatim with the WAC. But I think there're a couple of places where I noticed when we were doing the Boating section that there're certain provisions that should probably apply to all the structures – or most of them – in the rest of the document, not just Boating, and that they would be properly put in this section.

So I stole a bunch of text from other shoreline plans and from the WDFW mitigation guidelines and I'd like to recommend that there are several additions to this section. This section does not really discuss the priorities for mitigating onsite and in-kind. It is elsewhere in some of the subsections but not as an overall policy. WDFW prefers that things be mitigated onsite, in-kind first; then offsite, in-kind; onsite, out-of-kind; and, finally, offsite, out-of-kind. I can provide that language to you, if necessary, but...

They also – several other agencies require greater than one-to-one compensation ratio if there are temporal aspects. If you're sawing down a hundred-year-old tree and

planting a sapling, obviously that sapling isn't going to be effective for twenty or more years and the habitat loss over that twenty years until it is effective requires a little excess compensation. I don't see that greater than one-to-one compensation ratio anywhere in this section. Likewise we don't have a policy anywhere that I've noticed on in lieu of fees mitigation.

Chair Lohman: In what?

Mr. Hyatt: In lieu fee – l-i-e-u. I think it's French.

Ms. Ehlers: Yes, but it's the third word.

Mr. Hyatt: In lieu fee?

Unidentified male voice: Money.

Ms. Ehlers: Money – ah.

Mr. Hyatt: Money. Instead of mitigating, I'm just going to write you a check.

Ms. Ehlers: Okay.

Mr. Hyatt: And while that might work really well – I think other people – Elinor – suggested – for public access, our experience has been that often that money doesn't find its way into something that the fish actually see. And I should probably caveat my whole discussion. I'm mostly concerned with impacts to fish habitat, not so much for wetlands, although those are important, too.

In lieu of fee mitigation often doesn't work very well. It hasn't been tested. If we're going to use it I think – if the County's going to use it, I think they should have a clause in here that says when it's acceptable and when it's not. That kind of gets back to the in-kind and out-of-kind dilemma, too. Often when you're mitigating out-of-kind or offsite the impacts are to one species and the benefits go to a different species, and that's really not going to help us recover a lot of the salmon that are threatened. Some habitats aren't that rare and others are, and an impact in spawning habitat and mitigating in rearing habitat, or for a different species at a different life stage, it's probably not going to be apples and apples, and we need some provisions in here that'll kind of help us see that that happens.

Ms. Ehlers: You've raised a very basic point; that is, there are kinds of habitat that are crucial.

Mr. Hyatt: Exactly.

Ms. Ehlers: There's others that really are almost irrelevant.

Mr. Hyatt: And these mitigation banks on the Skagit River that promise to mitigate for impacts that are out in saltwater that simply can't physically, biologically happen. So we need a policy in here that's going to prevent that from being acceptable under this plan.

Ms. Ehlers: But that means that somewhere we need a definition and description of "priority habitats" versus just the fact that there happens to be a sand beach down there and nobody's – there's nothing particularly interested in it.

Mr. Hyatt: I'm not sure we're going to be able to plan out every habitat or every life stage, but –

Ms. Ehlers: I'm sure we can't, but I still remember when the Nookachamps plan was done we had a full day training – anyone who took part had a full day training – and they showed us why if you had cattle walking in the spawning gravel on a stream that it was destroyed. Now that is vivid. It's clearly understood. You can make the connection between all of this discussion and what you're doing. And it's that sort of illustration most people haven't had and that I think is useful, because then you'd have a better idea of, I need to mitigate where this dock is because of what's on the shoreline in that spot, and I don't need the same kind on that spot where there's nothing interested in it that anyone can see. That's what I'm getting to.

Mr. Hyatt: That's exactly the point of in-kind mitigation and, as it stands now, I don't think there's a strong foundation for arguing that point when somebody comes – someone – an applicant – comes to you and says, I'm going to build a dock and I'm going to plant some trees as mitigation. The in-water impact is not properly mitigated by the out-of-water mitigation project, and I think we need something in this document that'll fix that.

Chair Lohman: But at the same time, you don't want your plan so –

Mr. Hyatt: Rigid.

Chair Lohman: – restrictive that you can't think out of the box or –

Mr. Hyatt: Exactly.

Chair Lohman: – if an opportunity comes in the future that you can't try something innovative.

Mr. Hyatt: True, absolutely true. But if it was the priority your first effort is towards in-kind, onsite and then there are other priorities. If you can't do that then you drop down. That shows up in the mitigation plan, which is another point that I wanted to mention. I personally think the mitigation plan is a bit – and, yes, I'm going to say this – I think it's a bit burdensome for landowners. That often, in the day-to-day of things – a lot of people can back me up – you go out and you say if you want to do that the correct mitigation will be X, and the applicant says okay.

Chair Lohman: Right.

Mr. Hyatt: Well, now why would they have to go out and hire a consultant to write a mitigation plan if you already agreed on it? So I think the County should have the authority to waive the mitigation plan if it's already agreed on and if it complies with the other aspects of this chapter. But, according to this text, it sounds pretty mandatory and there are a lot of different sections to it, unless you go to (6), the Alternative Mitigation. That may be your loophole out, but I think my preferred would be a little more explicit.

Chair Lohman: But it starts right at the beginning – at the very beginning of (5) – you have to have a professional.

Mr. Hyatt: And I'm not sure that's necessarily –

Chair Lohman: Are you suggesting, Tim, that maybe this is still a work in progress, this section?

Mr. Hyatt: I would like to see some other provisions added to this. Yes, definitely.

Ms. Ehlers: I would, too. I would also like to make sure that it's understood that if you're dealing with that tree, if it's fresh water the tree is likely to live but maybe the reason the tree you're cutting is being cut is because it's dying because it's got saltwater intrusion.

Chair Lohman: Okay. Well, shall we go ahead and – Kevin?

Kevin Bright: I just was going to talk about a hydraulic project. You know, the HPA permits, too – that's where the mitigation comes in, too, is Fisheries' approval. If you're going to build a dock you're going to have to go through Fisheries to get a hydraulics project approval and they're going to go, This dock's in saltwater, it's in a marsh area. And that's where Tim said it's in-kind. They're going to go, You're going to need to look at this habitat to repair this type of habitat. That's the expertise right there with Fisheries. And they're not going to say it's a marine dock. Go plant some trees out in the field in Skagit County and –

Mr. Hyatt: I'm sorry, Kevin. They say that a lot! If you're trying to change that!

Mr. Bright: Well, they're not following their own guidelines.

Mr. Hyatt: You're right.

Mr. Bright: And that's their problem, but that's the agency that, I mean, has jurisdiction. And the County also has to be involved in that – you're correct. The County needs to have some say in the mitigation what's going to happen to mitigate any kind of project. But Fisheries should have a little bit more backbone.

Mr. Hyatt: Spine? You bet. I couldn't agree more.

Chairman Lohman: Matt?

Mr. Hyatt: But it doesn't – that's actually a separate issue from what is done in the Shoreline Plan, what we can control, what we can determine here, right?

Mr. Mahaffie: Just a couple of – as far as the mitigation points you're talking about and as far as the mitigation plan, you've got to remember too there's also the critical areas ordinance that is going to require a Fish and Wildlife assessment. Usually the mitigation is just put on it. \_\_\_\_\_ usually are still going to be, you know, required by other regulations. And doing your mitigation sequencing is also referenced in the critical areas ordinance. I just hate redundancy. I hate seeing things get too filled up. It's just kind of my take on it. What you're asking for, if people look for it it's still there. I agree with you. But it's – I don't know if we need to add it more, in more sections.

Mr. Hyatt: I guess you may be right. I would have to open up my CAO and look at it, but I think there's a few things I'm suggesting here that are probably not in the CAO. I'd have to check. Is there an explicit, in-kind, onsite priority?

Mr. Mahaffie: Again, I'd probably have to look, too, but I've been asked that question before: Why are you doing in-kind offsite? Why can't you do it – I mean, it comes up.

Mr. Hyatt: It comes up.

Mr. Mahaffie: It's not something that's forgotten about by any means.

Chair Lohman: But dovetailing on that, what comes up also is why do we have to get so complex? We forget that we can do simple. So we don't want to have the regulation or the requirement be so complex that we can't do the obvious simple and accomplish a lot or equal.

Mr. Hyatt: I agree.

Ms. Ehlers: I'd like to add that I find it objectionable if somebody has done everything they need to do, why should they clean up somebody else's mess?

Mr. Hyatt: Well, I think this section is just talking – correct me if I'm wrong – but I think this section is just project-specific mitigation. A cumulative mitigation comes later as a separate part of the plan, but this is basically: I'm applying for a project; I have to mitigate for my impacts, but not somebody else's.

Ms. Ehlers: Well, that's what I'm trying to direct it to. If it's onsite –

Chair Lohman: But, Carol, that might not be appropriate right here.

Ms. Ehlers: I don't – it's Dan's job to find the place where it's appropriate, as far as I'm concerned. What I don't – if it's a project, if the project proponent has done everything they're supposed to do on their shoreline, has been as good as gold – and there's a lot of people who have been – and they want to do something, why should they not be able to make sure that their project is good, that any difficulty is mitigated there, and why should they have to go spend money to clean up somebody else's mess who didn't want to bother with it, just so that there's a total protection? This is project. Let people bear the reward for having done what they're supposed to do.

Mr. Hyatt: I think that's the case.

Ms. Ehlers: Okay. Just as long as it stays that way.

Chair Lohman: Okay. Well, let's move on. Water Quality –

Mr. Mahaffie: Can I just tell Tim one thing?

Chair Lohman: Sure. Go ahead.

Mr. Mahaffie: It's only in the wetlands section that I was referring to; it's not in the HPA.

Mr. Hyatt: Ah. That's not the section I'm most familiar with.

Mr. Mahaffie: So, you're right.

Mr. Hyatt: Thank you.

Chair Lohman: Okay, can we go forward?

Ms. Ehlers: Mm-hmm.

Chair Lohman: Okay, finally, Water Quality, Stormwater, and Nonpoint Pollution. This would be section 14.26.250, page 36.

Mr. Nickel: So for this section, I just want to make a few points in the Discussion Guide here. First of all, the bottom of page 3 of the Discussion Guide: "New development must manage stormwater to avoid and minimize potential adverse affects (sic) on shoreline ecological functions through the use of best management practices" or the Stormwater Manual for Western Washington. That's a critical aspect for this section.

And the top of page 4 on the Discussion Guide: "For development activities with potential for adverse impacts on water quality" or "quantity in a fish and wildlife habitat conservation area, a critical area site assessment is required."

I do want to point out, I guess following our prior discussion, there's a lot of material in that critical areas section that deals with, you know, additional requirements that go beyond, you know, these environmental protection standards that we have in place. So that's, I guess, an area that if we have concerns here, let's take a look at that critical areas section. I think there's a lot of details in there.

c) on page 4: "Maintenance of storm drainage facilities on private property is the responsibility of the property owner."

d) "Best management practices...for control of erosion and sedimentation must be implemented for all development in shoreline jurisdiction through an approved temporary erosion and sediment control...plan."

And last, "To avoid water quality degradation by malfunctioning or failing septic systems located within shoreline jurisdiction, onsite sewage treatment systems must be located and designed to meet all applicable water quality, utility, and health standards."

Any questions on this section?

Ms. Ehlers: One of the major problems of septic pollution is addressed by the state WAC, but as far as I have found is not addressed by the County Health Department's septic code. And it must be brought up, I think, because it's a state WAC that we have to honor. WAC 246-272A-0230, Design Requirements: Section 2, "The designer shall use" – mandatory – "the following criteria when developing a design for an" onsite sewage system: "(c) Drainage from the surface, footing drains, roof drains, subsurface stormwater infiltration systems, and other nonsewage drains is prevented from entering the" onsite sewage system, "the areas where" it "is located, and the reserve area."

One of the biggest problems about water pollution – and it's everywhere but it's often seen in the shoreline – is the water which comes down uphill – from a road, for example, or from your neighbor – comes down through the septic system or through the septic field. It's very difficult for a homeowner to manage it. It's possible for the County Drainage Utility to control the water. That was one of the basic reasons we got the thing created, was so that for the first time they could legally manage their water. But while this is in this WAC six times that you shall have no surface or any other kind of water going through it, it isn't in the County Code. So I think you need to – if this critical areas section is to be separate from the other critical areas section in order to protect the shorelines, this seems to me to be a place to add this section. It's a State Department of Health WAC, not a Department of Ecology, but I think Ecology approves of the other department.

The second thing I would point out: It rather looks to me as though 14.26.250 seems to ignore section 520 on geohazards and it – 520, in this regard – differs from 530. So, Dan, if you take a look at all of that and see how it relates. I can give you more information later but I don't want to bore everybody here by quoting code to you.

And this leads to another point that's significant. This Stormwater Manual that the DOE put together in 2005, the first version – the versions of it were put together with no geologist at all on the committee. And the first draft was a disaster. The conclusion that they came to was that water in an infiltration pond – we'll deal with quality – and that the water will infiltrate the ground only to twelve feet. It is to take a large acreage and funnel it down to what amounts to a small – comparatively small – area and then funnel it toward the nearest water. If that nearest water happens to be a cliff, you are going to have in extreme rain – which this document ignores – you're going to have a blowout downhill from it. Ecology didn't – the committee of engineers that developed the manual didn't think of that consequence. I talked to them. I wrote to them. I took part in the first three processes.

And so there's another example of what's uphill from the 200 feet with the effect of severely damaging the shoreline, or the potential of it. Now add to what I was looking at when I reviewed this the stunning amount of really astonishing rain that's happening in the world. Nine inches in sixteen hours in Peking. Eighteen inches in – no, fourteen or eighteen inches in Tennessee a couple years ago in twenty-four hours. Somehow or other we have to start thinking – and this comes in the same category, I think, as sea rise – but we have to start thinking of how you manage huge quantities of water by thinking ahead and in the thinking process develop a kind of minimum impact. I don't think you can completely mitigate for it but you can have a minimum impact with it.

Chair Lohman: I think you need to keep it in context that this is in the Shoreline Master Plan. So things you're asking for are reaching far beyond this task that we're working on.

Ms. Ehlers: I realize it, but we can't handle this if we don't think of that.

Chair Lohman: Right, and I really have to – I guess I don't think much of the maintenance program on the storm drainage facilities on private property going on now. I don't think our drainage utility is able to handle areas that are outside an organized drainage district.

Ms. Ehlers: Oh, yes, they are. That's what they're legally done – organized for.

Chair Lohman: It may say that on paper but in practice I don't think it's –

Ms. Ehlers: That's another issue.

Chair Lohman: But you have to keep this in context. This is – we're talking about the Shoreline Master Plan. So –

Ms. Ehlers: I *am*.

Chair Lohman: But I wrote the question next to where you say "maintain storm drainage" and said, "Where's the enforcement?" or where's the – how are you going to

make sure that that is actually happening? I see a lot of ponds over by all those – well, go look behind the Haggen grocery store. There’s a great big pond. Well, is it really being maintained? They had to dig it. But, you know, those sort of things. We see a lot of things that are – maybe on paper they’re – they can check the box, but is it really –

Ms. Ehlers: Well, it –

Chair Lohman: You know, I don’t want to say more on that.

Ms. Ehlers: It should be – it’s more important than “should be” in the law that you have to do it. Because if you don’t maintain them near the shoreline it will burst out. There’s a subdivision that was put in right after the 1990. It took us ten years to get it through, but those people are legally obligated for the damage on the shoreline if they don’t maintain it. It’s on the plat. And that’s the way in which you get project development to take responsibility for the downhill consequences. Before September 1, 1990, we couldn’t have done it.

Now part of the difficulty here or anywhere else that Annie’s talking about is that the County legal department never allowed anybody to make a list of the drainage ponds and who was supposed to maintain them. It’s the same. We don’t have a list of water – of other districts. And so if this is in here then this can be used, if people are effective, to insist that a County list of these drainage facilities be maintained. There’s a budget for it. County people pay taxes into it in the drainage utility. It’s legal now since 1992 or 3 for the County to – the County’s Public Works Department Stormwater Management Plan to see to it this kind of thing is done. But they have no master list.

Ms. Stevenson: Actually I think Public Works is working on that and I think they are evaluating and looking at all of those, both the ponds – determining whether they’re publicly or privately held – and who’s working on that. It’s part of their NPDES work.

Ms. Ehlers: Yes.

Ms. Stevenson: So it’s happening. They do have a list.

Ms. Ehlers: Yes. They are working and it is happening and it’s one of the more positive things in this regard.

Chair Lohman: I wanted to clarify that fish and wildlife habitat conservation areas don’t include artificial features. I’m just going to read it out of the RCW. They don’t include “artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company.”

Ms. Ehlers: Could you give us the reference to that?

Chair Lohman: This is under the critical areas, but what made me look it up and pull it up was you referred to in number 3 – item number 3 on page 36 – fish and wildlife habitat conservation areas. This is RCW 36.70A. This is Growth Management/Critical Areas.

Ms. Ehlers: And what section in RCW 70A?

Chair Lohman: I'd have to go find that.

Ms. Ehlers: Well, it would help Dan, you see, if he – if you could give it to him at some point.

Chair Lohman: 030.

Ms. Ehlers: 030. The more of these references that we find and give to Dan as he's putting it together, the easier it will be to make the connections.

Chair Lohman: Okay, are we moving on?

Mr. Nickel: Yes.

Ms. Ehlers: I am.

Chair Lohman: Okay, the next thing is Sea Level Rise.

Mr. Nickel: So, Sea Level Rise. We had a couple of really good discussions with the Shoreline Advisory Committee on sea level rise. Scott Andrews of the Swinomish Tribe really brought this issue forward and we had a couple of really good discussions about how to address the issue. Part of that entailed looking at or at least discussing what level of science is out there, not in the details of what the science was but just in terms of the range of analysis or anticipations of sea level rise. And I think there is some agreement at least, or acknowledgment, that there's some disparity there in terms of what the science might say and what folks agree on. I think there's some general acknowledgment that sea level rise is an issue and we should be thinking about that as a possibility.

Scott had some really good points about, you know, the concern for sea level rise, both in terms of from the County's perspective as well as from an applicant's perspective of making sure that if you have a development happening being able to – or at least having the foresight – to look at sea level rise as a potential issue for your development in the future. And that has certain implications in terms of, you know, having to go back and redo something or fix something or protect something, and so we had a lot of discussion about what can we do, what should we do at both the policy and the regulatory level. A number of suggestions were being tossed around about regulations. I think there was some – again, back to the science aspect of things and some of the uncertainty about the size of sea level rise and how impactful it might be in the future.

The Committee have agreed to at least consider some policy statements that at least started to consider sea level rise in the future, but didn't go so far as to suggest regulation at that point.

So I guess I've got a few here – a few points to make in the Discussion Guide, and then lastly there's a policy statement that we have drafted up.

First off, it's not a required element under the Shoreline Master Program and under Ecology's requirement to address sea level rise in the Master Program. It is recommended. Ecology has published some materials. They produced an appendix to their Guidelines and there's, you know, quite a bit of encouragement to address sea level rise in a Shoreline Master Program.

I mentioned the recommendation from the Shoreline Advisory Committee. We've taken a look at a potential policy statement or policy statements. We have drafted up a suggestion here under item c) and I'll just read that here: "Development of new uses and structures should account for potential sea level rise and landward migration of the shoreline during site planning in order to avoid future need for new or expanded shoreline armoring. Such landward migration may result in increased erosion, changes in the location of the ordinary high water mark, or loss of shoreline vegetation."

So the intent here of this policy statement is – you'll notice we mentioned specifically shoreline armoring. That was one of the topics that we discussed with the Committee about looking at development actions; looking at where that development should take place; not only looking at – say it's having a coastal geologist look at erosion forces on the shoreline, but also have the foresight to look at potential future sea level rise. At least consider that in terms – in your positioning of a structure so that in the future we can avoid future shoreline armoring. We know that armoring has been identified as a potential impact to shoreline ecology.

Furthermore, under item d), I wanted to point out under section 14.26.520 – that's the Geologically Hazardous Areas section – this section describes the potential risk areas for tsunamis and volcanic activity under 2(c) and (d). They do not require a site assessment, but are identified as potential risk areas. A similar statement regarding sea level rise would acknowledge the issue without regulating it at this time, and the SAC seems supportive of this approach as well.

So I guess I'm kind of presenting this information as a – trying to get some feedback on whether we should include policy statements like this at this point in the Master Program. It's not in there right now – obviously – but I think we could include that in this draft.

Chair Lohman: Carol?

Ms. Ehlers: I have often gone to the Beach Watchers' presentations. There's always a new set of people showing up talking about the same problems, and it gives you a

perspective. The most interesting one on this regard was the geomorphologist who works with the Tulalips. Have you met him, Tim?

Mr. Hyatt: Which one?

Ms. Ehlers: The one that's got his degree at Bucknell.

Mr. Hyatt: No.

Ms. Ehlers: I don't remember his name.

Mr. Hyatt: Oh, Kent?

Ms. Ehlers: I just remember he got his degree from Bucknell and he was a geomorphologist, and what we're talking about now, you see, is geomorphology – the change in the surface of the earth as a result of wind, water, frost, waves, that kind of thing. The question of sea level rise was, of course, important to Guemes, and he pointed out that there is a thing called "glacial rebound," which he thinks for us in this area is just about equal to the sea rise. I think we should keep sea rise in mind but I think we should think of it as an equation – sea rise and glacial rebound – and we might be some of the few people on earth that might be reasonably protected. What we are much more likely to be vulnerable to are tsunamis. And the Department of Natural Resources has a map showing the tsunami – the vulnerable sites. There are significant shorelines in certain areas in Skagit County that are vulnerable. I think that map ought to be included in your portfolio and I think whatever we say about sea rise should include glacial rebound and tsunami, because I don't want tsunami completely forgotten. It's – we don't learn much about geology in school in this country, so it makes people easy to forget it or to deny it. But we have the experience of watching the Japanese tsunami, and there's places that are collecting all sorts of debris from it, so we are more aware of it than we used to be. But I really think it ought to be part of your map portfolio. And for those areas that are distinctly vulnerable, I think it should be part of what you're looking at. I'm not saying regulate, but I would hate to have anybody in those areas be able to come back and say, You didn't even mention it.

Chair Lohman: This is also not going to be the final time that this is ever updated.

Ms. Ehlers: That's a good point.

Chair Lohman: I think there's a potential of, you know, maybe in five years or seven years or another ten years that we're going to be going through this same exercise.

Mr. Nickel: And this is – that's a good point – this is kind of why the Committee ultimately, I think, decided that, you know, a policy statement's probably best for now. Didn't go forward with – in terms of acknowledging or advising the regulations at this point, because we are going to be revisiting this in eight years.

Ms. Ehlers: We are?

Mr. Nickel: We're required to look at updating the Master Program every eight years. And so at least by having a policy statement that at least acknowledges this and at least begins that discussion, we have the opportunity at least to look at it again in eight years and see where we're at. Because, again, the science isn't in complete agreement.

Ms. Ehlers: You're right. I'm grinning because I was put on this committee a long time ago because this document was supposed to be redone in 1992. We're only twenty years late. But I don't think sea rise is likely to occur in twenty years.

Chair Lohman: Brian?

Brian Lipscomb: I'd like to add that we're not unanimous on our \_\_\_\_\_ the sea level rise. I think it should be called "sea level change." Take your pick.

Ms. Ehlers: Oh, that would do.

Mr. Lipscomb: And \_\_\_\_\_. In fact, when we first started the discussion I made the mistake of asking, Where do you get your data? It was almost as if we were talking religion at that point. \_\_\_\_\_. But it certainly is not unanimous. But, you know, we should look at everything and look at the data. We shouldn't just say, Sea level rises. It's true, it's happening, and we all have to run to the hills.

Ms. Ehlers: Could we put it as "sea rise" – as "sea level change" and include tsunami in it legitimately?

Chair Lohman: But you're just discussing a policy statement.

Ms. Stevenson: The tsunami information is already in there.

Ms. Ehlers: Okay.

Chair Lohman: Okay, let's move on. The next thing is the Revised Purpose and Criteria for the Rural Conservancy – the Skagit Floodway Designation. This would be replacing the one in our draft, correct?

Ms. Stevenson: I don't think there is one.

Chair Lohman: Well, yeah, it says it –

Ms. Stevenson: This was the new designation that we came up with and we said we'd go back to the Rural Conservancy designation and change it to reflect what we had come up with. So that's what we tried to do here. And so those track changes show what the Rural Conservancy designation criteria are and how we changed them for our Skagit Floodway. Does that make sense?

Ms. Ehlers: Mm-hmm. Is that the one that relates to the June 15<sup>th</sup> memo?

Chair Lohman: Yeah.

Ms. Ehlers: Okay. Well, where's this – what am I looking for?

Chair Lohman: You're looking for –

Ms. Ehlers: What page is that on?

Chair Lohman: Well, I stuck mine in my book. It might be in your packet.

Ms. Ehlers: That we just got.

Mr. Nickel: So we did – again, just to reiterate – we did present this information titled as “Conservancy – Skagit Floodway.” The last time we came to you to discuss this it was decided we'd take a look at starting – our starting point being the Rural Conservancy purpose management policies and the designation criteria. Start from the Rural Conservancy and from there modify that language to incorporate the other provisions that we need to account for under the flood hazard regulations. And so that's the changes that you're seeing here. The track changes reflect the changes that have occurred to the Rural Conservancy language.

Chair Lohman: I have a question. In the very first paragraph, you're talking examples of uses that are appropriate. It's right underneath the blue line – the last blue line – if you're looking for where. Right here. You say, “...include low-impact outdoor recreation uses” and then you list several. Are you putting that phrase “low-impact” in front of every one of those things in that list, or is it just low-impact outdoor recreation uses and then the list?

Mr. Nickel: Yes, it's just low impact outdoor recreation uses.

Chair Lohman: Okay. Because – my reason for asking that is when you get to the very end – and I think it's partly because of all the cut and – or the editing; you can't see it clean – is you say, “...and other natural resource-based low-intensity uses,” so it suggests that that phrase trails every single item in your list.

Ms. Ehlers: Mm-hmm, it does.

Chair Lohman: And I don't think that's exactly what you meant? So maybe some wordsmithing on that to clean that.

Mr. Nickel: Okay.

Ms. Stevenson: One other change that I noticed – the one that I’m looking at which is the one I gave you –

Ms. Ehlers: Betsy?

Ms. Stevenson: – in the policy 6A-3.2. We did have this discussion with the Advisory Committee and I didn’t make that change so we need to do that, and I apologize to the members of the Committee who felt so strongly about it. But we will make that change. About half-way down, just before you get to a lot of the blue or purple lined-out section, where it says, “Agriculture, commercial forestry and aquaculture when consistent with the provisions of this SMP and flood hazard regulations may be allowed.” We changed that language to be more in line with how it speaks about the water-dependent uses below where they would be considered as preferred uses.

Chair Lohman: “Agriculture, commercial forestry and aquaculture would be the preferred uses \_\_\_\_\_.”

Ms. Stevenson: When consistent with the provisions of this SMP and flood hazard “would be preferred uses” rather than “may be allowed.”

Ms. Ehlers: There’s a difficulty. Are there swimming beaches on the Skagit?

Ms. Stevenson: Yeah. I’ve gone swimming.

Chair Lohman: But they’re talking this section. If you refer back to your map, this Skagit – the Skagit River floodway.

Ms. Ehlers: Yes, but I’m looking down at the end of 6A-3.2 down at the bottom where it says –

Chair Lohman: Oh.

Ms. Ehlers: “...preferred uses, provided...” – “...angling, hunting, wildlife viewing, and swimming beaches...” I think that may be a leftover from when it wasn’t the floodway, when it was just Rural Conservancy generic.

Ms. Stevenson: I think any beach area along the areas of the Skagit that are floodway in the middle reach are going to be in the floodway, so they could still be a swimming beach at lower water. I guess I don’t understand.

Ms. Ehlers: I will really be interested in seeing how you can mitigate from an open surface mine on a shoreline of the river.

Chair Lohman: So, Betsy, following along with your change on that “may” – I’m referring to agriculture then – when you jump over then to the Rural Conservancy one,

which is on page 6 in the Elements section, I have circled “Agriculture may be allowed.” So is that going to be the change there, too, to be a preferred use?

Ms. Stevenson: So it reads the same thing, because that’s what we talked to the Advisory Committee about. Those are the ones straight out –

Chair Lohman: I mean, I brought that up last time.

Ms. Stevenson: – of Ecology –

Mr. Nickel: We agreed.

Ms. Stevenson: – but I think we agreed to do that. So we’ll do that, too. Thank you for catching that.

Chair Lohman: Do you need help on finding that?

Mr. Nickel: No, we actually talked about that at the meeting.

Ms. Stevenson: Yep. Thank you.

Mr. Nickel: And that was intended to be corrected in both sections.

Ms. Ehlers: I don’t see how destroying the shoreline protects it. If you mine on a shoreline you destroy it and I don’t see how you can possibly claim that you’re protecting it. I don’t see how you could possibly mitigate onsite. If it’s crucial to have the shoreline intact for fish movement, I don’t see how you can destroy it with a mine. That’s for you to think about as you’re working on the rest of this.

Chair Lohman: Okay – did you have something, Matt? Okay, back to this section. You say in 6A-3.2 in the list agriculture, commercial forestry and aquaculture, et cetera. Then when you jump over to the second page, you – 6A-3.8 – you again go “may be allowed.” So which is it? Is that – are you going to tie that back?

Ms. Ehlers: Well, it’s “may be allowed” in both cases.

Chair Lohman: No, they changed it to a preferred use. Here they changed it to a preferred use.

Ms. Ehlers: And that says “may be allowed.”

Chair Lohman: I know, but they didn’t change it on ours.

Ms. Ehlers: You mean they struck it out?

Chair Lohman: Yes.

Ms. Ehlers: How do I know they struck it out?

Chair Lohman: They just said.

Ms. Ehlers: Oh...

Mr. Nickel: That would be the same.

Chair Lohman: Okay, and then –

Mr. Nickel: And the intent there is to point out specifically, you know, its connection with the state Forest Practices Act as well. But, I mean, I think that – what we discussed was it was identified as a preferred use. So we –

Chair Lohman: Do you need to segregate commercial forestry as a bullet when you didn't do that for agriculture and some of the other uses? I guess I'm asking why you did for them and you didn't do it for others.

Mr. Hyatt: Because forestry is actually governed under the state Forest Practices Act, especially in shorelines.

Chair Lohman: Okay, so that was the tie-in, was to that?

Mr. Hyatt: That's the way I remember it.

Mr. Mahaffie: Yeah, that's how I'd consider it.

Chair Lohman: I just didn't want to be pounding on one person and we're not pounding on everybody else.

Ms. Ehlers: Well, think – in 3.8, you see where it says, "...the State Forest Practices Act, its implementing rules..."? Remember that big, huge book I brought?

Chair Lohman: Yeah, I know that but my question had to be with, Why did you write that that way?

Mr. Nickel: Right.

Chair Lohman: I know they're required to do that, but I was questioning why –

Ms. Ehlers: I don't know any approval in for agriculture.

Chair Lohman: No. I just want us to be consistent from the beginning of the chapter to the end.

Mr. Nickel: Yeah.

Ms. Ehlers: I'm curious why this is the only page – two pages – in the Element that we're discussing. We've discussed – normally in the process of developing a plan, you write policies and then you implement them. We're discussing the implementation and we haven't talked about the Element itself.

Chair Lohman: Yeah, we –

Ms. Ehlers: Not really.

Chair Lohman: We did, at the very beginning.

Mr. Nickel: At the very beginning we covered the designations. This is kind of just a follow-up to that discussion we had.

Chair Lohman: This one was still under work. It was undergoing a lot more work at the committee level, Carol, so it had a placeholder spot.

Ms. Ehlers: I understand that, but there's forty-three pages in the Element and we only talked about the designations. We didn't discuss the rest of it. We didn't talk, for example, about the Economic Development Element. We haven't talked anything about the economic development of the shoreline except to permit – we were talking – we're permitting agriculture and aquaculture and forestry. We're permitting mining. We're permitting institutions. The Guideline said that the industrial was to be only on March's Point. The way the text writes, it's to be permitted anywhere. The people on the shoreline who are already there are going to be restricted in a number of ways. We'll get to that. But all sorts of things are supposed to be permissible for business and commercial in the water and on the shorelines, and I don't see any coherent economic concept of the tax value of the shorelines to be recognized along with all the rest of this. It's yet to be talked about. But in the day when the County government is as short of tax money as it is, you have to protect what you have.

Mr. Nickel: I think to that regard, there's a strong emphasis on allowing and promoting water-dependant uses at the shoreline and that has a variety of different types of uses in commercial and industrial uses of the shoreline that are water-dependant. And there's definitely an emphasis and a preferred use for water-dependant activities. And so while we really haven't discussed the economic implications of that it definitely is in here in terms of the promotion of that type of development.

Ms. Ehlers: On the Economic Development Element, all there are is commercial and industrial. There is no recognition of residential as a preferred use – which it is in the RCW – and in this county it is a huge tax benefit.

Mr. Nickel: Can I make a –

Chair Lohman: Tim.

Mr. Hyatt: Go ahead, Dan.

Mr. Nickel: I just want to make one point. Back to that 6A-3.8, the commercial forestry: I think – you know, I think we actually can strike that statement because we have addressed that in 6A-3.2. I think we could actually strike that.

Mr. Hyatt: But isn't the point of 3.8 to point out that it needs to be consistent with the state regulations, not that it may be allowed?

Mr. Nickel: Right, but it needs to be consistent regardless.

Mr. Hyatt: True.

Chair Lohman: I think it's already known. I think it's a redundancy. I thought it was when I saw it.

Ms. Ehlers: You can always add it to your reference list.

Chair Lohman: It's already referenced multiple times.

Mr. Hyatt: If nobody else is going to bring it up, the designation of the shoreline zone – it appears in two places in the first paragraph. "...within the floodway of the Skagit River...upstream of the State Route 9 bridge and the confluence of the Skagit and Sauk Rivers." I read that to be just upstream of the State Route 9 bridge and just upstream of the confluence of the Skagit and Sauk Rivers. That doesn't make a lot of sense. "Between" got struck. So I think this definition of where it lies needs to be fixed" –

Ms. Stevenson: You're right.

Mr. Hyatt: – to say "...upstream of the State Route 9 bridge and downstream of the confluence of the Skagit and Sauk Rivers."

Ms. Ehlers: Or you could write it, "...between" –

Mr. Hyatt: Well, that's the way they had it.

Ms. Ehlers: – "State Route bridge and the confluence..."

Mr. Hyatt: I'm not sure why they changed – why it was changed, but it doesn't work this way.

Ms. Stevenson: I think they got lost –

Mr. Nickel: Yeah, it wasn't intended to be construed that way! We'll work on the wording and make sure it's clear.

Mr. Hyatt: The same clause appears later in the designation criteria.

Ms. Stevenson: I think it got lost with all the \_\_\_\_ and inclusions.

Chair Lohman: Okay. Shall we move on? Next item, you were going to bring us up to date on aquaculture.

Ms. Stevenson: We can start that discussion and that's why Kevin's here, as well, and maybe Tim, in addition. The Advisory Committee has been working on this section so we held it back because they wanted to complete their work on it before we brought it before you. They put together a subcommittee to work on it as well, which we have been meeting and are still getting dangerously close to getting there. It is still a work in progress and we're asking for a little bit more time to do that. We met last Wednesday and got through some additional sections and I think we're to the point now of we can make as many changes as we can make and then we're going to just identify areas where the group agrees to disagree on different things.

So what we are proposing at this point is to – I'm going to try to clean it up based on our meeting last Wednesday; send it out to Kevin, Tim and Bill Dewey, who are the members of the subcommittee; have them take a last kind of look at it so we can put it together in a way to present it to the Advisory Committee; have the Advisory Committee meet again – I'm hoping we have some additional information, some additional things for them to look at as well – but sometime in August, a little bit later in August, so that hopefully we can bring it back before you in early September. So it will be late, in terms of our submission to Ecology, but I think the fact that we're working on it with some of the, you know, local operators and folks who are interested might make a difference, I hope, to them.

So we are getting closer. We've done a lot of work on it – spent quite a bit of time sharing information and going back and forth, but it still needs some additional fine tuning before you guys jump into it. So I'm hoping that you're willing to be a little bit patient and wait, and maybe – I know we talked early on in the process when you guys were looking at your calendars about whether you could take some time off since you're working all summer and normally you got to do that. But it would be really helpful if you could meet early in September to at least consider that. So I know you have a regularly scheduled meeting in September that I don't think we cancelled yet because you kind of wanted to wait and see what the work load looked like. But if you guys are willing – I know we can't make a decision tonight, but we'll try to target that for early in September.

Ms. Ehlers: I'd rather not look at something that was very much in progress.

Ms. Stevenson: Well, and that's what the Advisory Committee said because the version that they got – and I was trying to find it here – was so full of track changes in so many

different colors and comments that they just went, Whoa! You guys, why don't you take this and have a go at trying to clean it up a little bit and figure out where you can agree and, you know, include some of that. So that's what we're working on doing now.

And, Kevin, if you want to add anything, or Tim, feel free, but that was kind of what we talked about. Kevin Bright is part of our Advisory Committee and he's also with American Gold Seafoods who has the fin fish operations here in the county.

Chair Lohman: Okay. So the next item will be Agriculture Activities.

Ms. Stevenson: Okay. So at our discussion on the ag activities you asked for some clarification and also, perhaps, a change or addition to the Applicability section. So Ryan provided that to me tonight and I've included it in your packet. He said he didn't really show it to you in track changes because it got too messy but that he did change the Applicability section of that under the – excuse me; my voice is *really* dry – under the first page of the regulations, so 14.26.320 under (1).

Ms. Ehlers: Oh. Well, wait a minute.

Ms. Stevenson: And then he also deleted a couple of the things at the end, based on a recommendation by the Planning Commission that he remembered.

Chair Lohman: I don't think that you last time – the phrase “new agricultural facilities” – so it was the old – in the old section it was on page 46 in the Code. It was item 2(d). I don't think it captured what I was trying to refer to 100%. Because this one just limits you to only replacing a barn for a barn – an old barn for a new barn or – but I believe an existing agricultural operation is allowed to build something new.

Ms. Ehlers: Is within 200 feet, is that a crucial aspect of that?

Chair Lohman: It doesn't require a substantial development permit.

Ms. Ehlers: No, it wouldn't. Are there a lot of barns – are there barns right next to the shoreline?

Chair Lohman: I don't know.

Ms. Ehlers: Because this is –

Chair Lohman: I just want to be consistent with the RCW.

Ms. Stevenson: So what are you asking for that to say then?

Ms. Ehlers: We're having trouble remembering that this is just 200 feet.

Chair Lohman: I know.

Mr. Lipscomb: So I'd like to add, though, that if it's a floodway your 200 feet goes away. So anywhere in the floodway you can't have your barn.

Chair Lohman: Right.

Mr. Lipscomb: Not just 200 feet from the shoreline.

Chair Lohman: Well, and you get into the floodplain and the frequently flooded areas and it morphs. So we're not just talking waterfront property.

Mr. Lipscomb: And I have a structure 60 feet from the shoreline.

Ms. Ehlers: Yes, but you just pointed out something very basic and that is that most of this we're talking about 200 feet and then all of a sudden we're not.

Mr. Lipscomb: You're right.

Chair Lohman: That's right.

Mr. Lipscomb: When you expand into the floodway, and if your floodway maps aren't correct, you impact an awful lot of property that probably shouldn't be impacted.

Chair Lohman: Well, I don't think you can build in a floodway, but a floodplain.

Mr. Lipscomb: If you have an existing barn in the floodway.

Chair Lohman: Okay.

Mr. Lipscomb: So it's not 200 feet from the water. It would be anywhere in this floodway.

Ms. Ehlers: And the floodway is a crucial issue between the Route 9 bridge and the Sauk River.

Mr. Lipscomb: Which, by the way, will not be remapped in part of the Army Corps stuff, and it was actually – the cross sections were done in 1960. And so there's a – it's really not taking into consideration any channel migration. I think one of the reasons they stopped the flood insurance study – the deferred one – was because of the sixty miles of non-approved dikes that were in the county. I happen to have a couple thousand feet of one of them. But it doesn't show on a map; therefore, it doesn't exist. Of course it depends whose map you look at. The U.S.G.S. map, it shows on there, but FEMA's map doesn't. FEMA's maps were 1960, before it was put in.

And there's all kinds of definitions for a floodway. Here's four: there's FEMA, the RCW, the WAC and the Skagit County. And they're all a little bit different. FEMA's the only

one that says it actually has to have water through it. I mean, you must be able \_\_\_\_\_. Everybody else says once FEMA does it we adopt that. And if FEMA didn't do the math right, get out ten grand and an MT2 process.

Chair Lohman: I think he's close but not there, and maybe –

Ms. Stevenson: I mean this is right out of the RCW so I don't know.

Chair Lohman: Right, except you wrote “new agricultural facilities,” where here it says in the RCW, item (iv), it says, “construction and practices normal or necessary for farming.”

Ms. Stevenson: Okay, what part of the RCW are you looking at?

Mr. Hyatt: Where are you at?

Chair Lohman: 90.58.030 in the Definitions.

Ms. Stevenson: Okay, I'm in 90.65.

Mr. Hyatt: Are you within the Skagit Code also?

Chair Lohman: That's the RCW. On the new ag section you gave us, it would be (1)(iv).

Ms. Ehlers: That compares to what RCW?

Chair Lohman: 90.58.030.

Ms. Ehlers: 90.

Chair Lohman: 58.

Ms. Ehlers: 58.

Chair Lohman: .030.

Ms. Ehlers: 030.

Ms. Stevenson: I'm sorry. Can you say again in 030 which one you think?

Chair Lohman: Well, the one that refers to construction is (iv).

Ms. Stevenson: Okay.

Ms. Ehlers: How is an outsider going to know which part of this law applies because it's floodway and which part doesn't?

Chair Lohman: Well, we're just talking the agriculture section, Carol.

Ms. Stevenson: Maybe we can talk to Ryan about this, because I know what you're saying and I know what he's saying.

Chair Lohman: Well, and I remember we brought up, too, the other things in that list from the RCW and they referred to dike and drain, which would be the operation and maintenance of any system of dikes, drains, ditches, et cetera, which was (x) in the same RCW.

Ms. Stevenson: Those things are already exempt.

Chair Lohman: Yeah.

Ms. Stevenson: Because they're listed there.

Chair Lohman: Well, maybe I should just talk to him. Anything else?

Ms. Stevenson: It says, "SMP provisions apply in all of the cases not specifically exempted by the Act," which is the things that you're listing and talking about. So I think you're covered.

Chair Lohman: I want to make sure.

Ms. Stevenson: Because if we keep – I don't know. The exemptions are the exemptions. They've always been there and they've always been the same.

Chair Lohman: But you list – sometimes you list the RCW and sometimes you don't.

Ms. Stevenson: Okay.

Ms. Ehlers: It'd be better to list it. Then you at least know where you would go.

Chair Lohman: Well, or refer to it but capture *all* of it – not cherry-pick. Did you guys have more on this section?

Ms. Ehlers: That's your baby!

Chair Lohman: I mean, I admit I got it tonight.

Ms. Stevenson: Yeah, I know. These are the things that *wouldn't* be exempted, I guess is –

Chair Lohman: Right, and I need to make sure we're not talking this way.

Ms. Stevenson: Okay. Let's talk about it and just make sure, okay? Because I know what you're saying, but I think we're okay. But if it's not clear take a little bit of time because I know you just got and you haven't had a chance to look at it. Let's make it clearer.

Chair Lohman: Okay.

Ms. Ehlers: And please tell us somewhere how we can – we, the outsiders – can tell what we're really looking at when agriculture was primarily located in the floodplain, so that the public doesn't get confused and accuse Farmer X of doing something that Farmer X is perfectly innocent in doing because the floodplain line is 10 feet on the other side of his property line.

Chair Lohman: Okay, we're going to move on. This will be Legal Pre-existing Residential Structures and Uses, and Betsy refers us to an outline – to a memo that we got tonight.

Ms. Stevenson: Yep, and it's very short and not exactly what I had intended when I put it in the agenda, but it was the best that I could do at this point. We did receive some comments, and I know that this is an issue that is important to landowners statewide, basically, as far as what happens when this thing gets adopted because we know, whether we're calling them setbacks or buffers, that they're changing and a lot of them are getting bigger, so what does that do to our houses as they exist now and as were developed legally. So I just wanted to make sure that you were aware that there was some legislation that you guys are aware of that was passed that allows those things to be considered as pre-existing legal residential structures. I'm going to take full advantage of that, and, in addition, Ecology is allowing some flexibility with how the local jurisdictions are trying to deal with it in their existing codes.

So I guess I just kind of wanted to lay out what I'm thinking because I haven't had a chance to actually draft the code sections yet, but just to kind of – so people are aware that we know that it's important and we want to work with them on it. So I guess the three things that I outlined there as far as how I'd like to try to see it work is a bit of a tiered approach where if you have a residential structure that was legally built at some point in time along the way that, based on the adoption of these new regulations, now is either within a buffer or too close to it or whatever else may be the situation, that you may be able to do some modification to that with the use of the mitigation sequencing, if you can show that there aren't impacts and some other things like that.

The second level would be a little higher level of a modification which may have greater impacts to the buffer, but it may be allowed through an administrative review process, which we don't currently have under our Shoreline Program now. And this is something that I'm hoping that Ecology would kind of approve programmatically based on some criteria that we would have set aside that they could approve so that they wouldn't have

to look at each and every one of those, and have some sort of authority over there – over those.

And then the last type would be a modification that would be large enough that it would actually require a shoreline variance that has a public hearing attached to it and that would go before the Hearing Examiner, and then it would have to be approved by Ecology. And that's the system that we have now. Any development that would take place on an existing building that's within a shoreline setback now, no matter how big or small, has to go through that full-blown shoreline variance process now. So this is an opportunity for us to take a stab at allowing landowners a few more options in terms of their design and what they decide to do.

We've got something that's similar in the critical areas ordinance when we allow buffer reductions. A certain amount of buffer reduction is done kind of through mitigation, the second type is an administrative type, and then the third type requires a critical areas variance. And it's amazing what landowners, when they're given those options, will come up with, and it gives them some flexibility and some opportunity to kind of take control of what they want to do based on the amount of time and money and all the costs and everything associated with going through those processes.

So I'm hoping that this is something that if we write it up well enough and it looks like it makes sense to them that we can make work without it being too difficult. And it just gives people a few more options besides having to go through a variance process which takes a lot of time and can be very expensive, and doesn't really get you anything more than having some criteria in place – really – normally. It gives some people an opportunity to speak at a public hearing but the administrative process we would notify people – residents – within 300 feet of that property so that they would at least be aware that something might happen. So I guess quick and dirty rough, that's kind of what I was thinking of.

So I wanted to at least give you guys an idea that that's what I'm trying to work on and hopefully can get that put together in the next little while so it could be batched with the aquaculture and the other things that would be coming back in August to the Advisory Committee and September to you.

Ms. Ehlers: This should be the most important issue for anyone who owns a house on any shoreline in the county. I gather from the Assessor that's a billion dollars' worth of property. We don't play with it. You have to mitigate, you have to take care of it, but you don't play with it. The thing many of us out in the west are most worried about are the fireworks idiots who set off fireworks when there's been a burn ban for weeks – aerial fireworks with winds blowing, no control whatsoever of the sparks. You watch the sparks flying through the air into the conifer woods. And when we heard that it could be that because of net loss we wouldn't be allowed to rebuild, the shorelines got upset. Senator Ranker wrote a bill, which I think the Committee ought to have a copy of, and that's where my issue of no net loss on a miniscule scale arises. Because how do you decide that if House A that was built 100 feet back setback/buffer – I'm talking marine.

What goes on in the streams is – I’m not an expert, but I’ve spent an awful long time researching the marine, and if you have a setback of 100 feet – 50 feet, 100 feet, which is what it used to be – that’s not a buffer. Those are two different words. There is no definition in this document about buffer or setback. There is in the critical areas in 14.04 of the Code, but none in this document appear in the back.

Betsy was twisting the word “setback” to equal “buffer” and that’s what this document implies. I raised it the other days but I have to again. If somebody thinks you’re going to plant 100 feet of trees in the shoreline with shoreline saltwater intrusion, you’re pipe dreaming. Go out there and look at the woods that are planted on the north side of 20 right near the Swinomish Slough watching a whole forest die – I think that’s what the cause of it is – and watching other things in saltwater intrusion.

So you’re talking about modification, which is one issue; replacement is another one. We’re frightened that if there’s fireworks fire that the house will burn because there’s no attention been paid by any shoreline ordinance to a proper side setback with fire protection in it – including, as far as I can tell, this one – or from the many rats that seem to occur – I’m talking about four-legged rats – on Fidalgo Island. Rats have gotten into attics and caused more than one fire. And that’s why the visioning process, Dan, when you guys said we could only use three to four words to express our opinion as to what we thought was most important, we finally ended up with protect our property rights because that was the only three- to four-word sound bite we could use.

But that’s the crux of the issue. You need to have a setback. And for geohazards there are buffers, but that’s in here. So I’d like you to look again on page 149 where you have the lake and marine shoreline – because that’s my business – and how many feet you have, and you call it a buffer which means by definition – later here – that it’s planted. Now you don’t – the government doesn’t charge \$3- and 4,000 per front foot for a woods. And yet you *can* protect the environment. It’s been protected for decades in some of these areas.

I would suggest also that you take a look in this regard in 14.26.530. Take a look at 14.26.520 on page 138 because that’s the geologic hazards rules. The geologic hazards rules in the critical areas ordinance were based on all the documents that Doug Canning and the Department of Ecology could bring forth in the 1990s as to how you protected the – it did two things simultaneously. If you want no net loss of the shoreline, you have no net loss of the cliff and what’s above, or minimum loss. It’s a balance. And that’s what the critical areas ordinance geohazard tries to create and it’s worked.

Chair Lohman: Carol, so can you tie that back here to the nonconforming, pre-existing?

Ms. Ehlers: Well, there’s nothing in here that deals with the subjects I’ve been talking about.

Chair Lohman: No.

Mr. Mahaffie: Can I simplify that?

Chair Lohman: Go ahead.

Mr. Mahaffie: If a house burns down, can you rebuild it in the same spot?

Mr. Nickel: Yes.

Mr. Mahaffie: Okay.

Chair Lohman: I don't think you said that, though.

Ms. Stevenson: No. I was specifically talking about pre-existing, legal, residential structures. We are still going to have to address nonconforming kinds of issues, as well.

Ms. Ehlers: I'm talking about pre-existing structures. Can they be rebuilt?

Ms. Stevenson: Yes.

Ms. Ehlers: Well, it isn't clear. And do they have to put in –

Mr. Mahaffie: They're not done yet, Carol.

Ms. Ehlers: If you're down on Alexander Beach and your house burns – one did burn a number of years ago – you're supposed to have to plant the whole beach in order to get the right to build it because –

Chair Lohman: I – I –

Ms. Ehlers: You have a buffer instead of a setback? That's what needs clarifying.

Chair Lohman: I guess the question is, How's the County going to opt to handle this? Because you've been given some recent tools that you can use. Otherwise you're going to have thousands of nonconforming properties and you're going to have a big management problem, rather than having a few.

Ms. Stevenson: That's what I tried to address in my memo – just that we are trying to take that into consideration.

Chair Lohman: But it almost sounds like you're going to punish the people that happen to be already there.

Ms. Ehlers: Yeah.

Mr. Nickel: I think – just for clarity – I think one of the – from what I read from the memo – one thing that it's going to allow (is) existing structures: those that are legally established who continue to maintain and to rebuild in that footprint. I think one of the items that the memo tries to emphasize is that even modifications to those structures we're going to work at even allowing – even if it's in that situation where it might be within a buffer – we're going to work with even allowing some modifications to those structures. So we're really not only just dealing with, you know, the footprint and allowing replacement in that footprint. We're also going to work on allowing some modifications to occur. And I think what Betsy's memo identifies here, these three – this tiered approach gets at that level of modifications. You know, at some point – the first item – you know, some modifications might be simply allowed through mitigation sequencing. Some might be a little bit bigger modifications. That might be through a different process. And then the larger modifications might go through a variance process that Betsy described.

Ms. Ehlers: So in other words – a rebuild is not a modification, as I see it. It's a different term. So if your house burns down, you have to get a variance through the Department of Ecology in order to rebuild it? No! You don't talk about that aspect in the memo. I'm not objecting to what you've written. I'm objecting to what isn't there. Yet.

Chair Lohman: The other question is, What about lots that, for whatever reason, they're not built but they're already established lots within the Shoreline Residential? Now, you know, I'm a lay person so I'm not an expert, but I'm under the impression that you can consider them conforming as well. Is that correct?

Ms. Stevenson: We have a process that we go through called lot certifications.

Chair Lohman: Well, if they have already – are certified lots, but now under the new rules they're not going to be conforming because of size or setback or a bunch of –

Ms. Stevenson: I don't think we have a size that would be under the zoning but not under the shoreline necessarily. And if they have a lot cert then they're considered a legal lot of record.

Ms. Ehlers: A platted lot is by definition a legal lot of record but you have to go through a damnably expensive process to do it. But once you've done it you've taken out the reasonable use process and required a variance process to build on this lot. There are people I know of who buy lots – a neighbor bought a lot in 1962 when he was a young sailor. He didn't get to build it for forty-five years because of where he was working and what he was doing. When he did he had to go through a process because it was next to a resource land that was a spot zone, and so the guy had trouble getting his house built even though he'd owned the lot forever, and it was platted and approved in subdivisions. There's got to be a way – I'm glad you brought it up, Annie – there's got to be a way for people to invest in property that's been approved, gone through all the processes the County could think of at the time, and have that as an investment. You can't make it like the financial market.

Ms. Stevenson: The way to protect those rights is to go ahead and get a building permit. That's the only way it gets vested, is to get the building permit to do the work. You can't just keep the property and expect those rules to stay the same forever.

Ms. Ehlers: No, but if it's platted – I'm not talking about a rogue lot someplace; we've got those, too. I'm talking about an officially platted lot. The County has had trouble for many decades –

Ms. Stevenson: It's a zoning issue and a land use issue more than it is a shoreline issue, but there are specific laws that do apply to those scenarios and we can't change that in the shoreline rules, I guess.

Ms. Ehlers: No, we can't. But if it's zoned residential we put it through a reasonable use process, which dealt with this issue, and as far as I can tell you had it in here, you took it out and replaced it with a variance.

Ms. Stevenson: A state law requires that the Shoreline Program doesn't honor reasonable uses; the critical areas and the growth management does. It is specifically a variance and, yes, we did have to do that if that was what you were getting at. I'm sorry. I didn't understand your question.

Chair Lohman: Dale?

Dale Pernula: I think that Betsy tried to come up with a few different ways to deal with some variance situations – perhaps not all of those. One of those would be it didn't specifically state what's allowed if you want to rebuild an existing structure. I think it was assumed that it would be allowed. But I think we can come back and modify this memorandum to address that and to address nonconforming lots of record as well. We'll have to do some research and some thought and get back to it. I don't think we're going to resolve it right now.

Chair Lohman: Well, I think that this subject – a lot of people are *really* interested in this, and I don't think this is adequate at all by a long way and I think it needs a lot more work. And we don't have anything to really work on here.

Ms. Stevenson: I mean this was just my initial attempt to let you know what I'm thinking and what I want to try to do because I have heard from a lot of people. I understand that this is really important. So I just want it to get out before you guys don't see it anymore and while we still had an opportunity with this form so that it would get out that we *are* working on it. We are not going to just make them all nonconforming and have to go through variance processes. And, you know, I did end it – you know, my memo – saying that I know it is an important issue for residents and landowners and I do want to bring it back to both the Advisory Committee and the Planning Commission when those draft regulations are put together.

But I just wanted to give you an idea as we are hearing people. We understand that. We are doing everything we can to take advantage of the flexibility that the laws are giving us to allow them to continue as they are, to be replaced if they are damaged or burned down, and look at ways to – as Dan kind of said – protect that footprint area. And then, depending on if they want to modify and do expansions, how they can do that in different ways at different levels so that it isn't just as soon as you do anything within that area you need a shoreline variance that has to go to the Hearing Examiner.

So I guess, you know, in my haste to try to get something put together, I didn't cover some things, and I appreciate that. But it certainly is – we aren't trying to punish people for sure. It's the intention to do just the opposite: give them some options to look at. If the lot of record thing and the substandard lots is something that you want us to talk to you about we can try to show you what it says in our code and give that to you.

Ms. Ehlers: Betsy, my comments are not meant to be criticisms. They're meant to be additions.

Ms. Stevenson: No, no, no – and I appreciate that.

Ms. Ehlers: I just don't want you to forget – please.

Chair Lohman: Okay, so let's – since we really don't have enough on that, let's move on. The next item on the agenda is Administrative Provisions.

Ms. Stevenson: That's another section that we're still working on. We're getting dangerously close so I would ask that, you know, we get it back to the Advisory Committee kind of the same sort of schedule and batch it together and have it for you in September.

Ms. Ehlers: Okay.

Chair Lohman: Okay, and then the next item on the agenda is number 3), General response to comments that you've received on the draft – the draft draft.

Ms. Stevenson: You asked that we go ahead and try to prepare some response for those comments that we received. So I kind of just pulled out some of the ones that seemed to come up quite regularly and put those together in the memo. I'd be glad to go through these because it might be useful to other people who may be watching, as well, if that would help.

We received seven written comments during the informal comment period on the working draft version of the SMP. A lot of similar issues were mentioned so this memo will summarize those comments and provide a general response for your information. These will be reformatted into Frequently Asked Questions and responses and posted to the website.

(NOTE: Comment summaries are in boldface.)

**Not enough time was given to review the document. No notification or public hearings are included as part of the process.**

I hope that you know, but I'm going to go ahead and - the informal public comment process offered at this time was to provide the public with the working draft document so they could see the progress that has been made to date. The Shoreline Advisory Committee has been working through the sections of the working draft and it seemed like a great opportunity to begin study sessions with the Planning Commission so they could familiarize themselves with the process, the rough draft document, and offer feedback to be incorporated at this time.

There will be a formal adoption process with notifications and public hearings, as required. At this time, we anticipate that the adoption process may be initiated late in 2012 or early in 2013. The grant contract with Ecology includes a local adoption date of June 30, 2013. Public open houses will also be held once Ecology's initial review of the working draft SMP is completed and their comments are received by Skagit County. Now we're assuming that may be October, November, December sometime.

So the next comment was: **The 100-year floodplain is included in SMP jurisdiction.**

The County may choose to include the area of the 100-year floodplain within shoreline jurisdiction. There are areas under the current Shoreline Master Program that are included in this way. The Nookachamps area is one. The draft shoreline jurisdiction maps prepared in conjunction with the update have not included the 100-year floodplain except when it continues adjacent to the floodway. Shoreline jurisdiction *does* include the floodway and the area adjacent and measured 200 feet horizontally if that area is still all within the 100-year floodplain. And then I listed the RCW that that comes from out of the Shoreline Management Act.

**RCW 90.58.030(2)(d)(ii) indicates that counties are not required to impose critical area buffers in the shoreline.**

This reference may lead to such a conclusion, but in looking further one of the types of critical areas – fish and wildlife habitat conservation areas – lists waters of the state as one type of fish and wildlife habitat conservation area. And then I give you the WAC where that comes from. Waters of the state include lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters and water courses in Washington. And that comes out of the WAC and the RCW. So, basically, this is saying that shoreline areas are also a critical area by definition, a fish and wildlife habitat conservation area, and subject to the buffer requirements. These requirements are already in effect under Skagit County Code 14.24.530, which is part of the critical areas ordinance.

Ms. Ehlers: That's only for geohazards.

Ms. Stevenson: No.

Ms. Ehlers: 530?

Ms. Stevenson: These are fish and wildlife habitat conservation areas.

Ms. Ehlers: These requirements are in effect under Skagit County Code 530. I believe that's geohazards.

Ms. Stevenson: Fish and wildlife habitat conservation areas.

Ms. Ehlers: Isn't it?

Mr. Mahaffie: Fish and wildlife.

Ms. Ehlers: Is it?

Ms. Stevenson: **Draft SMP expands what are ordinarily considered geologically hazardous areas to include soils subject to risk of liquefaction.**

Again, geologically hazardous areas are described in WAC 365-190-120. Under number (7) it states that seismic hazard areas must include areas subject to severe risk of damage as a result of earthquake-induced ground shaking, slope failure, settlement or subsidence, soil liquefaction, surface faulting, or tsunamis. Areas located within a high liquefaction susceptibility are considered known or suspected seismic hazards. And that's currently addressed under section 14.24.410(3) of our Skagit County Code. 14.24.400 of the County Code does address design and engineering techniques to address potential risks to minimize risks to health and safety. Because that comment went on to say that there are ways that you can design and engineer to build things in those areas, and our Code does address those things and allow for that.

**Proposed Skagit County Code 14.26.500 should be removed. The County does not have the authority to enforce tribal law or laws of other jurisdictions.**

This provision can be found in section 14.24.040(3). The intent of jurisdictional substitution is to allow the County to accept information and work that has been prepared by an applicant for another agency that has permitting authority. For instance, if an applicant is required to get a Corps permit for development that impacts wetlands, the County can accept the Corps review and any conditions of the Corps permit as compliant with the critical areas requirements without requiring a site assessment or additional mitigation, for example. Sometimes what may be required for a federal or state permit application submittal may be different than what is required under our critical areas ordinance. This language allows us to accept what has been done without requiring site assessments and additional mitigation. It is not used, nor was it intended, to give the County authority to enforce the regulations of other agencies or tribes.

So that section that's proposed to be in the Shoreline Program is the exact same section that comes out of the critical areas ordinance.

**PCA requirements (markers, signs and fences) should not be applied in shoreline residential areas.**

Section 14.24.090(2), which is the critical areas ordinance, is the existing section of code that currently applies. There is discretion in requiring permanent markers, signage or fencing. Ordinarily it would not be required on a single residential lot, since a PCA site plan would be approved and recorded and any restrictions placed on the buffer would be included in the PCA and signed by the applicant. The additional requirements are used for land divisions or in more rural areas, where people may not be aware of the presence of a critical area and it may need to be identified as such. They are not necessarily required in agricultural areas, unless fencing is used to limit livestock access to critical areas or buffers. In areas zoned Ag-NRL or Rural Resource-NRL – which isn't in there because I forgot – and being used for ongoing agriculture, fencing would not be required for land in crop production.

**Requiring public access on private property as a condition of permit approval threatens the privacy of the landowners.**

Public access is a controversial topic and it is not the intention of the County to require public access as a condition of approval for every project that requires a shoreline permit. The state guidelines do require that opportunities for public access should be looked at and identified and, where feasible, considered. The County and the Advisory Committee recognize the concerns of landowners for establishing public access on their property. Issues of trash and garbage, animals (dogs and horses), privacy, security and other human use-type impacts need to also be considered.

**Forest practices regulated under the Forest Practice Rules should not be additionally regulated under the SMP.**

The County met with the Forest Advisory Board yesterday and will work with them to revise the Forest Practices policies and regulations in the draft SMP to be consistent with existing state and federal laws, but not redundant. Ecology notes that timber harvest and management under the Forest Practices Act is adequate for commercial forest uses within shoreline jurisdiction. Conversion to non-forest uses must be found to be compliant with the Shoreline Management Act and the SMP. The County does not intend to attach new regulations for forest practices within shoreline jurisdiction beyond what is required by the WAC guidelines and noted above.

**The SMP uses vague and conceptual language instead of clear, objective terms. This leaves too much up to administrative interpretation.**

The County has been working with its consultants to simplify the language and will continue to do so over the next several months. This is a valid comment and concern that is shared by County staff. Relying on administrative interpretation is not a satisfactory solution for citizens or staff. This is still a working draft document and will continue to be revised, providing more clarity and simplicity.

Ms. Ehlers: Thank you, Betsy.

Chair Lohman: Okay, I lost my agenda.

Ms. Stevenson: Yeah, the next thing is unfinished business and another study session. We've kind of gone over that with the items that we've listed on the agenda and identified those that you still haven't seen and that need to – still, I think, you're going to want to see them, I'm assuming, so I would hope. You've spent so much time already I would like to get your input on the rest of it because so far it's been very helpful.

Ms. Ehlers: What's your process with the Department of Ecology? And that's only six days off.

Ms. Stevenson: Good question and I meant to kind of go through that a little bit, too, as far as what the next steps are. Now comes the fun for us. We've got your comments and the Advisory Committee comments, the public comments and everybody's comments, and we need to go back and incorporate as best we can and as much as we can into the working draft to get it ready to send to Ecology. We are going to hold back the sections that you haven't seen yet and hopefully they're going to be agreeable to that. I'm going to call tomorrow and just make sure that's going to work. So we will be sending that to them next week and they have – they say in their requirements that they want forty-five to sixty days to do their initial review and give us comments back, so they asked that we factor that into our schedule. In that case, if we get the rest of the information to them after an early September meeting – say, mid-September – that would put us into what – November or so? – by the time we got comments back on everything. So then we would get that information back and take a look at it and see what it looked like. Maybe make some revisions to the working draft, and if there's anything on the maps or anything that they see that we need to be working on, do that as well.

We will schedule public open houses again, probably in the same areas that we did last time – Concrete, then the Lyman and Hamilton area, Mount Vernon and Anacortes to go out with the information and share it and have some interactive availability of the maps online so that people can actually look at their properties and take a look at what the designations are and any information that we have. And if they have some information they want to share with us or offer ideas about and just take their input and comments on that. Then we would put together some more revisions. We don't necessarily have anything scheduled with you. What I was anticipating is coming back to you with updates along the way as we get things back from them and as we move further through the process. And so I will be giving you copies of all the documents and

all of that, but I'm not sure that we would schedule to go through it again after we get the initial comments from Ecology, other than to supply those comments to you and let you know kind of how we're going to try to go about addressing them.

Then, once you have a chance to kind of see where we are, probably go ahead and put out the notice and start the adoption process, which would be – you know, right now I'm thinking December at the earliest. And there's a sixty-day review period as part of that process that you guys are aware of for the legislative action. So then we'd be looking at public hearings before you over the winter – you know, maybe February? January, February, depending – it all depends on when we get comments back from Ecology, too, because we have to wait for that.

Ms. Ehlers: This process of going through, as we have been doing, has enabled me finally to get my head around the picture. For a long time I saw nothing but individual trees, and I'm beginning to see the forest. Part of my response is a memo I sent tonight listing these documents, these watershed studies, as part of a benchmarking process for you. A benchmark study that Skagit County did in 2002, and the only document that's worth a damn on Fidalgo Island, which is the Stormwater Management Plan – and it's 2010 – which deals, you see, with the shorelines all around it and how things drain into it. It's a good basic document for anyone that wants to see in a small scale what a basin looks like and watershed looks like and how water goes from up here down to there, and therefore the problem of the last 200 feet. There's a lot more information that the public has that if we collectively – if you asked us for it, we could add to your bibliography, because we have to use best availability science and some of these things we haven't any science at all. And we have to know that – we, the public, the people following this have to have documents we can go back and look at to understand what it is and why it is that this language is the way it is.

As far as I'm concerned, while Ecology is giving *their* opinions I'm going to be organizing *my* opinions because I've given them and sometimes I've discovered I'm wrong and other people have raised issues that are basic that you didn't notice when we were first going through it, and that's part of the process. We've been told that we're going to discuss many of these things again. Aren't we?

Ms. Stevenson: Through the public hearing process and deliberations.

Ms. Ehlers: Oh, dear. How do you take language that I don't think you can enforce and then – and do it that way? Well, another suggestion.

Chair Lohman: Carol? Can I interject a question?

Ms. Ehlers: Mm-hmm.

Chair Lohman: Betsy, these things that you're holding out – the aquaculture and some of this other stuff – when do you anticipate sending that stuff to DOE?

Ms. Stevenson: Soon after you guys take a look at it and we can make your revisions. Maybe we'll have a little more of a turnaround time than a week – hopefully – but –

Chair Lohman: So you would be sending out just those chapters? Okay.

Ms. Stevenson: Yeah, they'll get the rest of it in with a memo indicating that we're working on all these others. And I think in order to ask for some grace period I need to give them some idea of when they probably will see them –

Chair Lohman: Right.

Ms. Stevenson: – and not just open-ended. So if you guys meet – and I don't have a calendar in front of me; I know we have Labor Day the beginning part of September – but if you meet early in September I'm thinking still later in September to have that to them.

Ms. Ehlers: It'd be nice to go on vacation some time.

Chair Lohman: That's what wintertime's for.

Ms. Ehlers: Well, yes. But, you see, the hearings are going to be during the vacation time in the winter!

Chair Lohman: I think it's really hard to have a discussion on the calendar without our other colleagues, so maybe at our next meeting – at the very end of that deliberations – we can put that on the agenda that we'd look at the schedule?

Ms. Stevenson: I don't know what the first Tuesday is, whether it falls on the day after – Labor Day so you'd meet the following week. I don't know. You're going to have to look and see what's on your schedule, too.

Chair Lohman: The first Tuesday's the 4<sup>th</sup>, which – you're right – is the day after.

Ms. Stevenson: So we'd probably schedule it for the 11<sup>th</sup>, I would guess.

Chair Lohman: But if we could put that on the agenda and then let the other guys know and then they can have it in there – they can think about it.

Ms. Stevenson: Okay.

Ms. Ehlers: Now I have a suggestion. I've divided my documents into two. This is the shoreline designation, which the public has never had a chance to comment on. If I were you, I would have a public open house – several of them – with tables with large maps that show these things and let the public look to see where the demarcation point is between this zone and that zone and, Does this zone really fit my piece of shoreline, my piece of the river or the creek? And have it a kind of work session so that people

who are on Nookachamps Creek are over here and people who are in some other creek are over there. So that after you've gotten the distinctions or the designation cleared up as far as what you think should be so that all you're working on is the designation of the shoreline, because that's a huge project – 158 miles – and it's going to be crucial for the people who are on it. And then work on this, which are the policies and the code, while that is being done by the public so that you're separating it in two open houses. This is an open house; this is a hearing. And I think you're going to – I can't imagine having a hearing – maybe I should say I *hope* I can't imagine what this room would look like if everyone in the county had to be at the same hearing the same night. I *hope* this is a topic that people are really interested in and that they care enough about to look at these tapes, look at what else comes up and learn enough that they can be knowledgeable and specific about, I think this should be the case in this law for these reasons. Because only if they give – only if all of us – give you folks specific suggestions in specific text and the reason why, from our experience, not just, I don't like this. That's not very useful. But, We have found that if you do this and this on this point of the shoreline you have this problem. That kind of thing. At least that's what my inclination would be. We used it years ago in the 1980s about a shoreline project and it certainly clarified issues.

Chair Lohman: Okay. Kevin? Did you have something?

Mr. Bright: I was just going to add that Ecology thinks about the comment period, too. You've got to factor that in. The County's going to have public comment and take those comments under consideration and Ecology has to have a public comment period, and if there's glaring problems with the SMP then Ecology will address those and advise the County to make changes. They'll go through it and make corrections so it lines up with the RCW and other things. So I just wanted to add that.

Ms. Ehlers: So there'll be another cycle after our cycle.

Mr. Bright: Several things.

Ms. Ehlers: We'd forgotten that.

Ms. Stevenson: We're lucky if it's only one cycle after our cycle!

Ms. Ehlers: Well, I've not forgotten what happened to Young's Island when *everybody* agreed, including Ecology. You sent it down there and some person said, I don't like it, and held it up for a year. And it ended that there wasn't any change at all. I hope that doesn't happen.

Chair Lohman: Anything more for us, Betsy?

Ms. Stevenson: Unless you have questions about what comes next. Did I explain it very well? I don't know. Sometimes I feel like –

Chair Lohman: I think you did. I think we have – it almost seems to me like we possibly might need another work session to catch up these trailing items.

Ms. Stevenson: Yeah, definitely. So maybe I can do a little better job at summarizing that for the end of the August – after you get done with the Comp Plan Amendments, I want to talk about the schedule just so everybody knows what's left and that you didn't do it all tonight. Surprise! You \_\_\_ but we have one more for you!

Chair Lohman: Yeah. Well, I think we all knew that there was going to be something left.

Ms. Stevenson: Yeah.

Chair Lohman: Okay, moving on on the agenda: Public Comment.

Mr. Mahaffie: Okay, remind you to limit it to three minutes today.

Chair Lohman: Yes. Okay, we're going to limit everybody to three minutes – and if you could say your name and your residence. And I want to remind you that this is not a hearing, so while you'll be recorded that it won't be part of the record. So in no particular order...

Kathy Mitchell: Kathy Mitchell from Bow. This is more of a question, if you guys can answer for me, and I apologize. One of you guys had said something earlier but tonight the only person that I could hear clearly was Dan. The microphones weren't picking other people up very well.

So back to the – if you guys can answer, it's more of a question. I understood pretty clearly about – for lack of a better term – the grandfathering in, as best as possible, for people that have existing structures if there were a fire or something like that and people needed to be rebuilt. What I could not hear and didn't understand very well was, What about the situations where a family has invested savings into a lot that they were going to build? These rules come down the pike. Will they be able to build or not? It's on the shoreline area where existing structures have been allowed to be built before. That's what it was really difficult to hear, if that was answered.

Chair Lohman: Go ahead, Dan.

Mr. Bright: Maybe I should answer that because I answered it a little bit before. And I – Betsy's memo covered a lot of the major issues that are going to come up, but she did not cover the legal, nonconforming lot situation. I think we're going to do some additional research and address that later. That's the best I can tell you. But we're not going to end up where – we'll address it the best we can. It's not totally addressed yet.

Ms. Mitchell: Thank you.

Chair Lohman: Next? Go ahead.

Ed Stauffer: Good evening. My name is Ed Stauffer at P.O. Box 114, Bow, Washington. I live west of Alger. I have a question of procedure. Rather than burdening in three minutes the Commission with the questions and concerns that I might have, is there a format by which I can address an e-mail or a letter to the Commission for their consideration?

Chair Lohman: They can e-mail us, can't they? To our County e-mail?

Ms. Ehlers: Don't e-mail. Stay away from that.

Chair Lohman: No, if we're on the County e-mail.

Ms. Ehlers: Stay away from it. Tell him he – you can write a letter.

Mr. Stauffer: All right, thank you. Just a comment: Most of my concerns will have to do with process, and it's because I now see this committee – this Commission – as the primary spokesperson for the general public of Skagit County. In the process I don't see that that grass roots voice is really relevant any longer in the process. And I understand public comment period is closed. Are you three gentlemen members of the Shoreline Advisory Committee?

Mr. Lipscomb: Yes.

Mr. Stauffer: I kind of assumed that from the size of your notebooks. I've been there before. Are you a technical advisory committee or are you a citizens advisory committee? Or both?

Ms. Stevenson: It's both, basically. We combined the two. It's just a Shoreline Advisory Committee. We opted to have one committee rather than a citizens and a technical.

Mr. Stauffer: Right. Appointed by the County Commissioners?

Ms. Stevenson: Yes.

Ms. Ehlers: No.

Mr. Stauffer: No?

Ms. Stevenson: Yes.

Ms. Ehlers: By the County Commissioners.

Ms. Stevenson: That's what he asked.

Mr. Stauffer: Right.

Ms. Ehlers: Oh, I thought I heard you say “Planning Commission.”

Mr. Stauffer: No, County Commissioners.

Ms. Ehlers: Sorry. I apologize.

Mr. Stauffer: Thank you. Your name is Dan?

Mr. Nickel: Yes.

Mr. Stauffer: Yes. I believe the first time that I saw you was at one of the kickoff meetings that I attended for this entire program. It seems like it was over a year ago. I believe the meeting was hosted by our Planning Department but you were like the keynote speaker. And, if memory serves, you were designated – somehow you came to us as a member of a consulting firm that had somehow been retained by Ecology. Is that correct so far?

Mr. Nickel: Retained by the County. But, yes, I’m part of a consulting team that’s been hired by the County to help with this process.

Mr. Stauffer: What I’m getting at as my concern is the very first time that Ms. Stevenson appeared before the Planning Commission with this item on the agenda she had been rushed and she was unprepared to give the Chair access to her request for at least a big outline of where they were going to be going so she could help prepare the members of the Commission. And here we are a year-and-a-half later – or maybe a year later – since that meeting and you persist in getting last minute looks at documents from things that you have to pass on. They’re really actually even incomplete at this time. There are a number of terms and a number of ideas presented tonight that are going to go forward from here within a week to somebody called “they” who’s going to review this to see if it’s appropriate or not. And I don’t know who “they” is. I hope you do. I want you to once again revisit the Skagit County Comprehensive Plan that we have in place, including the Elements, in which you find rights and responsibilities of property owners here, and make sure that what you’re doing here is consistent and congruent with those documents, as is required by the law.

I also attended the meeting that Ms. Stevenson referred to yesterday with the forestry people. I’m very concerned that your expressed need for forestry expertise on your committee is not yet represented. You are hoping for a vacant position to be filled which might flesh that out. They had some concerns about this one week deadline, and I would recommend that you avail yourself of either a staff person or the Chair of that committee to weigh in, to provide you with some information from their perspective. I think that’s also important. Thank you very much.

Chair Lohman: Anybody else?

(silence)

Chair Lohman: Okay. Is there a motion to adjourn?

Ms. Ehlers: So moved.

Mr. Mahaffie: Second.

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