Skagit County Planning Commission
Status Report: TDR Program
Work Session: SMP Update
December 4, 2012

Commissioners:	**Annie Lohman, Chair** **Josh Axthelm, Vice Chair** **Jason Easton** **Carol Ehlers** **Keith Greenwood** **Matt Mahaffie** **Elinor Nakis** **Dave Hughes**
Staff:	**Dale Pernula, Planning Director** **Kirk Johnson, Senior Planner** **Betsy Stevenson, Senior Planner**
Consultant:	**Dan Nickel, The Watershed Company**
SAC Members:	**Tim Hyatt** **Daryl Hamburg** **Herb Goldston** **Brian Lipscomb**
Commenters:	**Tom Stowe** **Howard Gully** **Ed Stauffer**

Chair Annie Lohman: … the Skagit County Planning Commission regular meeting. It is Tuesday, December 4th, 2012, and it is 6 p.m. If you could look over the agenda and if you have any changes… Under Miscellaneous, Dale is going to give us a presentation on some map revisions. So seeing no changes, let's just move on to the very first item – well, number 2 on your agenda, which is Transfer of Development Rights, and, Kirk?

Kirk Johnson: Good evening, Planning Commission. I'm going to give a brief update and status report on the Transfer of Development Rights project. I'm going to try to keep my comments to five minutes and we'll have about five minutes for questions and answers. And then I talked with the Chair yesterday by phone and we've tentatively scheduled your February 5th meeting for a fuller discussion of the Transfer of

Development Rights program with all the Advisory Committee members on that committee will be invited and able to interact with you.

So I'm primarily going to talk about the process but I'm going to start out with just a very brief definition or explanation of what Transfer of Development Rights is. Thank you, Dave. So it's a market-based mechanism that enables the voluntary transfer of future growth potential. It's not moving houses or people but the potential for future development from designated sending areas to designated receiving areas, and typically Transfer of Development Rights programs move development rights from rural or resource lands into urban areas.

Here's kind of more of a visual depiction of it. So you have a rural or a resource land. That owner, if they want to participate in a TDR program, can sell the development right or rights – the right to put a house or however many houses they can on there – to a developer who wants to do more development in an area where that's allowed – let's say within a city – and they can pay for a development right, and by doing so access additional development potential in the receiving area. And so it's a land conservation tool and it's one that can transfer future development potential from, say, natural resource lands, where you might not want it, into urban lands, where you might want the development to go.

So that's about all the substance that I'm going to get into today, although if you have questions, feel free to ask.

So we're working with an advisory committee. The committee's had three meetings so far. Let me see if I can get all the names in there. It's a really good committee in that it has very diverse interests, as you can see looking down the list. There's a realtor; someone from the Skagit Land Trust interested in conservation; the Builders Association is represented; we have several of the city planning directors involved; a banker from Mount Vernon; two county residents – at-large county residents – representing residents of Skagit County. Both of them live outside of cities. We have several people involved in agriculture: Mike Hulbert; Kim Mower, who's a dairy farmer in the Hamilton area; Allen Rozema of Skagitonians; Kendra Smith, who runs the Farmland Legacy Program; Paul Kriegel, who's on the Forestry Advisory Board. Did I miss anyone up top? Bruce Lisser, who's a surveyor and development consultant, mainly in Mount Vernon; Ed Stauffer is one of those two rural at-large members; and Joe Woodmansee, who's a developer who focuses his work in the Mount Vernon area. Mount Vernon has had a program over the last ten years or so that has conducted a number of transactions and so it has been a successful TDR program. They've made some changes to the program that are making it less viable now. The City was getting more development on smaller lots in some areas than they decided that they really wanted. But it's good to have Joe, Bruce Lisser and Jana Hanson – have all been involved in that and they have some real world experience with what makes a TDR program work, what makes it not work and, you know, what are the consequences of the transfers that you get as a result of it.

Let's see. I'm mostly done with my time. We're working with a consultant called Forterra. They used to be the Cascade Land Conservancy. They're one of the most knowledgeable organizations in the state on Transfer of Development Rights programs. They've worked quite closely with the State Department of Commerce and with a number of cities and counties in developing TDR programs. In some instances, in the area in which they work they are advocates. They both provide technical assistance and advocate for the adoption of TDR programs. Here we're outside of their service area. They don't want to play that role. We don't want them to play that role. So they're working with us as a consultant, as a knowledgeable entity about TDRs, but they're not going to be up here lobbying the County Commissioners to adopt a program.

We'll also be hiring an economic consultant to look at the overall demand in Skagit County for development: What types of development is there, you know, demand for? How strong is it? Is it likely to get stronger down the road as the economy improves? Where and what types of developments seem to be the strongest that might provide the kind of momentum to make a TDR program go, the developers being the ones who would purchase the development rights? It will look at developers' willingness to pay for additional increments of development potential in the receiving areas, and also at the market value of a residential development right, whether it's in ag land, forest land or rural land. Those are kind of key components to making TDR work.

The RFP for that market study is currently out. It's on the County website. There's a link on the main page called "Vendor opportunities, RFP, RFQs, calls for bids and rosters," if anyone wants to take a look at that, or, if I remember, I can send to you all tomorrow.

Wrapping up here, as I said, we've had three Advisory Committee's meetings to date. The first one was in June. Not all the committee members were appointed. It was kind of orientation. We sort of covered some of the same ground in September where we talked about what should the goals of a TDR program be in Skagit County if one is set up here. What might the interactions be with other programs like Farmland Legacy? In November we talked about potential sending areas, so the areas where development rights could be transferred on a voluntary basis by landowners who maybe had a development right that they didn't want to exercise, but they wouldn't mind receiving money for that to be transferred. In January we'll look at potential receiving areas, and then during the year we'll move – we'll look at – the Advisory Committee will look at kind of preliminary results from the market analysis. We'll be looking at what incentives would make developers interested in participating in a program, and then by the summer, what sort of structure would make the most sense *if* the County decides to implement a TDR program. You can have a system where, let's say, the County would be *very* involved and it would kind of be the buyer and seller – sort of a broker – or you can have a system where it's really just interactions between individuals, and the County's just sort of keeping track of the development rights that are transferred.

Toward the end of next year in the kind of timeline that I gave you the County Commissioners will have a threshold decision to make, which is do they want to move forward and actually consider – before the Planning Commission, with public review and comment and SEPA review – a Transfer of Development Rights program. So there was some concern – if we accept a state grant, are we obligated to adopt a program? No, we're not obligated to adopt a program. So the County Commissioners will be making a decision toward the end of next year: Do we want to move forward? And if so, you know, give some guidance to that. If they decide to move forward, then it would be in 2014 that that would come back as a package, a legislative proposal before you for consideration. You would take public comment and deliberate and, you know, make amendments, make changes and then make a recommendation to the Commissioners to adopt or not adopt. So that's kind of the outlines – broad outlines of the process. And I think I took closer to ten minutes than five.

Jason Easton: Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: So I want to go back to the choosing of and the statement you made about the consultant.

Mr. Johnson: Yeah.

Mr. Easton: I appreciate your transparency about that in what Cascade – or now Forterra's – roles have been. It's a little unique to – at least from my experience – to have an organization with their history as passionate as they've been in other, very neighboring jurisdictions to be very pro TDR. Did you look at other consultants besides Forterra when you considered, you know, the grant – you know, the use of the grant money – and was there any other, you know, thought to the fact that these guys are going to come from that point of view?

Mr. Johnson: I talked with Forterra before we submitted the grant, just like I talked to Skagitonians to Preserve Farmland and Skagit-Island Builders Association and Skagit Land Trust and the City of Burlington, and basically said, Would you be interested in working with the County? And they said, Well, yeah, we'd probably be interested in working with you but you're not in our service area and so our working relationship would be as a consultant, not as an advocate. And I said that would be good because, you know, there's concerns about outside entities. They are considered one of the leading experts in the state on TDR. They've written a resource guide for the Department – when it was the Department of Community, Trade and Economic Development, and they have worked for a number – I think a dozen different jurisdictions. So I thought that they would provide good expertise, that they would probably – because they're well regarded by the state – they would probably help the grant application itself to be approved. And I don't know if Dale wants to contribute. I think Taylor Carroll, who's the main staff person who we're working with, has been

pretty, you know, standoffish in the Advisory Committee meetings, and then he might say, Well, in this jurisdiction the sending areas were this, or in that jurisdiction, you know, they considered this. But I don't feel like he's, you know, really pushing the County hard to go this way or that way so much as just kind of saying, You know, these are the sorts of things that you want to consider as you're thinking about a program.

Mr. Easton: Okay.

Chair Lohman: Anyone else? Carol?

Carol Ehlers: Is this just for the ag land or is this for land – and I have in mind something that was identified during the Alger Plan time. It's the hill that's east of Old 99, north of Alger, when you get on the road and you suddenly realize you're back in 1925 and you look at that wooded hill. When you look at the scientific documents available to the County, starting with the Soil Conservation Service, you realize that that's a hill that never should be cut and, therefore, should never have any economic use on it, and the Assessor doesn't like to tax people with no economic use and doesn't like to recognize it. So it's that kind of an area that would seem to me also that might be considered for a program like this, because if you buy something in good faith and then the scientific documents are issued which tell you you really have no business doing anything, it's as much of a loss as it is to some of these other people you're thinking of. So I hope your group will consider that kind of situation.

Mr. Johnson: Yeah, right now agricultural land is under discussion. There're some differences of opinion. I mean, the Farmland Legacy is quite successful with Ag-NRL and so some people are saying, Don't – you know – Don't mix the two. Forestry lands could be considered. I guess I would say a typical TDR program transfers development rights off but leaves all the other rights that the property has *on*, and so oftentimes it would be resource land – forest land, where the development rights would be transferred if the landowner wanted to sell them, and then they would consider to manage the land for timber. So it's not really a mechanism for locking up a piece of land. It's a mechanism for removing the development rights and allowing – whether it's natural resource activities or recreation or whatever the landowner's desire is. But certainly it's broader than agriculture. That's kind of the whole discussion of what should the sending areas be.

Ms. Ehlers: Thank you.

Chair Lohman: Any other questions?

(silence)

Chair Lohman: Okay. Okay, I guess we'll move on to item number 3, which is a work session on the Shoreline Master Plan Update. And the topics are going to be

Aquaculture, Administrative Provisions, and Legal Pre-existing Structures and Uses. So we'll turn it over to Betsy and Dale.

Betsy Stevenson: Thank you.

Chair Lohman: And Dan.

Ms. Stevenson: Thanks for having us again tonight. I'd also like to recognize that we do have some members of the Shoreline Advisory Committee here tonight: Tim Hyatt, Brian Lipscomb, Herb Goldston and Daryl Hamburger are all here and have been a part of the process, so feel free to ask questions if you have them. And you guys feel free to – if you have answers that you think you'd like to share or comments that you'd like to make, as well, please do that as we go through it and have the discussion.

(brief exchange with Daryl Hamburger about moving to a seat with a microphone)

Ms. Stevenson: A quick update on the Aquaculture section since you didn't get that, and I think I may have put it in my e-mail to you, as well. I did have a meeting with the subcommittee of the Shoreline Advisory Committee yesterday most of the afternoon – Tim was a part of that, Bill Dewey and Kevin Bright – and we came to some common ground on some additional language, had some good discussions about some other sections. And we are still working on that so we'd like to continue to work on that until we can get it as close to agreed to as we think we can before we bring that to you to review.

So the rest of the document is looking pretty close to ready to get sent to Ecology, so we'll see whether some more of what we're working on tonight is going with that or if it just goes the way it is and we keep working on some of this as well. So that's kind of where we are, unless you have a question about the aquaculture.

(silence)

Ms. Stevenson: Okay. I did this this way to go through the Administration section first. Hopefully that'll be okay. My memo changed a little bit from our last meeting. We got this information to look at so hopefully we can kind of go through it. The Administration section covers procedures and review criteria for the different types of shoreline permits that we have, which would be a substantial development permit; a shoreline exemption; conditional use permit; and variances. Also revisions or modifications to any of those permits. It's our intention to integrate our existing procedures that we have in 14.06 of our regular code with our shoreline procedures as best we can. Sometimes they don't fit. Some of the notice requirements aren't the same, but as we can we're trying to bring those two together so that it fits a little better. In the past it's been a completely separate process.

Part of the information that's here also is what's required in a permit application: what we need to have a complete application; what the review criteria for the specific type of permit that you're applying for may be; what the notice requirements are, in terms of the public process; time limits for the permits and different filings; and any kind of appeal procedures that need to be laid out here. There's also something that's new in the way of a requirement, which is project monitoring and permit tracking. We're being required to do that as part of our adaptive management for determining no net loss – whether our program is working or not and whether we're achieving that goal.

Carol, you asked for the definition for the ecological functions or shoreline functions so I put that in there as well. Ecological functions or shoreline functions mean the work performed or the role played by the physical, chemical and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline natural ecosystem.

There's a table in the first part of the section under section.710 that kind of lists a little more easily the permit level. And this comes right out of our existing code of 14.06 of the different application levels that we have. So the major change here would be for shoreline substantial development permit applications. Under our current Shoreline Program, they're actually a Level II which means they all go before the Hearing Examiner for a public hearing. We've proposed to do it as an administrative process which is a Level I, which has always been allowed under the state requirements but when we first adopted our program we just decided to have public hearings on all of those.

Substantial development permit letter of exemption: a Level I, again an administrative process. Some of the things that we do are an administrative type of decision. Some of them under 14.06 we also exempt from the notification requirements. This may be one of those. At this time we're kind of considering that and whether to include it or not. There isn't anything in the state law that requires a shoreline exemption. You notify property owners or you publish anything or you have a comment period at this point. It's been brought up that maybe we should consider that so we're kind of – you know, we'd appreciate your thoughts on that, as well.

Conditional use permit is a Level II permit that does go to a public hearing with a Hearing Examiner. It's also part of the joint permitting process that we have with the State Department of Ecology, so we basically make our decision at the local level. The state has the final authority to approve or deny those.

Same with the variance that we have. The Level II variance, (the) same as the one that we have now – similar process. It's a Level II that goes before the Hearing Examiner for a public hearing. We make our decision. It all goes down to the State Department of Ecology and they have the final authority to approve or deny those.

We are proposing something new, and this is kind of what we talked a little bit about last time – about an administrative variance process that, hopefully, if we tie down the performance standards that you have to meet for that threshold and you can do all the things that are required there, we can do an administrative variance process that will make some of it a little bit more flexible, a little bit more site-specific than having to go through a full-blown Hearing Examiner Level II variance. And we'll probably talk a little bit more about that when we revisit the pre-existing structures and uses.

Permit revisions are very similar to the way that we handle them now. They've kind of been brought up to speed with what the state guidelines say. Some of them you do need to go through the process again, but it usually follows some sort of a process that you did the first time. Simple revisions or changes wouldn't necessarily raise to the level of having to go back to a public hearing again. Sometimes you just have to notify the parties of record that you're doing something and that there's a decision that's happened. So that information you probably were able to see when you reviewed it.

I guess, in addition to the variances, the administrative variance that we're talking about doing, it's my intention to use what we already have in our critical areas ordinance, which – again – we talked about last time. But I went ahead and included a copy of that here where we're talking basically buffer width reductions and what you can do with certain – less than a 25% reduction or encroachment into the buffer – we just do and it's a possibility to do it with some mitigation. A standard buffer width may be reduced by more than 25% but not more than 50%. That's a Level I application which is an administrative variance process. That would be new for our Shoreline Program but we do that with our critical areas ordinance now.

And then the third one: If you're asking to reduce the buffer width by more than 50% then that's still a Level II, which we have now for shoreline requirements, which is a Hearing Examiner process.

So that's kind of in a nutshell what's in the Administration section.

Ms. Ehlers: When do we get to ask questions?

Chair Lohman: You can now.

Ms. Ehlers: A substantial development permit is not in Title 14. I understood from you on the phone, Betsy, that it's in another set of definitions that are in the document we have been given. But at some point we've got to have *a* term that applies to more than one spot or else it's – you have a small development in the Title 14 in which you can build up to 5000 square feet, and it's a Level I. You have something called an "improvement development," which reads as though it was written for the pre-existing structures: "…where a building that has been damaged or destroyed may be rebuilt." But that one is a much more sophisticated issue and is based on the presumed value of a house. Goodness knows who decides the value of the house. So if you have a

house that's 1000 square feet and it burns, whatever its value is that puts it under a redevelopment thing which is a higher level permit than to build a 5000-square foot house to start with.

Now these are things that have been endemic problems in the code from the beginning and now they're getting us into difficulty because there has to be a way for people who are not expert. A number of people in this room are experts. You deal with these terms and these ideas all the time so you know how it works. But the majority of us who own the property are lucky if we know where to find the rules, much less read what they mean. And so we need one term, one set of definitions. Because, again, some of these properties – it has to do with the 200 feet. Now I finally found how you can find out whether you're within the 200 feet if you go on Google Earth. And I've asked Dan to put onto the website how someone who's not an expert can go on Google Earth and find out where the 200-foot line is in relationship to their house. Is it waterward of the house? Is it in the middle of the house? Is it on the other side of the house? That would help a lot of people.

But it's not clear in this Administrative document if you have half a house that's in the 200 feet and half a house that's out of the 200 feet. I don't know how somebody like me reasons my way through it and I'm trying my best to represent the people who aren't professional in this. And that's a problem I don't expect an answer to tonight, but I think we should have one.

The other question I have is we were told that we had to use buffers and not setbacks. When we look in this Variance section and there they are, both of them – setbacks *and* buffers!

Mr. Easton: Which leads to the question I was going to ask. Did I misunderstand last month's meeting? I thought we had some pretty clear conversation from you all to us that those terms were not – that our future with those terms was going to be different than what I'm seeing in this. What am I misunderstanding?

Ms. Stevenson: Point me in the right direction.

Mr. Easton: Well, just Carol's comment. I mean, she accidently towards the end of her comment stumbled into my question which is, I thought we weren't using buffers and setbacks – we were only using *one* of them, not both.

Ms. Ehlers: Page 1 of your Variance text, 14.24.140, number (3) – isn't it, Jason?

Chair Lohman: Which one is it?

Mr. Easton: 14.24.

Ms. Ehlers: 14.24.140, Variances.

Chair Lohman: But this is the critical areas ordinance. This isn't the SMP.

Ms. Stevenson: Yeah, I just attached this as a guide of how we kind of want it to read in terms of the more of (1)(a) and (b).

Ms. Ehlers: Well – go ahead, Jason.

Chair Lohman: Well, I think part of our discussion last time, too, was not to use the words interchangeably because they *are* distinctly different – a setback versus a buffer. And in the example on the critical areas ordinance it says "setback" *and* "buffer," whereas on the memo it's setback slash buffer.

Ms. Ehlers: Well, what I heard was it was only going to be "buffer" and the word "setback" was going to be abolished.

Mr. Easton: Which is why buffer slash setback threw me off. Am I confusing things further?

Dan Nickel: Well, I think just for some clarity, I mean, you will have setbacks in terms of side yard setbacks and other types of setbacks but they're – the term "setback" will still be present, even if you're using "buffer" from the shoreline. Maybe that's – I think that –

Mr. Easton: So maybe to clarify then – Dan – then "setback's" not going to be used in relationship to the shoreline? "Buffer" only will be used in relationship with the shoreline? But to the rest of the property "setback" would be an appropriate term? So is it basically that simple? The other three sides you may have setbacks, depending on the code or the property in relationship to the code? But the portion of your property you don't have as much use – legal use – anymore, width is now referred to as a "buffer" from the shoreline side and not a "setback"?

Mr. Nickel: Yeah, I think the – let me try to adjust this because I think the critical areas ordinance is really what we're drawing the term "buffer" from, right? And that's the language this variance – 14.24.140 – variance language comes directly from the critical areas ordinance.

Mr. Easton: Uh-huh.

Mr. Nickel: The idea here is to bring the critical areas ordinance, which currently regulates, you know, the streams and rivers and those critical areas in the form of buffers. Bringing that buffer language into the Shoreline Master Program, we would still use the term "buffer," and in many ways the protection of those buffers is very similar to the critical areas regulations. In the Shoreline Master Program language, though, we do have allowances that, you know, actually are more lenient in Shoreline Master Program language than the critical areas because we have shoreline use, public access. We

have water-dependent uses that actually allow activities to take place in shoreline buffers. So it's not going to be exactly the same as what you have in the language of your critical areas ordinance. But the term "buffer" would be there because we want to make the critical areas ordinance regulations apply within our shorelines.

Mr. Easton: Okay.

Ms. Stevenson: Do you find the use of the word "setback" in the section of code that we proposed, or just the insert from the critical areas ordinance?

Mr. Easton: It's in the insert from the critical areas ordinance, and then the memo – in the memo where it references a slash, which was the most confusing – I found that part the most confusing because of our conversation last month about the – that they're not synonymous terms. That's probably where one simple slash seems to have brought some confusion for me. But I feel like I'm more clarified now. Thank you.

Ms. Ehlers: Well, I was sticking to the Administrative section and variances are administrative. The Variance section is in the critical areas code but a variance process is an administrative process, no matter which code it's in. Correct?

Ms. Stevenson: Right.

Ms. Ehlers: And the variance process in this shoreline one, you were adding words – I think that's what the words with underlinings mean – and there it refers to "setback" and "buffer." And all I wanted was clarification so that I know – so we know how to read this.

Ms. Stevenson: The underline isn't necessarily something that's changing. Our code online now has a word search kind of feature that if you scroll over those words it'll give you the definition, so when you print it out this is what happens. That's not a change – I'm sorry.

Mr. Easton: So actually the underline actually means that online you could have got a definition for the word that's underlined?

Ms. Stevenson: Right – that you scroll over that with your mouse and it gives you a definition.

Mr. Easton: Ah!

Ms. Stevenson: So it's kind of a pain for doing this sort of work, but I apologize for that. We get used to it and I forget that you might take it that way. So I apologize for that confusion.

Mr. Easton: That helps.

Ms. Stevenson: So that helps clarify that for me, too.

Elinor Nakis: So the way that I understand buffers and setbacks is that they're both necessary. I mean I live on Hanson Creek and I consider that – I mean, I don't – nobody's coming down to our property and telling us this is what we need to do. But from my forestry experience, I feel that all that area along Hanson Creek is a buffer zone that I just leave alone, you know, and the setback is how far I can build from the creek. I mean, isn't that the difference between the two – that they shouldn't be synonymous? They're not the same thing. They're different. You can't drop one or the other.

Ms. Ehlers: Mm-hmm, mm-hmm.

Chair Lohman: I think we just don't want to get into the peril of using them interchangeably when they *are* distinct.

Mr. Nickel: Agreed.

Ms. Stevenson: Right. I would agree to that for sure.

Chair Lohman: Okay, any other –

Ms. Ehlers: Well, I still haven't gotten an answer regarding this definition of "development."

Keith Greenwood: Substantial development?

Ms. Ehlers: Substantial development. At which point does something become substantial?

Ms. Stevenson: It's based on a –

Ms. Ehlers: Not in 14.04.

Ms. Stevenson: So at this time, since it just changed, I need to look at my book. It becomes substantial above and beyond what development is defined as if the dollar threshold for the work is $6,416 – if it exceeds that amount.

Mr. Easton: How much was that again?

Ms. Stevenson: $6,416.

Mr. Greenwood: It was $5000 and then we multiply it by –

Mr. Easton: Cost of living adjustments?

Mr. Greenwood: – the Consumer Price Index.

Ms. Stevenson: Every five years the Office of Financial Management is supposed to review that for inflation and different things. So that's the new one that came out in September.

Chair Lohman: So it's pretty much __.

Ms. Stevenson: It started out as a thousand back in the beginning and now that's where we are now.

Ms. Ehlers: So it means that you can't really do anything.

Ms. Stevenson: No. That's just the dollar threshold when something that may be development becomes substantial development by definition.

Chair Lohman: And then under that there are exemptions.

Ms. Stevenson: Right.

Chair Lohman: Right.

Ms. Stevenson: Right, that are specific just because of the activity itself rather than the dollar amount. But I'm not sure that was her question.

Mr. Easton: There'll be a test on that number later. You might want to write that in your notes, class.

Ms. Ehlers: When did it start as a thousand?

Ms. Stevenson: With our first code.

Mr. Easton: '96.

Ms. Ehlers: 1971 or '76?

Ms. Stevenson: For us it was '76.

Ms. Ehlers: That was *after* the big inflation started.

Ms. Stevenson: I'm not sure what reference you were making, Carol, so I can answer your question to what section of the Definitions in the code talks about. Is it just a development? Was there one specific that you had in mind that you wanted me to –

Ms. Ehlers: I've spent the last three weeks trying to figure out what my neighbors and I – some of us are close to the shoreline and some aren't – what we would do if there was a fireworks fire. This is what's been bothering us for a number of years. Once we had a five-week burn ban and somebody set off aerial fireworks for an hour-and-a-half into conifers and onto the bank where the builder had dumped debris over the cliff. And we all got thoroughly scared and so we've paid attention to the issue ever since. So I've been trying to figure out what I and the rest would have to do if part of the house burned. It's an interesting example. It's not irrelevant; they have burned. And the deeper I get into this the more complex it gets and the fewer answers I find that I can pin down. And it's all administrative.

Now I don't want to spend a lot of time on it tonight but it's – when you finish with lot of record and lot certification and boundary line review removal and this consultant and that consultant some other thing and you're dealing with the insurance company, to get all of that done in a year would be difficult. If you could – if there were only one of you, it would be much easier than if you had a situation like Sandy and you had hundreds of people that needed to come to the County for the kind of permit. And so I'm going to stick not with Sandy but with a fire. And laws are followed when people can understand them and find their way through them, and I know this is something the County has tried very hard to do. It may not look it to some people on the Internet, but the County has really spent a lot of years trying to make this coherent.

So when you're presenting text to the public, if you're referring to something – words that are in shoreline only – maybe it would – if there's some way that you can footnote it so that it's clear that it's a shoreline definition instead of a normal land use definition? I'm feeling my way through this confusing set of rules. And I'm not asking for an answer tonight. I'm raising a question tonight. Because you're talking again about sending this stuff to the Department of Ecology and I'm trying to speak for the people who've been calling me, long distance and short distance, and saying, How do I read this? How do I understand that?

Mr. Greenwood: Can I interject?

Ms. Ehlers: I'm done.

Mr. Greenwood: Just for some clarification, please. I like to start with the original Act whenever you can. And they provide definitions and you don't start adding other definitions till you need them. So that's why I think you'll see definitions in one place and not duplicated in another. And the "substantial development" definition is in the Shoreline Management Act in 1971, so it goes down the entire list, you know, talking about the CPI and how it adjusts and when it starts and that sort of thing. And then underneath that are a list of exemptions or things that are not considered substantial developments for a variety of reasons, and then they go on to define what normal repair and maintenance are and, you know, what types of things that ___ their threshold like Betsy said, don't qualify for. So there's a lot of things including fire, you know, so it talks

about damage, accident by fire or elements. That's all in these Shoreline Management Act definitions.

Ms. Ehlers: So why doesn't this refer to that?

Mr. Greenwood: Well, we have to reflect it but I don't know that it has to redefine it.

Ms. Ehlers: If someone reading this doesn't know the connection to the WAC to the Shoreline Act, how would anyone expect them to know if there's no link to it?

Chair Lohman: I think the lightbulb's kind of – I couldn't figure out what the disconnect was, but I think it's because you're looking at this as a chapter in isolation and it's removed from the rest of it. And you can't just look at the Administrative section alone because the reference that Keith is making is in the beginning of the section in another section. And this is just one little slice out of the book. You basically took a chapter out.

Ms. Ehlers: Okay, now you have just illustrated for the audience what I have been trying to get across to people on Fidalgo for six months: why they need to go down to Bayshore and get copies of the WAC and the RCW so that you know exactly what's in it. Everybody looks at me and says, Why do I need to know those two laws? They're lengthy. I don't want to read them. But you've just illustrated why you have to. Thank you.

Chair Lohman: Right. Any other comments on the Administrative section from the Planning Commission?

Mr. Easton: Just a clarification for those that are at home that wouldn't know what Administrator – who the Administrator would be. And I think I've asked for the – we talked about this before, but that would be either the Planning Director or anyone he designated?

Dale Pernula: Correct.

Mr. Easton: Okay. Thanks.

Ms. Stevenson: And we've made a note – as we clean this up – to either call somebody the "Shoreline Administrator" or the "Administrative Official" because it goes back and forth.

Mr. Easton: Oh, okay.

Ms. Stevenson: So we need to – I think we're going to go with "Administrative Official" to be more in alignment with what's in the existing code.

Mr. Easton: I think that's a better choice because if it's the other one, I think people would tend to look that up as a job title and not find that person.

Ms. Ehlers: Mm-hmm, mm-hmm.

Mr. Easton: If it's an Administrative Official, they're more likely to either call the Department or assume that it's the Director.

Ms. Stevenson: Right. So thank you.

Mr. Easton: Mm-hmm.

Ms. Ehlers: Yes, I agree with that.

Chair Lohman: Okay then. With your permission, shall we move on then to Legal Pre-existing Structures and Uses?

Mr. Easton: Sure.

Tim Hyatt: Madame Chair? Before we move on from the Administrative, may I?

Chair Lohman: Sure. This is a work session so it is somewhat informal, okay?

Mr. Hyatt: Is it? Okay. I did have a couple of comments on the Administrative section. We haven't had a lot of time – as the Committee – we haven't had a lot of time to spend on the Administrative parts. It was kind of held till the end. But I have reviewed them recently and the change of the substantial development permit from a Level II to a Level I I think is probably a good move. The Level II requires a Hearing Examiner and I don't think a lot of people really need it to go through that level of detail in their applications or the formality of a Hearing Examiner.

But what it does is it – there's a potential there for reducing the public comment that would come from a Level II, and that's something that the tribes and many other people might benefit from. So I was hoping that we could make sure that if this change is made that the Level I review procedures have a couple of different ways of doing public comment. It's an administrative procedure, but the instructions are to – unless exempt by a later section of 14.06, the comment procedures shall be section 14.06.150(2)(b) through (e) are required. That's a bit of a mouthful. But essentially what if says – if you flip to that section – is under 14.06.150, Public notice requirements, there're some things on the Level I that are exempt and some that are not. Building permits are exempt so there's no public notice required. That's as it should be. Boundary line adjustments, short subdivisions – things like that don't need a public comment, but I think the substantial development permits do need a public comment period. I know we would avail ourselves of it and consider it an important distinction.

So if we could make sure that if we do go to a Level I that the procedures in 14.06.150(b) – which *does* require public comment – if we could make sure that goes through, I think it would be – it would certainly be – wouldn't deprive us from the public comment that we get now. I did look into the WAC, the Ecology regulations on public notice, and they seem to support that: "… that the notification system shall provide for timely notification of individuals and organizations that request such in writing," and that "… the notification system shall provide notice to all agencies with jurisdiction" under SEPA "and to all other agencies that request in writing any such notice." So we would certainly want to be notified for shoreline substantial development permits *and* exemptions, if at all possible. There have been some recent examples where exemptions were issued and there was a – we had a problem. We were able to get it reconciled through other regulatory means, but if we don't see an exemption or a substantial development permit until after it's issued, if we really need to say something about it, there's really no way for us to say anything about it except to appeal it. So if we could get advance notice, we could work these things out before the permits are issued and avoid that.

Chair Lohman: So your Committee, though, hasn't discussed this chapter?

Mr. Hyatt: I don't believe we have.

Brian Lipscomb: No. No, we have not.

Mr. Hyatt: Not there –

Chair Lohman: So you're seeing this –

Mr. Hyatt: – certainly not these provisions in the Administration.

Mr. Easton: And those were certainly the comments of you, as an individual –

Chair Lohman: Yes.

Mr. Easton: – and who you represent, not of the Committee, correct?

Mr. Hyatt: Correct. Oh, absolutely.

Mr. Easton: I just want to make sure we're –

Mr. Hyatt: I did not mean to misconstrue that.

Mr. Easton: Okay.

Mr. Hyatt: Sorry.

Mr. Easton: That's okay.

Chair Lohman: You didn't.

Mr. Easton: He didn't. I just wanted to make sure the whole room's clear that that's the case.

Ms. Ehlers: But there *is* a problem in 14.06 that you have brought up. The appeal process depends upon your knowing that an application has been made, and if there's no way to know an application has been made there is no way to comment or appeal.

Mr. Hyatt: Right.

Ms. Ehlers: And that is one of the difficulties that's existed in that law from the beginning.

Mr. Easton: Dan? I would presume that there's a reason why that wasn't attached – it wasn't passed to us the way that it was just described.

Chair Lohman: Yeah. We haven't talked about it.

Ms. Stevenson: It did go to the Advisory Committee. We talked about it at the last meeting in November.

Mr. Hyatt: We did?

Ms. Stevenson: Yeah. You weren't there.

Mr. Hyatt: Oops!

Ms. Stevenson: So –

Mr. Hyatt: I think – I apologize – I had, like, three other things to do that night.

Ms. Stevenson: It wasn't in this form. It was a more draft version than what you have in front of you.

Mr. Easton: Okay.

Ms. Stevenson: We've been able to take a little bit of time.

Mr. Easton: So what was the – is there someone here that was there during that discussion? Besides staff, I mean. Does somebody else want to comment? What was the tenor of the conversation from the rest of the advisory group? I would be curious.

Mr. Lipscomb: I don't recall saying that we wanted to provide notification if we could, in fact, talk to the Hearing Examiner that we just – one of the advantages of doing it with less effort was exactly that. Less effort, no publications – you know.

Ms. Stevenson: To clarify it a little bit – if it helps, and I don't know if it will – I think we are required on substantial development permits to do the notification, so it was never our intention to try to exempt that. Shoreline exemptions are a little different matter, and this is something that Tim's just brought up – at least I think this is the first time we've talked about it tonight – is doing the Level I notification process with exemptions. I think we're going to have to talk about that one a little bit more.

Mr. Easton: Oh, yeah.

Ms. Stevenson: I'm not sure if we're going to get sideways with that because if they don't really need a permit and it's exempt, should we really be doing a public notice? I'm not sure. I just want to make sure that we're not getting too far off with that. But I can take that back and talk about that, as well. And I would love your input if you have guidance on that now.

Mr. Easton: Well, I find the example that you just gave – the clarification that you just gave – about what they're *not* required to do and then to add this requirement seems out of place. I mean, we're talking about a very significantly defined group. We're not talking about widespread, hundred – you know, hundreds of acres-type of development here. We're talking about individuals who have come to the Administrative Official to ask for these phase ones. So, you know, I mean I think you have a weird – you've set up a kind of weird double jeopardy of saying, We're trying to create an opportunity for people to deal with these one – basically I see this as the picture of those one-off lots in the middle of Biz Point or the middle of –

Chair Lohman: But it isn't just residential lots or –

Mr. Easton: True. I have to be kind of _____.

Chair Lohman: Because, for example, agriculture has quite a few exemptions from the substantial development permit, as well as some other uses.

Mr. Easton: But would those rise to being – weren't those higher levels than administrative? I mean, the Planning Director couldn't approve – I mean, maybe I'm misunderstanding, but –

Chair Lohman: I think that's what you're getting at.

Mr. Hyatt: Yeah, if I could clarify, there are a lot of things that are exempt –

Chair Lohman: Yes.

Mr. Hyatt: – that may require some interpretation, and we would like to be able to review those before that interpretation is made and see if we – and often I think we can bring information that may change that determination. Case in point was the one that happened a couple of months ago where a party applied to remove a very large, instream, channel-spanning log jam from a creek. Because it was just excavator work, it didn't meet the financial threshold – it was cheap to do – and it was called exempt. Yet it had a very substantial impact on the habitat quality in that creek, and eventually the National Marine Fisheries Service, Ecology, Army Corps of Engineers – they all agreed. But it was issued as an exemption. Had we been able to review that before it was issued it might not have been.

Other exemptions: normal maintenance and repair. When we get better definitions for normal maintenance and repair that may be a lot clearer, but that's often the thing where there's some interpretation. One of my first projects that I reviewed under Skagit County – Betsy's predecessor – there was a bulkhead to be replaced under normal maintenance and repair. There were three pieces of rebar sticking out of the sand, and what it was replaced with was a 60-foot, 5-foot high, concrete wall. That was the repair. If we had an opportunity to review some of these things before these exemptions are written and granted, I think it would prevent – it would avoid having to take the appeal route.

Mr. Easton: Well, I sure hope our definition of general maintenance and repair would be violated by that type of expansion, but –

Mr. Greenwood: Well, what was there before there was rebar, though?

Mr. Hyatt: It had been a concrete wall but it was completely obliterated and the shoreline – the ordinary high water mark had moved landward.

Mr. Easton: So it's not necessarily fair to call it three pieces of rebar.

Mr. Hyatt: That's all that was left. And under the current Ecology guidelines, when the shoreline changes so does the ordinary high water mark and so does the place where –

Mr. Easton: And you want opportunity to speak to *every* exemption?

Mr. Hyatt: *No*. We want to be able to see them. That's all.

Mr. Easton: (inaudible)

Mr. Hyatt: And if it takes – and often, what is going to – once we've seen them, on the small minority of the ones we're going to say, Wait a minute, it's going to be a phone call. And if we can't resolve it with a phone call then, you know, it goes forward and then –

Mr. Easton: You guys still have plenty of different types of recourse.

Mr. Hyatt: Exactly. Exactly. But I think we can avoid that – avoid having to go into appeals – if we can review them in advance. We already do this with HPAs. We do it with Corps permits. I don't think either of those agencies would say it's been a bad idea.

Ms. Ehlers: So let's be clear. You're talking about –

Chair Lohman: Wait, Carol. Matt was trying to get a word in.

Matt Mahaffie: Dale had something.

Mr. Pernula: I think I would have a problem of what threshold would we have to refer it to this or some other committee. We make all kinds of calls every day. A building inspector or me or someone makes a decision whether or not it goes across this threshold or it's above this threshold or below it. And it would really slow things down unless we had it very, very specific on what was reviewed by who (sic). But I would have – you know, if we have something that's difficult we normally research it very, very thoroughly, and there're some real close calls. But I'd hate that decision to be made by a committee.

Chair Lohman: Go ahead, Tim.

Mr. Hyatt: I guess I was going to clarify. I was not extending this notification to all Level I procedures under 14.06 – just the shoreline exemptions.

Mr. Easton: That's still a lot. I think you'd be better off giving us a list of the exemptions you're thinking about, as opposed to all exemptions.

Chair Lohman: Because then you would be challenging every single one _____.

Mr. Hyatt: No, no, no, no, no. We're not going to challenge –

Mr. Easton: Potentially.

Chair Lohman: Potentially.

Mr. Hyatt: Well, we're not going to – we currently review a lot of these things and we don't – I don't recall challenging any of them in four years. But it is good to be able to see them before they get to that level and review them, and maybe make a phone call and see if there's not a way you can get something revised before the permit's written. We often have information on the habitat that the permit reviewers – the permit writers – don't have.

Chair Lohman: Matt?

Mr. Mahaffie: Just to clarify a little bit: An exemption is – it's not a permit. You're exempting it from a permit. Just because Skagit County doesn't authorize that work with, you know, we're not – it's exempt. It doesn't mean there's not a permit issue. If your log jam issue – well, just because Skagit County doesn't exempt it it's still getting an HPA. Correct me if I'm wrong.

Mr. Hyatt: In that instance, yes.

Mr. Mahaffie: Pretty much a bulkhead, so it's going to be required to get an HPA. A dock: still going to get an HPA. If it's exempt from Skagit County, it's still somebody else's responsibility. It's still going to get reviewed for a permit. Don't get me wrong. The exemption process has some pretty big issues with it. You know, there's a pretty big lack of follow-through, I think. I know exemptions have been issued and what's been built is not what was put it there but there's, you know, the lack of a building permit mechanism – you know, there's a possible solution there. But an exemption, it's not a permit. It's saying you don't need a permit from *us* – not necessarily from other jurisdictions. So public notice, you know, input – I think you're kind of directing it at the wrong place, personally. Input is valid __ professionals, but the people issuing the permit – the actual permit for the work to me is the better direction to go.

Mr. Hyatt: Well, you know – you're right – it's not a permit. It is a letter of exemption which can be conditioned, and it functions, for all intents and purposes, as a different kind of permit. Here is your letter of exemption. Here are the conditions we attach to it. You may go. And that's pretty much the way a lot of other permits work. And I agree entirely that a lot of the – once people hear that they've got an exemption, they tend to run with it and they don't always abide by everything in the code that the permit says that they're supposed to. I think another set of eyes would actually help the County achieve their goals on what the shoreline code is written to protect. I think it would – you know, that's the spirit in which it's offered actually. Not to challenge everything – just the opposite. To review things and offer a few comments and try and prevent things from getting out of hand before they do.

Ms. Nakis: It's guidance.

Mr. Hyatt: Exactly. And it is a decision – a Level I decision. With or without public notice, is appealable to the Hearing Examiner, so I guess what I'm trying to do is avoid those appeals, avoid having to pick –

Mr. Easton: But you just said you haven't done – you haven't had one of those in four years.

Mr. Hyatt: We came really close on that other one, on that recent one. We don't review them that closely. We don't see them often until we see them under a different permit. I saw that shoreline exemption – I got it from WDFW. And here's the key: We couldn't – each permit writer is under their own code and their own things they have to protect. The one that had what we thought was the clearest mistake was the shoreline permit. That one would be the easiest to appeal. The HPA hadn't actually even been written yet.

Mr. Easton: But it didn't break the threshold, the financial threshold of substantial development.

Mr. Hyatt: It didn't but I think FEMA got involved – if I'm not mistaken – and said that it did meet certain other thresholds related to the – help me out, Betsy.

Ms. Stevenson: Yeah, I'm not agreeing with what you're saying so I'm not sure I should get into the conversation. The logjam removal FEMA was fine with.

Mr. Hyatt: It was the dredging?

Ms. Stevenson: The in-water bucket mulling –

Mr. Hyatt: Okay.

Ms. Stevenson: – was of concern and is being reviewed. But the logjam removal, they didn't even –

Mr. Hyatt: That didn't constitute development?

Ms. Stevenson: No, they didn't have a problem with the way we handled it as far as our BiOp requirements and the flood predicaments.

Mr. Hyatt: Okay – my mistake. It was a very confusing issue with multiple permits and multiple projects on the same side by the same applicant.

Mr. Easton: I'm not sure how having –

Chair Lohman: It was a drainage district –

Mr. Easton: The drainage district – that was my presumption.

Chair Lohman: – so it wasn't a building.

Mr. Easton: Multiple – you've got governments negotiating with governments. I'm sure that's similar.

Chair Lohman: I guess that's a great example that it *isn't* all buildings.

Mr. Hyatt: Correct.

Chair Lohman: It's –

Mr. Greenwood: Developments.

Chair Lohman: Development is kind of almost a – I almost hate that word because –

Mr. Greenwood: Well, that's defined, too. That's defined, too.

Chair Lohman: – it's almost any activity.

Mr. Greenwood: Not really.

Mr. Easton: Whether it's development –

Mr. Greenwood: Go to the definition.

Mr. Easton: – multiple permitting agencies crossing each other's path would not change it; it would only increase if we added – in your case – the representation of another sovereign nation into the review of all these exemptions. Or not all these exemptions. It's not going to simplify the process. It potentially could add another – adds another layer. Now I'm talking about from the landowner's point of view, which is part of the task that we have up here that's different than what you all have – some of your responsibilities there – I mean, as a group.

But I just think it's interesting that you noted that you haven't done any in the last four years. None have risen to the level where you appealed. Now if you had been notified, do you believe that would have been different?

Mr. Hyatt: No. No, I don't –

Mr. Easton: So then I don't –

Mr. Hyatt: The whole point –

Mr. Easton: I don't see what the benefit is then.

Mr. Hyatt: The whole point – we've been seeing HPAs all along.

Mr. Easton: Sure, and you will continue to after the way the Shoreline Master Plan is written. That's not impacted.

Mr. Hyatt: Sure. But – we haven't appealed those either – but we *have* commented on a lot of them. And it's usually taken care of with a phone call, sometimes a site visit, sometimes a little bit of work on – map work and GIS and looking through historic records – spawner surveys, things like that. And we can (a) provide information that wasn't already there, and often we suggest solutions that help the landowner or the applicant get their project done without harming the fishery. And we've got a fair amount of expertise for people who know how to do that. And that's exactly what we try to do.

Mr. Easton: I think that it would be good for us to hear from – as we go forward, as least for me – to hear from some other voices about where they're at about this topic, other members of the – either those that aren't here or those that are here that are other members of the Advisory Committee. It doesn't necessarily have to be now, just – Betsy, I think it's a topic we'll have to circle back to.

Chair Lohman: Anymore discussion on the Administrative section?

Ms. Ehlers: Mm-hmm.

Chair Lohman: Carol? ___? I'm trying to look at both __. If you want to speak, you've got to flag me down.

Ms. Ehlers: In these multiple agencies, does the authority extend outside of the water?

Mr. Hyatt: Sometimes yes, often no. Each of these agencies has their own law and their own things they're trying to protect. Clean water isn't the same as fish habitat, which is not the same as necessarily as wetland filling, which is not the same as land use changes in the shorelines or the critical areas. They're all trying to protect something a little bit different. Sometimes there's overlap, sometimes there's not. Often there are exemptions, and you can get exemptions from multiple agencies. We don't deal with that. That's out of our jurisdiction. Sometimes the lack of a shoreline permit triggers an exemption somewhere else, which is sometimes the case. If there's no shoreline permit then there's no SEPA. Then WDFW can't – is often the only permit. Anyway, it gets very confusing.

Ms. Ehlers: How do the rest of us find our way through this?

Mr. Hyatt: Don't know. It gets very confusing.

Mr. Greenwood: Well, Ecology clarifies a lot of it in their website about what is exempt, what isn't exempt, and they try to provide guidance for jurisdictions.

Mr. Hyatt: Within shorelines.

Mr. Greenwood: Yeah, shorelines. And they talk about what additional permits are required, what other agencies are involved. It doesn't exempt you from SEPA if it's a substantial, unless it's categorically exempt from SEPA.

Mr. Hyatt: Exactly.

Mr. Greenwood: There's a lot of opportunities for interjection or photo review.

Mr. Hyatt: If it's substantial development, yes.

Mr. Greenwood: You said you'd like to have that input early on.

Mr. Hyatt: Well, if it's an exemption then there isn't a lot of opportunity.

Mr. Greenwood: What type of exemption are you referring to?

Mr. Hyatt: A lot of them.

Mr. Greenwood: You're not talking exemption from substantial development permit then?

Mr. Hyatt: Yes, I am. If it's a shoreline exemption exempt from a substantial development permit – and there are quite a few of them – then that leads – there're a whole lot of them. Dredging in small streams; you know, what the diking district considers a ditch and infrastructure, WDFW and the rest of us consider a salmon stream – some of them.

Mr. Greenwood: I was going to say you'd better clarify that.

(several sounds of assent)

Mr. Hyatt: Okay. In this instant case, Turner Creek, it's straight but it has head waters and it was formerly a stream that was straightened, and it has salmon swimming up it to go spawn up – further upstream. WDFW, National Marine Fisheries Service both consider that a fish-bearing waters and a salmon stream that DD21 considered it a ditch and they thought they should be exempt under shorelines, and apparently they were. There're a lot of exemptions.

Mr. Greenwood: I see a lot of exemptions but Department of Ecology says, "Exemptions shall be granted only after meaningful review under the State Environmental Policy Act, unless the proposed project is categorically exempt under SEPA." So being exempt from the substantial development doesn't exempt it from SEPA unless it's categorically exempt from that as well. Am I –

Mr. Hyatt: You got me. I don't know why so many of these things are, unless these exemptions are categorically exempt under SEPA?

Mr. Greenwood: It provides further clarification. It says, "SEPA categorical exemptions are not identical to the substantial development permit exemptions granted under the Shoreline Management Act."

Ms. Ehlers: Is there a WAC reference to that?

Mr. Greenwood: This is Department of Ecology's Guidance on Shoreline Master Programs, under Exempt Developments.

Mr. Hyatt: All I can say is, you know, there're a lot of things that we do review in other contexts that turn out to be exempt under shorelines.

Mr. Greenwood: Okay. I think they have a pretty good list of that, and if you've got a Shoreline Administrator looking at it they're not in the same house and one's proposing and one's reviewing it to see if it needs further review, and it should be pretty minor before it gets full exemption from SEPA *and* Shoreline Management Act substantial development.

Mr. Hyatt: Again, I think sometimes –

Mr. Greenwood: Sometimes things do slip through; you're probably right.

Mr. Hyatt: There are interpretations involved.

Mr. Greenwood: Well, hopefully, if we're pretty close to the line there shouldn't be a whole lot of gross misinterpretation.

Chair Lohman: Betsy?

Ms. Stevenson: I don't know if it helps or not, but a lot of times if something is exempt under the Shoreline Program, that doesn't mean it's exempt under SEPA.

Mr. Hyatt: Right.

Ms. Stevenson: There's a grading permit that's required. There may be other permits that the County issues that they still exceed those thresholds under SEPA for categorical exemptions. So it isn't –

Mr. Greenwood: It's not the same.

Ms. Stevenson: Every shoreline exemption –

Mr. Greenwood: It's not like setbacks and buffers where they're the same.

Ms. Stevenson: – exemption isn't necessarily exempt from SEPA.

Mr. Greenwood: Right.

Ms. Stevenson: It's not – you know. What you refer to there is correct and I guess the easiest one to look at is the fill and grade requirements. That's the one that comes to mind the most, probably.

Josh Axthelm: I think that's the reason they have a lot of these permits in place – these different permits – is because each one has different requirements. I don't think the County should really have to be the catchall for everything. In this situation they approve it, but it doesn't mean it's going to be approved through all the other permits. I just – you can't catch everything, I guess.

Mr. Hyatt: I'm not trying to put the burden on the County of approving or disapproving anything. I just thought if we got a chance to see it in advance, given the interpretation in a lot of these exemptions, I think we could help clarify and perhaps help make sure that the permits that are issued are fully – not that Betsy's not doing a great job – but just make sure that they are actually carrying out the code at both the state and county level.

Mr. Axthelm: Question – if the Administrator looks at it and determines that it would be a good idea to go out to a different agency, can they do that?

Mr. Pernula: I don't know why not. We could do that.

Mr. Axthelm: Because it seems to me that if the Administrator's reviewing it and determining if it's something that can be – or needs some comments, you would think they could send it out to get those comments.

Ms. Stevenson: There's a process for that, as well. It's a JARPA – Joint Aquatic Resource Permit Application – and that's exactly what that's for. All the agencies got together and said, Hey, instead of having people apply and fill out all these different applications, let's have something that they can use for an HPA, for a Corps permit, for a water quality certification, for a shoreline exemption. So, yes, everybody recognizes that their permits are a little different and their requirements are all a little different. But, there again, it's up to the applicant to make sure that all the agencies who will be reviewing it get a copy of that. But, yes, we do that quite regularly and do try to consult with other agencies when we're looking at JARPAs and things.

Mr. Hyatt: Actually, under this proposed code for letters of exemption, if any project qualifying for a permit exemption also requires an Army Corps permit or an HPA, then the Department sends a notice of the exemption to those agencies.

Chair Lohman: Where are you reading that from?

Mr. Hyatt: I am on page 8 on the part 8, Administration, half-way down, just above item 4, (3)(c).

Chair Lohman: Okay.

Ms. Ehlers: And it must be transmitted the way all the others must to the Department of Ecology.

Mr. Hyatt: Sure.

Ms. Stevenson: So that's once it's issued.

Mr. Hyatt: Once it's issued. Okay.

Chair Lohman: So you want to use the language in 14.06.150(b) *in addition* to that provision that even if it's requiring HPA and all of those other things that the County would be transmitting the exemption anyway?

Mr. Hyatt: Actually – okay, so 14.06.150(b)(2) would already apply to a substantial development permit. I'm saying I would like for it to be applied to an exemption – a letter of exemption – as well. And I wouldn't – I would not necessarily advocate for – well, I'll just leave it at that.

Chair Lohman: I would like to propose to the Planning Commission that we – if you guys could come up with some proposed language from the Committee – from your Shoreline – and we look at this again, because this is our first look at this.

Mr. Easton: Yeah, that's important. If that Committee can come together.

Chair Lohman: I want to think about it. As an individual Planning Commission member, I want to do a little more looking at this.

Mr. Easton: That does assume that they can come up with joint language that they'll agree to.

Chair Lohman: I agree with that. But I don't want this to be the only time that we talk about it. And I know that it won't be, that people will have a final –

Mr. Easton: During deliberations.

Chair Lohman: – during deliberations. But I would like to give us all some more time because you brought up a lot of things and I want to personally – if that's okay. Yes, Carol?

Ms. Ehlers: I agree with what you're saying but I also suggest that the Planning Commission read the section of 14.06, because what I noticed in our last action – the Wooding action – if he went for a development permit, under that code it's not necessary for a certain size of development permit to be noticed at all. The County does not have a history of paying attention to drainage and the impacts of drainage across the street or downhill. And so under this process, if it were followed as it is written in Title 14.06 there is no way for people downhill to know there's something proposed until it's been decided and gone, and we don't have the money and the wherewithal and the knowledge to do what organized groups do. So this is a problem that isn't just a shoreline problem.

Mr. Easton: Well, we're just working with the shoreline.

Chair Lohman: Right.

Ms. Ehlers: I realize that but –

Mr. Easton: It's a big project in itself!

Chair Lohman: Okay. Anymore comments on the Administrative chapter?

Ms. Ehlers: Yes. All of this has to go to the Department of Ecology when the Department is finished with it. I remember vividly the last time we sent something to the Department of Ecology that had to be approved. Remember that island in the middle of Burrows Bay – or the edge of it – where Oscar and a consultant and Betsy worked for months? And the trouble was it wasn't a round island. It was a lozenge-shaped island so you couldn't have the right setback from this little cabin that they wanted to build. Finally it was negotiated through with what seemed to us watchers as an excruciating amount of time and effort, and Ecology agreed, nobody disagreed, it got to Ecology and *somebody* decided they didn't like it and held it up for a year.

Now that is a difficulty in this. You have one year to get the permit. Does the one year to get the permit mean *before* it's sent to Ecology or does it include Ecology's interminable decision process? That's not an answer I expect but I think you should look at it.

Ms. Stevenson: It's from the time when all your permits have been issued and any appeals that have happened are ended. That's all.

Ms. Ehlers: Right, but deal with that in the language somewhere, because that experience was not pleasant. It certainly wasn't pleasant for the County.

Chair Lohman: Okay, let's move on to Legal Pre-existing Structures and Uses.

Ms. Stevenson: We made a few changes since the last meeting. There was some discussion about the reference to the vegetation conservation section so we took that out, did a little bit more research, and we don't really have to have that in there so we did take that out, if that helps at all. I'm prepared to go back through some of what we talked about at the last meeting. I realize that you didn't have a chance to look at that since you just got that information at the meeting and I was hitting you cold with it. So I don't know if you've had a chance to look at it anymore or is you would like for me to kind of go through it again – at least what I was thinking and what I was trying to put together when we did that, if that would help. I also brought, you know, some aerials if, you know, you wanted to try to do that as well. I can walk you through it to start with and just see where we are, or whatever you want to do.

Mr. Greenwood: I'd prefer to start from scratch because I didn't know what she was talking about when she started, so and now I think I understand it better.

Chair Lohman: Just dive in!

Ms. Stevenson: Okay. Okay. Then let's try that. And stop me anytime. I know it's somewhat convoluted when you try to be a little bit more flexible in what you're trying to do. So if you got through with the critical areas variance levels with me a little bit, that's kind of what started it and that's where we are.

The new shoreline requirements got a lot of people in the state – and the landowners, especially – concerned for their property rights, especially single-family, residential landowners, because there were proposals to integrate critical areas regulations which do have a bit larger buffers in most cases than what the existing shoreline setback requirements would have been under our existing and old, not updated Shoreline Programs. So legislation was passed and adopted that allowed any type of single-family, residential development that was done legally – I guess is the best way to put it – either through if where it was established was an okay place to build it when they built it, or they got a variance from those requirements at the time they built it – all those different scenarios.

Now, by overlaying the new regulations under the Shoreline Program, those houses may all be partially or fully within a new buffer that's been established that is now existing under our critical areas ordinance that's been adopted as well.

So I don't know if that helps you or not. One of the things that I did give you tonight was just a little chart that shows what the requirements are for the buffers. And those are under our existing critical areas ordinance. So when it says "Type," that would be the type of stream under the stream typing system. So "S" would be for any shoreline streams, basically. The proposed buffers are what we're proposing under the Shoreline

Program. So, basically, it doesn't take too long to figure out they're the same. We're not asking for anything more than what's in the existing code now under our critical areas ordinance. We're just integrating those into the Shoreline Program.

The Marine and Lake is a little bit different, as you'll see, because we've changed our Environment Designations – our Shoreline Environment Designations – to align with what's proposed through the state and their definitions for their new designations. So we don't have Rural or Rural Residential anymore. So we have a Rural Conservancy which kind of lumps in a lot of what would have been Conservancy under our old program and some Rural, some Rural Residential under our new program. A lot of the Rural areas and the Rural Residential areas have become Shoreline Residential, so some of them may have gone up a little bit, some of them may have gone down a little bit.

I don't know if that helps at all from where we were last time. And I guess I'm going to jump right in and stop me if you want to at some point, okay?

Ms. Ehlers: Legally: So if it were okay to build on the site according to the laws of the time it was built, and that's how you're defining "legally." So one needs to know for these older shoreline areas that are earlier than 1971 or '76 – you'll have to pick the date. But if a building were built in 1943 and there were no setback, then, although the setbacks have changed enormously since 1943, it was legally built. Now how you're going to have evidence that the house was really there in those days needs to be clarified someplace because you can get into an argument. If the County's only record of a septic system is 1977, but there's an orthophoto for that site – that's a government document, of course – that shows that a house was there in 1967 when there weren't any laws at all about most of these things, then that would be considered legal. Is that correct? Well, that's pretty crucial.

Ms. Stevenson: Yes. You can't see me shake my head – Debbie will get mad at me. I'm sorry. Sorry, Debbie!

Ms. Ehlers: That's really crucial because you can't go by the building permit because too much of it's been thrown out. So it says to me that people who live near the shoreline of any sort – that's much of the county – ought to obtain orthophotos as early as you can for that area. And it would be helpful if in this process over the next year people were informed as to where you get the orthophotos and how you get them. Some people have found on the Internet some extraordinary pictures from near where I am of where there was clear-cutting back in 1970 and nobody knew there was a permit for it. But once we knew that it was clear-cut, that explained why the drainage was so horrendous coming off that hillside.

So there's a lot of information, but most of us don't have it. And how you want to do it – I was taught years ago that you had to do everything with a government document. I don't know when the orthophotos were first done. They were done by the Department

of Natural Resources by flying over. I found through the Assessor's office last week that there are orthophotos taken where there aren't any leaves on the trees, which means a lot of things are visible that aren't visible under the ones that you can easily buy. (It) changes whole stories of whole sections of shoreline.

And so I don't want – I have to belabor it because it is *the* crucial issue. And I don't think there's anything more needs to be said. I just appreciate a mechanism for doing it fairly and honestly. And that connects, you see, to that Google iMap that shows you how far away your building is with current shoreline. I don't know if there's a historical one.

Ms. Stevenson: It's just a quick response. I don't want to take up too much time if you don't want me to, but the Assessor does have – and on our website on the iMap you can get aerial photos that go back. Jeez, a lot of them are pretty old. And the Assessor's records – at least the ones that I look at – do usually say when the house was built, and I've seen some back to the early 1900s. So finding one for 1940 is not that – I mean, you can – they usually peg a date of when a house was built. So that's all on public information that anybody can find.

Ms. Ehlers: There's a set of three-ring binders in the Assessor's office that are made of cardboard – that's how old they are – and they have for many parcels a photograph and text describing exactly what's in it. I raise it because there are those in the County government who want to throw these out, and so perhaps there ought to be a defense of the keeping of these old records for purposes such as this.

Chair Lohman: Okay, Betsy, you're on again.

Ms. Stevenson. Okay. Thank you. So I guess the legislature did allow us now to come back and recognize those structures as pre-existing legal structures – to exist as they are. And we were given quite a bit of flexibility to address improvements, expansions, changes, replacements, the whole thing with that. So I kind of took the ball and ran with it. This was my attempt of coming up with something that makes it a little bit easier, because, as it stands now, if somebody has a house in that situation where it doesn't meet our current shoreline setback – which we call it a setback in our current code so, not to confuse you, but I'm going to use that term, which in most areas is 50 feet or the average setback of any residence is within 300 feet of our side property lines, whichever is greater. If it sits waterward of that requirement and they want to come in and do an addition or do some work on it or – there's a little bit of repair and maintenance that's allowed, but it doesn't include very much – they would have to get a Hearing Examiner shoreline variance. That's kind of a hard and fast line drawn now that we don't have anyway to give them much in the way of leniency, I guess is the best way to put it. It's a variance. What we're proposing here and what we have tried with our critical areas ordinance is a more tiered level approach to allowing some encroachment into those buffers. So that's kind of what I described earlier a little bit and kind of what I went through briefly last time, is if you have a building that would be now considered pre-

existing legal, but if you go to put an addition on it, I guess the lowest tier or the easiest thing to do that could be approved by the Shoreline Administrator – and this is in this section of code under…620 maybe is where it's listed…I'm going to have to look again – that under certain conditions for pre-existing single-family residences, minor enlargement or expansion would be allowed. And this is under 14.26.620, number (3)(a), and then little (i) through little (iv). If you meet these conditions, then the Administrative Official – this still says "Shoreline Administrator" so we'll get that fixed – the Administrative Official can approve that without having to go through variance processes. One of those things is that that proposed addition, expansion, change, enlargement wouldn't increase the – or expand – the footprint by more than 200 square feet. So it's fairly small but it's something, and it gives people the opportunity to do some things.

The next type of expansion would be one that would be handled under a Level I permit process and this is where the critical areas – what I was trying to refer to to give you some sense of it. If you encroach into the buffer between 25% and 50% it could be handled as an administrative process. So this is a situation where if you do have a residence that falls within the buffer or your proposed addition would encroach into that buffer, but it's between 25 and 50% encroachment into the buffer, we could do that through an administrative variance process, which you notify the landowners, you put a notice in the paper, there's a comment period of fifteen days. If you meet those criteria and you're able to address all the issues, we can sign it off and issue it. There, of course, is an appeal period with any kind of administrative determination and decision, so that would be appealable, as well.

So that's kind of the second set of possibilities. And then the third one – I'm trying to think here – the third one is if it is an expansion that would go waterward of the existing house and encroach more than 50% into the buffer, that would be a Level II and still have to go before the Hearing Examiner. But by integrating – which we're required to do – our critical areas regulations with our shoreline regulations, we're integrating the processes, too. If somebody fell into one of those categories, theoretically they could be required now to get a shoreline variance *and* a critical areas variance where you're really kind of reviewing the same proposal under slightly different criteria but you still have to go through both of them at a higher cost to the applicant. So this is a way to try to bring those processes together, turn it into one process, one fee, one review, one notification. I don't know for sure whether Ecology is going to approve our administrative variance process. This is one of those things that I felt it would be better to vet locally and come up with some justification for doing it. They are allowing some flexibility based on the new legislation that went into place, but I figured rather present it all to them after we went to our early processes than ask them just, Hey, what do you think? Because once you get an, Ooh, that's a bad idea, it's pretty hard to get them back to thinking about it.

Are you still with me?

(several sounds of assent)

Ms. Stevenson: Okay, good. I don't know if you want more information, if that helps. This is for single-family residences. I guess if I didn't clarify that, that would – okay?

Chair Lohman: Oh, I have a question.

Ms. Stevenson: Okay.

Chair Lohman: On page 4 of the handout you have a 12-month extension period to submit the application. And then you said extenuating circumstances did not include a delay in financing. You had "market conditions" also. Why? Why did you – how did you come up with that, or where did that come from?

Ms. Stevenson: I think this may have been language that was proposed by one of the consultants. I think this is something that Lisa had proposed in another section that we just – we run into problems with permit applications that people just leave hanging for years and years and years and years. And it's more land divisions and things like that sometimes where it's not going to pay for them to finish doing all the improvements because the land value has gone down. You know, this has happened fairly recently. But then they want to go ahead and come back and pick it up when times are better. So I guess this is just to indicate that we can't necessarily extend that. We wouldn't necessarily consider that extenuating circumstances. That in and of itself may not be enough of a test to allow us to do that. It doesn't mean that we necessarily couldn't, but it means don't expect it just because, you know, the market isn't right where you want it to be so you want to hold off and you don't want to do that yet. I guess that's kind of our intention. If that's not what it's saying to you then we need to take a look at rewording it.

Chair Lohman: I guess the part that I stumbled on was the delay in financing. Because I can imagine hiccups from your lender, but it –

Mr. Greenwood: I was just going to point out that when I looked at – at least on the replacement issue, the Department of Ecology uses, rather than a specified amount of time they use the term "reasonable period of time." And a reasonable period might include financing, it might include – at least I'm thinking about it in my scenario. A lot of times I don't – a lot of land has been managed for a lot of years – many, many years – and there're some structures and things that don't get visited over a long period of time, but then they get revisited over a rotation, if it's timber property. And so what's reasonable in one case might be different in another.

So that's – I was looking at this 12-month period. I remember we had talked about last time, and that would be very difficult for some of the cases that I'm thinking about on the timber property. It might be in others, too. So what's reasonable? I haven't defined that but –

Ms. Ehlers: You could look at paragraph (a) which talks about getting the permit and then having five years to do something, which I think is a definite response to what Jason brought up last time.

Ms. Stevenson: Yeah, this is just to actually *apply* to replace it.

Ms. Ehlers: Well, this is only for single-family residences, right?

Ms. Stevenson: Right. It's 620.

Ms. Ehlers: Well, then that wouldn't be what you're talking about, Keith.

Mr. Greenwood: Well, I can see where it could be extrapolated.

Ms. Stevenson: The same language is in that section, too.

Mr. Greenwood: Oh, okay. All right.

Mr. Axthelm: Well, this says 12 months to *submit* the application.

Ms. Stevenson: Right. Right.

Chair Lohman: But it says "complete."

Mr. Pernula: Five years.

Ms. Ehlers: Complete within five years might even take care of the lawsuit that the insurance company has.

Chair Lohman: Any other questions? I have a couple. You talked about – you talk about nonconforming use, and on the first page you talk in number (2) – 14.26.600 Pre-existing Uses, number (2) – you talk about if you have a nonconforming use it can continue to be a nonconforming use and it can't be expanded or enlarged. And then you have an "except," and I have read that sixteen times and I can't figure it out.

Ms. Stevenson: Oh. Yeah, if you're using a portion of your garage or a portion of a building on the property for something that we would consider a nonconforming use, we wouldn't necessarily consider expansion into another portion of that existing building as an expansion of the nonconforming use – actually we have this happen quite regularly – or if you're doing it out of your house and you want to start doing it out of your garage. It's still the same structure. You're not actually adding on physically to the building. So it's an expansion of the nonconforming use because the use area is getting bigger but it's still housed with – boy! – it's still housed within that existing structure so you're not increasing a footprint on a structure. Does that make sense?

Chair Lohman: Yes.

Ms. Stevenson: That's what it *means*. If it's not saying that, that's what we were getting at.

Chair Lohman: I don't think the words are saying that. At least for me they didn't.

Ms. Stevenson: Okay.

Mr. Greenwood: It's awkward language.

Chair Lohman: Yeah.

Ms. Stevenson: Okay, we'll look at that and see if we can do better.

Chair Lohman: And then to follow that same idea then, on number (3): "A use that is listed as a conditional use but" it "existed prior to the" update, and it says "for which a conditional use….has not been obtained is a nonconforming use." Are you talking about somebody has a conditional use but they did not go through the permit process, so it's an illegally – illegal activity then? Or was there maybe no requirement that they had a conditional use?

Ms. Stevenson: Yeah, this – you're talking about number (3), correct?

Chair Lohman: Right.

Ms. Stevenson: A use listed as a conditional use but it existed prior to the effective date of this master program, so they probably didn't need to get a conditional use for it at that time. So it would be considered a nonconforming use.

Ms. Ehlers: But then what happens to it?

Chair Lohman: But then what happens –

Mr. Pernula: It would still be legal.

Ms. Stevenson: Right.

Mr. Pernula: You just would have to get a conditional use permit if you wanted to expand it.

Ms. Stevenson: Right.

Mr. Pernula: It'd be a legal nonconforming use.

Chair Lohman: Can we maybe reword that a little better? I think it's awkward language also, because it doesn't really say that.

Ms. Ehlers: It's hard to make it *mean* that.

Ms. Stevenson: I was going to say some of this language is really hard to change. Number (2) is right out of what's in our existing code so we were trying to make it – and I agree with you. I think it is hard. I did have a lot of help, mostly from our attorneys, and nonconforming issues and uses – I will – we can go back and look at it and try to explain it better. But it's a tough one. So we'll take a look at that one, too, and make note of it and see if there's a way to describe it. Ryan has a pretty good sense of making things simpler but still saying what it needs to say in order to – nonconforming things are legally a problem, I think, in all zoning codes. So we'll take a look at it.

Mr. Greenwood: So once they got a conditional use permit prior to this current master program and they were legal then and they were conforming then, then why would they later be considered and labeled a nonconforming use?

Ms. Stevenson: Did you say if they got a conditional use permit?

Mr. Greenwood: Well, it says in (3) "…for which a conditional use permit…" – oh, it says, "has *not* been obtained."

Ms. Stevenson: "…has *not* been obtained…" Okay.

Mr. Greenwood: I see. But it's not like a grandfathered conditional – "…listed as a conditional use…" – why would you list it as a conditional use if it –

Ms. Stevenson: It's listed in our new program as a conditional use. So if you were to come in today to get a permit for whatever the use is that's happening there, you'd be required to get a conditional use permit if it was new. If it was existing prior to the program going into effect, then we now consider it a nonconforming use and it falls into that category.

Mr. Greenwood: Okay. I'll have to digest that a little bit.

Ms. Stevenson: So we would allow it to continue –

Mr. Greenwood: Right.

Ms. Stevenson: – to operate, but if they wanted to expand or do some other things they'd be required to get a conditional use permit. I know it's confusing.

Mr. Greenwood: Oh, that's okay. No, that's fine, that's fine.

Ms. Stevenson: It's pretty standard language.

Mr. Greenwood: Yeah. Okay.

Ms. Stevenson: But it *is* confusing.

Mr. Greenwood: I just thought it was a little bit similar to the single-family residence that had been established when – under their pre-existing legal conditions and then they were labeled "nonconforming" because the rules changed. And so they were actually – that label was removed and now, through legislation, they're considered conforming. Right?

Ms. Stevenson: Only for single-family –

Mr. Greenwood: I know. I know, but it seems pretty parallel.

Ms. Stevenson: – and these are uses and not structures.

Chair Lohman: Use.

Mr. Greenwood: Yeah, but this seems like a parallel situation. I know it's not exactly the same.

Ms. Stevenson: The legislation didn't include that, though.

Mr. Greenwood: Well, maybe the next one will. I don't know.

Ms. Stevenson: Yep, maybe it will. Maybe it will.

Mr. Greenwood: Yeah. Because I'm sure people will be upset.

Ms. Stevenson: Okay.

Chair Lohman: Carol, go ahead.

Ms. Ehlers: If you have a house that is partly within and partly without – you know, it straddles the line – and under this you could only add 200 square feet – there's a bunch of houses I know that were built in the '40s and they aren't very big and you've got four kids you have to put in it and you'd have space for two, or maybe one. Does this mean that the sensible thing to do would be to build an accessory dwelling unit back on the rest of your property that is more than 200 feet outside?

Ms. Stevenson: Your first reference to 200 – let me clarify – was 200 square feet, correct?

Ms. Ehlers: Yes. That's on page 3.

Ms. Stevenson: Okay. Right, right. Now that is a minor enlargement or expansion that you can do without needing any kind of – it's just – you can get approval if you meet those things. You can apply for something that's larger than that. That's just the initial, first blush.

Ms. Ehlers: Good, because I remember discussions under the critical areas ordinance where the world would collapse if you wanted to increase it by 2*10* feet. So I'm glad that doesn't apply here.

Ms. Stevenson: Right.

Mr. Easton: I know Matt wants to talk, but I'd like to follow up on this, if that's okay. Matt, is that all right?

Mr. Mahaffie: (inaudible)

Mr. Easton: Refresh my memory unless – you may have told me already: Why'd we pick 200 square feet?

Ms. Stevenson: That's what's in the critical areas ordinance now – things that are allowed to happen without requiring critical areas review.

Mr. Easton: Okay.

Ms. Stevenson: So it wouldn't be in conflict with something that we would require under the critical areas ordinance. I mean, I guess _____.

Mr. Easton: And your concern would be if we did that that it's going to create a conflict situation for those that apply that where both acts would apply?

Ms. Stevenson: Right. If we made it bigger under the Shoreline Program but that restriction was still in the critical areas ordinance, then –

Mr. Easton: It's probably good, too, for the audience's sake to clarify that it wasn't Ecology-driven.

Ms. Stevenson: Okay.

Mr. Easton: That's part of why I asked the question.

Ms. Stevenson: Right. Okay. No, at this point it wasn't Ecology-driven.

Mr. Easton: Trust me – I blame them for plenty of things but I won't blame them for this one.

Ms. Stevenson: Yeah. We were just trying to make it compatible with what's in our existing code.

Mr. Easton: Okay.

Ms. Stevenson: That's a good question. Thank you.

Daryl Hamburg: Just to clarify that, Jason, because I tested that with Betsy and got kind of shut down.

Ms. Stevenson: Oh.

Mr. Hamburg: Instead of kind of a square footage I –

Mr. Easton: Percentage?

Mr. Hamburg: – presented a percentage.

Herb Goldston: And I'll make my comment on that, too. Instead of putting a number on it or a percentage, I mean the whole concept here is to have it not adversely affect the ecologic function. And one way of really thinking about this is to really allow a little more flexibility for the site, as well as the landowner to expand his –

Mr. Easton: Right.

Dr. Goldston: – now legally conforming structure in a way that doesn't adversely affect the ecologic function.

Mr. Easton: Right – which I like about the – you know, I mean the expansion maps that you provided last time you were here a month ago, Herb, I think really made that kind of clear in a visual way that this 200-foot – 200 square feet – is actually not negatively impacting the waterward side of – you know, and the issues that would be spelled out.

Dr. Goldston: If it went beyond that it still could not have an adverse effect on ecologic function.

Mr. Hyatt: There is a threshold.

Dr. Goldston: In other words, a threshold that the Administrator could exercise if he feels that it exceeds that.

Mr. Easton: If they're _____. Right.

Dr. Goldston: Then it requires a –

Mr. Easton: Right. It requires them to go to the next level but it's – sure. I think this actually leaves people in a better position. I mean, like I think of the lady who testified last time who was dealing with some issues. Now, granted, her lot size is not working in her favor, which is an issue that's going to come up in a lot of – some places – not as much on the creeks as it is on the saltwater. But there is an additional level of flexibility that I don't think other versions of the code would have allowed and I think that's healthy – that still protect the core issues that matter in the plan. Matt had his hand up, Madame Chair.

Mr. Mahaffie: I'm still hung up on single-family residence. Any discussion?

Mr. Easton: You mean on the definition?

Mr. Mahaffie: Yeah. And as far as appurtenant structure, is a pre-existing appurtenant structure a pre-existing structure legally if there is not a technical single-family residence? Is a garage on a shoreline lot that doesn't have a house? I know numerous lots of people – some are on Guemes and they have a garage but they don't have a house. Or things that are permitted as garages, pole buildings or the park model at Lake Tyee or places like that. So can it be an appurtenant structure without a house attached to it?

Ms. Stevenson: According to the change in the state law – the RCW 90.58.620 – yes, because it says, "For purposes of this section, 'appurtenant structures' means garages, sheds and other legally established structures." It doesn't include bulkheads or other shoreline modifications or overwater structures. But to go up above that –

Mr. Mahaffie: Yeah, that's what I was looking at – above that.

Ms. Stevenson: It says, "Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following to be considered a conforming structure: Setbacks, buffers, or yards; area; bulk; height; or density; and Redevelopment, expansion, change with the class of occupancy, or replacement of the residential structure if it is consistent with the master program, including requirements for no net loss of shoreline ecological functions." So, basically, it can be considered conforming.

Then the next one talks about appurtenant structures as well, and it includes both of them, so I guess my interpretation of that – it could be wrong – would be the answer to your question would be "yes."

Mr. Mahaffie: Yeah, I was just looking at that sentence right above it.

Ms. Ehlers: Betsy, would you give us that citation, please?

Ms. Stevenson: 90.58.620.

Ms. Ehlers: Wait, wait, wait. 90.58 –

Chair Lohman: I think she gave it to us at a prior meeting.

Ms. Ehlers: I know, but I – look, this –

Chair Lohman: I agree.

Ms. Ehlers: This is heard by people separately from another meeting, and the more references we can give them to find the original document the better off we're going to be later. So 90.58 – what's the rest of that, Betsy?

Ms. Stevenson: .620.

Mr. Pernula: .620.

Mr. Axthelm: Six, two, zero.

Mr. Mahaffie: So I guess my follow-up to that would be, Would a garage still be *permitted* under the single-family residence rules if it's *just* a garage?

Ms. Ehlers: So the .620 in 14.26 and the .620 in the RCW coincidentally are the same number.

Mr. Easton: I think Matt was raising an additional question.

Chair Lohman: Matt. Matt is talking.

Mr. Mahaffie: I got my answer.

Mr. Easton: What was the answer?

Mr. Mahaffie: I think so.

Mr. Easton: "I think so"! Really? That seems like something we can get a clarification from the lawyers.

Ms. Stevenson: Based on that language, I'd say the answer is "yes," but we can certainly get a clarification for you to make sure.

Mr. Mahaffie: It's pretty important to me. I mean, I do see those quite often.

Mr. Easton: It's a good basket point.

Chair Lohman: 90.58 –

Ms. Stevenson: .620.

Chair Lohman: RCW.

Ms. Ehlers: So it is the same as the .620.

Chair Lohman: Just coincidentally. I have a question on your over-water structures.

Ms. Stevenson: Okay.

Chair Lohman: You have a place holder note. Are you going to bring us more then?

Ms. Stevenson: I certainly can.

Ms. Ehlers: Do we have many?

Chair Lohman: Are you in – because in an earlier section on page 2 on Pre-existing Structures under over-water structures, number (1)(b), you said "…structures located in hazardous areas, including floodplains and geologically hazardous areas…" So I want to know if .630 is including floodplain in your hazardous area.

Ms. Stevenson: We actually took the reference out – to hazardous areas – right? – except in the title, it looks like. Yes? Yeah, we did. Yes, because we referenced the flood damage prevention ordinance and that was part of why I wanted to coordinate with some other staff who work with some of our other code sections so that we weren't putting something in here that was at odds with what's in a different program.

Chair Lohman: Well, I was envisioning – because one of your sentences, "The intent here is for the eventual elimination of these over-water structures…" and it goes on a little bit further. I was thinking of things like pump stations. I'm thinking of our drainage district, for example, that uses tide gates, but there could be a – the reality is those tide gates are getting silted in more and more frequently, so maybe we're going to have to go to pumping more. And if we have to go to pumping more we're going to have to install more pumps, so then our pump house is too small – our current pump house. So I want to make sure that – that would be probably an over-water structure, correct?

Mr. Lipscomb: Are you asking me?

Chair Lohman: Yes.

Ms. Stevenson: Depending on where the pump is located – if it's within the channel of the watercourse. I've seen them both ways.

Chair Lohman: They're all over. I mean, there's a bazillion ____.

Mr. Hyatt: Some don't have over-water structures; some have them.

Mr. Axthelm: Would that be considered a structure or utility? I mean, if it's necessary for a utility, does that give it the exemption?

Ms. Stevenson: Not necessarily.

Chair Lohman: It falls under the word "use."

Mr. Easton: Why are we using language that says – that we're eventually moving away from them?

Ms. Stevenson: We were thinking more in terms of –

Chair Lohman: A dilapidated dock.

Ms. Stevenson: Well –

Mr. Easton: No, you know, there's a difference between docks and over-water structures.

Ms. Stevenson: Right, right.

Mr. Easton: Just for those at home –

Ms. Stevenson: Right.

Mr. Easton: – that might be concerned that the County staffer is discussing the idea of getting rid of all docks eventually. That's not what we're saying.

Ms. Stevenson: We have some old cabins, there's old shed/warehouse kind of facilities that are just hanging, ready to fall down –

Mr. Easton: Right.

Ms. Stevenson: – that are actually out over the water that were built a long time ago or may have been built on piling and a lot of the piling has deteriorated.

Mr. Hyatt: Boat houses, beach houses.

Ms. Stevenson: That's more of what we're considering here than pump stations, but perhaps we need to clarify that because –

Chair Lohman: Well, since you have a placeholder I think I'd – I'm saying I would like to see the language.

Ms. Stevenson: That's part of why I put that in there – because I thought of some other instances where I thought, Ooh, I need to be – I don't want to start writing stuff in here that would affect other types of things.

Mr. Greenwood: What about bridges? Aren't those over-water structures as well?

Ms. Stevenson: Yeah.

Mr. Greenwood: Yeah. We don't want to get rid of all of those. And when they're crossing they're going into hazardous areas oftentimes. They're going into a gorge-type of situation or a near gorge on smaller shorelines and those would be considered hazardous areas, but not necessarily a problem.

Ms. Stevenson: Right. I'm not sure too much about the use of this section, whether it's making it more complicated or less, so we'll take a look at that as well. But I think if you have any other ideas – the pump station, the bridges, all those sorts of things – if you have others, that helps.

Mr. Mahaffie: It's just kind of thrown me – over-water structures – just how it reads when __ .610(1)(b) and you mention floodplains. It kind of makes it sound like it's one and the same, that the house and the floodplain is an over-water structure, just the way it reads.

Ms. Stevenson: Okay.

Chair Lohman: Because it says "…structures located in hazardous areas, including floodplains…"

Mr. Mahaffie: "…including floodplains…"

Ms. Stevenson: Okay.

Ms. Ehlers: You might want someday to build houses in the floodplain similar to what they do in Bangladesh where there're structural buildings made of concrete block on pilings that go down, and the floodplain flows underneath it. If they can survive the tidal surges down in Bangladesh they might do well in whatever the flood committee's going to end up doing here.

Chair Lohman: Or those houses in other flood areas that rise and fall with the…

Anymore on this section from the Planning Commission?

Mr. Greenwood: I'd just like to have Betsy clarify what the intent was. So if you can start with the intent then you can work towards identifying that, and then not so much confusion for folks.

Ms. Stevenson: Good comments. I appreciate that very much.

Chair Lohman: Anything from the Committee?

Mr. Lipscomb: Nothing that hasn't already been discussed.

Chair Lohman: Okay. With your permission, let's move on to item number 4 Miscellaneous, and, Dale?

Mr. Pernula: Okay.

Ms. Stevenson: Thank you for your time – very much.

Chair Lohman: Thank you, Betsy.

Mr. Pernula: Okay, a few months ago I approached the GIS Department. What I wanted to do is create a map of Skagit County where we could show on a map all of the proposed public hearings that are coming up. Someone would be able to go to our department and see a dot in their neighborhood and be able to click on the dot and see that there's a public hearing scheduled before the Planning Commission or before the Hearing Examiner or the Board of County Commissioners. While they had already begun a different map, which locates all the existing building permits that have been issued in Skagit County, what are mapped here are those from June 1 to October 16, 2012. What you can do is click on any one of those and it'll tell you the details: what the permit's about, where it's at, and so on. This is not available to the public yet. In fact, they're trying to use a different base map so that people with different kinds of computers are able to call it up. But it's well underway. This is something that will be deployed to the public. This is all public information that's available in our office. Nobody works on it. It's just taken from our database and put onto a map.

What we want to do, though, is do the same thing for people who have applied for discretionary permits before the Hearing Examiner or Comprehensive Plan amendments or anything like that that will be coming to the Planning Commission or to the Board of County Commissioners, map them in a similar manner. You'll be able to click on it, find out the pertinent data. It's just information available to the public that we're trying to provide a better service so that people will see what's happening in their neighborhood and be able to attend hearings. And as it becomes more and more available, I'd like to have your input and see if there's things – how we can improve it

over the years. I think it could be done for not only permits but it could also be road projects. We might have a road that's going to be closed or that's going to be improved. We'll have a red line across it and it'll say that it'll be closed from August 1st to September 30th – or whatever. Park improvements – various things like that.

But for the time being we're going to have it available for issued permits and we're going to do it annually. Starting January 1st will be a new map. We'll have one by the end of next year for all of 2013. You'll be able to go to each of the year's permits that were issued and click on it and see what they're about. But I think most importantly is the public hearing map where you're able to see what's coming up and where you can comment.

Anyway, that's all I wanted to mention – is that we're working on this and we should be well underway before too long.

Mr. Easton: A question for the Director on another topic?

Chair Lohman: Go ahead.

Mr. Easton: How goes the search for number nine?

Mr. Pernula: (We've) got a couple interviews scheduled, and hopefully within the next few weeks we'll have another appointment made.

Mr. Easton: Excellent. And then I got a call today from a citizen who was looking for information about how the process is going to proceed with – how the conversation with the community's going to proceed and when and where, on the Northern State property. And I'm just wondering if – especially on two major topics right now where we tend to get phone calls – I don't know if anybody else is, but I'm getting stopped or getting phone calls about Northern State and I'm getting stopped and asked about Tethys and Anacortes's application for potential expansion of the UGA. There doesn't seem to be a resource that's simple on the County website that talks about what's going to happen next. These things are really out in the public, I mean, partially because of the press, and so people are, like, wondering when they can comment, when they can learn more. Is there anything that you might be able to do to kind of help with that? I directed them to call the Department.

Mr. Pernula: Okay.

Mr. Easton: Because, you know, I mean – but if there was something to point to them on the website that might be helpful.

Mr. Pernula: Okay.

Mr. Easton: Just about what the future timelines are – not necessarily any of, you know, a lot of detail on it, but…

Ms. Ehlers: According to the *Herald*, Tethys is going to be able to build entirely within current Anacortes.

Mr. Pernula: On the first issue, the Northern State property, Planning and Development Services has not been involved in it. You probably know there is a hearing scheduled – I believe it's December 13 – on the issue, but we haven't been involved. I will be there and I'll be asking questions of the promoter to find out exactly what it is, what permitting requirements they're going to have – that kind of thing.

Mr. Easton: Okay.

Mr. Pernula: So you know just about as much as I do. I will be attending that meeting.

On the Tethys project, we're still waiting for some additional information to augment their application. Even though they may have enough land in the city of Anacortes to do their project, as far as I know we're still working with the modification of the UGA. And so those issues will be coming up over the next several months.

Mr. Easton: Okay. Thanks.

Ms. Ehlers: I've been getting phone calls about the public comment process on this. People say that there was a deadline of June 29th and there were public comments but people have turned in things – like Tom Stowe did last month – and other people are interested and they don't – there needs to be something on the website –

Mr. Easton: Are you talking about the Shoreline Master Plan?

Ms. Ehlers: I'm talking about the Shoreline Master Plan. There needs to be something on the website which makes the process clear and at which point letters can be turned in. There are people who would like to raise questions so that issues are dealt with at the draft level instead of waiting until a final draft is ready and *then* you take comments. It's an essential point of, Do you raise a question when it's almost cast in stone or can you raise a question before it gets there? And that's a valid issue since many of the people haven't been able to see but bits and pieces. And they look on page 19 and there's nothing there. It's – you've heard it too.

Mr. Greenwood: I think you're striking Tim's chord there a little bit.

Mr. Hyatt: Not necessarily. We've been involved from the early stages. I was reminded of a comment I heard from John Watts, a former City Council member in Bellingham. He was fond of saying there were two opportunities to comment on the

proposal: before anything was really known about it and after it was too late to do anything about it.

(laughter)

Ms. Ehlers: Right, and that's where I'm getting concern from long-distance phone calls saying, I can't find this. And it's, I think, a testimony to how useful your website has been and how important it is, which is good, but then you get used to the idea it's got all this information and here's this hole. But most of us do not like comments that are brought in after we think we've solved something completely and then someone says, Oh, by the way, you forgot…and that's what these folks are raising to me. So I'm raising it to you for you to think about over this next month.

Mr. Pernula: Okay, I'm glad you didn't ask me to respond right now because that is something that'll take some additional thought, and coming up with a program of where we will have enough of a body of the document to actually make some comments about.

Ms. Ehlers: Some of these people are concerned deeply about the boating and the docking issue. And, you see, there wasn't much given us.

Mr. Pernula: Okay. That's all I have.

Chair Lohman: Okay, the next item is the Public Comment and I remind the public that this is not a public hearing so your comments will – while they'll be recorded – are not part of the record.

Mr. Easton: Is there a time limit?

Chair Lohman: Three minutes. Are you keeping time for me?

Mr. Easton: I can if _____.

Chair Lohman: Okay. You can be the timekeeper, Jason.

Tom Stowe: My name is Tom Stowe. I reside at 15750 Quiet Cove Road – Quiet Cove Drive, rather – in Anacortes, or South Fidalgo Island. And I won't repeat any of the things that I said the last time we met. That isn't what I'm here for tonight.

I am – excuse me – I'm somewhat confused about a couple of things that happened here tonight and I would like some clarification, so these are kind of in the form of questions. My property is now zoned Rural Residential. The chart refers – given out by Ms. Stevenson – refers to "Shoreline Residential." Have I been rezoned? If so, when was I notified and what is the definition of "Shoreline Residential"? I'm hearing a great deal of silence so apparently no one knows the answer any more than I do.

Another issue in these – by the way, I tried to get this document which Ms. Stevenson apparently wrote last Thursday or Friday – whatever – I tried to get it online. It wasn't online in my – as far as my computer is concerned, so I saw it here tonight for the first time; therefore, I'm not able to ask all the questions that would be obvious that a document like this should require. But a couple of them I do see. One has been discussed by Ms. Ehlers – and, by the way, I want to compliment all of you. You're asking very good questions, as far as I'm concerned. The definition of "legally established": I've got a home that was built originally in 1926. There weren't too many permits being issued in 1926. It's been added to and added to and added to over those times, and as far as I'm concerned, those changes, some of them may have had permits, some of them may have not. I bought the property thirty-five years. There was quite a bit done to it before I bought it. I've gotten some permits since I had it. Some of those permits you can't find online, you can't find in the file. They're gone. Anything – apparently – prior to 1990 is a mystery. At least it's not something that you can rely on so, therefore, somebody's going to have to determine "legally established": What is it and what does it mean? Are you going to say that the house that's there is legally established? That would be a good way to do it, but it's going to take an inventory – a house-by-house inventory – for somebody. Now you've got an assessor who has been out on the property many times and who has a type of sketch – not necessarily accurate but a rudimentary sketch of the improvements. Is that going to be accepted? These are questions that somebody has to answer. This "legally established" could be a real thorn in your sides.

Anacortes City adopted a shoreline management code section. It appears, from my cursory examination, that it's going to be somewhat different than what you're proposing here. Has any consideration been given to that ordinance in the writing of this ordinance?

Last question – oh, by the way, this chart, I finally figured out how it – I found this chart to be a little bit on the confusing side – that is, the four-section chart that Ms. Stevenson prepared. I've begun to understand it and I appreciate what she's doing, it's just that with the new designations under the Marine and Lake section, I don't know what they're talking about. These are designations we don't have, at least the public doesn't have. What is a Rural Conservancy? What is an Urban Conservancy? Do you have a definition for that? Is that a part of a code, a new code?

Chair Lohman: Mm-hmm.

Mr. Stowe: Has it been adopted?

Chair Lohman: No. That's what we're – what these work sessions are about.

Mr. Stowe: Well, when are we going to see that so the public can see that? I didn't know that it was available.

Mr. Nickel: It's part of the working draft.

Chair Lohman: It's part of the working draft.

Mr. Stowe: Which we won't see until December or whenever?

Chair Lohman: It's on the website.

Mr. Stowe: It is in the – those definitions are in that?

Chair Lohman: Yes.

Mr. Stowe: Thank you. I did not know that. That document is not the littlest thing you've ever put on the website.

Chair Lohman: No, it's not.

Ms. Stevenson: I can send those to you, if that would help.

Mr. Stowe: I was confused – the four gentlemen in the front are in this Committee, appointed Committee. The gentleman on the end I was – his questions about having some sort of super authority to look at things, is he speaking for himself, for his employer or for the Committee?

Mr. Hyatt: Do you want me to answer that question?

Chair Lohman: You can.

Mr. Stowe: Since I don't know you, I can't define you any better than that.

Mr. Hyatt: I work for the Skagit River System Cooperative and we represent two Indian tribes with –

Mr. Stowe: You represent the Swinomish?

Mr. Hyatt: For natural resources, yes.

Mr. Stowe: So I'm presuming that the tribal authority would extend to the reservations, but are you saying that the tribal authority extends outside the reservations?

Mr. Hyatt: We seek to protect the fishery on which the tribes have always depended.

Mr. Stowe: That's a kind of a not-exact answer, but…

Mr. Hyatt: We do not have land use authority off-res.

Mr. Stowe: Thank you. That's what I understood. Therefore the Planning Director over there was correct in that another body would have to be legally established if you're going to have any kind of super authority over anything. It can't be just done by the Commission or the staff deciding to turn something over to somebody else to look at. It would have to be done –

Mr. Hyatt: _____ be public information.

Mr. Stowe: Your comment would be a part of the *public* comment, as opposed to being a specific authority that you had to go through.

Mr. Hyatt: That's your opinion.

Mr. Stowe: Thank you. That is what I have to say tonight. I –

Chair Lohman: Your time, sir.

Mr. Stowe: Pardon?

Chair Lohman: Time. *Time*.

Mr. Stowe: Time? You mean I'm done?

Chair Lohman: Yes.

Mr. Stowe: I am done – talking.

Chair Lohman: Thank you.

Howard Gully: My name is Howard Gully, 15815 Yokeko Drive, the south end of Fidalgo. I'll take my last comment first. Mr. Pernela – did I pronounce that right?

Mr. Pernula: Pernula.

Mr. Gully: Okay. Your map idea is brilliant. Some of the things that came up here I was going through and I was saying: How can we find that out, and particularly in regards to the comments you had. I'm glad we got that solved because I was – one of my comments was: Who's the 'we'?

For people that want to find out something, if they had a map like that and it was available to the public that's outstanding. So I, you know, three stars for that one.

The next thing that it is is that – probably part of this is due to my multiple decades of being around jet engines, but we spent a lot of money on public address systems. It'd be a good idea if they were used, particularly some very talented people I know here in the room but you're of the female gender and you have a tendency to talk a little lighter _____ and, therefore, it's –

Ms. Stevenson: Who, me?

Mr. Gully: Well, it – let's see, what do I say? If the shoe fits…yes, that would be a great help and should be part of the system here. You might also turn the volume up a little bit.

I spent a lot of years, of course, in Uncle Sam's military and we worked for years and years trying to eliminate acronyms. We started acronyms because of the code languages and – you know, in order to send code systems. But unless you're the insider, and the general public may not understand when you start talking about everything in acronyms. Acronyms might be appropriate for writing on a blackboard but when you talk people shouldn't talk in acronyms.

Now to the things here. Question: I heard it said that setbacks and buffers were not separated. Would that mean that a setback can be added to a buffer, or that's what's intended? A question.

Mr. Greenwood: I would think they'd be overlapping.

Mr. Gully: One would replace the other one?

Chair Lohman: No.

Mr. Greenwood: No, I would think they'd be overlapping with different functions.

Mr. Easton: There are potential situations where they could both exist.

Ms. Ehlers: There's a spot in the critical areas ordinance where you have a buffer and a setback.

Mr. Easton: Right.

Mr. Gully: So if I'm on a shoreline and I've got a 200-foot buffer and then you're supposed to have a setback beyond that, too?

Chair Lohman: Yeah – potentially.

Mr. Easton: Potentially.

Ms. Ehlers: Wait a minute, folks. If the law only applies to 200 feet, how do you regulate beyond it?

Mr. Hughes: Let's let the experts answer the questions.

Mr. Gully: Yeah, I really think we need a definition of that one.

Mr. Easton: Dave weighs in! I like that. It's good.

Mr. Gully: Is the definition forthcoming now or later?

Chair Lohman: Go ahead.

Ms. Stevenson: Do you want us to?

Chair Lohman: Sure.

Ms. Stevenson: I wasn't sure. Okay. There is such a thing as a maintenance area. I don't know that that helps but there is such a thing as a maintenance corridor, because we have run into situations where somebody has built right on the edge of a buffer. And then when they go to do maintenance on that they end up damaging that buffer if it's a fairly sensitive area. It's not all the time and it's not everywhere, but I think there are provisions in there that would allow us to put that in if we need to or we feel that there is something within that buffer that needs to be protected.

Mr. Gully: Okay, that clears it up as well as mud. Definition of Shoreline Residential. And this may be something that, you know, if we had a map that said, Okay, these areas are Shoreline Residential.

Ms. Stevenson: There's a map online.

Chair Lohman: Yeah.

Mr. Greenwood: There is.

Chair Lohman: There is.

Mr. Gully: Is there a map online that says "Shoreline Residential"?

Ms. Stevenson: Yes.

Chair Lohman: Yes.

Mr. Easton: Yes.

Mr. Gully: Thank you.

Ms. Ehlers: But, Howard, one of the things I checked with Kirk Johnson a couple of weeks ago is that on Fidalgo there are many areas that are zoned Rural Intermediate and that puts them in what the GMA refers to (as) a LAMIRD. Don't ask me to spell out what LAMIRD means. It's one of those acronyms you don't like. But I asked Kirk if it were not the case that everything in the Rural Intermediate – that's blue on the map – zone is not by a definition – by the zone – a residential property, and he says it is. I don't yet find a complete correlation between that GMA zoning map and the map that's in these documents. And that *should* be the same, because if you're Rural Residential under the one set of laws, you also ought to be under the other set.

Chair Lohman: Not ___.

Ms. Ehlers: Well, then, you see, there's going to be difficulties.

Mr. Easton: I agree.

Ms. Stevenson: They're different definitions.

Chair Lohman: They're different.

Mr. Easton: Time.

Chair Lohman: Time, sir. Your three minutes are up.

Mr. Easton: We went a little longer than the three minutes.

Chair Lohman: Yeah, I know you did. Anybody else from the public?

Ed Stauffer: Good evening, Commissioners. Ed Stauffer. I live at 580 feet in the foothills of Chuckanut Mountain near Alger. At the two previous meetings of the Commission on this subject I asked the staff to go to a definition of the stated purpose and goal of this project, of this grant, of this exercise. I asked for a definition of that goal which is called "no net loss of ecological function," and until you have your goal defined, I find it impossible in process to legitimately design a program which achieves that goal. And I think you need to be careful that the definition isn't supplied when you're done with your work.

Number two: I think I've attended every one of your sessions on the shoreline deliberation. I also attended the initial kick-off presentation. It's my opinion – and I've expressed this before – that we have an existing shoreline management program that we've all lived with for a very long time. It may be aged but I would suspect that part of the function and the ability of the Planning Commission as appointed is to generate understanding and need for revisions to our existing plans. And that's further enhanced

by having a locally-appointed citizen (sic) of experts who are aware of the on-the-ground conditions here at our county. My impression is – given Mr. Nickel's statements in presenting this program at the initial kick-off – is the mandate to do the update, the content of the update, the structure of the update, the components of the update were given to us by the grantor. And we have a representative, a consultant, from the grantor which is advising every step of the way of our staff which on every occasion – on the record – has been delivered late to you on your agenda without chance to review the materials. And I, as a member of the public, am repeatedly reminded by County legal representatives that, as a member of the public, I will have my opportunity to review whatever winds up having been written by a posting ten days prior to your deliberation in front of the public. And then I'll probably have three minutes to say something.

Now if Commissioner Ehlers is having trouble getting the information and internalizing it and dealing with it, how in the world do you expect the public to do a decent job in communicating with you? I think you need to look at this from a different perspective. What I hear in the testimony is one more attempt to compromise residential land use in the rural areas of Skagit County. I do know that on the TDR Committee, of which I'm a seated member, that the TDR Committee members were not presented with information relating to or germane to our existing plans. We were presented a plan and an expert consultant from above that came with the grant to do a TDR investigation without background. Here are the materials that we were given for background and review. They weren't supplied by people from Skagit County. So you were given an update. As a member of the Committee I have to help clarify that. The last meeting was about sending areas. Before we did that I asked the question: Please define "transfer of development rights." The answer to the question was they are only talking about rural residential development rights of homes. That's what a rural development right is. What's the transfer of it? In the documents, if you read, it is permanently removing from the title of the land the right to do a residential development.

My second question: Do not the urban areas, the incorporated areas, have the right and the responsibility to determine whatever development rights they wish within their own jurisdictions? And the answer was: True. So when you look at development rights, who's going to sell what to who? And it's a shell game. It's creating I don't know what.

So the next time we're going to be talking about receiving areas. Now I understand that there's some special deal that the City of Burlington has going that may have some other implications, may have some uses. We'll be open-minded to that.

I know I'm out of time.

Chair Lohman: Time, sir. Sorry.

Mr. Stauffer: Thank you.

Chair Lohman: But thank you very much.

Ms. Ehlers: Question. Only ten days' notice for something this complex? That's what they did to us –

Mr. Stauffer: Legal requirement. Period.

Ms. Ehlers: *Only* ten days? That's what you did – what was done to us in 2000.

Mr. Easton: But maybe we should let him respond first.

Ms. Ehlers: I think you need more than a ten days' notice.

Ms. Stevenson: These are study sessions.

Chair Lohman: Dale?

Mr. Pernula: Well, these are – right – these are study sessions right now.

Chair Lohman: Right. These are work sessions.

Mr. Pernula: As we have public hearing or public hearings we can have the advertisement at *least* ten days but at whatever level that is deemed appropriate for the proposal. I really don't want to propose something that doesn't have good public input or isn't appropriate, given all the work that we've done on it. I know that we've got a – we're supposed to have something done by the middle of next summer but if it takes a lot longer than that I don't care. That's fine with me. I want it done right.

Ms. Ehlers: Good.

Chair Lohman: Right.

Ms. Ehlers: Good.

Chair Lohman: Okay, and a reminder that tentatively scheduled for February 5th –

Mr. Easton: There might be one more person who wants to speak.

Chair Lohman: I'm sorry. Was there anybody else from the public that wanted to speak?

Mr. Stowe: Another three minutes, please. Then I'll complain to the Commissioners.

Chair Lohman: Okay, I just wanted to remind the Commissioners that we've tentatively written in on February 5th that the TDR program *is* going to be on the agenda.

Mr. Easton: Do we have a January meeting planned?

Chair Lohman: Dale?

Mr. Pernula: Yes. Instead of the 1st, I'd like to reschedule it for the 8th, if that's okay.

Ms. Ehlers: By all means!

Mr. Easton: Yes, that would be great.

Chair Lohman: That would be great. And that would be our meeting also where we elect a Chair.

Mr. Easton: And Vice Chair. Annual meeting.

Chair Lohman: Okay, do I have a motion to adjourn?

Mr. Easton: So moved.

Chair Lohman: Then we are adjourned (gavel).