

Skagit County Planning Commission
Study Session: Shoreline Master Program Update
November 13, 2012

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

Staff: Dale Pernula, Planning Director
Betsy Stevenson, Senior Planner/Project Manager

Consultant: Dan Nickel, The Watershed Company

Commenters: John Bouslog, Developer
Ed Stauffer
Tom Stowe
DeAnna Claus
Ellen Cooley

Chair Annie Lohman: Okay, I'm calling to order the Skagit County Planning Commission. This is Tuesday, November 13th, 2012, it's 6 p.m., and the purpose of this meeting is a work session on the Shoreline Master Program Update. If you guys could review your agendas and if you see anything you would like to add to the agenda let me know.

Jason Easton: Madame Chair, I suggest, per our bylaws, that we fill the open position of Vice Chair and add that to the agenda.

Chair Lohman: Did we want to do that here or did we want to wait 'til a regular meeting?

Mr. Easton: I think it's pretty – I mean, it seems there's – I mean, we're vastly here. Most of us are here. It seems like it'd be the right time to do it to me, but that's up to you.

Chair Lohman: Any discussion?

Mr. Easton: The bylaws seem pretty clear. Once there's not somebody in a seat we need to have an election.

Chair Lohman: Okay, so –

Josh Axthelm: Sounds fine.

Chair Lohman: – did you want to entertain a nomination?

Mr. Easton: I would like to nominate Josh Axthelm to fill the role of Vice Chair for the remainder of this calendar year. I guess we should probably ask him if he *wants* to do it.

Mr. Axthelm: Sure.

Chair Lohman: Is there a second?

Elinor Nakis: I'll second the nomination.

Chair Lohman: Are there any other nominations for the Vice Chair?

(silence)

Chair Lohman: Well, it's been moved and seconded that we nominate Josh Axthelm to be the Vice Chair. All those in favor, say "aye."

Mr. Easton, Ms. Nakis, Carol Ehlers, Chair Lohman, Keith Greenwood, Mr. Axthelm and Matt Mahaffie: Aye.

Chair Lohman: All those opposed, say "nay."

(silence)

Mr. Easton: Thanks, Josh.

Chair Lohman: The motion passed, so welcome aboard, Josh, as our Vice Chair.

Okay. I did want to add on that we still have a vacancy and if we could – at the very end of our work session – if we could deal with that, or do you have something quickly?

Dale Pernula: About all I have to report is that it has been advertised and we have received four applications so far that I'm aware of.

Mr. Easton: Is it still open, Dale?

Mr. Pernula: It's still open.

Mr. Easton: So for those at home, if you're interested, it's District 3.

Mr. Pernula: District 3, which is Burlington, Sedro-Woolley and east.

Chair Lohman: Which is Commissioner Dillon's district.

Mr. Pernula: Correct.

Chair Lohman: Okay, so let's move right on to the work session of the SMP Shoreline Updates, and the items are going to be Aquaculture, Legal Pre-existing Structures and Uses, and Administrative Provisions. So if we could turn it over to you, Dan, and Betsy?

Dan Nickel: Betsy?

Betsy Stevenson: Thank you. Betsy Stevenson, Skagit County Planning Department, and Project Manager. I'll give you a brief update, to begin with.

The Aquaculture section is still being worked on by the subcommittee of the Advisory Committee. So there're still some details that we're still trying to fine-tune, which I think is a very worthwhile process because if I think it comes out of that group I hope it'll get, you know, your blessing as well as maybe Ecology's blessing because we've got some really good people working on it. So we are hoping to meet sometime this week to either figure out that we can agree on some different language, or disagree and figure out how to move it forward with some disagreement, and get it to you hopefully in December. So Ecology is aware of some of these things that are being held up and so far are okay with that.

Carol Ehlers: Annie?

Chair Lohman: Carol.

Ms. Ehlers: Betsy, the Planning Commission went through a citizens advisory process some years ago under the leadership of Oscar Graham and created some aquaculture amendments for floating aquaculture. It would be a help, I think, for us to know what the current existing rules are.

Ms. Stevenson: Okay.

Ms. Ehlers: And, in addition, I can't – I have too many files. I can't find a letter that Bob Scofield wrote back in the 1987 era from his experience on the state shoreline judicial committee – the things he thought were essential for all kinds of aquaculture. That memo, I think, would be very helpful because of his experience in judging things all over the state if you can find it.

Ms. Stevenson: Yeah, I'm not sure where to even start looking for that, but okay.

Ms. Ehlers: You can find it in the – if you find the files for the aquaculture amendments that we did under Oscar, the memo is in there because I made sure it got in there.

Ms. Stevenson: Okay. I'll start that.

Chair Lohman: Well, is there any way that you can get us stuff in advance on the aquaculture one?

Ms. Stevenson: Yes. Yes. Yeah, and I apologize for not getting this stuff to you tonight sooner, too. It just took longer than we expected and it's really – although it's not very many pages, it's hard to deal with and it's a tough one to address so I hope you'll be patient with me as I explain it. And for those of you that may be more familiar with our processes then some of this might be review and overview, but I'm going to go through it anyway because it took a while in reading it and in writing it and in putting it together to even get it clear in my mind, and I thought I had a pretty good idea of where I was headed with it. So this is going to be kind of – I'd like to get through my things. If you have questions while I'm doing that, fine. I know you're going to have questions as we go through it for sure. And this is my best attempt, with Jill's assistance and her help, putting it together. There haven't been too many people who have had a chance to look at it or ask questions or give us comments yet, so this version that you have before you is a little bit revised from what we gave to the Advisory Committee, too. So I would appreciate it if it doesn't make sense or if you think we need to make changes or however, you know, you think that it would read better, or if you get what I'm *trying* to do – Well, why don't you do it this way? – I'd really appreciate that help, too, if you guys are willing to do that.

Mr. Easton: Just to clarify: I know who Jill is but some other people in the room – especially the new member – may not know. Jill – I assume you're talking about Jill Dvorkin, the –

Ms. Stevenson: Yeah.

Mr. Easton: – the County attorney, one of the County attorneys?

Ms. Stevenson: Yeah, she's one of our legal counsel.

Mr. Easton: Okay.

Ms. Stevenson: She kind of helps us with our land use issues.

Mr. Greenwood: For clarification, can I also ask who else is participating in that language drafting?

Ms. Stevenson: So far it's been Jill and I.

Mr. Greenwood: Okay, so no one in the aquaculture?

Ms. Stevenson: Oh, I'm sorry. I'm talking about the nonconforming stuff.

Mr. Easton: She's talking about ____.

Ms. Stevenson: The aquaculture section, the subcommittee the Advisory Committee formed because the draft document that we had had so many track changes in it and so many comments that they would just look at it and go, This has gotten way out of – kind of out-of-hand for us. So it's Bill Dewey, from Taylor Shellfish; Kevin Bright, who's with American Gold Seafood, who has the finfish aquaculture here and in other places in the state; and Tim Hyatt, from Skagit River Systems Co-op.

Mr. Greenwood: Good. Good makeup.

Ms. Stevenson: Yeah. And then we sent a version a while ago to Ecology, too, to get some of their input early, too, just to see if we were on the right track a little bit.

Mr. Easton: Are they commenting on things that you send them early?

Ms. Stevenson: They did with that because they were just going through their geoduck changes so it was all fresh in their mind, and we just kind of wanted to make sure that that was going okay.

Chair Lohman: Okay, so for clarification –

Ms. Stevenson: Sorry to be flipping back and forth _____.

Chair Lohman: – we're on the Pre-existing Uses now? Is that what you're going to be talking about?

Ms. Stevenson: I can give you a brief update – because I haven't been before you in quite a while – just of where we are in the process and what's been going on, and that's what I have to go through tonight, if that's okay.

The overall working draft that you guys got through very well and provided some really good comments has not been submitted to Ecology yet. I was trying to work and clean up some of it and make it a little bit better and it's just taken longer than I thought so they've given us a little bit of time, but as soon as we get done with our meeting and depending on where we go with this section – if it needs more work or if it's ready, it'll either go or not. But I think I'm going to go ahead and send it at this point, after we finish and I get a sense from you tonight whether this looks like it's going to be okay as a working document to forward to them, or the rest of it will go and we'll hold this back with the Admin and the Aquaculture. So we need to get something to them; otherwise we just push everything else back too far so we need to get that down to them so we can get some preliminary comments from them before we start our adoption process and make some revisions.

Chair Lohman: So you never – they haven't gotten –

Ms. Stevenson: They haven't gotten any of it yet. I was trying to work at it to simplify it, make it a little easier to read, and work over some other things. Some of the sections we did make some fairly major changes to in ways that we kind of put it together. So when we get that ready to submit, you guys will all get new, clean copies and versions of it so you have it as well. And for those of you that may either not remember or just would like a quick review, we'll send that working draft to our Project Planner at Ecology and he's going to give us a review and give us some comments back. I don't know that he shares it with other folks down there. We'll come back and make those changes; have some public open houses to describe what we're doing; get some additional feedback; kind of look at some of the maps and share those with people; start the adoption process, which would be going out for the sixty-day notice; and then doing our environmental review work; and then starting to figure out when the public hearings would be for this before you. So depending on how long it takes for Ecology to get everything and how long their review is, that kind of tells us what kind of timeframe that we have.

Mr. Greenwood: For clarification also, can – the binder that was just a working draft that you gave me, is that reflected on the website? Is that the same level of documentation?

Ms. Stevenson: Yes. Yeah.

Mr. Greenwood: So it's been kept up-to-date since you've had these working sessions.

Ms. Stevenson: That's the same one that the Planning Commission received, so it doesn't – we haven't printed up any new versions.

Mr. Easton: It doesn't reflect anything new.

Ms. Stevenson: Yeah, we haven't printed up any new versions yet. We're kind of waiting to get them all and then do another clean version.

Mr. Greenwood: Even electronically on the website?

Ms. Stevenson: Yeah.

Mr. Greenwood: Okay, because I was just thinking that it seemed as though there were quite a few holes in it thus to be able to present something to them other than, This is how we're doing. (It) isn't very close to a public disclosure document. But if you've worked a lot on it then it could be. And as soon as we can get that to both others and the public for review, that should be helpful.

Ms. Stevenson: Yeah.

Chair Lohman: Carol?

Ms. Ehlers: One of the biggest holes and the thing that's most troubling to me is the lack of evidence in the inventory of the geology and geomorphology of the saltwater islands. The description of the geology of the county – the east part – is excellent. It peters out when it gets to the Swinomish Channel and the coast, and there's no reference that I find to things like glaciology and, therefore, the structure of the cliffs as they were cut by the glaciers where you have clay, gravel, sand, clay in different kinds of combinations. We used a lot of geological references when we created the geohazards ordinance and the critical areas ordinance, and I think it's essential that we use the same sources for the top of the cliff that were – for the bottom of the cliff that we're using for the top of the cliff. Because we were quite careful in writing the geohazards ordinance to deal with the problem of water that appeared at the top, water that appeared in the middle or at the base, from whichever direction it came. And I know you're planning to use the administrative processes for the geohazards ordinance, which makes sense. But there's nothing in here that deals with the reality that Fidalgo faces and that much of Guemes faces. There's no recognition of the plutons that come straight out of the earth. Here in the inventory there're statements about lack of something, and the lack of something is caused because there's this piece of stone that comes out of the center of the earth and goes up into 3 or 400 feet high. There isn't any possibility of restoring something like that. But no one can tell from the inventory where the geology is – because my neighbors have been hunting for it – and that – we don't use best available science but it's in the WAC and the RCW that we *have* to use science. So for protection of yourself and the rest, take that set of documents I gave you the other day, add to it the Coastal Zone Atlas and the stuff that John Cooper has, so that we have a baseline of science in which we can discuss things.

Ms. Stevenson: Okay.

Ms. Ehlers: And that should take care of a lot of concern that *should* appear on the part of the county population if they don't see it.

Chair Lohman: Carol? You have to be really careful when you make broad, sweeping references like "whatever John Cooper has," because I have no idea what that guy has and I don't think other people do either.

Ms. Ehlers: If you were here in the critical areas ordinance you know, but many of you weren't.

Chair Lohman: But you have to boil it down to – okay, what is it that you're asking for them to have? Do you want a more explicit description of the saltwater islands' geology?

Ms. Ehlers: I want something that recognizes what saltwater islands are, how they're created, how they operate, how the water operates on it, and what the people who live on the edge of it are faced with. Among other things, I want the coastal zone

management strategy documents done by the Department of Ecology back in the 1990s by Doug Canning. There's eight volumes; John has all of them. There's also three guides: 1993, Vegetation Management; 1993, Slope Stabilization and Erosion Control; and 1995, Surface Water and Ground Water on Coastal Bluffs. I want the Port Townsend portfolio geologic maps. I want the latest information that came from the County in terms of the Fidalgo Stormwater Management Plan.

That's the – oh, and I want a NOAA – there's a really good NOAA map/chart of the coastline and the coast that shows where the mudflats are where it's – and then that's green; and then the blue, which is deeper; and white, which is the deepest, because I don't see how we can talk about kinds of aquaculture or categories of aquaculture when we know nothing at all about the saltwater that surrounds the islands. And this group has never, ever, ever been given any of that information.

We're discussing these – we've discussed for the last number of months these rules with no knowledge at all of whether it's possible to actually follow them. For example: 100% vegetation – you can't do it. There's no recognition that some of these are vertical. There's one down the road to the north of me where it's 18 feet of clay. John was going to require when they developed their house – redeveloped it – that they plant it. It's vertical, because that's what the glacier cut and it hasn't eroded off. If you try to plant it there isn't any water in that cliff. And the basic thing we learned in plant science – and there's nothing in here of that either – is that if you have a plant it's got a stem, it's got leaves or needles, and it's got roots. And the reason that it has roots is so that the roots will take up water and nutrients into the stem so that the leaves and the needles can do something with it and make the plant grow. If you have no water, you can't make the plant grow. And you can order people all you want to and make them spend thousands. I spent 4000. Nothing happened with an expert planter. Everything was done the way it was but it was in the early days of the '90s when I was told I had to set the standards. So I had to drill in to find out what my ground underneath me was. I had to plant things which couldn't be planted. And, obviously, I got fed up with it, didn't I?

But there is a degree of realism as to what you expect people to do, and then you expect them to do it. But you can't expect somebody to – this inventory. I've been looking at it this afternoon. According to the inventory there are areas that have "low priority habitat." I can't find a definition of "priority habitat." I don't know what habitat you're looking for. The habitat I was looking at is in my shoreline. It's got every kind of habitat you can think of except clams. Are we going to judge the whole shoreline of the county as to whether there's clams on it? I don't think so. That's not the way you do it. Are you going to find out during the administrative process that suddenly there's something down below you that's not any different than it has been for the last period of time since human habitation came, but you're responsible for the fact that there's no clam there? We've got more animals than we know what to do with and they love coming into our house and coming into the crawlspace and trying to have their babies underneath your kitchen porch.

So this isn't yet something that you can actually deal with. The inventory has never been ground-truthed. Biz Point, for example, has low priority habitat. It's rock. It's Jurassic rock. There isn't a thing you're going to do with it. You can't put sand on it; that's useless. It's been there for thirty-five million years and that's the way it is. But you – there's nothing in here that indicates that the reviewer understood that that's why it's the way it is. And I don't know how, either as a writer of these documents or as an owner, to deal with something that isn't real. And thanks for listening.

And if any of you in the audience agree with me, don't just nod your head the way you are. Come up and say it at the end of the meeting.

Chair Lohman: Jason.

Mr. Easton: I have some real concerns about our workload for tonight, and I mean this with a tremendous amount of respect. I recognize that Dale and Betsy and Dan are under a ton of pressure with timelines and deadlines, but to give us the Pre-existing Conditions tonight and not give us a chance to review it before we walked in – unless I missed something, it wasn't in the agenda packet and, I mean, it may be four pages long but they are four expensive, powerful and painful pages for me to feel like – I mean, I get we're going to work through them tonight but this probably cannot be the last time we deal with this section. And I just want to, you know, kind of to say that to the rest of the Commissioners. We can't take Pre-existing conditions seriously enough.

(several sounds of assent)

Mr. Easton: We can't err on the side of blowing through this section, regardless of its size. These are the livelihoods of a lot of people, and we're talking about affecting – I mean, some of the verbiage that I've had the chance to read already, just while listening to Carol with one ear and reading, it's concerning. Because we're talking about long-term decisions that are affecting pre-existing industries and individuals, homesteads and – I mean, we're – this is a wide road here. The first clarification I need before we go much further is: What you gave us that's the code, is that current code or is that – that's all – and then so I – this is all new proposed code that's –

Ms. Stevenson: Yes.

Mr. Easton: – to be inserted? And then the one – there's one section that's underlined. That was just for emphasis, so it's not –

Ms. Stevenson: That was a track change still. It's a comment and track changes and it's just not been accepted.

Mr. Easton: Oh, okay. That's just on the – you're talking about on the back? Okay. All right, so everything that's here – I just didn't have a point of reference on that – so this is all – and that's what I thought – this is all brand new –

Ms. Stevenson: Yes.

Mr. Easton: – to the potentially – it's suggested brand new additions to the code.

Chair Lohman: So this is a narrative to the code then – the memo?

Ms. Stevenson: Yeah, it was just to sort of explain it.

Mr. Easton: Explain each of the sections that you've changed?

Chair Lohman: I have to agree with Jason that we really need to be looking at this once again and maybe three times again, because it has a huge number of implications and the number of properties involved is huge.

Ms. Stevenson: Okay.

Chair Lohman: And to me it doesn't make sense when you have several – I don't know what the number of properties exactly would be, but I would imagine it's quite a few. And then to me nonconforming should be a minimum number of properties, not the majority, and it almost seems like it would be if we didn't do certain things that we would have a heck of a lot of nonconforming properties, and that's pretty difficult to manage.

Ms. Stevenson: Okay. A clarification, Jason, on what you said when you asked if this was new: This is new code language proposed for the Shoreline Program. A lot of it is existing information and existing in our critical areas ordinance.

Mr. Easton: So it's a compiling – sort of consistently bringing that together?

Ms. Stevenson: Yeah. It does give us a lot more flexibility than we have now, in terms of our Shoreline Program. It does – if you read through it carefully – it does consider single-family residences that would ordinarily be considered nonconforming under our new Master Program. Under the new standards they would be considered conforming. So I don't know if that helps with some of the comments that you're worried about.

Mr. Axthelm: Quite a bit.

Ms. Stevenson: But if I could go through my memo a little bit – and I appreciate your comments as far as needing time on this, so I'm not trying to rush you. I just thought, Hey, if you were ready I would submit this with the rest of it, but clearly that's probably not going to happen. And again right back at you, with all due respect, you don't have to do that. I'd rather –

Mr. Easton: Yeah, I'll just speak for myself. I'm not going to be ready to say tonight –

Ms. Stevenson: Yeah, that's fine. That's fine.

Mr. Easton: – that I'm ready to send these on to Ecology,

Ms. Stevenson: And I wasn't concerned with not having the other sections ready for you because I think we're going to spend some time on this.

Mr. Easton: Yeah.

Ms. Stevenson: I think it's going to take a little while for it to really sink in for all of us.

Mr. Easton: If you – you know, I mean, obviously you're going to take us through some explanation and that'll be helpful, but – all right.

Ms. Stevenson: Yeah, but then I expect you to spend some time with it, too, and just kind of go over it and that's perfectly fine with me. I'm not – I didn't mean that –

Mr. Easton: I'm a little concerned that we're – I haven't heard – Madame Chair, I apologize.

Chair Lohman: Go ahead.

Mr. Easton: I heard you reference that – you referenced, obviously, you're working on this and working on it with Jill and now it's with us. It's missing that one step that I was expecting kind of – was that I thought that the greater group – not so much a sub – not so much because you need a subcommittee but at least the Shoreline Master Plan team that's together now hasn't reviewed this language either, right?

Ms. Stevenson: The Advisory Committee?

Mr. Easton: The Advisory Committee?

Ms. Stevenson: They haven't seen this draft of it. They did get a copy and we did make some changes based on their comments.

Mr. Easton: Okay, so they have. I hadn't heard you say that.

Ms. Stevenson: So they don't have *this* specific draft yet. I'm sorry.

Mr. Easton: Oh, that's good. That's good. That's helpful.

Ms. Stevenson: Yeah, they have reviewed it.

Mr. Easton: All right.

Ms. Stevenson: In fairly similar form, but we did make some changes, based on their comments, to clarify and just make it a little better. So they did see it when we met last Tuesday.

Mr. Easton: Okay. It's a smart group and they, I'm sure, have a lot to add, especially in relationship to such an important topic.

Ms. Stevenson: It was a really good discussion.

Ms. Ehlers: May I add to what Jason has said?

Chair Lohman: This is a work session, so keep that in mind. You know, we can have a little more of a free forum.

Ms. Ehlers: One of the crucial issues of this conforming or nonconforming or whatever you call it is a Substitute Senate Bill 5451 that passed through the legislature in 2011, and I have seen a reference to it at the end of the RCW 90.58 that we have been given. The crux of the issue in that bill is no net loss and the crux of my comments about this inventory is how do you know whether you have *any* net loss, much less *no* net loss, if you have no idea what you had? Apparently the no net loss is one of the crucial terms in it. I can't find a definition anywhere. Apparently one of the difficulties of it is who decides there's a net loss. Is it the County decides it's a net loss? Is it some interested bystander, including an Indian group or an environmental group, that comes up and says, Ah, this has had a net loss; you can't do such and such? There nothing I find that you can pin down on and hold on to.

And whenever you have something as crucial as it is – Dave Thomas, the assessor, told me that the residential property value on Guemes and Fidalgo shoreline property value is $\frac{3}{4}$ of a billion dollars. Now we can't, we just can't ignore that, either in terms of the banks, in terms of the property owners, or in terms of the tax money the county needs. And, boy, do they charge.

Chair Lohman: Jason, or Josh?

Mr. Axthelm: I have just a general comment. I'm very uncomfortable with reviewing these documents tonight, and the reason I'm uncomfortable with it is because the public hasn't even seen them and we haven't even had a chance to review them. I understand it's not the final draft, but any decision that we make is informed through, basically, in the last fifteen minutes that I've been able to sit here and read these documents. And from what I've read I have a lot of underlined stuff and some questions there that I haven't even had the chance to review and understand. My concern with this is that the way it's written right now, I don't want that to go on. I don't want it to go further at this point. I think there's enough things in there that we shouldn't be sending this to the Department of Ecology. It's not right yet. It's not even close. And I think that it would be inappropriate for us to review this tonight, based on that. Because if we go through and make a decision, that goes on. And I just think there needs to be more time for us to see this beforehand. There needs to be more time for the public to see this information and to review it and be able to come here and comment on it. So I understand that this is not the final time, but I still – they need the time.

Chair Lohman: Dale.

Mr. Pernula: I think you can review it as many times as you want before we send it to Ecology. I think if you want to make some preliminary comments tonight, that would be fine. I think if Betsy can give you an introduction of what she's trying to do and where she came up with these requirements, maybe it'll give you an idea of why we're at the point we are right now. But if you feel uncomfortable tonight or after the next meeting or even the following meeting, you know, we can correct it and get it right.

Mr. Axthelm: Well, that's my – just making sure that the public will have the opportunity to review it and that we will have the opportunity to go through it again, that it doesn't just go on and we don't see it again.

Mr. Easton: Remember, we're doing a preliminary step that's not required by –

Chair Lohman: Right.

Mr. Easton: It's not required to send – to pre-send – some of our language to Ecology. It's not in lieu of public hearings. It's not in lieu of our regular deliberations and our regular – I mean, these work sessions are intended to try to make what is a large document that's only done on a very rare basis, more how-do-you-eat-an-elephant-one-bite-at-a-time sort of approach. It gets a little weird because we are sending – I'm a little weirded out, to be honest; it's been a little stretching for me to be sending some of our stuff to Ecology early. As long as we track their comments aside from our decisions, I'm okay. What I get a little concerned about is we're not all as eagle-eyed as my good friend and fellow Commissioner Ehlers, and I don't know if we always would catch what was – I want to see a clear track and understand draft comments by the Committee, comments by us, you know, and separately what Ecology does. If it's changing because of Ecology – and there's a comment you made earlier, Betsy, where certain things are changing because of Ecology's comments on an earlier portion – on the Aquaculture one – that makes me real nervous. Because now we have the agency that's tasking the County to make – to do this update testifying without it being noted that they – you know, so I'm not going to be able to tell the differences between what the three gentlemen on the subcommittee are doing versus what Ecology suggested, and that's not a problem I would like to see us create. So I recognize that there's – they came up with some new things about geoducks and great, but can you keep those lines kind of separated? I mean because it's just I know we have to have a working relationship with them and ultimately this plan doesn't go – you know, has that – is a working relationship that's delicate, but I don't want to be making decisions not knowing that it was – I want to *know* if it came from Tom and not from Ecology.

Ms. Stevenson: I want just to clarify that. That was something that was sent by one of the Advisory Committee members.

Mr. Easton: To Ecology?

Ms. Stevenson: Yeah.

Mr. Easton: So this is outside of –

Ms. Stevenson: So hopefully we manage to keep that from happening.

Mr. Easton: Well, I'd like to send a message to the Committee members that it would be the preference potentially of all of our – maybe they'll all agree with me! It would be our preference to keep communications with Ecology run at least through you –

Ms. Stevenson: Yeah.

Mr. Easton: – so that we know what's being communicated. I would prefer that our subcommittees that are working to try to help us not set us up to have some confusion about communication. I'm really trying to hold my tongue here.

Chair Lohman: I want to make sure this is Skagit's plan and not some other person's.

Mr. Easton: Yeah, that makes me *really* nervous.

Ms. Ehlers: Well, in that vein, I would appreciate seeing what you have done on the basis of our comments before it goes to Ecology –

Mr. Easton: Right.

Ms. Ehlers: – so we could catch things which –

Mr. Easton: The Chair said it best: This is Skagit's plan, not Ecology's.

Ms. Ehlers: – that we thought were really important and you missed.

Chair Lohman: Betsy, can you just run us through your memo?

Ms. Stevenson: Sure.

Chair Lohman: And that'll get us kind of jump-started. And keep in mind, everybody, this is a work session so it doesn't have to be pretty and it *is* a little painful because we haven't had any time with this ourselves. So let's just walk through it and let's cogitate for a minute while she walks us through.

Ms. Stevenson: Okay, and I'm going to kind of read from this because I chose my words fairly carefully, so rather than talk to you about it and get it wrong or not. So bear with me and if you have questions or if I'm not looking up enough or whatever I need to do, but I think I will try to read through it, if that's okay.

Mr. Easton: We had a request from the audience: Is it possible to turn Betsy's microphone up?

Ms. Stevenson: Yeah, I'm sorry. My throat is just really dry.

Unidentified male voice from the audience: _____. It's impossible to hear ____.

Ms. Stevenson: Okay, I'll keep trying to help you.

Mr. Easton: ____ might be able to help you with the microphone. The other thing is, maybe it'd be easier for the public if we could – if you're going to read from the memo, maybe put it up on the screen, too, so they can see, because I don't think they all have it.

Ms. Ehlers: Oh, that would be a big help, as long as you increase the size of the print.

Mr. Easton: Is that possible, Betsy, to put it on the screen for them?

Ms. Ehlers: Yeah, you can.

Ms. Stevenson: I don't have any extra copies anymore. I gave them all away.

Mr. Easton: Oh, ____ can handle it. He's on it. Thank you, Betsy.

Ms. Stevenson: Sure. ____ I don't think about it. Okay. I will try to speak up. My throat is kind of scratchy so I'll do the best I can.

Mr. Easton: He turned your mic up, too.

Ms. Stevenson: Oh, so I need to be quiet now?

Mr. Easton: No, you're good.

Ms. Stevenson: Okay, we have titled this chapter 14.26.600 through .640, and titled it "Pre-existing Structures, Uses and Substandard Lots." And in the way of an introduction, this section introduces a new way of looking at pre-existing, nonconforming uses and structures. In the past, it was the intent of the codes to regulate them in a way that would lead to their eventual elimination. That has changed over time, and maintaining and repairing nonconforming structures is usually acceptable practice.

I went right into the single-family residential section, which takes them out of order a little bit, but it seems to be the most important so that's where I started with my memo.

In the way of background information: With the requirement to update the Shoreline Master Program, we are required to integrate our critical areas regulations into the SMP for those critical areas that fall within shoreline jurisdiction. Section 14.24, the critical

areas ordinance, was updated in 2009 and included some changes to the critical areas buffers, which had to comply with various regulations and standards found within the Growth Management Act. The buffers that are being established in the SMP Update, although different from the existing SMP standards, are consistent with those established in the critical areas ordinance. This means that many single-family residences that have been constructed in compliance with the regulations will be within the shoreline/CAO buffer once the new SMP becomes effective. This has caused much concern among shoreline property owners around the state, prompting legislation – which is found in RCW 90.58.620 – that provides the basis for recognizing such single-family residences described above as conforming structures under the SMP.

Under the current Shoreline Master Program – the policies and regulations of that Program – if the owner of the single-family residence that was legally established (either prior to the enactment of the Shoreline Management Act and our Shoreline Master Program, or under the rules found in the SMP and SMA) that is located within the shoreline setback or buffer area, proposes an addition or a remodel of that residence that would also be within the setback or buffer area, the owner would be required to obtain a shoreline variance that goes to public hearing before the Hearing Examiner. The proposal would also require a critical areas variance since the two sections of code have not been integrated. Okay? Does that make sense?

Since the criteria and regulations for these variance processes are separate, proposals are reviewed under both and the fees for both are charged.

Ms. Ehlers: Ouch.

Chair Lohman: That's the old way. That's now.

Mr. Easton: It's the current way – yeah.

Ms. Ehlers: Still ouch. That means two hearings – two payments and two hearings before the Hearing Examiner and all the rest of the processes that are in 14.06. That's expensive.

Ms. Stevenson: There's only one hearing. They are combined at least and go to the same hearing, but...

Under the proposed new section 14.26.600, the proposed new section of the Shoreline Master Program that addresses pre-existing structures and uses specifically addressing single-family residences takes advantage of the flexibility offered by Ecology and that recent legislation. By integrating the critical areas standards into the new SMP for areas within shoreline jurisdiction, the SMP will provide some flexibility for owners of single-family residences.

So I'm going to go through these options.

Option 1, which can be found at 14.26.620(3)(a)(i-vi): The proposed enlargement or expansion of the residence, as described above, may be approved by the Shoreline Administrator if all of the following criteria are met. So this is just an outright approval by the Shoreline Administrator if you can meet all these things.

- The structure needs to be located landward of the ordinary high water mark.
- The proposed enlargement or expansion doesn't extend further toward the shoreline than the existing primary residential structure, further into the minimum side yard setback, or further into the critical area or its buffer than the existing primary residential structure.
- The project does not expand the footprint of the existing structure by more than 200 square feet.
- The area between the structure and the shoreline and/or the critical area buffer must meet the vegetation conservation standards of the SMP.
- The project will not cause adverse impacts to shoreline and/or critical area ecological functions and/or processes.
- And if the existing structures, proposed remodel, or expansion is within the special flood hazard area, the requirements of section 14.34, the Flood Damage Prevention, must also be met.

So I did some little site plans just to kind of give you an idea of what that would look like, if it helps. It helps me sometimes. So here's a situation where if you've got your existing residence, which is already there and it's already within the shoreline buffer, and you're proposing an addition there that's less than 200 square feet that doesn't encroach into any of the buffers or setbacks any further than the existing residence – which that little orange – here's the house that's there. There's the addition in orange. This is the shoreline buffer area between the – what we're using here is a stream but it could be anything – over to this black dotted line over here. It's less than it – and you're assuming that it meets all the other things that I just read through. This could be something that could be approved by the Shoreline Administrator at this point – okay? – based on the new code requirements. As I just read a minute ago, that's not the case in our existing code so that would be something that would new.

Okay. For Option 2: If all of the above criteria cannot be met, then the owner would have to apply for a variance. In keeping with the intent to provide some options and site-specific design flexibility, the variance process will be improved, in keeping with the procedures outlined in the Skagit County Code 14.24.140 and .540 from the critical areas ordinance. These requirements provide some options for landowners. Buffer width reductions will be considered provided the mitigation sequencing criteria have been considered, the buffer that is degraded is enhanced and/or restored, and some other variance criteria are evaluated. The variance process is broken down further so that if the buffer width is reduced less than – by less than – 25% of the required buffer and meets the additional criteria review test outline, the proposal could be approved and a protected critical area site plan would be created, approved and recorded, showing the extent of the development and any required mitigation.

If the buffer width is reduced by more than 25%, but not more than 50%, an administrative variance would be appropriate. This process, which is a Level I described in our permit procedures processes under 14.06 of the Skagit County Code, does not require a public hearing but does require notification of nearby landowners, publication, and posting of the notice of development application. It also provides a comment period prior to an administrative decision being made. I think it also requires a notice of decision go to any parties that commented, and gets published, as well.

So that would be Site Plan number 2 that I think you guys have copies of, as well.

Mr. Easton: Did you skip letter c)?

Ms. Stevenson: Not yet.

Mr. Easton: Oh.

Ms. Stevenson: That's the next option. Okay, so thank you because I could very easily. Okay, so here's the next scenario that I just read through. So this proposed addition and a portion of the existing residences within the shoreline buffer doesn't extend more than – it's between the 25 and 50%. So this is one that could be done with an administrative variance process. The size doesn't necessarily matter. It can be more than 200 square feet at that point. It's just how much it encroaches into the buffer. Okay?

And then the next option is item c) down there. If the buffer width is decreased by more than 50%, then a variance in accordance with the Level II procedures outlined in section 14.06 would be followed. This type of variance would require a public hearing before the Hearing Examiner. And that's the process that everyone has to go through now, regardless, under our existing Shoreline Program.

The next thing that may be a bit confusing in there – at least I know several people that looked at it mentioned it: Some additional language that may prove confusing is the use of “appurtenance” and “appurtenant structure.” In 14.26.630 under (1), the Applicability, it refers to “appurtenances” and it lists them. This list and description comes from the guidelines under WAC 173-27-040 under (2), which is the list of exempt activities. And (2)(g) describes under what circumstances construction of a single-family residence and normal appurtenances would be exempt from the requirement to obtain a substantial development permit. They would have to be located landward of the ordinary high water mark and the perimeter of a wetland.

I can go through that. Those appurtenances, as they're described here –

Chair Lohman: Down at the bottom of page 2.

Ms. Stevenson: Thank you. Appurtenances necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high

water mark and the perimeter of a wetland. Appurtenances include a garage, deck, landing, patio, driveway, utilities, fences, installation of a septic tank and drain field, and grading which does not exceed 250 cubic yards which does not involve the placement of fill in any wetland or any waterward of the ordinary high water mark. So that's the language that comes out of the exemption for single-family residences, which means that they don't necessarily need to get a substantial development permit.

So under 14.26.620(2), the term "appurtenant structure" is used, and under (2)(b) notes that appurtenance structures are garages, sheds and other legally established structures. They do not include bulkheads and other shoreline modification or overwater structures. This description comes from that new legislation under RCW 90.58.620, which allowed us some more flexibility on dealing with these types of single-family residential structures as conforming.

Ms. Ehlers: That's the bill I was referring to.

Ms. Stevenson: RCW 90.58.620, which provided local governments the means to authorize pre-existing, single-family residential structures and appurtenant structures not meeting the new standards for setbacks, buffers or yards; area; bulk; height; or density as conforming structures. This reference is more limited than what is found under the WAC guidelines for exempt activities so the distinction may seem inconsistent, but it actually is important to have them both and clearly indicate which is being considered.

And under this section: Replacement of a single-family residential structure is allowed if, in fact, it's destroyed, burned – whatever happens to it – provided the replacement is requested, approved and completed within a specified amount of time and that other regulations would not preclude the replacement of the structure.

I think that in this draft it says you have to apply for it within six months. I think that I made that change and I shouldn't have. I think it should remain a year. I think that keeps it consistent with our existing code, so I will probably change that back with whatever other changes may happen.

Okay. Now we'll move from single-family residential structures to pre-existing structures, which, as far as in the code, it goes back to the first section of 14.26.600. This section applies to legally established structures that don't meet the SMP standards, other than single-family residences. It allows for repair and maintenance of the structure and for expansion if the expansion conforms to the SMP standards, i.e., the expansion is beyond or outside the buffer area and meets the other standards. If the expansion does not conform, then a variance would be required.

Replacement of the structure is allowed, again, if it is burned or destroyed by casualty/natural disaster provided the replacement is requested, approved and completed within a specified amount of time, which would be a year, and that other regulations would not preclude the replacement of the structure.

And the last section which we started but we – I'm sorry?

Mr. Easton: Hang on.

Ms. Stevenson: Okay.

Mr. Easton: But in 14.26.600 draft under (5)(a), it says within six months of the date of damage.

Ms. Stevenson: Yeah, that's the one I was going to change.

Mr. Easton: Is that the one you were going to change, too? It's in two places.

Ms. Stevenson: It's in both of them.

Mr. Easton: Okay.

Ms. Stevenson: Yeah, that would change in both of them. That's the same otherwise, I think.

Chair Lohman: Where is that second six-month one?

Mr. Easton: The second one's on the last page in the top paragraph.

Mr. Axthelm: Where was the first one?

Mr. Easton: The first one is on the first page under (5)(a).

Ms. Stevenson: Yeah, and the other one is under (4) under .620(4).

Mr. Easton: So those both need – those will both need to be changed.

Ms. Stevenson: Yeah. Jill actually had it as a year and I was mistakenly thinking it was six months.

Chair Lohman: You mentioned expansion in two different sections, I think.

Ms. Stevenson: Mm-hmm.

Ms. Ehlers: Two different kinds of buildings.

Ms. Stevenson: Yep. Do you want me to finish – real quick? It is two different kinds, so we can go through that just to make sure that you're clear, okay? Thank you.

Ms. Ehlers: Before you go beyond the one here, there have been at least two fires that I know of on shoreline buildings where the insurance company was determined that somebody who was in Hawaii had clearly flown over, started the fire and flown back, and it took more than a year to settle out the legal fight. How could something like that be handled?

Mr. Easton: I'm going to come back to this section when we get our – when we take shots at this.

Ms. Ehlers: Yes, but think of – think about it.

Mr. Easton: I'm already thinking of scenarios where twelve months doesn't – I mean, if you look at the disaster that they're dealing with on the east coast right now, there's –

Ms. Ehlers: Yeah.

Chair Lohman: Well, sometimes it depends on when your start date is – I mean, when the disaster happened because –

Mr. Easton: Are you getting guidance from somewhere to pull the six-month and the twelve-month numbers, or are those just kind of something you –

Ms. Stevenson: The one-year is in our code – in our existing code now.

Mr. Easton: One year is in the existing code?

Ms. Stevenson: Yeah.

Mr. Easton: Okay. I will probably come back to that.

Ms. Stevenson: Yeah, okay. The last section in there, which would be 14.26.630, is Pre-existing Over-water Structures Located in Hazardous Areas. We just got this started and realized we need to kind of coordinate with several other folks and maybe different agencies, too, that may have laws that might impact these kinds of things. But this section applies to over-water structures that were legally established, but by virtue of their location are nonconforming with regard to the regulations of chapter 14.26, the SMP, chapter 14.34, Flood Damage Prevention, or chapter 14.24, Critical Areas. These would be over-water structures located in hazardous areas, such as special flood hazard areas and geologically hazardous areas.

As noted in the draft code section, some additional work is needed to coordinate the language that will be placed here to address these over-water structures. It is the intent of this section to look very carefully at these pre-existing nonconforming structures and provide a mechanism to eliminate such structures for life safety reasons. Some additional work on the language will need to be reviewed by other departments and agencies so it doesn't conflict with their regulations or standards.

Mr. Easton: Okay, so let me see if I get this right. So you're at the bottom of a bluff and you built stairs down to the bluff and a dock. It's pre – you know – it's pre-SMP potentially or pre-Growth Management and pre- at least this Update. It could pre-date the SMP in general, which is right in the '70s, right?

Mr. Greenwood: '71.

Mr. Easton: What's that?

Mr. Greenwood: '71.

Mr. Easton: '71. So it's the intent to, if those were damaged, that they're not to be repaired and that because they're – I mean, the way that this is written that would be because citing safety issues or – so the definition of the hazard obviously becomes really critical to the homeowner in this case because that would make a difference about how that's handled.

Chair Lohman: But it isn't necessarily a residence.

Ms. Stevenson: It doesn't apply to single-family residences.

Mr. Easton: It only applies – so this doesn't apply to single-family residences?

Ms. Stevenson: Nope.

Mr. Easton: I missed that.

Ms. Stevenson: This is just over-water structures.

Chair Lohman: So this could be like a pump station.

Mr. Easton: It's an over-water structure. A dock is not considered an over-water structure?

Ms. Stevenson: A dock would be considered an over-water structure. It's a very limited application and it's something that was noted in that change in the RCW that did allow local governments to still go ahead and regulate those things if they so chose. So this is –

Mr. Easton: Okay, so I'm baffled then by – so is the better example the cannery in Anacortes on the Guemes Channel? That's truly a structure that's over-water.

Ms. Stevenson: Yeah, I don't – I'm sure it was there prior to –

Mr. Easton: And it's probably noncom – oh, it's definitely pre-'71.

Ms. Stevenson: Probably there long before the Shoreline.

Mr. Easton: Yeah, it's pre-'71.

Ms. Stevenson: I don't know what kind of shape it's in as far whether it's something that's falling down or whether it's still being utilized. If it's still –

Mr. Easton: It probably depends on who defines what's falling down or not.

Ms. Stevenson: Okay. If it's still being utilized and still being utilized and still being used as a pre-existing nonconforming use, it's not a safety hazard, it's not either in conflict with some other codes that are more life/safety-oriented than the Shoreline Program, then it would be continued – allowed to continue under the nonconforming structure. This just gives us a little narrower ability to go ahead and regulate some of the things that –

Mr. Easton: So clarify for me again: Are docks a structure over-water?

Ms. Stevenson: A dock is a structure over-water.

Mr. Easton: Okay.

Chair Lohman: And a pump station?

Ms. Stevenson: Could be. I've seen them both ways.

Mr. Easton: You've seen them both ways?

Ms. Stevenson: Where they are actually over the water or there's a pipe that runs from the water up to the pump station where it's not actually over the water.

Ms. Ehlers: Yeah.

Mr. Greenwood: Well, what about a bridge? Because that's what I deal with the most in the shorelines of the state that are upriver.

Mr. Easton: Oh, yeah.

Mr. Greenwood: A lot.

Chair Lohman: Well, I think it's –

Mr. Greenwood: And a lot of those – well, they were done a long time ago.

Ms. Stevenson: Yeah, yeah.

Ms. Ehlers: Yes. The question of legally established is an interesting one because the County wasn't permitted to regulate until 1959. It wasn't until '65 it got its act together. Out where I am the entire shore – which is in a master planned community – there's ten subdivisions that were permitted before the County – nine of them – before the County got any opportunity to regulate. They were all done legally. The plats are registered. They look like any other plat done afterwards. A lot of the buildings didn't require a building permit because the County didn't, and many of the older buildings there's no record of the building permit because the County threw it out because the budget director wanted the space. So I'm not quibbling over the idea of legally recognized, but I'd like to know what it means eventually.

Mr. Easton: So can you clarify one more thing for me? Sorry, Josh.

Ms. Stevenson: Sure.

Mr. Easton: Clarify one more thing for me: If an over-water structure is in a hazardous area today, under *today's* SMP rules as long as they're not rebuilding it – I mean, as long as they're using it and it would appear to be – we're not – no one's telling them to tear it down.

Ms. Stevenson: Correct.

Mr. Easton: But we're citing some – what makes this a little weird for me is then we're going to classify certain things that are near them being hazardous. We're going to make them aware of the fact that their dock that their family's had for x amount of years at the bottom of this – you know, in their boathouse at the bottom of this – of this bluff that they've had for x amount of fifty years or whatever. I mean, in some of these areas some of this stuff goes back a ways. Now that's – now it's hazardous and now it's no longer an asset for them? It becomes a liability that has to be removed if something was to happen to it?

Ms. Stevenson: Okay, that's a good question and I think it's a fair question, and I don't think that was our intention here. I think it's more of a way to have some of the things – where somebody isn't keeping up that dock –

Mr. Easton: Right.

Ms. Stevenson: – and it's starting to break loose and it's got holes in it –

Mr. Easton: Right.

Ms. Stevenson: – and it is a safety or nuisance hazard, that it would give us something other than, Well, it says we can keep it and we can maintain it and we can continue to have it. _____ extenuating _____.

Mr. Easton: So I get that it's a loophole – I mean, a little bit of a loophole for jurisdictions and give them extenuating circumstances. And I'm somewhat familiar with the motivation behind the lead state senator's desire to write this piece of legislation - which never, ever forget how important it is to have state legislators who live all over the state and have one that actually lives on a shoreline and actually wanted to do something on his property, because that makes a significant difference than everybody making these decisions from condos in west Seattle.

Ms. Ehlers: Mm-hmm.

Mr. Easton: But – because this bill wouldn't exist if Senator Ranker didn't live where he lives, in my opinion – but it can't be written by – I'm concerned that when we write this out that we don't overstate the ability of the County to undo what was just – the first half of this meeting seems – some parts of it are relatively positive about how to deal with a nonconforming use. So I don't want us to cut it off again.

Ms. Stevenson: Yeah. I guess to clarify it just a little bit, the first stuff that I was talking about were the single-family residences –

Mr. Easton: Right.

Ms. Stevenson: – with a lot of flexibility and a lot more options than we have now. The second part was just structures.

Mr. Easton: Right.

Ms. Stevenson: They weren't single-family residences but existing structures and how those work, and it's more of a maintenance and repairs situation. And if you want to expand it, if it's within the shoreline buffers or setbacks now, you would have to get some sort of variance.

Mr. Easton: Right. And I promise, Josh, I won't ramble on forever, but I want to leave you with this one last thought.

Ms. Stevenson: And then the third one is the over-water structure.

Mr. Easton: I want to leave you with this one last thought.

Ms. Stevenson: Okay.

Mr. Easton: Remember: Even after six – almost six – years on this blessed commission, I still don't speak Planning nearly as well as the planners do. And simple-minded as I am multiplied by the fact that you're dealing with people who aren't dealing with this on a daily basis – you know, if Grandma and Grandpa's house has a dock on it they consider that part of Grandma and Grandpa's house. And if that dock has a

garage – you know, if there’s a boathouse and if there’s a garage – a separate garage from the property and it needs to be repaired, but it’s not connected and it’s over 200 square – you know what I’m saying. I mean, I’m just rambling. But the – you know, this square footage and that and all that, we’re dealing with people who are going to read this who don’t define – who might not find those definitions as handy in their minds, the separation between a dock and a bulkhead, a garage, an addition. So the other question that I had in another direction is, Where did 200 square feet come from?

Ms. Stevenson: It’s in the critical areas ordinance now.

Mr. Easton: I thought it might have had some – I thought I had seen it before.

Ms. Ehlers: May I comment on the –

Ms. Stevenson: Just to clarify –

Mr. Easton: Josh was ahead of you.

Ms. Stevenson: Can I clarify Jason’s really quickly? That 200 square feet is only under the situation where the Shoreline Administrator can approve it flat out. You don’t have to go through any kind of – much of a process, provided the criteria are met.

Mr. Easton: And the Shoreline Administrator is going to be the Director? The Shoreline Administrator will be the Director or someone the Director assigns?

Ms. Stevenson: The Administrative Official – yep.

Mr. Easton: Whoever the Administrative Official is. Okay. Thank you.

Ms. Stevenson: Or his designee. Thank you.

Mr. Axthelm: So just a matter of method: Do we want to go over this – these comments? She just read this through so we may have some comments on it. Do we want to go through that step-by-step, or how?

Chair Lohman: Just dive in.

Ms. Stevenson: Can I – if you’re done with any of my stuff, can I go over there and take better notes? I’m running out of things to write on here. I wasn’t prepared to do too much of that from here. You guys are okay with me just going over to that stand?

Mr. Easton: Sure. Yeah.

Chair Lohman: We’re going to *make* you stand there!

Ms. Stevenson: Well, I can stand but I just need something to write on! It actually feels good to stand; I'm okay with that. That works for me but I just need something to write on so I can get this written down.

Ms. Ehlers: Jason?

Mr. Easton: Yeah?

Ms. Ehlers: There's a staircase in our area that had a minor slide and it was partly damaged. What the County made us do is sensible. It had not been originally created according to engineering standards so we had to get an engineer to engineer it and define the criteria, which made it a much safer staircase. And under the RCW which says "recreational element for the preservation and enlargement of recreational opportunities," the County graciously granted the ability to rebuild.

Mr. Easton: Good.

Ms. Ehlers: But the idea was that you had to rebuild it under better standards, and I think that's –

Mr. Easton: Reasonable.

Ms. Ehlers: – perfectly sensible.

Mr. Easton: Sure.

Chair Lohman: Dale?

Mr. Pernula: I'd just like to make a comment to Jason, and that's that the dilemma on writing regulations is that we could just have a standard here and any deviation is required to get a variance. Very simple, everybody understands it. But to be fair to people who really shouldn't have to come in for a variance, we start writing exceptions (and) they get very, very complicated.

Mr. Easton: Right!

Mr. Pernula: The more complicated the ordinance is is usually because you're trying to be fair to more and more people. So it's kind of a dilemma. Do you want to make it real easy for the public to understand or do you want it to be fair? If you're doing it right.

Chair Lohman: Josh?

Mr. Easton: So the goal's both, in the end?

Mr. Pernula: Balance it.

Mr. Easton: Right.

Mr. Axthelm: So I have a question. The first part of it, it says – about the background – on that first page it refers to, like, the critical areas ordinance. So is this going to replace the critical areas ordinance?

Ms. Stevenson: Basically what it does is we're required to integrate the critical areas ordinance into the Shoreline Program as we update it for those critical areas within shoreline jurisdiction. So we have to do that. In order to do that we have to consider what our critical areas regulations are now. So those standards that I mentioned are from the critical areas ordinance – if that makes sense. Did I answer your question?

Mr. Axthelm: Partially.

Ms. Stevenson: Okay.

Mr. Axthelm: The concern – one concern I have is that you have like a setback situation is that what's required by the critical areas ordinance might not be the same thing as what's required by the Shoreline Master Plan, that if you took those and you tried to match each other then you're expanding it unnecessarily. Now there may be situations where, by the critical areas ordinance, it would be, well, on one side of the line or the other. And I think that's just natural – like with setbacks and with easements – is that you have points where they cross over each other, and making the Shorelines Master Plan match the critical areas ordinance would be a concern to me that you're pushing that unnecessarily more. Does that make sense?

Ms. Stevenson: It makes sense. I think we're required to.

Mr. Axthelm: You're required – okay.

Ms. Stevenson: To integrate the two, and for us to try to justify making critical areas buffers smaller within shoreline areas, I don't think that's going to work.

Mr. Axthelm: Okay. I see what you're saying and that's –

Ms. Stevenson: Those buffers are already in place in the shoreline areas under the critical areas ordinance because those shoreline areas are considered fish and wildlife habitat conservation areas under the critical areas ordinance. So what we're trying to do is bring the two together and have it be one process instead of two processes, which is what we have now.

Mr. Axthelm: Okay. Okay, but there's critical areas outside of the shoreline.

Ms. Stevenson: Right, and those would still be regulated as they are under the critical areas ordinance. All we're dealing with is those critical areas that are within Shoreline jurisdiction. But to make those buffers, setbacks – whatever you want to call them – the

buffers less than what they are now, under the critical areas ordinance with our Update, I don't think that's going to get approved.

Chair Lohman: I think the confusion, too, is you use "setback" and "buffer," and even in your memo you have setback-slash-buffer area. And the requirements of a setback aren't necessarily buffer requirements.

Ms. Ehlers: Exactly.

Chair Lohman: They're a setback. So, for example, if I am building a property on Samish Island where the setback is met because they have a lawn or some kind of landscaping, but it is not a buffer. And I thought I recalled in the guidance documents they talked about the perils of intermingling or interchanging those two phrases when they *are* different. And that is a big shift for people on residential property on a shoreline when you're talking buffer versus setback.

Ms. Ehlers: Mm-hmm.

Ms. Stevenson: We would consider that as a buffer for critical areas even if it's a degraded buffer, even if it's not a native, natural vegetation buffer. So it's still a buffer. It's still an area there, so –

Chair Lohman: Then how do you –

Ms. Ehlers: That doesn't go –

Chair Lohman: But then we just arduously went through a section on vegetation and planting schemes and 100% success rates, and I'm questioning what you're saying with what we just went through.

Mr. Easton: I think you just described a degraded buffer.

Ms. Ehlers: And I'll question it too because the function of a setback is not the same as a buffer. The language of the word "buffer" – if you've got – if you're dealing with a geologically hazardous area, that ordinance was written to protect the existence of the cliff, the existence of the habitat, the existence of the house, and the safety of the people in the house or the building, and the critters that are on the cliff. That's why it's written with "shall." You have a setback – on Samish, for example, there was a symphony tour/garden tour that I went on. The County had required somebody on the north side of Samish to have a 200-foot setback from the top of the cliff where there was already a 100-foot buffer between the shoreline and the top of the cliff. Now if they had been required to plant that setback thick with trees the way their buffer was required, they would have essentially worthless property somewhere in the woods. So the language was considered very important in that decision some years ago. And that's clarification I think we need. I certainly do.

Ms. Stevenson: I think to respond to what you said, in looking back through my memo where I used the shoreline setback buffer it's under the existing code because it *is* considered a shoreline setback. Under the proposed it's going to be called a shoreline buffer.

Chair Lohman: So we're switching horses.

Ms. Stevenson: Only as we're integrating with the critical areas ordinance.

Mr. Easton: And so the new phrase would be "shoreline CAO buffer"?

Ms. Stevenson: Just "shoreline buffer."

Ms. Ehlers: All right, does that mean that down on a beach – ___ Beach, Alexander Beach, all the beaches – they now have to plant trees so they have no vision at all of the water?

Ms. Stevenson: Not necessarily.

Ms. Ehlers: Well, in most places you use the word – for "buffer" you mean trees.

Mr. Easton: So are we going to redefine "buffer" then?

Ms. Nakis: Carol? It's pretty well-defined in here, you know. It really is. It talks about vegetation historically found in the site. So if there's –

Ms. Ehlers: How do you know what the vegetation was eighty years ago?

Ms. Nakis: Oh, I think there's pretty good photographs and whatnot and information on that, even eighty years ago.

Ms. Ehlers: How about out where Tom is, 1880?

Chair Lohman: Carol, let's hear from Dan.

Mr. Nickel: I just want to emphasize that the use of the term "buffer" really goes to the existing condition. We have – a buffer can be 100 feet and in that 100 feet it can be vegetated; it can be cleared; it can have a house; it can have a hardscape in it. It's still a buffer. It's the condition of that buffer and what that entails in that 100 feet, let's say, of what your existing condition is, and that is where you're working from is that existing condition. So we're not trying to regulate going backwards and requiring existing properties and existing developments to go back in time to revert to a pre-existing condition. We are looking at – this is what the Shoreline Management Act really tries to focus on, is making improvements where you have impacts from today's condition. So if that is, you know, a new development coming in, looking at the functions that are being impacted in that buffer, let's say, and trying to come up with a solution to mitigate

for those impacts. But we're not saying that an existing property, you know, without other – without some form of development action happening on that property, we're not saying you need to return to a fully vegetated condition.

Ms. Ehlers: Well, that has to be clear because there's always somebody either among the population or an employee who doesn't understand.

Mr. Nickel: But maybe that's one of the clear messages that needs to be, you know, discussed or at least acknowledged is that we are not – the only reason that this Shoreline Master Program will get implemented on a site basis is if there's a development action occurring. We're not talking about, you know, saying to a property owner over here, You don't have a fully vegetated shoreline. You need to go and plant trees. It's only when there's – you know, this is only brought up when there's a development action taking place.

Ms. Ehlers: And it's the replacement action for a house that has been destroyed that is causing the anxiety for most of the people in that category.

Mr. Nickel: Right. And I think, you know, from my perspective from what's being proposed, it certainly is taking the – taking what's been enacted by the legislature and actually trying to provide the flexibility to the upmost extent actually. I know there's other jurisdictions out there that have not agreed to implement that language specifically so they could be consistent with their other zoning practices.

Mr. Easton: By "that language" you're talking about the new –

Mr. Nickel: Recognizing that –

Mr. Easton: Recognizing the new law that was passed.

Mr. Nickel: Right – recognizing that existing structures that were legally established that are nonconforming to today's standard. Some jurisdictions have continued to call those nonconforming structures so they're consistent with their other areas of their code.

Ms. Ehlers: And there's trouble there, too.

Mr. Nickel: Right.

Mr. Easton: Well, we'll be happy to be the rebels on that one.

Mr. Nickel: Well, I mean a lot of jurisdictions now are trying to implement what's being proposed here and trying to be flexible and trying to allow those structures to be called conforming.

Mr. Easton: Right. Well, they've got to try to do that at the same time in syncing when the last time their CAO updated. And in our case – luckily for us – we're on a rotation

where our CAO is very young in its update, which I think makes this more – in some ways makes this easier, I think. If we were dealing with an outdated CAO, I think we'd have more struggles trying to get them to balance. So I'd like to move to the question of twelve months, which was six months, and now we've been verbally told tonight that you would prefer twelve.

So I envision a scenario not unlike the Inaugural Day storm in 1992 where widespread damage potentially could happen to a lot of these structures all at once, with sustained winds in the 60s, 70s, 80s, 100-mile-an-hour gusts. That was a, you know, a super storm for our sake in the northwest and caused widespread damage. My concern is – and I think we addressed some of this in the CAO in the past and we've addressed some of this in other areas – is that if we structure the requirements to read as it reads now, “a complete application for restructure, reconstruction or replacement is submitted within six months,” – or if we change that to twelve months – “twelve months from the date of damage, all permits are obtained and the restoration is completed within five years of the Shoreline permit issuance,” we're leaving the Commissioners and – potentially – and the administration – in a situation where you're going to be turning away – you could be turning people away en masse who are trying to rehabilitate the area. So I'm wondering if there isn't the ability – and, again, we may throw this down the road to Ecology and they shoot it back and shoot it down, but I'd like to investigate with this commission the idea of easily – of some language that creates an easy path or a clear path for how you could get an extension on that. And so I suggest that we consider this idea: That we leave it an one year, but with a one-year extension available if extenuating circumstances can be presented to the Shoreline – what is that called? – the Shoreline Administrator that would allow for additional one-year extensions to seek up to two one-year extensions so that the total time you could – in theory, if you were dealing with a mass – say, a mass situation or some sort of ongoing – you know, if there's an ongoing legal case that doesn't allow them to rebuild I would think that the Administrator would not be unfair. It would be unfair for them to not allow them an extension.

So I would think that giving people succinctly one-year extensions, instead of just an open-ended three years – which would not sit well, I'm sure, with Ecology – but give the people the possibility to come and appear before the Administrator twice if they needed to – up to two times to seek a second year and a third year, if needed. That – and then I would suggest that we extend the five years to seven years – that seems to me to reflect the fact that we do live in an area where you could be dealing with a lot more of these applications all at once, potentially, or people having a hard time getting labor or getting to a project because of a mass potential issue, or because of that one-off circumstance where you're being – you know, where you and your insurance company are suing each other and you can't go do it because the law wouldn't allow.

Mr. Greenwood: Can I read something from Department of Ecology's website pertaining to this? They say under normal maintenance or repair there's an exemption for the Shoreline Master Programs. It says, “This exemption authorizes maintenance or repair of existing lawful structures and developments when they are subject to damage

by accident, fire or the elements. Normal maintenance includes those usual acts to prevent a decline, lapse or cessation from a lawfully established condition, and normal repair means to restore a development or a structure to a state comparable to its original size, shape, configuration and external appearance. This must be done within a reasonable period of time after the decay or partial destruction. Replacement of the development or structure comparable to the original may be exempted where there is a common method of repair. Neither repair nor replacement should be exempted where such action would cause substantial adverse effects to shoreline resources or the environment.”

So Department of Ecology gives room for setting that timetable – whatever we want, I believe – and then it also enables us to have a threshold, really, for repair being substantial adverse effects on the shoreline resources. And I guess it gets – the complication part just comes down to what’s lawful and what’s not. So talking about safety, is it a chicken coop or not? Am I out of order there, Dale?

Mr. Pernula: I think that that has to do with repair and maintenance, but we’re talking about total destruction.

Mr. Greenwood: It talks about repair, too, and it’s replacement, even after fire.

Mr. Pernula: Total replacement?

Ms. Ehlers: What’s the reference?

Mr. Pernula: I didn’t think it said that.

Mr. Greenwood: Well, let’s see. Let’s see. It means to restore a development or a structure. “...replacement of the development or structure” – that’s replacement – “comparable to the original may be exempted where there is a common method of repair necessary. Neither repair nor replacement should be exempted where” it would have substantial adverse impact.

Ms. Ehlers: Keith?

Mr. Greenwood: Yes, ma’am?

Ms. Ehlers: What’s the reference?

Mr. Greenwood: Ah, let’s see. That is – I’ve got their website – it’s one of their definitions for normal maintenance or repair.

Mr. Easton: That’s just the definition of normal maintenance or repair?

Mr. Greenwood: On their website – normal maintenance or repair.

Chair Lohman: Under the Shorelines caption.

Mr. Greenwood: They define “normal maintenance” –

Ms. Ehlers: It’s not WAC 173?

Mr. Greenwood: They’ve also defined “normal repair.” It’s on their website pertaining to Shoreline Master Programs. I’d have to look up the code section but they give a list of tips to local administrators, as well. It talks about what types of projects to watch out for, but it doesn’t talk about – it says, well, replacing piling and decking on docks is normal maintenance and repair, but adding deck area, floats, sheds or other expansion is not. So we’re talking about expansion is one thing and repair on the same footprint is still under normal repair, and it’s an exemption.

Ms. Ehlers: And if you could give us a reference later, that would help us tell other people where they could find it.

Mr. Easton: Well, he’s just saying it’s on the web – on their Master Plan website under Definitions.

Ms. Ehlers: So if I go to the DOE Master Plan website, look for Definitions, I’ll find it.

Mr. Easton: Under “Normal Maintenance or Repair.”

Mr. Greenwood: In quotes: “Normal Maintenance or Repair.”

Mr. Easton: Dan, I guess other jurisdictions have obviously wrestled with this issue, so the twelve-month reference is maybe borrowed from one of our sister counties?

Ms. Stevenson: From the existing code.

Mr. Nickel: I think that twelve months reference comes from the existing.

Ms. Stevenson: It’s in our current code.

Mr. Easton: It comes from the existing code? Oh, okay.

Chair Lohman: Matt, go ahead.

Mr. Mahaffie: I could be wrong, but it’s – it might be a little bit of a can of worms. When a fire or something else occurs, there’s multiple other sections of code that this twelve-month comes out of the process. This, from what I’ve seen, would probably have no effect on the process. There’s multiple other chunks of code that this reference is the twelve months.

Mr. Easton: So you're saying that if we do more it's not going to be effective because other things are limiting it to twelve months?

Mr. Mahaffie: That has been my impression – yes.

Mr. Easton: Fix this piece of code, fix the rest later. There's a bumper sticker!

Ms. Ehlers: Well, maybe we should modify some of the other because Jason's point of the super storm – we've had several here.

Mr. Greenwood: I think it just throws it into the category of whether it's a substantial development or just a regular development, because it talks about – even in the Shoreline Management Act itself – “normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements.”

Mr. Easton: See, I'd rather remove the whole section if I can't ex – I mean, I'd prefer not to have the section at all in relationship to a timeline that has to do with repair, unless the SMP is required to have it. But if left with having to have it, I hear my compadre's here's concern but I'd rather at least extend the potential for – in this section of the code – for it to be helpful if it isn't – I mean, if there are other sections that would make them unable to complete and follow that timeline that would be disappointing, but I think we need to make some sort of reference to the fact that that's not a real – that may not be a realistic timeline if we're dealing with a serious situation, I mean. And one of the things that we've talked about before is to try to make the code flexible, and Dale mentioned it earlier about making it fair, but I also think there's another area which is making it manageable for the Commissioners under challenging circumstances. And when we're dealing with – it's not a one-off, potential thing – you know, *maybe* we have an earthquake. We see serious storms on a pretty regular basis that can do widespread damage.

Mr. Greenwood: Especially in the shoreline area.

Mr. Easton: Well, yeah, and the most critical of these areas, especially in the shoreline areas, and I'm thinking particularly of over-water structures that are pre-existing over-water structures, that may not be built to code. And granted, one of the things that would happen after a storm and those repairs is those things are going to be built better than they were before and that's – you know – that's a natural – Carol's example earlier – it's a natural occurrence that seems to make it more helpful, but...

Mr. Greenwood: One more point, just from the Shoreline Management Act, under “Findings.” It says that the legislature intends that critical areas within the jurisdiction of the Shoreline Management Act shall be governed by the Shoreline Management Act, and that critical areas outside the jurisdiction of the Shoreline Management Act shall be governed by the GMA. So they *can* be different, perhaps.

Mr. Easton: Right.

Chairman Lohman: No.

Mr. Easton: Well, they can be different in the sense they can't – as long as they don't contrast, as long as there's no conflicts, right?

Ms. Stevenson: They'd be more restrictive but I doubt if we'd get away with less restrictive. _____.

Mr. Easton: Your thinking is – say that again.

Ms. Stevenson: I mean I guess in the shoreline area, if you wanted to make it more – I don't see how you could propose something less restrictive than what's in the critical areas ordinance for critical areas in the shoreline areas.

Mr. Greenwood: Well, it seems to separate them pretty clearly.

Mr. Axthelm: I have a question on this statement. So if it's in the shoreline area, then the critical areas ordinance wouldn't have anything to do with it. It would be strictly regulated by the _____.

(several people speaking at the same time)

Ms. Stevenson: It has to be integrated once we update our Shoreline Program.

Mr. Axthelm: Okay.

Ms. Ehlers: There has to be an integration because you can't have the top 50 feet of your cliff under one law and the bottom 200 on another. You just can't live with it.

Ms. Stevenson: In response to your concern about the replacement language, the exemption that Keith was reading from comes out of the list of exemptions in the language, I think, or at least that's where it also comes into play as far as normal maintenance and repair is allowed as an exemption. But exemptions and development that happens under an exemption also has to comply with the Shoreline Program and the Shoreline Management Act. So if you had a pre-existing nonconforming structure you wouldn't necessarily be able to do that because it wouldn't necessarily comply with all the other regulations. There's kind of an overlay or an assumption there. So this gives you the ability to go ahead and allow them to replace that without having to rely on, Oh, it's exempt anyway. You can replace it right where it was in the same footprint and all that regardless of what its conformity or non-conformity would have been. Does that make sense?

Ms. Ehlers: Mm-hmm.

Mr. Easton: Yeah, but I want to clarify something.

Ms. Stevenson: Okay.

Mr. Easton: Just a paragraph ahead/above this, in (5) when it describes replacement, it says if nonconforming structures (sic) “is damaged or destroyed by fire or natural disaster or other casualties, it may be reconstructed to those configurations existing” the day it blew down – is what that means. Then it goes on to say “existing immediately prior to the time the development was damaged.

So it’s not a given. And I was mis- – and the reason I’m pointing this out is because I was mistaken when I said they will build back to a better standard. They don’t have to. They only have to build back to what was there before as long as it was – as long as we’re not in a hazard.

Mr. Axthelm: But you’d still have to build to code.

Mr. Easton: You could rebuild my dock if it goes down in this situation. It has to be built to code but it doesn’t have to be built – well, no – well, then why does it say that it can be built at the – why is the clarification then, Josh, about existing – or Betsy – about the existing “immediately prior to the time” of the development? Why doesn’t it say “as built to code” – current code?

Ms. Stevenson: Well, the configuration would be like the size and the location and all of that sort of thing.

Mr. Easton: So the config- – oh, so you could – see, as long as you build to the code, but, you know, years and years of code material, but it’s twice the size of what was legal – what’s legal today, you could still build it back to what it was at the time it went down?

Chair Lohman: Yeah, you could.

Ms. Stevenson: _____ what you’re saying this.

Chair Lohman: That’s why it’s called “nonconforming.”

Ms. Stevenson: Right.

Mr. Easton: I just thought we were trying to get away from that.

Ms. Ehlers: No, it’s nonconforming because it’s within a setback that’s been changed.

Chair Lohman: Dan, go ahead.

Mr. Nickel: I just want to make – I think that’s exactly right – I want to make one emphasis about considering not having this language in there. I think it’s actually very

beneficial to have it because it actually pertains to **sympathy** in nonconforming structures. So this makes it clear that you *can* actually replace in the existing footprint.

Ms. Ehlers: Mm-hmm.

Mr. Easton: Well, I don't know what the pleasure of the rest of them is, but I'd like to see Ecology tell us that it's not a good idea to give people more time. I'm just one Commissioner.

Ms. Ehlers: I'd like more time, too.

Mr. Easton: But I wouldn't mind crossing swords with them on this in a respectful way. If they decide to send it back, they send it back. But my comment in this work session is to my fellow Commissioners: I'm willing to live with that. I don't think it's disrespectful to Ecology.

Chair Lohman: Yeah, but I don't think Josh's point had to do with Ecology. I think he was referring to other –

Ms. Stevenson: No, Betsy made a point about Ecology.

Chair Lohman: Oh.

Ms. Stevenson: (inaudible)

Mr. Easton: I misunderstood. I thought you made the comment that you didn't think Ecology would go along with doing a longer extension than what's allowed in critical areas.

Ms. Stevenson: Now I'm getting confused.

Mr. Easton: Do you follow me, Dan?

Mr. Nickel: Yeah, I do but I don't think that comment was related to the extension. I think that was more general in terms of –

Mr. Easton: My misunderstanding.

Mr. Nickel: Yeah.

Mr. Easton: I misunderstood. So those are my comments on that subject.

Ms. Stevenson: And I guess I would say – and I can't find it and put my finger on it now, but when we came up with those dates that what we have proposed in there is already longer than what Ecology was recommending. I think they said you were supposed to – their recommendation was that you apply for your permits and stuff within eighteen

months and the work is done within two years. And I'm looking for that now and I can't find it. So we've given them the amount of time – the five years – that they would get to complete it under if they had to get a shoreline permit.

Mr. Greenwood: Are those guidelines or WACs?

Ms. Stevenson: I'll have to find it. I'm not putting my finger on it right now and I apologize for that. But if we have a state of an emergency like you're talking about, where it's more than just one property that we're dealing with –

Mr. Easton: Yeah.

Ms. Stevenson: – in past with floods and things the County issues a state of an emergency and things get changed, so there is always the possibility. And we try really hard to work with people. We would like to think they could at least submit an application within that amount of time as a placeholder, if nothing else. And if extenuating circumstances come up and we have one, at least that I'm aware of now that it is one of those situations that – you know, working with their insurance company and getting all of that stuff figured out so it's been longer than that in terms of they applied for it within the year but it's taking a while. I don't think we're to five years yet, but they haven't gotten their permit or started construction yet either, so he's going to be pushing up against all of that. We try to work with them. But in a situation where it's a widespread disaster of some sort, we'll work with people on that for sure.

Mr. Easton: I just want that in writing. I mean, I just think that that's, I mean, a fair point. I don't think that that would be the case. And the other thing is if you're upfront discussing this stuff with Ecology *before* an emergency, at least we find out where they're at. You know, if we just take the – my concern is if we just take the language as it's drafted right here, they agree to it, we didn't have a chance to have the discussion about whether or not a longer period of time could be considered. I've spoken enough.

Ms. Stevenson: Do you want us to add something just to address some major event or – I don't know. It's almost better to leave it open and unspoken.

Chair Lohman: Dale?

Mr. Pernula: I would prefer to understand what you're trying to accomplish and have us draft it, if we try to draft something here.

Mr. Easton: Oh, no – I agree.

Ms. Ehlers: I agree.

Mr. Pernula: But I think I understand your point and we can see what we can come up with. Or maybe there're some general law provisions where if you have some ongoing litigation that allows it automatically to be extended. I don't know.

Mr. Easton: Yeah, because there are two circumstances I'm looking at: the legal one and the natural disaster. All right.

Chair Lohman: Dan? I think I asked this question several months ago, But you also have residential lots that people haven't built on but they're within a community of residential lots. I don't mean a formal community, but they haven't been built on but they are landscaped similar, meaning there isn't a wild and wooly buffer or whatever. And you said earlier that you weren't just going to arbitrarily – automatically those poor souls would have to have these 200-foot buffers and... So I don't see that language in any of the packet that we got. What *is* your plan on dealing with these lots that are probably in between already developed lots? And they *are* going to be substandard lots. They are teeny, tiny lots when you're talking a lot of these shoreline lots.

Mr. Nickel: Yeah, I think the language we're addressing here is addressing the nonconforming structures and the use of – yeah, I mean, we're not calling out a buffer condition as conforming or nonconforming. I guess that's –

Chair Lohman: But yet when the people do a very minor, less than 200-foot change, one of your criteria on whether they get to pass go is the area between the structure and the shoreline and/or critical area buffer must meet the vegetation conservation standard, which is the full monty.

Mr. Easton: For 200 square feet.

Chair Lohman: For 200 square feet or less, which is a very huge hurdle. I mean 200 square feet is ten by twenty. I mean, it's a very tiny change. It's not a huge change. It's like adding a mother-in-law room or a – you know, it's tiny.

Ms. Ehlers: Are you talking about what was the reasonable use issue?

Chair Lohman: No. On these substandard lots or even an undeveloped lot – it may not be a substandard as far as size, but it may be a lot that's not developed. So what are you going to do with it? Are they going to have requirements that their neighbors don't have?

Ms. Ehlers: We dealt with that a number of years ago with the LAMIRDs and that's when we developed the reasonable use. But I've read someplace, I think, that you have eliminated reasonable use in this area.

Mr. Axthelm: I would think you could follow a variance process in that situation, where you have a neighbor that has the same – you have two lots next to you that are –

Mr. Easton: Yeah, I haven't seen that spelled out.

Chair Lohman: No, it's not.

Ms. Ehlers: It's isn't. It isn't spelled out yet.

Mr. Pernula: It doesn't say specifically, as far as I know, what your building envelope would be, but the very last provision deals with substandard lots and it says that you *would* be able to build on it. So if you are able to build on it and you have a number of other buildings in the area, you may have to go through one of the variance processes, but you do have the right to build on that parcel.

Mr. Axthelm: So you could use precedence of ____ lots.

Mr. Pernula: I think that might help justify your variance.

Chair Lohman: But you didn't write that. You wrote, "all other requirements of the applicable Master Program."

Mr. Pernula: That's right.

Mr. Easton: Which is significantly – I mean, maybe we should include some language in here about – or – about variances or about – I mean, this is an ongoing, recurring situation that'll happen throughout the county on every creek, every river, and every piece of shoreline you're going to find, whether it's the most developed, richest real estate at Alexander Beach or whether you're upriver next to a creek where people platted that thing out fifty years ago. There are lots that are sitting empty next to multi-million dollar houses, and shacks, and so we need to have some sort of process for what happens. I would think we would prefer that people aren't coming in without any guidance about what their potential building envelope could be. And I think that's where this – well, I mean, when you look at Option 2b or you look at Option 2c and you start using percentages of lot, that type of instruction to that family that's held on to that piece of dirt for all that time or it's changed hands a few times and never got developed, at least would give them some sort of idea – when that dirt changes hands before it's developed potentially – what the building envelope's going to be. Or if not, you're just going to have people at the counter who are really frustrated.

Ms. Ehlers: There have been cases out in that area – out in my area. One guy bought his property when he was a sailor in 1962 when it was first subdivided and he wasn't able to build until 2008. So what Jason's bringing up, just even with one owner, much less the kind of situation where someone buys a piece of property, they have three kids so they buy three lots next to each other, and one kid wants the property and the other one doesn't so, of course, they sell it but that may be fifty years later. Property stays in ownership around here for an astonishing amount of time.

Mr. Easton: So if you had a 150-foot lot in a 200-foot setback area and it's vacant; vegetation looks similar to your neighbor's, who have built out. Right now, under the way we've drafted it, that person would come to the counter and say, I want to build, and you would say, basically, We have to let you build but you're going to have to come

to us and tell us what you want to build and we'll decide whether it's reasonable or not. And I think we need to give them some guidelines, you know, because if they come back **with a 50% coverage by a 150 lot**, you know, you're going to say, That's a mega-mansion; you can't build that here, you know – well, unless it's on the shores of Lake Campbell, but that's another story. But, you know, it –

Ms. Ehlers: There's a 35% lot coverage allowed everywhere in the county.

Mr. Easton: Sorry. So some sort of guidance for this. I would say maybe you want to go back to the – I would be surprised, Dan, if there aren't other jurisdictions that have some sort of insight for what they're doing on these, right? We can't be the only ones who've got lots that aren't going to fit into these equations.

Chair Lohman: Well, it's not necessarily an unused lot. Maybe the people are using the lot: They haul their trailer there for a couple months in the summer and then they haul it out. Well, then at some point maybe they want to build a –

Mr. Easton: – a cabin or whatever.

Chair Lohman: – a dwelling like their neighbor's and maybe have a little more permanence. But all of a sudden, what is their rules?

Mr. Easton: Because some of these places we're talking about people, if they want to build to fit into the neighborhood and they're thinking that they're going to get to build to fit into the neighborhood, and y'all are going to be the bearers of some bad news if you're telling them, No, you can't be 60 feet from the ordinary high water mark like the other people all around you. You've got to be 100 feet and that means you're – you know – you're building on the back 50 feet. And none of these end up being flat so they're all – then you've got all the other challenges that go along with them – I mean, in theory.

Chair Lohman: Sometimes, too, where are they going to put their septic? You run out of space.

Mr. Easton: In a hurry.

Ms. Ehlers: Then you have cases where the road runs through the middle of the lot.

Mr. Easton: Dan, is there jurisdictions that have addressed this?

Mr. Nickel: Yeah, I think part of what we've included here that with the setback reductions get at some of that, in terms of allowing administrative variances to get to those limits. That applies to other lots. It applies to the substandard lots.

Mr. Easton: Yeah, now that's part (c). What seems to be missing is (a) and (b) to get there. Like for that guy at the counter earlier. I mean, I get that you can go apply for a

variance. I get that you could do some things to mitigate for you eating up some of the buffer. You know, because I see that in Options 2(c) and 2(b) that those are potentials and I think that's – we came through all of that with critical areas and it was a very healthy process. Most people tended to agree with giving people some flexibility. But how do they get to the beginning of that? Is it 35% lot coverage? Is it, you know – or is it a percentage? Because it's probably not going to be a setback – a standardized setback – because they're not standardized size lots that are left.

Chair Lohman: Well, in a way they're already developed.

Mr. Easton: By their neighbors.

Chair Lohman: Because they're using them in some ways – some of them are, even though it's kind of passive.

Ms. Stevenson: Isn't what our intention for identifying substandard lots is just to indicate to people that if you have a substandard lot, under the Shoreline Program we're still going to allow you to develop it but you would probably have to get a variance? It's like you said: Your lot is only 60 feet deep and the buffer is 100 feet at that point. Then you're going to be hard-pressed. There isn't a reasonable use exception under the Shoreline laws that would allow you to give it your best shot and let them go ahead and do it without going through some sort of a variance process.

Mr. Easton: I have no problem with them going through a variance process. What I have is know there's no direction. If I hire a John Ravnik today – you know, or a fill-in-the-blank – and I say to John, I've got this 60 by 100 sitting here on Alexander Beach and I want to put up a house. What can I put up? John's like, Well, we're going to have to go get a variance. Well, a variance on what? I mean, like – you know, we've got to get (a) and (b) done before I can go apply for the variance on it. And I think that the key's probably percentages. I think it's probably looking at percentages and trying to accomplish what the Shoreline Plan does in getting as much compliance as we can but also being consistent to the neighborhood and fair – as fair as possible – to the landowner.

Ms. Stevenson: Part of what we try to do with our pre-development meeting process, too, is get all the different disciplines from our department and Public Works to come in with somebody who might have a lot like that and, Okay, so what size house do you want to build? So you want a three-bedroom house so now we have to figure out where your three-bedroom septic system's going to fit, if you need a septic system.

Mr. Easton: Right.

Ms. Stevenson: Are you on a well? Are you on PUD water? All those things. And we work with them the best that we can. Is it best to have more setback off of a busy road and move them closer to the water? Or is it better – I mean, all those things have to come into play with where –

Mr. Easton: Sure.

Ms. Stevenson: – it goes and how it fits. Where are the soils where you can put a septic system? Where is your reserve area going to be? What's _____?

Mr. Easton: I think 14.26.640 can be improved if you take some of our comments here and, maybe with the Committee or not, and try to build something out of it that's a little – that paragraph by itself doesn't leave enough.

Ms. Ehlers: Take a good look at – you were telling me earlier, Betsy, that we were going to follow the basic principle of the variance section, which is 14.10, so I made a copy of it and brought it with me. And one of the things that I think Jason's talking about are the – 14.10.040 – the findings of the variance. "The variance is the minimum variance that will make possible the reasonable use of land, building or structure."

Chair Lohman: But, for clarification, you said we can't use the reasonable use in the Shoreline.

Ms. Ehlers: And I don't know why.

Ms. Stevenson: Right.

Chair Lohman: Why?

Ms. Stevenson: Because the law doesn't allow us to. They don't recognize it under the Shoreline Program as we can in the critical areas ordinance where you're allowed a reasonable use of your property. You have to go through the variance process.

Ms. Ehlers: Yes, but –

Mr. Easton: So we don't use the phrase "reasonable use," but we can use definitions for it! I mean, in some ways, like Dale was saying earlier, without using the words "reasonable use," was really describing it's reasonable for us to allow them to build on their property without – potentially.

Ms. Ehlers: Well, permit the concept if you can't use the word.

Ms. Nakis: Betsy, I'm not sure – I'm sure I read this over the last few months that it did take into account substandard lots as being able to build and as an average of how far the house is on the right and left of you are, right? I'm not sure exactly, but it seems like there was something like that in what we went through earlier in the year.

Ms. Stevenson: One of the presentations that I made did talk about that because that's the way our existing code is written to determine your shoreline setback.

Ms. Nakis: Right.

Ms. Stevenson: So it's either 50 feet or the average of any residences within 300 feet of your side property line, whichever is greater.

Ms. Nakis: That's right. That's what I read.

Ms. Stevenson: Yeah, that's what you're referring to. That's not something that we plan on necessarily keeping in our new Program.

Ms. Nakis: Oh, okay.

Ms. Ehlers: Why not?

Ms. Stevenson: That actually wouldn't solve this problem. It would actually make you set back further if your neighbors were further back because you would still have to meet the minimum requirement, but you might have to actually be back further and it's kind of designed to protect people's view. If they actually built back further then you might have to be back further. If you're closer, then you still – if everybody else is closer and the average is less, you would still have to stay back that minimum distance. So if you're dealing with a small lot that isn't very deep away from whatever your shoreline area is, that doesn't necessarily help you.

Ms. Nakis: Okay.

Ms. Stevenson: Yeah, we did talk about that.

Chair Lohman: But then we're also shifting from a setback. It isn't going to be a setback in the future. It's going to be a buffer requirement.

Ms. Stevenson: Yes. We'll work on that at least.

Ms. Ehlers: I'd like some definitions.

Chair Lohman: I think if you mean "setback," say "setback," but if you're – I think we need to get away from using them co-joined because it's confusing, because the new regulations it isn't setback. So we need to kind of call it what it is and not confuse people, because they might go in thinking they're going to have a lawn and it's not.

Ms. Stevenson: That's not necessarily the case, either. There's a lot of lawns out there.

Chair Lohman: But –

Ms. Ehlers: Well, there are *now*.

Chair Lohman: But the vegetation conservation standards are not a lawn. That's – for me – the deal breaker.

Ms. Ehlers: Well, and there's another deal breaker when you're talking about upriver shorelines, and that is if you look at the natural hazard mitigation document that's the official document for the county in terms of things like fire, there is a fire protection program that's been developed by the Conservation District and they want 30 feet of grass around a building so that you don't have much less danger from a fire. Well, if the code doesn't permit you to have that grass around it then at the right hand you're saying that you have to follow the Shoreline Act and in the left hand you're saying you can't follow the FEMA laws that are federally mandated. And that requires that you recognize where you have a – what is it? – the urban – give me the right words – the urban forest interface?

Chair Lohman: Well, I think, too, you have to remember that a lot of this area we're talking about is already designated as Rural Residential. Rural – I'm looking for what you call –

Mr. Easton: Rural Reserve?

Chair Lohman: No – Shoreline Residential. So in that context is what we're talking about in part of this. I mean, there's not all of these dwellings are necessarily in the Shoreline Residential. But in the Shoreline Residential I would think that – is it reasonable to have more flexibility?

Ms. Ehlers: I would think so – yes.

Chair Lohman: Because why would you specify that as an area?

Ms. Ehlers: Because it is, in fact, in those areas a preferred use.

Chair Lohman: Right.

Mr. Greenwood: I'm struggling a little bit still just to reconcile – I feel like we're trying to reconcile the Shoreline Master Program with the code, rather than having the code reflect the Shoreline Management Plan – Master Program. I feel like we've got the tail wagging the dog a little bit. So I think there's more flexibility in the original Act and its mandate and in the Department of Ecology's directives to us. I think we're letting the current code drive us a little too much. Just an observation.

Mr. Easton: My statement was earlier and I'll repeat it: I find no offence nor any slight thought at all that we are wasting our time if Ecology rejects certain portions of what we send to them. As a matter of fact, I'll be more troubled and disappointed if we send something over there and they like it, the whole thing. You know, in a sense? Because it's like I want to find the boundaries of what's the right thing to do within the Act. I don't mean that in some sort of sense of let's try to beat the principal out of – and get an extra

half-an-hour recess or something. But it's just – it's a guideline until they tell us that we can't do it – you know? – on certain parts of this. I mean, I agree. I don't want to be wagged by the dog.

Mr. Mahaffie: Can I ask you a couple questions, Betsy?

Ms. Stevenson: Sure.

Mr. Mahaffie: A little different subject here: single-family residences and appurtenant structures. I'm picturing a lot of areas where that's a very blurry line. I'm thinking Lake Tyee, Cascade River Park – permitted as pole buildings quite often, garage structures, small cabins. What exactly is a single-family residence in this case? And I would consider – you know, obviously – a park model cover as, you know, not a single-family residence, but if there's not a single-family residence there, can it be an appurtenant structure?

Ms. Stevenson: We have issues with all that now.

Mr. Easton: Mm-hmm.

Ms. Ehlers: That's a point well taken.

Ms. Stevenson: But you're right. We need to definitely make sure that we're clear on that.

Chair Lohman: Can you repeat that, Matt?

Mr. Mahaffie: No. Do you really want me to?

Mr. Easton: Yeah.

Mr. Mahaffie: It's on tape: you can review that.

Chair Lohman: Well, I think it was a good point.

Ms. Ehlers: Yes, it is.

Mr. Easton: It's a great point.

Ms. Ehlers: Is lot certification required for all these?

Mr. Pernula: A lot certification's required on any lot where we're issuing a building permit on – yeah.

Ms. Ehlers: Oh, that's a nice, pricey process.

Mr. Easton: Yeah.

Ms. Ehlers: It might take you almost a year to get all the conditions done for the lot certification. Why can't you recognize that a platted lot is a platted lot?

Mr. Easton: There's a conversation for another day.

Ms. Stevenson: I'm sorry. I missed the question. I was still –

Mr. Easton: It's okay.

Mr. Pernula: I know that one time we were challenged on that. We had to adopt an ordinance. You were probably involved in drafting that ordinance.

Ms. Ehlers: It's in here. It's in 14.06. But it doesn't – it makes sense to me to have lot certification for a lot that isn't platted, and there's plenty of them out there. But I do not see why you would have to have lot certification for a regularly recorded Skagit County plat.

Mr. Pernula: I don't know all the rules about it but I believe that if they were platted after a certain time that's true, but some of those that go back a ways they have to go through a certification process.

Ms. Ehlers: Oh, but –

Mr. Easton: Even those that were platted?

Mr. Pernula: That's correct – a long time ago.

Mr. Easton: Right.

Mr. Greenwood: That's been my experience.

Ms. Ehlers: Well, you see that becomes a good part of the difficulty because a lot of these lots were platted a long time ago.

Mr. Pernula: My understanding is that we used to issue permits, recognize all those, and we were challenged successfully, so we adopted an ordinance that set up the procedures for lot certification.

Ms. Ehlers: Even for rebuilding?

Mr. Pernula: I don't know about that.

Mr. Greenwood: So once they're certified then – once a lot is certified then they could build on it, but until it's certified they cannot. I'm thinking about one in particular in

Cascade River Park. If it's within shorelines of the state – now we're getting back to the shorelines issue – how would you certify it?

Mr. Pernula: ___ my head I had a few discussions with our person who does lot certifications. I know that on a lot of the older lots that are substandard – that kind of thing – that they go through a whole certification process to make sure various things are there. But even after they're certified, they still have to meet all the other requirements – setbacks and so on – and then they still may have to go through a variance process.

Mr. Easton: Right. Isn't there potentially a scenario where you could have a nonconforming house on a lot that doesn't have a certification, that's then destroyed in a shoreline – that's destroyed or burnt down or something, has some sort of issue – in the shoreline that gets rebuilt that's still on a lot that's not certified? You know, a brand new structure on a lot that's not certified?

Mr. Pernula: I think that's possible.

Mr. Greenwood: Not legal.

Mr. Easton: Well, no because they're not required to come back and do a new lot certification if they had a pre-existing building on it, if it was a residential property and it was then damaged in some sort of – or needed – and fell into disrepair and needed to be repaired. So you could, in theory – as long as the footprint didn't change; I mean, as long as it's not substantially changed – you could in theory have a brand new home on a lot that's not certified.

Mr. Greenwood: That makes sense.

Chair Lohman: I think I would like to see some examples of how you're going to do this in the different areas, the classification areas. Because you have Shoreline Residential, you have Rural Conservancy and these others, and I don't think that they're going to be uniformly treated because they're different. Because I'm struggling with applying this to the Shoreline Residential section because there isn't a buffer now, and I guess I need to see a real world application so I can figure it out.

Ms. Ehlers: I have another question that's pretty –

Ms. Stevenson: I mean, chances are, unless the building is right up against the shoreline, there's a buffer.

Chair Lohman: No.

Ms. Stevenson: It may be degraded but there's a buffer. There's a distance between where the structure is and where the shoreline is.

Mr. Easton: It's just definition. It's definition.

Chair Lohman: It's a setback.

Mr. Easton: It's a setback.

Ms. Stevenson: But _____.

Mr. Easton: So you're telling us that we really should stop using the word "setback" and think of everything as a buffer that may be degraded or not.

Ms. Stevenson: I don't think we want to get involved in each of the different shoreline designations in the nonconforming pre-existing section.

Chair Lohman: Well, I want to make sure that when you're talking about the nonconforming, if I have an example and it happens to be in the Shoreline Residential I know how it's going to be applied. If the example is in the Rural Conservancy zone, I know how it's going to look.

Ms. Stevenson: I'm trying to understand. I'm not trying to argue with you.

Chair Lohman: Great.

Ms. Stevenson: So you want, like, me to set up a table that would show what the buffer would be proposed for each of the designations –

Chair Lohman: I think if you just went on Google.

Ms. Stevenson: – and go through and do the percentages and what those would give you? Is that what you're asking for?

Chair Lohman: I'm envisioning – when I'm trying to walk the words I go on Google and I download a neighborhood that I'm familiar with and say, Okay, what does this mean? And my neighborhood that I would use this on I'd go over on Samish Island because it's right in my backyard and I can drive right over there and look at it. And I would want to know what does this nonconforming uses regulation mean to a lot on Samish Island.

Ms. Stevenson: Okay.

Chair Lohman: And there's going to be a variety of scenarios. You're going to have one that's got a modern structure, you're going to have one that's got the kind of little cobbled together beach cabin/shack kind of weekend place not really meant to be a long-term residence. Then you're going to have the one that's they haul their RV in, then you're going to have one – there's always one in the middle that nothing's happened and nobody knows who the owner is and it's all wild and wooly. But I want to know what's going to happen in there. And then maybe go upriver out in the Rural

Conservancy where it is a little bit more naturally vegetated – it isn't mowed lawn per se – maybe on a river or a lake, and then it's going to be different at Lake McMurray and Lake Cavanaugh. But I want to know, What is it going to look like?

Ms. Ehlers: And to add too, is it going to be with this the way it is in FEMA? In FEMA with the floodplain, if you have a parcel that any part of it – even a big parcel, any part of which is in the floodplain, FEMA assumes that your whole parcel's in the floodplain and you have to buy flood insurance. Now are you going to assume that if any part of this parcel is within the 200 feet that the whole rest of the parcel has to conform to the Shoreline Management Act? Or just the part that is within the 200 feet?

Ms. Stevenson: A development within the shoreline jurisdiction is covered by the Shoreline Master Program.

Ms. Ehlers: No, but if you have a parcel – and there's a number of them – where it's 200 feet deep and 10 feet is within the 200 feet of the shoreline, you're only going to consider the 10 feet that's within the 200 feet of the shoreline as a shoreline rule, right?

Mr. Nickel: Right. It's only that part from the shoreline _____.

Ms. Ehlers: Well, that's more sense than FEMA has.

Chair Lohman: Okay, does anybody else have any more on nonconforming? We also still have Administrative Provisions on the –

Ms. Stevenson: Actually we don't.

Chair Lohman: None?

Ms. Stevenson: None. I think I made that comment at the beginning.

Chair Lohman: Oh, I guess a couple of us didn't quite catch it.

Ms. Stevenson: Ryan and I are still working on it.

Chair Lohman: Okay.

Ms. Ehlers: Well, actually we've talked about a good deal of administration in this discussion.

(laughter)

Ms. Stevenson: Yeah, we have.

Chair Lohman: It's like "How?"

Mr. Pernula: The variance is one of those provisions of the administrative part of the code that will come in in that.

Ms. Ehlers: Well, that's why, you see – I will repeat – reasonable use of the land. You've got to provide people with the ability to use a piece of land. If they've been paying taxes on it as residential, developable land, you've got a legal problem if all of a sudden you say, No, no, no, no, no.

Chair Lohman: Yeah, but it goes to the state because they took that language out.

Ms. Ehlers: That's one of the things I think we ought to argue with the state with, if we have to.

Mr. Axthelm: We don't have to directly adopt what the state says.

Ms. Stevenson: Can I get a sense of whether you're even thinking that we're on the right track with what we're trying to do? I mean I'm not asking you to approve it or not, but if we need to be going a totally different direction are you sort of – I mean, if you just want to think about it some more I'm great with that because I tend to have to think about stuff for a while. But at least as far as the single-family residence and the non-pre-existing, making them conforming and how we're trying to do that. You just want to see more? I see you wince when I ask. So you want to want to see what it really looks like on an aerial and run through? My little drawings didn't help so much – you need some better scenarios with aerial photos showing real places and things?

Several voices: Mm-hmm.

Ms. Ehlers: This may be your third or fourth draft, but it's a pretty good beginning, as far as I'm concerned. I'd like all the ideas that we have brought in to be included in how you rephrase some of the language.

Ms. Stevenson: Okay. It may be if it's an area that you recognize, sometimes we run into trouble if we start projecting people's property up on some of our screens and stuff, so – I don't know. We'll have to look for something that somebody _____.

Chair Lohman: Go to another county.

Mr. Easton: If you're concerned about projecting it out to television, just put them on the tables here and we'll come down and look at them and you don't have to shoot them then, if that's something you're worried about.

Ms. Stevenson: Okay.

Ms. Ehlers: Or I really do like the drawings you gave us.

Ms. Nakis: Yeah, they're helpful.

Chair Lohman: Yeah, but they're not –

Mr. Easton: That was a good place to start.

Chair Lohman: Yeah, they're a beginning.

Ms. Ehlers: They're a beginning.

Ms. Stevenson: Okay.

Ms. Ehlers: And they did help.

Mr. Easton: Matt has his hand up.

Chair Lohman: Sorry, Matt.

Mr. Mahaffie: Did you ever note a definition for me for "single-family residence"? I don't find it in there.

Ms. Stevenson: No, it's not in there so we need to do that. I mean, it may be in our *code code* – if you want me to look, I can look there – but it certainly isn't in the Shoreline itself.

Mr. Mahaffie: Well, it's not in the development code under Definitions.

Ms. Stevenson: It isn't? Okay, and it's not in the Shoreline, so...okay. That's interesting. I can't believe that it's not in there. It used to be back in the old days. We'll put a note in there to make sure we _____.

Ms. Ehlers: If we have done with this I'd like to go back with you to the inventory. I have a fundamental question on it.

Chair Lohman: Well, she asked a question and we haven't answered her.

Mr. Easton: Haven't really answered her yet.

Ms. Stevenson: No answer is an answer.

Chair Lohman: I don't think any of us are comfortable to give anything a nod.

Mr. Greenwood: I'm thinking, too, that the randomness of some of the fishing questions pertains to our lack of ability to prepare for it, you know?

Ms. Stevenson: Yeah.

Mr. Greenwood: Because there's definitions that need to be sought out – I mean from the base, from the very beginning, including looking at some of the pictures I see a buffer and it's a shoreline buffer and I want to know where that buffer distance comes from. Is it from the critical areas – associated – some sort of critical area ordinance? Or is it based on the Shoreline Management – some code pertaining to it? So just from the nature of the unfamiliarity, I think that's kind of making it _____.

Mr. Easton: I wouldn't say that it's time to burn this version of what you gave us for a memo tonight. I do think it's – I think we're working towards something that will be an improvement over what was there before, but with only you and Jill's eyes basically on it so far, it's got a ways to go. And if you capture what we've said tonight in a way that you're not – and it becomes particularly troublesome for you to see it in writing and want it to – you know, I mean you can put it down there as "Options as described by Jason," you know, or something like that if you want some distance so it doesn't look like the Committee –

Ms. Stevenson: No, no, no. I'm not trying – I just to understand and make sure that I get it.

Mr. Easton: To track it a little bit differently, you know?

Ms. Stevenson: Yeah.

Mr. Easton: And I would re-emphasize my comment earlier that I think we need to wait on our timing to sending things to Ecology. They need to come from us as a group. And if you could share that with the Committee members, that would be good. I don't know if it'll be listened to, but...

Mr. Axthelm: I do like the idea that some of this – it seems like some of the restrictions are being looked at and actually the restrictions aren't as stringent as what they have been in some situations. Some situations it may be the other way. But I appreciate that because I think that that's – it's – we're looking at the right questions that way.

Ms. Stevenson: That helps a lot. Thank you.

Chair Lohman: Carol, did you –

Ms. Ehlers: Yes. I would like to know in the inventory – not necessarily tonight – in the inventory when it talks about "priority habitat," *what* do you mean?

Mr. Nickel: I think I _____ after I address this. I'm not exactly sure which section of the inventory you're speaking to, but "priority habitats" are something that are part of the database from Fish and Wildlife, the Department of Fish and Wildlife. They have a database of priority habitats and species that is part of our inventory, and so a lot of the

references that we have in there are related to priority habitats – I’m just off – probably pertain to that state database.

Ms. Ehlers: When we had our first session and Bob Warriner gave us a slide show, he said that a beach that looks exactly like mine was ideal. But in this habitat it’s got a 2.7 or a 2.8 which means that it’s not 5 which means it’s not good. But none of us can figure out what is missing.

Mr. Nickel: I think what you’re referring to are the scores that are in there for ecological functions.

Ms. Ehlers: Mm-hmm, I’m looking at the scores. And if you – how do you argue with a score that’s based on information you have no idea what it was that they were looking for when the people give you a photograph and it’s perfect.

Mr. Nickel: Yeah, I think there’s this – to go back to the inventory a little bit, the scores that are in there pertain to individual functions and the functions relate to several things that are required elements by Ecology. One is looking at hydrologic functions; one’s vegetative functions; and one’s habitat functions. And each of those has kind of sub-categories and they’re spelled out in the inventory. So there may be areas where the inventory looks at scoring a certain ecological function and it might have one score that might be different from another type of element in the same reach. And it’s – I guess if it’s in – what I want to emphasize is that that evaluation is based upon the data that is available to us. And so we have a bunch of different scoring that’s spelled out in the inventory about what types of data we’ve used to get to that rating.

Ms. Ehlers: But we have no idea of what the data is that you used to get there, and if everything is 4, 5 or 5 and then all of a sudden here’s this one category and it’s priority habitat and we talk among everybody – Well, we’ve got this, we’ve got this, we’ve got this, we’ve got this, we’ve got this, we’ve got this, we’ve got this – and the only thing – you know, we’ve got eagles, fish, kelp, eelgrass; you name it, it’s there – the only thing we don’t have is clams. Now you’re going to damn a beach because there’s no clams on it? But we don’t know what data people were looking at so we – there is no way for us to tell, and this will come when it comes to the public hearing. I hope that people will pay close attention to their reach so that they understand exactly what it is that this inventory evaluation is looking at.

Mr. Nickel: And I think the inventory – the maps that are included in the inventory? – they have mapped out all of those elements that are in the analysis and –

Ms. Ehlers: But I don’t know what “priority habitat” means. Everything I can think of that in my mind deals with endangered species or the things that we have talked about is there. And since nobody has altered that beach since Mother Nature and God created it, we don’t know what to do or even how to respond. And I see a number of areas in the county where this is, not just mine. Mine – I’m referring to all of Burroughs Bay. And there are places in Burroughs Bay where people have been careless over the

years, but I still don't know what priority habitat isn't there. I know they haven't vegetated properly.

Mr. Nickel: I can't really respond to that without seeing the specifics.

Ms. Ehlers: What do we do?

Mr. Greenwood: Can I ask on the inventory question for clarification? The inventory just pertains to what's already out there. An assessment or a conclusion on that inventory can change through the update and the review process whereby if we're trying to determine what is the ecological function that is perhaps a limiting factor, those are the ones we're going to look for, and the ones that provide the habitat for that particular – if it's a species like I'm just thinking of fish, for example – if there's a limiting factor, those are the things that are going to be the critical habitat. So we can go to the no net loss of ecological functions essential – which I get disappointed when we leave out the last part pertaining to essential for – I don't even have the language but there's more to it than just no net loss. We tend to just stick with no net loss – and essential for their subsistence, basically or their continuation.

Ms. Ehlers: The bill referred to no net loss. That's why I brought that up.

Mr. Greenwood: Right. No net loss, but look at the entire Shoreline Management Act requirement of no net loss. It's not just no net loss of habitat. It's looking at ecological function on the overall. So that's why you have to do an inventory of the overall shoreline management and then you can say what –

Ms. Ehlers: I'm not questioning that at all.

Mr. Greenwood: Oh. You're not questioning the inventory but the assessment of the inventory?

Ms. Ehlers: I don't know what –

Mr. Easton: She doesn't know how she got her score.

Chair Lohman: You want to know how to get a 5.

Mr. Easton: She's playing basketball, she doesn't know the rules and she's losing by thirty points, but one of the coaches told her she had a perfect score. She can't figure that out.

Mr. Greenwood: You've got to put that on the screen if you're going to use that as an analogy!

Mr. Easton: She can't figure it out because they used her neighborhood as an example, said it was, you know, perfect, and used these pictures, and then she got a score of a

2.6 out of 5, and can't figure out how to keep score. She's playing a game where they don't know how to keep score.

Chair Lohman: They told her she passed the test and then they gave her a C.

Mr. Easton: Right.

Ms. Ehlers: Now there's a good example!

Mr. Easton: She's stuck in a chess game and she's playing checkers.

Chair Lohman: 2.8 is a C.

Ms. Ehlers: Mm-hmm.

Mr. Easton: We could do this all night – just bouncing analogies back and forth.

Mr. Greenwood: Sure, sure.

Ms. Ehlers: But it's a problem that's endemic throughout the county and we do need some definitions. You can't improve if you don't know what it is you need to.

Mr. Greenwood: But here's another thing, is that it *is* a baseline. Whatever that baseline inventory is, you can do an assessment of if it's good or it's bad and then every time you make an incremental improvement it's making it better. Right? I mean, they're going from baseline to – whatever that baseline is. Your house might be on a cliff with a septic tank pouring in. Well, you're part of the whole system. But if somebody upriver is making an improvement then you're not causing a net loss. But that doesn't mean we want you to continue to have your sewer pipe dumping over the sewer – over the shoreline into the water.

Mr. Easton: Right.

Mr. Greenwood: So that's why the inventory's important – so that we know where we've got places that are right on. There's no buffer, there's no protection, there's activities right up against the shoreline. And then we can assess how much is improvement.

Ms. Ehlers: I buy all of that. What I don't buy is the English teacher who gives you a C and doesn't tell you why she's giving it to you.

Mr. Easton: So they'll get us an answer for you. That Dan'll get this cranked out. He can handle it! Maybe we should hear from the public, Madame Chair.

Chair Lohman: Okay. Moving on then, we're at the public comment section. And I want to remind everybody that does come up to give their name and address, and you're not testifying so it's not going to become part of the record but it *is* recorded and

we *do* hear it and we – I mean, you are talking to the Planning Commission and the public, but it is not considered part of the record. And we will give everybody two minutes, three minutes? Jason says three minutes.

Ms. Ehlers: At least.

Mr. Easton: Three minutes.

Chair Lohman: So, anybody?

Ms. Ehlers: There aren't many.

Mr. Easton: You can say a lot in three minutes, Carol.

John Bouslog: Can I speak?

Chair Lohman: Yep. Come right up here to the microphone where Betsy started.

Mr. Bouslog: My name is John Bouslog. I live at 11190 Bay View-Edison Road, which is Mount Vernon but it's actually Bay View.

I want to commend you on the questions and the concerns that you have with these shoreline issues. I want to give you a perfect example of what you're struggling with. I have a house on Bay View-Edison Road that is on the water side and it has a beach front. I bought that in 1998 and in 1999 the lot next door to me became for sale. It had an existing building on it that was 40 by 50 – a general purpose building – that I tore down. It had an apartment upstairs. I tore that down so I have made lawn out of it. I don't use it for anything right at the moment other than lawn. It is a certified buildable lot with a lot certification.

So when all this became public I looked at what I had and started looking at the setbacks or buffers and decided I needed to do something. So I hired an architect and I hired a surveyor and with the consent of my attorney I would be willing to show you all that, and the survey has become recorded so I assume you could probably grab it anyway. I had everything mapped – house, bushes, trees, garage, everything on the property – and then had them draw in the lines of the setbacks. So the lot next door that's vacant now I thought I would have building rights because it had an existing building that I tore down, but I learned when I removed the foundation all bets were off, so it starts over again as a vacant lot.

So if you look at these buffers, I have 85 feet of beachfront on one lot. It's 100 feet deep. That's a standard 8500-square-foot county lot. Okay, if you go back now with 100-foot buffer, I've got a 35-foot setback from the road. I have no buildable space at all on that lot. The County assesses that lot at \$210,000. It was 230 and they've lowered it and I assume it'll go to zero if I can't get a variance to do something with that property.

Ms. Ehlers: No, they won't. They'll still charge you.

Mr. Bouslog: Well, I know that but I had to throw that out. So I just think it's a gross devaluation of everybody's property with these new laws that are being effected. And, you know, I don't want to get a value of that. I've been paying taxes on that for fifteen years. And so if you want to use my example, I'd be more than happy to bring it in – bring copies for you and you can take a look at it.

Mr. Easton: Thanks, John.

Mr. Bouslog: Okay.

Ms. Ehlers: That makes a good example.

Mr. Bouslog: Thank you.

Ed Stauffer: Good evening, Commissioners. Ed Stauffer, Alger. The weatherman in Seattle described my location of my house as a low spot on the lee side of the mountain – a *cold* low spot.

I want to start by saying welcome to the Commission – is it Mr. Greenwood?

Mr. Greenwood: Greenwood, yes.

Mr. Stauffer: We've long suffered without a voice of expertise in forestry on this body and we're all really pleased to have you here. Thank you.

Mr. Greenwood: Thank you.

Ms. Ehlers: Mm-hmm.

Mr. Easton: Hear, hear.

Mr. Stauffer: I share with you your concern over being surprised. You can imagine how I feel as a homeowner in rural Skagit County to realize that a Skagit County attorney and one of our division leaders has been working behind the scenes crafting laws that have to do with me being defined as rather than as a resident, citizen, homeowner and taxpayer in Skagit County as a pre-existing nonconforming use. I'd like to hear that forever purged from the lexicon and replaced with a heritage home. We are the people that built this county. We still live here. We're the people who, at the order of the state, created the Skagit County Comprehensive Plan, built around the thirteen elements of the Growth Management Act. Our Plan is in place and it's the law of the land. It's your mandate to uphold that law. And that means my rights as a homeowner.

I'm going to ask our expert here, now that I realize that we also have what tonight was described as "our project planner at Ecology." I'm assuming that Mr. Nickel is a part of that. Has there been any progress on my report from the last meeting where I requested a definition from Ecology of your central principle of this idea called "no net loss of ecological function"? I don't think you should proceed with this until you have that definition. I certainly don't think you should spring us a surprise on the agenda. Once again, late announced; unprepared; incomplete; no time to deliberate or read for even the Planning Commission members. What about the general public? How do we support you?

So I'll try to answer my own questions. I'm presently serving on a committee in Skagit County that's somewhat like this called the TDR Committee. That's coming at you. We've just had our third of six meetings. There are a number of people on a citizen or technical advisory committee, of which I'm one. We have a mandate under the check box under the grant, which comes from the Environmental Protection Agency to the State Department of Community Development blah-blah-blah-blah, finally down to us, with an expert provided by the state, telling us what we're going to do and how we're going to do it, what our options are and what the definitions are and aren't, and what the mysteries are. But we have an outreach function. It's an obligation. I will have an outreach function on the TDR Committee. I want some line of communication between me and you, and I'm prepared to do that in any way you seem to find fit. And I guarantee you I will keep that line of communications open all the way through the process. I wish you would do the same thing with these people. Thank you.

Mr. Easton: Thanks, Ed.

Ms. Ehlers: Ed? This TDR Program, which is clearly designed to protect ag land among others: There are lands in this county – one of them is north of Alger, due east –

Mr. Axthelm: Point of order. If this has to do with the TDR Program, could we have this argument another time?

Ms. Ehlers: Yes, but he's raising it. I want to give you all one example of how it can be done. North of Alger – we did it on the Alger Plan –

Chair Lohman: Can you –

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

Chair Lohman: I think you're out of order.

Ms. Ehlers: Well, then we'd better figure out how to do some communicating before the third – next three meetings are over and there is no time to do it. Ag land is not the only land that needs to be considered in the process.

Chair Lohman: But – for clarification – we have had at some of our work sessions some members from the Shoreline Management Plan Committee and they have sat down here as a panel. There's nobody here from that committee tonight but we have had.

Mr. Easton: And so in the same way when the TDR comes forward there'll be – you'll have every – we'll give you and every member of the TDR – opportunity like we have in the past; right, Madame Chair?

Chair Lohman: Right.

Mr. Easton: – to participate with us at that point, too.

Mr. Stauffer: I will bring _____.

Mr. Easton: We appreciate *that*.

Chair Lohman: And my ruling against Carol isn't that I don't think it was important what she wants to say. It's just inappropriate for here, for now.

Mr. Axthelm: Exactly.

Mr. Easton: Agreed.

Ms. Ehlers: Okay, so you'd rather wait until it's all set in stone and then say, Oh, well, we're going to bring this up.

Mr. Easton: Carol?

Mr. Axthelm: That's not what we're here for.

Mr. Easton: Be respectful.

Chair Lohman: Dale?

Mr. Pernula: This kind of a middle ground, maybe the best thing for me to do is at one of the next couple of meetings put an update or something like that on the agenda where we can spend fifteen or twenty minutes or a half-hour – whatever it takes – to go over the status of the project, and Mr. Stauffer and whoever else wants to speak would have the ability to talk about that issue.

Mr. Easton: That'd be great.

Chair Lohman: Yes, and I think that should be a standing rule for any of the things that are in the pipeline that are going to eventually be coming before us.

Mr. Pernula: Okay. Okay.

Chair Lohman: Because it's too hard to get up to speed when it's already a done deal.

Ms. Ehlers: Well, and nobody likes to have somebody say, Oh, but you should have done this and this and this and this when it's too far along.

Chair Lohman: Or the grant is already spent.

Ms. Ehlers: Yes, or the grant is already spent! That's even worse.

Mr. Easton: Yeah, "The grant is already spent." We've heard that one before.

Mr. Axthelm: The problem is is we're not on that committee and we're not part of that. We're not hearing that right now. So if we go through and talk about all those other issues, I guess my feeling is we're butting our nose into places where we really don't belong.

Mr. Easton: I think we're talking about TDRs again.

Chair Lohman: Okay, sorry, sir. You're up!

Tom Stowe: My name is Tom Stowe. My wife and I own and occupy as our home a waterfront property on South Fidalgo Island, at 15370 Quiet Cove Drive, Anacortes.

I'm a retired real estate appraiser with over fifty years of experience in valuing property, particularly in condemnation, bankruptcies and other matters requiring court testimony. I hold virtually every professional appraisal designation, including the MAI, SRA, ASA, Senior Right of Way Agent, and others. My clients have included the Corps of Engineers, the State of Washington, the State of California, numerous cities and counties, including Whatcom, Island, King and Snohomish. I have qualified as an expert witness in federal court, federal bankruptcy court and many, many superior courts in California, Nevada and Washington. I'm saying all that because I want you to understand where I'm coming from.

The matter before you can substantially affect the value of waterfront property. Depending on how severe the restrictions on use are, the County may very well be faced with substantial lawsuits based on the taking of property rights. The subarea I live in is known as Dewey Beach. In that subarea alone the salt waterfront properties have an assessed value of over \$80 million. The actual market value would be closer to \$100 million. This is only that property within 200 feet of the high water line in the Old Fidalgo City tracts extending west to Deception Pass Park.

It's probable that in all saltwater frontage alone on Fidalgo, Guemes, Samish and the Bayview area the residential assessed valuation would approximate half-a-billion dollars. Add to that the same issue on freshwater lakes and the number becomes astronomical.

Bear in mind also that this is estimated to represent about 35 to 40% cash equity and the rest are trust deeds of institutional debt. Lenders, as well, perhaps, as title insurers, have a stake in the pending use restrictions. Severe reductions in value will affect all the properties in ownership.

Most of these home sites are small. Nearly 100% are existing nonconforming uses to the superimposed 2 ½- to 10-acre zoning. Most are less than 200 feet in depth. Many are under-improved to their full potential. There are few vacant lots. It's been the pattern for the last twenty years to buy small, older homes, tear them down, and build larger homes reflective of the land value.

If the setback is to be 200 feet, this may also affect second tier properties as well as the waterfront. That 200 feet is an absolute. It is not necessary that it be just waterfront. You may go beyond that. If your home is 100-foot deep, you can go into another house behind that one. So you have a large – and I'm not even counting those in my tally.

A side issue, as you've already mentioned – and, by the way, I do want to compliment, as the other gentleman did, the Commission's questions. I was very interested in the questions you were asking, as best as I could hear, and I don't hear too well these days. The questions are good questions. And one of them is the side issue of septic. All these sites require onsite treatment areas. The County Health Department does not want these areas on the water side of the residence, meaning that a substantial part of the upland from the residence must be devoted to the septic system of whatever nature.

Other things that were brought up here tonight occur to me that every one of these properties on which you get a new building permit is going to have to have a survey. It isn't mandatory today that you have a survey to build a house, but this will require a survey to establish the water line and to establish the setback. It's an extra cost. You're going to have to determine the high water mark for every waterfront property, including your lakes. This is a huge issue.

If you're going to avoid very expensive litigation and recognize the right to use these sites, you must be careful not to limit the site to the existing footprint to allow rebuilding in the event of fire or other disaster and to set reasonable and useful setbacks. The ordinance can constitute a taking otherwise, and require payment of market value for the site. I believe there was a recent case in the city of Nooksack concerning this issue and the appellate court in the state of Washington is requiring them to either buy the site or reduce the restrictions that were placed on it, because they were going to require this gentleman next to a creek to have a maximum residence of something like 500 square feet.

I'm sure your counsel will probably advise you and properly advise you, but I point out that some of these issues have already been before the United States Supreme Court, starting with *Nollan v. California Coastal Commission* in 1987; *Dolan v. the City of Tigard* in Oregon in 1994. And in that last case the Oregon Supreme Court was

reversed by the U.S. Supreme Court. There've been more recent cases. The 2012 *Sackett* case actually came down in October – still doesn't have a page number – arising from actions of the EPA in Idaho at Priest Lake. And re the Clean Water Act, ruled unanimously in favor of the property owners after years of litigation. In that case the EPA was trying to assess \$75,000 a day damages for failure to obey the EPA ruling, with no way for the owner to have any court action to allow him any redress.

On the tree matter: On South Fidalgo Island we have very thin soil. It's rock and a little forest duff and some earth on top of it. During the thirty-five years that we've owned our property we've had several windstorms that have dropped trees. In that '92 storm you were talking about we hauled out five logging trucks of downed trees on our property. I've had trees take out a travel trailer, and worse, land on my house. Some of these trees as they rot – as they age they rot out on the inside creating a hollow tube, and some of these are 125 to 150 feet high. The owner must be able to remove trees that are a danger to life and property without enormous and expensive red tape. Just as the County is now being sued because the Sheriff didn't respond quickly enough to a 911 call, the County would be sued if dangerous tree removal is not allowed simply and easily. That's a side issue to what we were talking about tonight.

And on this issue of no net loss and vegetation: Some of these houses on Deception Road, they might have 30 or 40 square feet of grass and a couple of planted trees, but there is no vegetation there; there's not room. What's to be the punishment, with respect to tree removal and perhaps owner refusal to comply with replanting? Is the County prepared to go onsite and perform the requirements? What's the authority for entering private property? Will court orders be required? And these kind of questions go on forever.

I've attempted to read through the various state statutes regarding these matters. Very little is said about residential shoreline development. Agricultural uses are covered in detail. What *is* said appears to protect areas of existing residential development. Chapter 123-26 of WAC, on page 39 out of 62 pages of this stuff, states under management policies, design criteria – quote – “assign a shoreline residential environment designation to shoreline areas inside urban growth areas... incorporated municipalities,” and in “Rural Areas of More Intensive Development...if they are predominantly single family or multiple family residential development.”

On page 57 of that, under the heading Residential Development, “Single family residences are” – and I'm quoting – “Single family residences are the most common form of shoreline development and are identified as a priority use.”

This section goes on to state various regulations for such use, but nothing is said about existing use which does not meet setback or other standards. There's been an enormous investment in these properties. The investment was made with the knowledge that these properties were legally created with the codes – or lack of them – at the time of development. Owners have a right to depend on these codes. Changing the rules by creating massive nonconforming uses is not a proper approach.

The County also has a monetary interest – as somebody mentioned here tonight – a monetary interest in these properties. They represent a disproportionate share of tax revenue. Devaluing these properties will result in a greater tax burden on other properties.

I found the WAC codes re shoreline development to be extremely difficult to read and interpret. They're filled with bureau-speak and also appear to have conflicts. There has to be clarity in any code to allow it to be enforced. My wife and I ask, therefore, that you be extremely careful in placing additional burdens on the use of these shoreline residential properties. Thank you.

Ms. Ehlers: I would like to be able to read that.

Mr. Stowe: The WAC code?

Ms. Ehlers: No.

Mr. Easton: She'd like to read your notes. I have a question for Dale – if there's no other public comment, I mean.

Chair Lohman: Go ahead, Jason.

Mr. Easton: If there's no other public comment I will.

DeAnna Claus: I have some if nobody else does.

Mr. Easton: Oh.

Mr. Stowe: I have a copy of the – of most of everything that I said – and I'll be glad to put it up there. Now does that become a matter of the public record if I give you a written copy?

Mr. Easton: Not tonight.

Mr. Stowe: How do you get it into the public record?

Chair Lohman: At the hearing.

Mr. Stowe: Pardon?

Chair Lohman: When we are actually in a formal hearing.

Mr. Stowe: Oh, so these meetings, it's not public – it's not going to be part of the record anyways?

Mr. Easton: No.

Chairman Lohman: No.

Mr. Easton: These are work sessions.

Chairman Lohman: This is a work session.

Ms. Ehlers: *However*, as I said regarding Ed Stauffer, if we have information before we get to the finished written version then we will make more sense and more understanding of –

Mr. Stowe: I have a copy. If you want some more copies I could make some.

Ms. Ehlers: Is there some way –

Mr. Stowe: (inaudible)

Ms. Ehlers: Is there some way – is there anyone else that would like to read this?

Chair Lohman: I took a lot of notes.

Ms. Ehlers: Well, I did too, but I –

Mr. Greenwood: I'll take a copy, Carol. I'd like to put it in my binder.

Ms. Ehlers: I always like to read what someone says because then I am sure that I heard it precisely.

Chair Lohman: We are allowed, aren't we?

Mr. Pernula: Pardon?

Chair Lohman: We are allowed, right?

Mr. Pernula: To –

Mr. Easton: He could distribute that.

Chair Lohman: Have information from the public.

Mr. Pernula: Sure.

Mr. Easton: Yeah.

Chair Lohman: Okay. I wanted to make sure that we weren't going to get our ears boxed by Legal or something.

Mr. Easton: This is legislative – yeah – so we _____.

Chair Lohman: Okay.

Ms. Claus: My name is DeAnna Claus. I live in the same general development that Carol does but in a different environmental part of it, I guess you'd say. It's 3284 Biz Point Road in Anacortes. I just wanted to thank the Commission. I didn't know what to expect when I came here tonight. And I feel like my property rights are very threatened and I really appreciate your concern, you know, and interest.

I wanted to just give you a couple little examples of how property rights can be affected and just inequities that come up. Like our next door – we live on a little cove. I mean, it's actually a little cove with a beach down at the bottom. We're on a high bank very far from the fish, and our neighbors wanted to remodel their house. These houses were built by both sets of our parents, like, almost sixty years ago – beautifully built, but they look like a cabin now. When they were first built *they* were the *homes* and these other things were little cabins! Now let me assure you we are the cabins and these mansions, you know, go up around us. So my parents built their house for two retired people. I have six children that come home. Man-oh-man, you know, there is not room for them. We do not even have a dining room.

So we would really like to expand. I haven't tried yet, you know, with the regulations, but our neighbors tried to do something this last year. And both sets of our homes are just a straight, long, gable-roof home. They have out front, as we do – this is overhanging porch here, you know, with some posts holding the roof up – absolutely integrated roof. There's no change in the roof line. It's all one roof. They wanted to start living in the front part here of the porch. No, they couldn't do that, the County said. But then they thought, Well, we'll put on an upstairs and the County said, Well, okay, you can do that but only on half of the upstairs. So it's the oddest thing: They left this roof line here, tore off the back one, and could go up a story on the back. Now what this does – and, I mean, it's much nicer than it was, sure, but here's where the windows are, you know, on the upper storey and right in front, smack in the middle of the windows, is the big fireplace chimney. So they look past that, whereas if they could have built the whole second storey then, you know, the windows could have looked out to sea instead of at the chimney. But it's better than it was.

Anyway, we are living in a 1400-square-foot house on a high bank. My parents set it back farther than was required, you know, at the time. We have no pavement. All the natural vegetation just about is there. But we are so cramped in that house. And I can just about guarantee you that we're going to have terrible troubles if we try to expand that house in any way.

I'm not quite sure – we have been surveyed. We are like maybe 100 feet back or so from the ordinary high water mark. But my understanding is that this change would put a – I mean, like, virtually our whole lot will be in the 200-foot whatever you want to call it – buffer zone or whatever. So I'm not sure – and we don't use chemicals, we don't use fertilizers, we've really been a good steward of that land. But I think that we're going to get dictated to, you know, in what we can do. I would just hope not.

But I've made a few notes here. I did try reading ahead of time, you know, the revisions that you're working so hard on and that was really hard. I mean it's like 269 pages on the computer and you scroll around and I got lost in it, and every time I went to the things I was concerned about – high bank, setbacks, residential property rights – they seemed blank to me, and I think that's maybe because they aren't written yet. But, in other words, I couldn't find anything out and that worried me.

One of you touched on something that concerns me and that's that there aren't any specifics. It doesn't – I mean, I'm way above the water. I can't possibly be hurting fish if I had a dining room for my house. I mean, I don't think. I don't know what I would be hurting. But I think it's – there's nothing that says you can't do this because there are, you know, ten fish instead of twenty out front; you don't have enough trees – I mean, I don't know why I can't do something with the land. So it's lacking in specifics.

Another thing that I wondered about is what Carol mentioned is – our part, too, it's a different reach than she is in, but it got a 2-point-something on Animals and Species, too. And I thought, Well, why do we have that? And I listed what is there. I see these: deer, quail, coyotes, crabs, seal, otter, dolphins, occasionally the orcas, and recently a raccoon. Now there used to be herons everyday there. Now there aren't, but that is not because of people. It's because the bald eagles moved in, and I have personally seen them confront the herons. And just around the shoreline a little bit my sister-in-law has seen the eagles kill a heron on her land. I mean, it seems to me like we have lots of species. We've also seen the eagles dive-bombing the ducks that are happily swimming along there. So I don't know why we don't have a good animal rating.

And we are on that high bank, too, and I don't know – if we were ever required to whatever the word is you use – rehabilitate, or restore – restore: that's what you say – that bank. Truly you would have to do it with a helicopter, and then how would you water it? I mean, there's not soil there to grow anything worth anything. You couldn't guarantee 100% survival. You couldn't water it. I mean, so that wouldn't be a very good quality.

One thing I can tell you is we pay a lot of taxes, and I'd like to have a dining room for my taxes, you know what I mean? I would like to be able to use my land. And I certainly have stewarded it well. I mean, next to us we have huge buildings with two stories. They're further out to the water than we are, and they have sprinkler systems and they water and they use chemicals. So I'd just like to kind of figure in the equation. And thank you very much for all your hard work.

Ellen Cooley: Good evening. My name is Ellen Cooley, 16340 Lookout Lane in Bow. I also appreciate all the pertinent comments from the Commission about legitimate concerns for all of us.

I definitely agreed with this gentleman's comment and the other comments made. I think that landowners in the county fear being handcuffed with vague, one-size-fits-all approaches to a measurement of somewhat nebulous goals like no net loss. These regulations risk damage to land values, business and the county tax base. The process appears coercive to landowners who fear being buried in fees and regulations. I believe there should be no more leeway than absolutely necessary for government intervention on private property, and I really appreciate your indication of wanting clarification on terms like "setback" versus "buffer," and "vacant lots," and "priority habitat." And thank you all for the opportunity to speak and for your questions.

Chair Lohman: Anybody else? Commissioners, any last comments?

Mr. Easton: I have a question for Dale about the schedule. Is that all right, Madame Chair?

Chair Lohman: Yes.

Mr. Easton: One more regular meeting? Do you see anything else on the schedule for the remainder of the year? Comp Plan amendments? Anything that we're going to have to deal with prior to the end of the calendar?

Mr. Pernula: Yes, there's going to be – it won't be Comprehensive Plan amendments. This, if we get an update, maybe we'll have this back on the agenda, and I have a couple of other items that I'd like to have on the agenda.

Mr. Easton: For December?

Mr. Pernula: Yes.

Mr. Easton: So just the one regular meeting is all you anticipate?

Mr. Pernula: That's all I anticipate.

Chair Lohman: And are we going to be on our regular day? The first Tuesday?

Mr. Pernula: It probably should be unless it falls – well, the reason why we moved it this time was just because of the election.

Chair Lohman: Right.

Ms. Ehlers: So that would be December 4th.

Mr. Pernula: Yeah. I don't see any problem unless someone else does.

Chair Lohman: I'm leaving the next week so I –

Mr. Pernula: So December 4th. Okay.

Chair Lohman: I e-mailed that to you.

Mr. Pernula: Okay.

Ms. Ehlers: December 4th works best.

Chair Lohman: Yeah.

Mr. Pernula: Okay. I'll schedule it then.

Mr. Easton: Can you tease us with what else you have in mind?

Mr. Pernula: I kind of wanted to go over – actually I was going to try to go over one thing tonight, but by then I'll have it in better shape. I've been working with our GIS Department on preparing a map of Skagit County that's accessible for just about anybody that shows all the permits that are being issued since June 1st. You can click on any one of those dots. It will give you all the information about the permit. And you can further click and find out about the parcel. More reference data.

There's a second one that I think may be more important that we're trying on right now, and that's any public hearing that's being scheduled it'll show up on the map. You can click on the dot. It'll tell you about the public hearing. That way you can go to the map of Skagit County, see that there's a public hearing in your neighborhood, click on it and find out what it's about and when it's going to be held and so on. So it's public information. That's one thing I was hoping I'd – I do have a draft map of the permit map. It's done, but it's still the draft, and I wasn't able to access it from the computer here tonight. I can do that at the next meeting. Hopefully we can have a draft of the future public hearing schedules mapped, as well, at the next meeting. That's one item.

Chair Lohman: Are you the responsible party – do you get the credit for – on the map – like on the property map now, there's another – in the legend it has sales, or recent sales, and it has a date.

Mr. Pernula: I didn't do that.

Chair Lohman: I thought that was ___.

Ms. Ehlers: On the Assessor's map?

Chair Lohman: Yeah.

Mr. Pernula: That would be theirs.

Chair Lohman: No, on the GIS. I think that's new. But I thought that –

Mr. Easton: A TDR update, the mapping and then whatever Betsy can have ready for us?

Mr. Pernula: Yes. TDR, I will see where that's at – if it's ready for an agenda or not.

Mr. Easton: Okay. Awesome.

Chair Lohman: Even if it's just a thumbnail.

Mr. Easton: Or just some ideas of what they've been talking about.

Mr. Pernula: Okay.

Ms. Ehlers: I'd like to know what lands are being considered for the sending lands, because it's been obvious that ag land is part of it but there is land in this county that is not buildable because of geologic reasons, and it seems to me those people should be taken out of their tax misery. I can think of several places: north of Alger on Old 99, where it already slides down on the road and if you allowed anything to be built the whole thing would slide down onto the road. I tried to get it in the Alger Plan, but since it's in the Samish Plan nobody wanted to put it in the Alger Plan. But somebody – or somebodies – own that land and think perhaps that they can build because they haven't looked at the Conservation District's soils map and don't realize how really tricky it is. There's a place down on Biz Point on the uphill side where each time somebody who owns that land has tried to cut it, it's ended up on the road. Now that's not their fault.

Chair Lohman: Okay. Let's –

Ms. Ehlers: That kind of thing.

Mr. Greenwood: Madame Chair, I was wondering if there would be an appropriate timeframe – is the next session going to be a work session as well?

Chair Lohman: Regular meeting.

Mr. Greenwood: Regular meeting? Okay. Because I would like to dredge up a couple of issues that came up in comments pertaining to forest practices in the working draft, and I've highlighted some of those throughout the draft document. And I'd like some time to run through some of those at a time that's appropriate for the agenda.

Ms. Ehlers: I'd like to see that but I'd like to see what your sections are before the meeting so I can read and look at it.

Mr. Greenwood: Oh, no, surprises are better!

(laughter)

Mr. Easton: Hey, hey – easy! Careful – I want you to be able to get out of this room alive!

Mr. Greenwood: No, I do have them in writing already, but I'd like to add to those. So wherever it fits in the agenda would be helpful in this process.

Mr. Pernula: Well, it depends on how extensive those are. If you could get that list to Betsy as soon as possible, or give her a call and have some discussion on how to frame them and we can put those on the agenda.

Mr. Greenwood: Okay, great. I can do that.

Mr. Easton: Move to adjourn? Would that be appropriate?

Chair Lohman: Yeah, say it out loud.

Mr. Easton: I move to adjourn.

Chair Lohman: Nobody's going to second?

Mr. Greenwood: I'll second that one!

Chair Lohman: Okay (gavel), we're adjourned.