Skagit County Planning Commission
Short Course Supplement; GI Study; TDR; and Bylaws
June 4, 2013

Commissioners:	**Annie Lohman, Chair**
	Josh Axthelm, Vice Chair
	Jason Easton
	Carol Ehlers
	Bob Temples
	Keith Greenwood
	Elinor Nakis
	Matt Mahaffie
	Dave Hughes (absent)
Staff:	**Ryan Walters, Civil Deputy Prosecuting Attorney**
	Dale Pernula, Planning Director
	Kara Symonds, Public Works Watershed Planner
	Kirk Johnson, Senior Planner
Public Commenters:	**Roger Mitchell**
	Ed Stauffer
	Ellen Cooley

Chair Annie Lohman: (gavel) Good evening. We're running just a couple minutes late – about four minutes after six. This is the Tuesday, June 4th, 2013, meeting of the Skagit County Planning Commission. I see that we are missing Dave Hughes and Keith, so they may be running late because of traffic. So we're going to go ahead and review the agenda. Are there any additions or changes to the agenda?

(silence)

Chair Lohman: Okay, seeing none we'll just move on to the public remarks. So if members of the public would like to make some opening remarks, if you could come up to the mic and say your name and your address, please. And we'll have fifteen minutes for this so that'll be at twenty after six.

Roger Mitchell: Good evening. Roger Mitchell, Bow, Washington.

Jason Easton: Point of order. Sorry, Roger. I'm – and maybe Ryan can address this – but do we need to make a statement every time we open this that these

are not recorded, you know, comments that don't go on the record? Do we need to make a statement about that every time? Because I know we have been and I was just concerned with making sure.

Chair Lohman: I know I have been but we've gone to having it published on the agenda so I just assumed that we didn't have to. Do we?

Mr. Easton: I don't want to second guess you. I just want to be sure.

Ryan Walters: I don't think it's really that big a deal to clarify. The whole point of that is that the public comment period is not the standard invited public participation process for any particular project. It's just the public comment period for the Planning Commission. I mean, there is a record but we're not associating it with any particular project or anything. It's just a little bit of inoculation. We added it to the agenda so that you make sure that you've got it in front of you and the public has it and it's written and so they can really understand it. Does it have to be verbal? No, probably not.

Chair Lohman: But we tried to change the name of it to "Public Remarks" to try to distinct – make it a distinction. Sorry, Roger.

Mr. Easton: Thanks, Roger. Sorry.

Chair Lohman: Go ahead.

Mr. Mitchell: Okay. I'll start again.

Chair Lohman: So you get new time.

Mr. Mitchell: Good evening, Commissioners –

Josh Axthelm: Time's up!

(laughter)

Mr. Mitchell: – and others. As I always do, I thank you for the opportunity to comment. I especially thank the Chair for restoring citizens' rights to speak at these meetings. Many in government seem to have forgotten the identical phrases in the Declaration of Independence and the Washington Constitution. Governments derive their just powers from the consent of the governed. The authority for everything you folks do, the Planning Department does, the County Commissioners do is by the consent of the governed. Citizens need more opportunities to tell you what we want from the government that *we* created. We need to be able to provide that input in real time when you're discussing and deliberating, not at some out of sync time on the agenda. We need to be able to tell you, for example, that 200-foot shoreline buffers are a regulatory taking and

we don't approve of them. That when we reject a proposed ordinance we don't want to see it reconsidered over and over again. That Bernie Madoff is envious of the Ponzi scheme that some call Transfer of Development Rights. That – and I dare say this – most people believe that humans have rights that cannot be superseded by salmon. Consent of the governed. Instead of citizens asking for a few more minutes to speak, like Oliver Twist begging for more porridge, government – you folks – should be asking citizens for their input in real time at every step of the way. If anyone else agrees with what I've just said, please raise your hand. Thank you again.

Chair Lohman: Okay, next.

Ed Stauffer: Good evening, Commissioners. Ed Stauffer, Box 114, Bow, Washington. I notice on the agenda that the next item on your agenda is you're going to be schooled in a short course on local planning. I've had occasion to go back through some of the laws about the formation of the Planning Commission and I'd like to briefly reiterate that and that we are a republic and a democracy by federal law. You were created as what's called an act that created you a planning agency. The planning agency in Skagit County consists of three parts, and I'm going to compare it to a statement from our founding fathers. This government is of the people, by the people and for the people. The lead head of the agency is the Board of County Commissioners. They are elected representatives by the people. Second came you, the Planning Commission. You are volunteer, private citizens that in the judgment of the Board of County Commissioners represents me and the other citizens of Skagit County. Your job is to advise and recommend to staff what they need to do to meet our needs. That is, you are *of* the people. We hire the third leg of the agency, which is the Planning Department, who are hired employees who are bid to do the work by you and the Board of County Commissioners. They have no role in the formation or implementation of policy. They are there to work for the people. Thank you.

Chair Lohman: Anybody else?

Ellen Cooley: I'm Ellen Cooley and thank you for the opportunity to comment. My comment has to do with the public remarks issue and where it's placed on the agenda. As someone with a background of extending educational material to fellow citizens, I think that the opportunity for the clarification of – I think a lot of people actually come to these meetings – cross construction zones, et cetera – to be educated. And it's your function, I imagine, to help the public understand what's going on. It would seem like being able to get input back from the public at other times during the meeting is appropriate. I have nothing against comments at the beginning of the meeting but when you're giving a class, so to speak, the most education you get in return – being an educator – is spontaneous reaction. Thank you.

Chair Lohman: Anybody else?

(silence)

Chair Lohman: Last call. Okay, seeing no more public remarks we'll just move on on the agenda to item number 3, which is a presentation. It's a Short Course on Local Planning Supplement. Ryan?

Mr. Walters: Well, good evening, Planning Commissioners. We prepared this Short Course Supplement sort of in anticipation of you attending the Short Course, some of which you've already seen because several of you have attended the Short Course before. I think most recently in La Conner there was one either last year or the year before, and there was one a couple of weeks ago in Bellingham. The Short Course tries to cover a lot of material in a relatively short amount of time, and it's not tailored for a planning commission. It's tailored for planning in general.

So what we tried to get together here is some material tailored not just for planning commissions but specifically for the Skagit County Planning Commission. There is a lot that goes into this so we'll try to cover as much as we can as succinctly as we can, but Commissioner Ehlers has requested that we also prepare some kind of written form perhaps with, you know, more narrative than is on the slides but that explains how that works. That will take some work, but I think we will produce that. It would be a good tool for future planning commissions and future planning commissioners.

Carol Ehlers: Something that you can look at and that the public can have to read that's on the Internet available so that – a mind being what it is, it forgets.

Mr. Walters: Right. There's a lot of work and a lot of synthesis that will go on to be able to produce that, but that's something we'll work on.

So, first of all, there's this list of relevant statutes and codes – and we had anticipated you would be able to see this mainly on your monitors – but first there's the 36.70, the Planning Enabling Act. We've talked a lot about that recently. That entire chapter is relevant to this discussion.

There's also RCW 36.70A. That's the Growth Management Act and it really does not talk about planning commissions but it does talk about public process, it talks about what it is we are trying to accomplish with county planning and also city planning, even though it's in the county title of the RCW, Title 36.

Then there's our code provisions. There's Skagit County Code 14.02, which is General Provisions. That includes some provisions specifically related to the Planning Commission. And there's also Skagit County Code 14.08, which is Legislative Actions, and the Planning Commission fits into that and the Board of County Commissioners fits into that.

Now to give you just a little bit of orientation to Skagit County Code, in case you need that, Title 14 is the Unified Development Code. It's where all of our land use regulations end up. Title 15 is related, but it's the Building Codes so not land use legislation – not planning but building codes.

So you're going to find, if you look through these statutes – and we're not going to show you all of them tonight – but you'll find that there's lots of repetition and lots of overlap. So it takes reading all of them together in order to come to the result. These are the ones that directly affect you. There're also others that you might find relevant. So we talked about 36.70, we talked about 36.70A. There's 36.70B, Local Project Review. That's review of permits. You don't do review of permits, but in case you were interested, 36.70B prescribes really quite a few rules for how the County reviews permit applications.

36.70C, Judicial Review of Land Use Decisions. Anything that gets appealed in terms of a permit – a permit appeal – 36.70C addresses that. There's also 58.17, Subdivisions. Subdivisions are regulated by an entirely different section of RCW. You also probably won't need to know this but, in case you're interested, 58.17. We have in our own Skagit County Code regulations that implement the subdivision statutes.

And then there's 90.58, something that you're dealing with right now in terms of the Shoreline Master Plan Update. 90.58 is the Shoreline Management Act, which directs us to do that. And as you may remember from the Short Course, there's a lot of interaction between GMA and SMA – the Shoreline Management Act. Because they were passed at completely different times, they are not a unified body of law. They have to be read together and it's complicated, and they sometimes have some conflicts. The legislature has made quite a few different little changes to try to integrate them, but they really are not an integrated whole. It's difficult to work through.

Those are planning-related statutes that are important, but there're also sort of statutes of general applicability to public bodies. Open Public Meetings Act – that's one of them – RCW 42.30. There's the Appearance of Fairness Doctrine, which really you don't have to worry about but it's a statute that frequently comes up in the planning field. And then there's RCW 42.56, which is the Public Records Act and it applies to everything government does.

Let's get into the formation of the Planning Commission. RCW 36.70.030 – this is in the Planning Enabling Act. This is *not* the method by which the Planning Commission is created. If you read it, it says, "By ordinance a board" – meaning the Board of County Commissioners – "may create a planning commission" – and I've broken it up into different lines to break up the phrases – "and provide for the appointment by the planning commission of a director of planning." Unsurprisingly, the Planning Commission does not appoint the Planning Director.

We don't use this statute. Instead we use RCW 36.70.040. It's the next one. It's an alternative. "By ordinance" the Board of County Commissioners "may, as an alternative to" the .030 that you just saw, "create a planning department which shall be organized and function as any other department of the county." They create the Planning Department and then they go on to create the Planning Commission. "…When such department is created, the board shall also create a planning commission." So you're organized under the Planning Enabling Act but, more specifically, you're organized under 36.70.040. The Planning Commission is instructed to "assist the planning department in carrying out its duties, including assistance in the preparation…of the comprehensive plan and recommendations to the department for the adoption of official controls and amendments thereto." At a recent public comment period someone suggested that your role is to supervise the Planning Department. That's clearly not the case under the statute.

Now this is important because this is your scope of responsibility. It's the Comprehensive Plan and the official controls. And "official controls" is the 1960's Planning Enabling Act term. The more recent term is "development regulations." But here's what the definition is in the Planning Enabling Act of "official controls": "…legislatively defined and enacted policies…all of which control the physical development of a county or any part thereof …and…the means of translating into regulations and ordinances all or any part of the…comprehensive plan." That's the 1960's Planning Enabling Act definition of "official controls."

Now it gives some examples – zoning, subdivision control, platting, adoption of detailed maps. That's what we're talking about. If we fast forward to GMA, which was adopted in 1990, the new phrase is "development regulations." You'll see it includes zoning ordinances. It also says in here "official controls." "Official controls" is right here. It's a little bit broader term. That's what we usually talk in terms of development regulations. And just to clarify, it is "the controls placed on development or land use activities by a county or city" – remember GMA applies to counties and cities – including…zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances…" I mean, it's ordinances. The critical areas ordinance is clearly a part of a zoning ordinance. Shoreline master programs, they are half comp plan policies and half development regulations. Development regulations includes all of this.

Now it's important to talk in terms of the division of authority, and I hope that you can see this chart because it gives a bunch of different examples of the types of things that the County does in terms of land use regulation and permits. On the left you have your list of examples. On the far left you have the two big categories, which are Legislative and Administrative. Your Administrative types of activities are issuing administrative special use permits and other special use permits; subdivisions; interpretations. These are broken vertically into three groups in the top half. These up here at the top are what we call Level 1 permits

and those are delineated in Skagit County Code. This group here in the middle are Level 2 permits, and then these here are Level 3 permits. There are also Level 4 permits but there are essentially none of them.

Level 1 permits, as you can see, there isn't really a recommendation because the staff make the decision on those permits, and then there's an appeal process. There is no future review of those permits unless someone appeals. And that process is "HE," which is Hearing Examiner; and then someone can appeal from that to the Board; and then if they want to go farther they can appeal that to court.

Level 2 permits – these down here – these include things like Hearing Examiner special use permits, or preliminary subdivisions that are greater than or equal to nine lots – and that distinction is actually a little bit more complicated than that. This is a simple table. But there's a recommendation by staff; there's a decision by the Hearing Examiner; and then if you want to appeal, the Board would make a decision on the appeal. And then beyond that there's court.

And then for Level 3 permits – see, it just steps it one step back – the Hearing Examiner makes a recommendation to the Board; the Board makes the decision; and then the appeal is directly to court. There's no further administrative appeal.

For each of these steps – the Level 1s up here, the Level 2s down here, and the Level 3s here – there are different levels for what kind of notice is given to the public and what opportunities the public have to participate in the proceeding. For a Level 1 permit, there's a Notice of Decision – unless it's exempt – and the Notice of Decision occurs at the time that the decision is made. There's no public hearing.

Down below in Level 2 there's public notice and then there's a public hearing and then there's a decision. And then for Level 3 permits there's public notice, there's a public hearing. The public hearing is held by the Hearing Examiner. And then there's a decision by the Board. In every case there cannot be any more than one public hearing. This is a really important distinction between permits and legislation, because for permits RCW 36.70B – the one that you don't really need to know about because it's permits – does say that we can only have – under state law – we can only have one public hearing – open record public hearing – on a permit application. Now that is very distinct, very different from the legislative process, and that's your area of influence.

The legislative process down here in the very lower half of the chart, there are two types of legislation that you weigh in on and that's Comprehensive Plan/Comprehensive Plan amendments and development regulations, the definition we went over before. The Planning Commission makes a recommendation and then the Board of County Commissioners makes a decision, and then if there's any kind of appeal, an appeal goes to the Growth

Management Hearings Board, not to court. It can only go to court after it's been to the Growth Management Hearings Board. So that's a really important distinction. Your role is basically entirely legislative and that rule on having only one public hearing doesn't exist for legislative matters. I think I'll answer your question in a minute.

So here's a –

Ms. Ehlers: That's not what we were told.

Mr. Walters: Here's a broad overview of the legislative process. Oh, quasi-judicial or legislative – that's the first question. Recent case law has indicated the one thing that you do weigh in on that's sometimes quasi-judicial – Comprehensive Plan amendments – are really not. They are legislative. Because what you're doing is you're deciding in a very legislative way with maybe more than one public hearing what our Comp Plan is going to read. Our Comp Plan is a piece of legislation. Now immediately after, or perhaps concurrent with, you might do a rezone if it is a map amendment. Rezones, on a site-specific basis, are very clearly quasi-judicial. But Comprehensive Plan amendments are very clearly legislative. That was previously not very clear. But today we have recent case law that indicates that Comprehensive Plan amendments have to be legislative. There's more discretion afforded a local government for a legislative action, and if they were the same there would be no distinction between them. Quasi-judicial applications, though – rezones – bring in all the stuff like Appearance of Fairness Doctrine and time limits for processing rezones and that kind of thing. Those are things that we don't actually have to worry about because you're never processing a rezone separate from a Comprehensive Plan amendment. Now that is not necessarily the case forever; that could change in the future. You know, we could set up a system where we have a rezone map that is different from a Comprehensive Plan map. But today we have one unified map.

Mr. Easton: So, you know, eight, seven years ago when I first came on, one of the examples was used that I've sort of driven home was if you had a vested interest in a piece of property that was the only property to be affected by a legislative decision that was somewhat of a gray area, then you would – we had sort of verbalized amongst the Commissioners we would make sure we disclosed and worked through with each other about whether we were – and with legal staff – about whether we should participate. So in some cases over the years multiple Commissioners have recused themselves because a particular change in the Comp Plan would directly affect their particular property. Mineral Rights Overlay was an example. There were examples with some property that was going to be affected by logging. And then when you have specific requests to change the Comp Plan that then would specifically benefit only one property owner – say, a water bottling plant that I own, say, 25% interest in – the way you just described it, I wouldn't need to disclose that then?

Mr. Walters: There is –

Mr. Easton: Because that doesn't seem to fit the Appearance of Fairness.

Mr. Walters: There're quite a few more details here. So Appearance of Fairness doesn't affect legislative decisions. It just doesn't. It says there right in the Appearance of Fairness Doctrine. But there're other things that might require you to recuse yourself. For instance, if you have an interest in a piece of property you may still need to recuse yourself. That's not necessarily Appearance of Fairness – it's conflict of interest.

Mr. Easton: Even if it's a legislative decision that may affect the property?

Mr. Walters: Yes, because it's a conflict of interest situation.

Mr. Easton: Okay.

Mr. Walters: So there's that distinction. Appearance of Fairness, you know, brings in all kinds of stuff. If you've had any kind of discussions you have to disclose the discussion, you know? Appearance of Fairness is a much broader doctrine that casts a much larger net than just conflict of interest.

Prior to case law making it clear that Comp Plan amendments were legislative, though, I mean, it was prudent to exercise an abundance of caution related ___.

Mr. Easton: So this is a recent change, in your opinion?

Ms. Ehlers: Since last fall?

Mr. Walters: Since last year, I think, yeah.

Ms. Ehlers: You mean I could have taken part last year?

Mr. Walters: Your particular issue was conflict of interest, not Appearance of Fairness.

Ms. Ehlers: My particular interest was whether I got destroyed and whether my neighbors were destroyed. That was the conflict.

Mr. Walters: Right. Financial interest in the outcome is different from the broader Appearance of Fairness.

Mr. Easton: So this is an addition, this is a change from what the Short Course taught us a year ago – last time we were – well, when I was in La Conner. This appears to be some clarification that's new.

Mr. Walters: Maybe. I don't –

Mr. Easton: That's my interpretation of it.

Ms. Ehlers: I agree with Jason. I think you should look ___.

Mr. Easton: Which is fine. I'm not arguing with you. I just want to make absolutely sure I was clear.

Mr. Walters: Right. Dale and I just attended the Short Course two weeks ago and we didn't hear anything contrary to this. But the La Conner one may have been – I don't know –

Mr. Easton: It may have just been my misunderstanding, too.

Mr. Walters: Yeah. I mean, if you're interested in the case law –

Mr. Easton: I think, in general, this Commission – I'll just say it with the public here and for the benefit of those at home – I would say that my experience in seven years with these types of issues, we've erred on the side of disclosure and a number of Commissioners have erred, to their credit, erred on the side of recusing themselves. I can't even go into the list of all of them, and I have a great deal of respect for them that they did that. But we've erred on that side. I mean, I don't think we played loose with this.

Ms. Ehlers: Mm-hmm.

Mr. Walters: That's right. And, as I say, it wasn't very clear prior to this. And it's prudent to be cautious. Because under the Appearance of Fairness Doctrine, if you do have an error then the result is reversal of the decision and you go back and you start over.

Mr. Easton: The problem that I run into is that there's just occasionally Comp Plan amendments that just really, legitimately are really – I really, really feel like they are literally just for Bill Youngsman. They're literally just for Tethys or just for Janicki Logging and so – now that's not who the applicant is – may not be who the applicant is, it may not be – or it may be, but we're in these positions where we're clearly ruling on *a* – it may be legislative on paper, but it's clearly going to affect a property just the same way that most city planning commissions then have to behave. And then we've developed this great relationship, I think, with the public where they've got our address – e-mail addresses – they know how to communicate with us – and then suddenly we're in this spot where we've got – you know, we've got people doing public records requests or we have to sit up here and disclose all conversations we've had about a particular piece of

property. So is there a way for the Department, particularly now with this additional definition, to be clear with us ahead of time? I mean, like –

Mr. Walters: Oh, yes.

Mr. Easton: – we know that potentially if Tethys gets – if Tethys' example –

Mr. Walters: Well, let's not use Tethys as an example.

Mr. Easton: If a Comp Plan amendment is about to be put on the docket that's going to appear before us, I can't not have ex parte communication before I know that it's ex parte communication. That's not really great English and I'm sorry.

Ms. Ehlers: Perfectly clear.

Mr. Walters: If an application isn't pending, if an application hasn't been made then there can't be ex parte communication. But also the ex parte communication issue doesn't apply if Appearance of Fairness doesn't apply. Because ex parte is an Appearance of Fairness Doctrine concept.

Mr. Easton: Okay. Well, that helps. Thank you.

Mr. Walters: I mean we could provide, I guess, much greater detail on this very single issue.

Mr. Easton: If it's possible. The one thing I would suggest – I'm not so much concerned about *me* needing any greater detail. If you all, particularly the Department leadership and the legal staff, recognize that we're walking towards one of these, the sooner you can tell us that this is one of those so we can manage our relationship with the public or the applicant. Most – I mean, part of the time what you run into in such a small community is that even if the applicant's a City, City leadership wants to talk to County Planning Commissioners. And that's a – you know, I mean those are – and it may not benefit – it may not be technically a legislative – I mean a quasi-jurisdictional issue, we'll need that clarification from you early on. Does that make sense?

Mr. Walters: Well, and actually the – and I think Dale might want to weigh in here – but I think that the fact that the courts have made it clear that it *is* legislative really frees you up to not have to worry about a lot of these issues. Because legislative things you can talk to whoever it is you want about them and you don't have to worry about making lists of your conversations for disclosure – that kind of thing.

Mr. Easton: That's the default that we're living in.

Mr. Walters: Yeah, your e-mails are a different situation. Public records are governed by the Public Records Act. But the Appearance of Fairness Doctrine issue goes away when things are actually legislative.

Ms. Ehlers: We need that part in writing before we get the Comp Plan amendments.

Mr. Walters: Dale can –

Chair Lohman: Go ahead, Dale.

Dale Pernula: I was just going to say I think one thing that we can do is if an issue's potentially going to be quasi-judicial, we will notify you in advance of the hearing that we're putting a notice on and let you know that you have to respect all those things like don't be engaged in ex parte contact, on and on. But I think we can do our best to help identify those and let you know in advance.

Ms. Ehlers: When an issue comes up that seems like it might come up, and somebody in the bookstore talks to you two years ago, are you supposed to cite that? It's these kinds of conversations that make it difficult because long before it's come up and when it wasn't in a context it might come up, there's comment. And you don't respond but they do tell you. Now you can't say to everybody that you bump into, I won't listen to anything you say on any subject for the next five years. That's not realistic. So we've got to have something based on a law that enables us to deal with this next year and years after.

Mr. Walters: Well, and again, you don't have to worry about that for legislative issues, and the court's ruling makes it clear that many more issues are legislative.

Mr. Easton: So you believe that a Comp Plan amendment –

Mr. Walters: That even a site-specific one.

Mr. Easton: A site-specific Comp Plan amendment that only benefits one –

Chair Lohman: We've had those.

Mr. Easton: Right, and we've recused – people recuse themselves over those.

Ms. Ehlers: And we've had people –

Mr. Easton: People specifically recuse themselves over those because of their concern about making sure that we weren't violating GMA or, I mean, or the state law. So you believe that those are still just legislative?

Chair Lohman: Where's the line, is, I guess, what we're asking.

Mr. Easton: Because it's _____.

Ms. Ehlers: Give us the case law, give us the date.

Mr. Walters: We can give you much more information on this specific topic.

Ms. Ehlers: Please.

Mr. Walters: But this is the general rule that I'm articulating right now – that you're only dealing now with legislative issues. You may still have situations where you may need to recuse yourself: if you have a conflict of interest; if the bylaws require you to do so; if the County ethics rules require you to do so. But under the state law, under the Appearance of Fairness Doctrine, if it's a legislative issue, is that the Appearance of Fairness Doctrine and all the issues that go with it – the keeping track of conversations, disclosure, that kind of thing – don't apply.

Mr. Easton: See, that just really makes me nervous.

Mr. Walters: Well, and –

Chair Lohman: Go ahead, Bob. Thank you, Bob.

Mr. Temples: A real quick clarification here. What I'm kind of hearing and reading into this, it sounds like – when you refer to this as a recent development – it sounds like something has gone to court, the court has ruled in a certain fashion, and now things have changed a bit. Is that what I'm hearing?

Mr. Walters: Yes. Yes, that's right.

Mr. Temples: Okay.

Mr. Walters: And there was most recently another case out of Spokane, I think, where the opposite result was reached – that the rezone was quasi-judicial, and the reason was because it was only a rezone. They had a separate Comprehensive Plan map. We don't. We have a unified Comprehensive Plan zoning map, and that makes a big difference. So we'll get you a more detailed treatise on this particular topic.

Mr. Easton: Particularly address Comp Plan amendments. To me that's where the challenge is.

Mr. Walters: That is the only place it comes up anyway.

Mr. Easton: Well, I'm talking about Comp Plan amendments that do benefit a specific – either a specific Planning Commissioner, like Bill dealt with this years ago with the MRO issue and it was going to benefit his property if the MRO was – if the Mineral Rights Overlay was passed over his property. So he recused himself – or specific Commissioners and whether if it's site-specific application, when does the ex parte – you know, when are we not – are we not in a position that we can violate the ex parte communication, then it needs to be clarified.

Mr. Walters: Right. And, again, there is this multi-level analysis. You've got to know: Is it quasi-judicial? And, if so, then Appearance of Fairness applies. But even if it's not quasi-judicial, if you have a financial interest in the outcome you're going to recuse yourself. So that can happen even with legislative issues. So –

Mr. Easton: Fully 50 to 75% of the Comp Plan amendments that we've dealt with in the last seven to ten years could have been – very specifically benefit one or two property owners.

Mr. Walters: Oh, yes. It's because the property owners apply.

Mr. Easton: Right.

Mr. Walters: Yeah.

Mr. Easton: Even sometimes with the County ones it will affect people but it's definitely what the private people apply for.

Mr. Walters: Right.

Mr. Easton: Thanks.

Mr. Walters: So we'll expand on that. We'll try to answer all of your questions and we'll not just talk about quasi-judicial versus legislative. We'll talk about when you may or may not have to recuse yourself.

Ms. Ehlers: Something else that – before you go on to a different subject – you said that open public record hearings are not mandated when it comes to the Comp Plan. The difference – when we started the Growth Management Comprehensive Plan process, Dan Peth was Chair of the Planning Commission. He refused to continue because under 36.70 there was – the Planning Commission went through all the work of drawing up a Comp Plan with hearings and testimony and evidence, and a certain group of people didn't bother coming. Then when the Planning Commission and Planning Department forwarded the document to the County Commissioners, a whole group of people came – and I've seen the transcript – Oh, we didn't want to bother with the Planning Commission because we don't think they're very important, so we're going to tell you we don't like this, we do like that, we want this changed. And the Planning

Commission was infuriated in the '70s and '80s because everything they did certain groups of people would just ignore it and then come change it, which meant an act of contempt, among other things. And the big difference, we were told, under Growth Management was there was only one open public record hearing at the Planning Commission and so they could not go to the County Commissioners and undercut what we did.

Mr. Walters: That's not under Growth Management.

Ms. Ehlers: Then what is it under?

Mr. Walters: It's under 36.70B. It's under Permit Review, (and) in Permit Review there can only be one open public hearing.

Ms. Ehlers: This is what we did for the entire Comp Plan amendment process.

Mr. Walters: Well, GMA clearly does not require only one public hearing.

Ms. Ehlers: So in other words, no matter what we do in GMA you can have another hearing before the County Commissioners?

Mr. Walters: Oh, yes.

Chair Lohman: Mm-hmm.

Mr. Walters: In some cases it may be required.

Ms. Ehlers: For what we've just finished? That isn't what happened.

Mr. Walters: Yes. We'll get to that in just a second.

Ms. Ehlers: That isn't what happened.

Mr. Easton: It happened in pipeline.

Ms. Ehlers: Pipeline is – I'm talking about Comprehensive Plan, the issue that Growth Management has and the various plans that go with it – the Coordinated Water System Plan, the recreation plan, the transportation plan all are elements of the Comprehensive Plan. Everything was done before the Planning Commission and then that document went to the County Commissioners. If they had a concern, and sometimes they did – You haven't dealt with this yet, or something is not quite complete – they remanded it back to us with specific things and there was a hearing at that point. We didn't have the game that was pre-GMA of a hearing and then this group of people coming in and undercutting us. That was one of the reasons why a lot of people joined the Planning Commission who had refused to be on it before.

Mr. Walters: Well, I can't really speak to what happened pre-GMA because I was ten, but I can tell you about, you know, what's required now, and that rule for only one public hearing only applies to permits. It's meant to expedite review of permits and make sure that there aren't multiple hearings for permits so that applicants are not disadvantaged.

Ms. Ehlers: It also applies to SEPA.

Mr. Walters: Okay. Yeah, but SEPA is usually being done on permits, although it also is done on legislative actions. So let's –

Chair Lohman: Let's move on.

Mr. Walters: Let's keep going. So here's the big picture overview of the legislative process. There's a proposal, and then there's public comment, there's a recommendation, and then there's a decision. Now there could be more process than this related to a legislative action but there are always these four elements.

So the very first required step in this process, the proposal, usually results in what's called a Notice of Availability. That goes out onto the website. There's also a legal notice published in the paper, and that legal notice in the paper contains a short description of the proposal; it contains the dates of a written comment period; the method of commenting – whether e-mail is accepted, faxes, what address you write to – that kind of thing; the date of a public hearing; and then there's a statement of the SEPA threshold determination because the Department will do a SEPA threshold determination, usually at the same time they release the proposal. The text of the proposal is also made available, you know, at the office or on the website or both, and then there's generally a staff report made available at the same time. So this is the package. This is the final draft of the proposal that is going out for public comment, because there has to be a draft for public comment.

Public comment – remember, being that second step – is important. It's one of the goals of GMA. Citizen participation and coordination is Goal 11. It encourages the involvement of citizens in the planning process and ensures coordination between communities – because, remember, GMA talks a lot about how Cities and Counties interact – and jurisdictions to reconcile conflicts.

Now there are two forms of public comment. There's written comment and there's public hearings. Those are the two that are understood by our statutes and codes. "Public hearing" is defined in 14.04.020. It's just a hearing at which evidence is presented and testimony is taken. Public hearing is mentioned a lot in GMA but it's never defined.

Now I'm going to give you a flow chart that takes you through the process, and this is somewhat simplified but it's also – it's a synthesis of all the different rules and regulations so you can see how this actually works in practice and how it works under Skagit County Code.

So there are three lanes on this flow chart, three swim lanes. The top is the policy maker level; the second middle is the administrative level; and the third is the public. And these are the three participants in this process. So the first step: the Board will initiate a project in some way, either through informal direction to the Department or more formal direction to the Department. That immediately takes us down to the administrative level where the Planning Department is releasing the proposal, the staff report, all that stuff that I just described. There's a notice that goes out to the *Skagit Valley Herald*. There's e-mail listserve. There's also a required 60-day notice to the Department of Commerce. The state Department of Commerce wants to know when we're moving forward with any kind of development regulation or Comp Plan amendment so we have to notify them. They have to have at least 60 days to review it. They pass it on to other agencies that might be interested. We almost never hear back. They almost never offer comments, but sometimes… After that there's typically a written comment period. The public gets to submit comments in writing. And then there's generally a public hearing before the Planning Commission. The Planning Commission holds this public hearing. The Planning Commission is supposed to be the group that is doing most of the work in this process, so the Planning Commission is hearing comments directly from the public.

Then the Planning Department will collate all that comment, usually mostly the written comments but there will typically be a transcript generated, and then provide it to the Planning Commission and the Planning Commission holds deliberations. The Planning Commission deliberations hopefully result in some kind of recommendation and the recommendation has to be reduced to writing, so the Planning Department will write down a recorded motion. I'll have some more to talk about – you know, What *is* the recorded motion? – but the statute requires you to have a written recommendation to the Board.

After that the Planning Department will send the motion and the original proposal to the Board of County Commissioners and then it falls into their lap. Now they have a choice. Do they want to vary from the initial proposal that the Planning Department put out, or do they want to adopt something different? Do they want to adopt the Planning Commission's recommendation if they made a change? Do they want to adopt something entirely new or their own ideas added on to whatever the original proposal was? This is the only diamond on the flow chart here, on the simplified flow chart. The question is: Does it vary from the original proposal? And if the answer is yes then there needs to be an additional opportunity for public comment. That's required by GMA. That means there's going to be some kind of notice to the *Skagit Valley Herald*, an e-mail listserve notice, and then the Board will decide what that additional opportunity for

comment looks like. It may be a written comment period, it may be a public hearing, it might be before the Board, it might be remanded to the Planning Commission. The Board would have a lot of options for how they want to proceed if they do want to vary from the original proposal. And then if not, then the Board makes a decision. And you see the line goes back there after there's that additional opportunity for public comment. It ultimately ends up before the Board so the Board can make some kind of decision.

Now the – oh, and then the Planning Department develops a final version of the ordinance which they put back before the Board for final approval. Typically the Board will say, Okay, go forward and write that up, and Planning brings it back.

The recorded motion: There's some prescription in a couple of different places. The Planning Enabling Act says, "To this end the Planning Commission shall conduct such hearings" and then "make findings and conclusions," which shall be transmitted to the Department which will transmit the same on to the Board with whatever comments and recommendations the Department deems necessary. Now our code gives a little bit more detail here. "Findings of fact," it says – and it doesn't include any kind of definition as to what findings of fact are, but here's what it essentially is. It's a list of facts that the Planning Commission (a) believes to be true, and (b) are relevant to its recommendation on the proposal. It's facts that support its conclusion. The reasons for its recommendation are that second part of the recorded motion. That's an explanation of the Planning Commission's rationale in making its recommendation. Now I wanted to include this explicitly here – these explanations of what these two components are – because findings are not necessarily other things the Planning Commission wants to put in its note to the Board. The Planning Commission can do that but it's not necessarily a finding. It's supposed to be a finding of fact and then a reasons for action that are based on those facts, that are supported by those facts. And then the recorded motion needs to be signed by the Planning Commission Chair, and the Chair's signature is indicating that the recorded motion reflects the will of the Planning Commission. We don't have the entire Planning Commission sign it because it's produced typically after the Planning Commission meets.

Now if we look back at the flow chart here, that diamond shape there – the yes or no want to vary from the original proposal – here's the section in GMA that provides for that. If the legislative body – the Board of County Commissioners – wants to consider a change to an amendment to the Comp Plan or a development regulation, and the change is proposed after the opportunity for review and comment has passed under the County's procedures, you have to give another opportunity for review and comment. And it doesn't say exactly what that looks like, whether it's public hearing, public comment period, SurveyMonkey – you know, it doesn't say exactly what that looks like, but it says there has to be an opportunity for review and comment. And it's important here because there should be no step at which the public has not seen a document and been able to comment on it. That is what GMA is saying.

Now there are a couple of exceptions, very minor changes, and adoption of options. As you recall, there is a provision in GMA that allows for proposals to be put out with options in it and you can make a recommendation on one or the other. The Board can then choose between one or the other without having to have another public hearing because the public has had an opportunity to comment on both.

So that concludes that section of the presentation on the legislative process, but I also want to talk a little bit about the Open Public Meetings Act.

The Open Public Meetings Act looks simpler than it is, so I've put this up with some highlighted words so we can break it down exactly. It's contained in RCW 42.30, and it says that all meetings of the governing body of a public agency shall be open and public. Now if you start breaking that down, the definitions are in this section. "Public agency" means a bunch of different things, including planning commissions. The "governing body" means the multi-member board, so, for instance, this doesn't apply to the County Administrator or the Planning Director. It applies to a multi-member board that makes policy or rules, or any committee thereof. So if the planning commission creates a committee it applies to the committee in the following circumstances: when the committee acts on behalf of the other body; when it conducts hearings; or when it takes public comment or public testimony.

"Meeting" means meetings at which action is taken. Now that seems simple at first, but it actually is important because it's "meetings at which action is taken," and then they define "action." "Action" means the transaction of the official business. And if you stop there you might think it just means final action, final adoption, but no. It includes discussions. So if you go back, "meeting" means meetings at which action is taken. "Meeting" means meetings at which discussion occurs. That's how you unpack all this. It surely could have been written more clearly but it is actually written very broadly the way it is constructed with the Russian doll nesting that I'm showing you here. It includes all of this stuff. It includes discussion, it includes deliberation, it includes receipt of public testimony because maybe you can have a meeting without having discussion – you're just receiving public testimony. Well, that is also action of the agency. Reviews, evaluations, and final actions, and final actions are the final votes on an ordinance/motion/proposal/resolution. But final action is not the threshold for whether you're conducting a meeting. Final action occurs, you know, at that last step, but action is the important thing that triggers the Open Public Meetings Act requirements. Action includes discussion. Action is pretty much anytime you get a quorum together. So I wanted to make that very clear.

Now there're also some other things that are really not addressed in the very text of the Open Public Meetings Act but have been developed through case law, and that is serial meetings. If Planning Commissioner A has a conversation with B

has a conversation with C has a conversation with D has a conversation with E, you've now gotten together five, which is a quorum. It can be difficult, I suppose, to avoid that if you don't know who's talking to whom but, in general, what you want to do as sort of a best practice is ever avoid having five Planning Commissioners in the room at one time, unless you're at a properly advertised public meeting, and also handle the question of meetings at a distance because they don't have to occur simultaneously in the room. They can occur over e-mail. So you don't want to have a conversation over e-mail amongst a quorum or more – in your case, five or more.

And then, finally, the penalty for violations is $100 civil penalty, so it's not like it's a huge penalty; however, the County would also be on the hook for attorney's fees. So we really do try to avoid this. Audit findings, court cases, bad publicity – Open Public Meetings Act is an important thing and it's one that we have to be very careful about because the case law has developed it and it is supposed to be interpreted broadly to avoid private meetings where the public's business is done.

Chair Lohman: Carol, then Jason.

Ms. Ehlers: Well, I was going to make clear that when Annie appointed two committees on the Planning Commission to deal with something that was before us, and we were very careful to be under five, that that was okay.

Mr. Walters: Right. A committee of less than a quorum is okay unless it is doing one of those activities that requires notice, like receiving public comment, testimony, acting on behalf of the governing –

Mr. Easton: Discussion.

Mr. Walters: No, not discussion. Here, let's back up.

Ms. Ehlers: Yes, because you can't meet – two people meet and you're going to talk about something.

Mr. Walters: It's not the governing body. If it's a committee that is not acting on behalf of, conducting hearings, or taking testimony or public comment. As long as you're not –

Mr. Easton: So as long as your subcommittee even – so a four-member subcommittee would only break this barrier if they started taking public testimony. So if a bylaws committee didn't take public testimony they're free to discuss and to work on it as long as they're below that threshold.

Chair Lohman: But you're not even making a decision. You're making a proposal to us at large and the public.

Mr. Easton: Right, because clearly you're not acting on the whole, but if we did take testimony at a subcommittee meeting you would break the threshold thing.

Chair Lohman: Right.

Mr. Walters: This threshold.

Mr. Easton: Yes.

Mr. Walters: And you could not act on behalf of the body.

Mr. Easton: Right.

Mr. Walters: If you act on behalf of the body you might –

Mr. Easton: Which in this case she didn't delegate to any – we wouldn't – didn't delegate – or the Chair didn't delegate that to the subcommittee.

Chair Lohman: Other than to solve something.

Mr. Easton: Right. But the key thing there is just making sure that you don't take – you're not taking public testimony, because if you take public testimony it's got to be a public meeting.

Mr. Walters: Right, which means it has to be properly advertised and that kind of thing.

Ms. Ehlers: Which – does that also then mean that if there's a subcommittee talking about something and people know the subcommittee, then nobody in the public should e-mail a member of that subcommittee.

Mr. Walters: I have not seen any case law particularly on that point. I think that's – that is rather strict.

Mr. Easton: The case law starts after what Carol does with the e-mail. If she sends it to five members of the Commission – or four members of the Commission plus herself, then you're having a meeting of more than a quorum and you have violated the rule.

Mr. Walters: A single Commissioner could send an e-mail to all the Commissioners –

Mr. Easton: Oh, that's right. I did that once, didn't I?

Mr. Walters: – but not reply.

Mr. Easton: I had to do that during pipeline – that's why.

Mr. Walters: A single e-mail out to the Planning Commission is not a problem because that's a one-way communication. It's the replying that starts to become a discussion. And even a single reply-to-all might – this is not well-developed, but that may be a problem.

Mr. Easton: This was written pre-e-mail, right?

Mr. Walters: Oh, yes.

Mr. Easton: Because there are occasions when some communication will come to either the Chair or a member that would be best distributed to All. You can do that without violating the Open Public Meetings Act as long as you don't start discussing it in the e-mail.

Mr. Walters: Right.

Mr. Easton: Which in the case – well, during my Chairmanship a couple times I had to do it, we actually wrote – you and I talked it through – we actually wrote in the cover e-mail, Do not – reminding the Commissioners not to discuss it in an e-mail.

Mr. Walters: And you can avoid reply-to-all by putting the Planning Commission address in the bcc box; then you can't hit reply-to-all. It doesn't work. It would just reply to the sender. But, yeah, that's an important thing to keep in mind.

Ms. Ehlers: Considering the fiascos that have happened in my lifetime over e-mails I'd rather be conservative on it.

Chair Lohman: But it is –

Mr. Easton: And we have – definitely.

Chair Lohman: – allowable for the committee to research and talk with members of the public when they're working on a delegated project, right?

Ms. Ehlers: Well, not under this.

Mr. Walters: Well, I don't see a problem with that. This says "takes testimony or public comment."

Ms. Ehlers: Well, if anybody out in the public –

Mr. Easton: That's not considered ___.

Ms. Ehlers: A public comment is a remark and all they have to do is call and say, I like this or I don't.

Chair Lohman: Yeah, but I think that what – I wish they would use better language because "public comment" has been – that phrase is used for *everything* and yet it has distinctly different meanings depending on the context. And it confuses people and I wish that we had better language there.

Mr. Walters: Actually I asked a question about this of the presenter at the Short Course a couple weeks ago because this question has come up in my other life. If you have a committee meeting –

Mr. Easton: Your well-documented other life.

Mr. Walters: If you have a committee meeting, can you take comment at that committee meeting? And this is the situation that I think this is getting at. And the presenter, the attorney who was giving this presentation, suggested probably not, and the best solution would be just to advertise because you can advertise and avoid the problem. Because advertising requirements in an Open Public Meetings Act are not very strict.

Mr. Easton: And that's how the Cities get around it because they advertise all of their committee meetings. The local Cities advertise all their – seem to advertise all their committee meetings.

Mr. Walters: Not in my experience, but maybe other Cities do.

Mr. Easton: *Some* Cities advertise all the committee meetings.

Ms. Ehlers: Well, Mount Vernon doesn't.

Mr. Temples: Lynnwood never did.

Mr. Easton: So here's the thing. I mean we can hold out hope that at some point the A.G. and the legislature will get together and rewrite the Open Public Meetings Act in an updated format that deals with electronic communication and some clarifications on some of these things.

Mr. Walters: Well, and that's why I'm here – to provide you some guidance that goes beyond the exact text.

Mr. Easton: Right.

Chair Lohman: Is it okay if we just keep moving?

Mr. Easton: Yeah.

Mr. Walters: Well, and that is bringing me to the end of the presentation.

Chair Lohman: Oh, okay.

Ms. Ehlers: Now, Ryan? What I wanted to be given is what you have just given us.

Mr. Walters: The slides themselves?

Ms. Ehlers: Yes, in print.

Mr. Easton: That's easy.

Mr. Walters: Well, yeah.

Ms. Ehlers: Because some of it was taken out.

Mr. Walters: My sense is that the whole package here is the value, because the slides contain just the text and the text is in the statute already.

Ms. Ehlers: The text isolates component parts of very large documents and gives us an entrée into looking at the rest of the documents by highlighting the things that *you* think are most important in each one. And that's what I wanted. And I still want it.

Chair Lohman: I think if you could put it up on the Planning Commission website it would be very useful and the numbers can be downloaded and printed at will, and the public can also.

Ms. Ehlers: Mm-hmm.

Mr. Walters: Yeah.

Mr. Temples: Is that easy to do?

Mr. Walters: Oh, yeah.

Keith Greenwood: Okay. Sounds good.

Ms. Ehlers: And next time do it beforehand, please.

Mr. Walters: Yeah.

Ms. Ehlers: Please?

Chair Lohman: And if you could also cite the current recent court opinions so that we can –

Mr. Walters: Well, I'm going to get you a detailed explanation of that.

Ms. Ehlers: Okay.

Chair Lohman: Okay. Okay? Any more questions from the Commission?

(silence)

Chair Lohman: Okay, we'll move on to agenda item number 4. It's a discussion on the Skagit River GIS, which is the General Investigation Study. Dale?

Mr. Pernula: Okay. We have with us tonight Kara Symonds. She's a Watershed Planner with the Public Works Department for Skagit County. And I asked her to make a presentation and she said she would.

Kara Symonds: Good evening, Commissioners. Kara Symonds, Skagit County Public Works Watershed Planner. And I'm very happy to be here tonight. Thank you very much for the invitation. I'm here tonight to talk about the Skagit River General Investigation, and I can also make this PowerPoint available on the Planning Commission website because I did include the maps that you requested, Carol.

The General Investigation, as some of you may know, is a long range flood plan. It's an effort led by the U.S. Army Corps of Engineers and there are five phases to a General Investigation: Reconnaissance, which started for the Skagit River General Investigation in 1993; Feasibility, which is the phase we are currently in and have been in since 1997. After Feasibility, we go into Pre-Construction Engineering and Design, or PED; to Construction; and then Operation and Maintenance. Each one of these phases has a different cost share between the non-federal sponsor and the Army Corps of Engineers. And Skagit County serves as a non-federal sponsor, so currently in the Feasibility stage we are a 50-50 match with the Corps. Later on we become 35% Construction and then ultimately we are 100% O & M.

Now here're some figures that are probably difficult to read in the back, but it just sets a little bit of context of why a long range flood plan is needed for the basin. Here's a history of all the recorded flood events, and you can get these on the U.S.G.S. website. Some of them are in the range of 160 to 200,000 cfs. The current hundred-year flood cfs at the Concrete gauge is approximately 214,000 cfs. And just for a little bit of context, I checked the gauge right before I came into the meeting and the river was flowing at about 20,000 cfs. And then here is a synopsis of dam construction and flood control in the basin. We have five

dams – three on the main stem and two on the Baker project – and each one has some flood control. Ross has 120,000 acre feet and Upper Baker has 74,000 acre feet.

Here's another illustration of – or a context as to why a flood plan would be helpful in the basin. The areas highlighted in blue are the floodplain and this map specifically highlights infrastructure at risk, including – there's four pipelines in the county; obviously the interstate; numerous state highways; County roads; parts of towns; almost complete towns. And, again, this'll be better to see if you've printed out the pdf.

So the General Investigation has been going on for a long time. As I mentioned, we've been in the Feasibility stage since 1997. And at the end of 2011 it appeared that the General Investigation funding sources were drying up, including the state Department of Ecology and the Army Corps, so we were looking to put the General Investigation into a bit of a time capsule. And then in April of 2012 federal funding was announced for the project and that really launched us into an aggressive timeline. Near the same time the Army Corps of Engineers came out with a new planning paradigm – a lot of people refer to this as the "reset process" – and it was outlined in a February 2012 memo, "Three By Three By Three," and the "Three By Three By Three" stands for feasibility phases – finish them in three years or less for three million dollars or less, and incorporate the three layers of the vertical team. And the Corps vertical team is the district – Seattle district, Portland division, and headquarters. So one of the take-homes is to consistently check in with the vertical team throughout the Feasibility process.

So we've been going rapidly since the funding was announced in April. We've had a series of public outreach meetings. We've taken some measures and turned them into alternatives. We took the alternatives out to the public. We had a series of vertical team meetings. And we were also the first general investigation in the nation to go through a national charrette, and this was the Corps' way of refining the project's goals, opportunities, and outlining a path forward to completion.

So most recently we've been in Alternative Refinement, which I'll speak to in just a bit, and we also have Northwest Hydraulic Consultants under contract with the Army Corps to do some of the Alternative Refinement.

So we have three basic alternatives and each one of these alternatives contains numerous measures that are packaged together under an umbrella concept. So all the alternatives contain some specific measures such as nonstructural measures, which are emergency evacuation routes or outlet structures. All alternatives contain Baker Project dam storage. As I mentioned, Upper Baker has 74,000 acre feet of storage and in their most recent relicense there's an opportunity to expand the seasonality of that existing storage and to also add

storage at Lower Baker Dam. And also each alternative contains individual, site-specific projects or measures, such as the Mount Vernon Flood Wall and a La Conner Levee.

So early last year we sketched out six preliminary alternatives and took these out to the public, and we received a lot of comment and refined these down to three alternatives. The three alternatives – again, it's just an umbrella idea and they're a suite of projects – Joe Leary Slough Bypass/Overland Flow, Swinomish Bypass/Overland Flow, and system-wide levee setbacks. And, of course, no action will always be looked at as part of NEPA compliance.

Here's an image of LIDAR, or bare earth topography of the basin. And before I go into alternatives I just want to highlight a couple areas – Bayview Ridge, Burlington Hill, Sterling Hill. Here's the river so here's Burlington. Here's Mount Vernon, Riverbend, and here's where the river splits into the North Fork and the South Fork distributary. There's numerous locations of spill along the river, which is where the levees are low and water will leave the system. The main area I'd like to discuss is Sterling Spill in this area right here. As I mentioned, there's approximately 220,000 cfs in the hundred-year flood, and the three-bridge corridor can handle approximately 160 to – I've hear various estimates – 180,000 cfs. So what will happen is water will back up and spill out Sterling into Gages Slough through the town of Burlington, and then water flows towards the Samish basin and towards Padilla Bay and the Swinomish Slough. So there's a lot of excess water spilling onto the floodplain and that's why the hundred-year floodplain is so large.

So the alternatives I've gone through and are continuously going through – continuous refinement – we're going to put four alternatives into the NEPA analysis. No action, obviously. The Joe Leary Slough Bypass. Now earlier I was calling it Joe Leary Slough Bypass slash Overland Flow. The concept was either let water spill here and define a channel to take it out to Joe Leary Slough or just let water spill and let it cover the area. So the Corps looked at the overland flow and it eliminated it because of the great depth and velocity that the water had across the basin, and also it isolated Samish Island.

The system-wide levee setbacks went through analysis. And the concept there was that we have levees along the entire river system and they put in the model to set those levees back to see if we could get the hundred-year conveyance through the system. It provided a localized benefit but the benefit – it didn't reduce the amount of spill at Sterling to an acceptable level, so it didn't pass the cost-benefit analysis. The project delivery team from the Corps, which is an interdisciplinary team working on the project, eliminated the levee setback – system-wide levee setback – as an alternative and morphed it into an urban protection alternative, which is basically to pass a cost-benefit, raise and strengthen some levees in place, and then leave some levee setbacks on the table as potential mitigation.

And another alternative that is next for refinement is the Swinomish Bypass or Overland Flow. And here's – the dark gray lines – on a map of the lower delta, the dark gray lines are the existing levees – Mount Vernon, Burlington, Bayview Ridge, Sterling area, and Nookachamps area. And, again, here's the Joe Leary Slough alternative. And the concept here is to take the excess floodwaters out towards Joe Leary Slough through a confined channel. And this would require an inlet into the channel from the Skagit River, it would require some excavation at the inlet and the outlet of the bypass and additional levees to keep the water contained to that inlet.

Ms. Ehlers: And 1500 feet wide throughout?

Ms. Symonds: Yes, approximately. It changes.

Mr. Easton: Out of season, or one not being used dry or wet?

Ms. Symonds: The concept for Joe Leary is dry and to be used potentially at a 25-year and greater event. But when I say dry, since there is some excavation there will be water in the channel but there won't specifically be water –

Mr. Easton: I mean by dry – I mean by wet – I mean by flow it'd probably be – there will be no flow.

Ms. Symonds: Yep, correct. Yes.

Ms. Ehlers: Well, isn't there water in Joe Leary Slough now?

Ms. Symonds: Yes. Exactly. So it's – what we're saying –

Mr. Easton: I should have clarified I meant it's a term they use – sometimes it's confusing – but I meant flow.

Chair Lohman: Is it actually a channel, like __?

Ms. Symonds: Yeah, it would be a –

Chair Lohman: Or is it a swale?

Ms. Symonds: It would be a left bank and right bank levee and a channel in between, and it would have some water that's from the existing drainage system. But the Skagit River water wouldn't trigger to go into the bypass unless it's a 25-year event or greater.

Mr. Easton: And the Swin is the same sort of concept?

Ms. Symonds: Yes.

Mr. Easton: Conceptually.

Ms. Symonds: Yes.

Mr. Easton: Just different locations?

Ms. Symonds: Yes.

Chair Lohman: And where is it at?

Ms. Symonds: I'll get there.

Chair Lohman: (unintelligible)

Ms. Symonds: And then, as I mentioned, this is just an umbrella concept and I'm not going to go through all the challenges and opportunities with each alternative, but I would like to come back to the group and do that later this summer slash early fall when we get there. I'm very thankful to be here and we're very much mid-process, so I'll just share what I know.

And, as I mentioned, it's an umbrella concept. There's additional, numerous, smaller projects that would still be warranted with this alternative, including completion of the Mount Vernon flood wall and a protection levee for La Conner.

Now here is the same idea for Swinomish Bypass. Again, this hasn't been refined. We haven't – so we haven't narrowed this one down yet. The idea is to take water out here at Riverbend, right bank Riverbend, and it could be a left bank-right bank levee with a confined channel or it could just be a release point for water and then overland flow could happen in this general area. And the concept here is that we need to get the water through the three-bridge corridor and cut off spill at the Sterling area through additional measures.

Elinor Nakis: Is there any kind of natural channel there now?

Ms. Ehlers: No.

Ms. Symonds: Well, if we look at the LIDAR – I don't know if you can really see that – but I mean historically there were logjams and water everywhere during floods, so potentially. I mean, there are sloughs at the outlet here and Telegraph Slough here.

Ms. Ehlers: Yes, but, Kara, the Swinomish Slough is – every drawing I have ever seen – and it's been going on since 1921 – has it south of 20 and many of these sloughs, like the one at the bottom of Bayview Ridge, starts – is a slough that

goes into Joe Leary on one side and whatever – Big Indian – on the other, and that goes north of 20 into Padilla Bay. But the problem with the Swinomish Slough and probably the other one, too, is what roads you're going to cut off. And the Swinomish one would cut off Memorial Highway, Best Road. It would cut off every single north-south road in the county. Because if you have levees, you can't have holes every time you have a road or the water just goes out on the roads. And the hydraulics man gave a very good presentation but he apparently wasn't asked how deep the water would be in the Swinomish Slough, and I don't know – I didn't think to ask about Joe Leary – but he said it would be four to eight feet between the two levees in the Swinomish Slough until it got to the other side of the La Conner-Whitney Road at which point the overland flow issue would come. And what I've always had trouble with is that when it gets to the Swinomish Slough it's supposed to turn right, and I've played with too many hoses in dirt when I was a kid and it was the pressure of the water that made the water go in a direction, but it went whatever was the easiest way. So anyone trying to figure out the alternatives has my sympathy.

Ms. Symonds: As I mentioned, this alternative is still going to go through some refinement, and even once we get to a preferred alternative that preferred alternative will go through even more refinement. I mean, it's a constant dance of design. There are concepts out there that if it was a confined channel it could split flows here, it could tie into the restoration project at Telegraph Slough, it could be a wet or a dry channel, for example. There's a lot of ideas ____.

Mr. Easton: When you consider the cost-benefit, because overland was removed from the – overland is now not an option in the Joe Leary.

Ms. Symonds: Correct.

Mr. Easton: Was part of the reason why that is or part of the factor, is anyone considering the issue with how to get rid of the water once it's – I mean, once it's on the – is that part of the cost analysis?

Ms. Symonds: Yeah, that's another really good point that I usually fail to bring up, is that they are doing – one huge benefit from this process is they are sizing and typing the amount of outlet structures that would be needed for that alternative. So the Joe Leary Slough Overland Flow was ten 5-foot pipes at Joe Leary and currently there's, like, twelve 4-footers. But we're getting an idea of what we, as a community, need in terms of outlet structures into the nearshore. So that's been done for Joe Leary and we have a sense of what's necessary there. If we had – if the no action alternative was implemented and we just wanted to get water off of the floodplain when it did flood, it gives us a sense of what type of outlet structures and where they would be needed.

Mr. Easton: Great.

Ms. Symonds: And hopefully we get that for Fir Island and Swinomish Slough as well.

Mr. Easton: Thank you.

Ms. Symonds: Thank *you*. And this is the most recently refined alternative. Again, system-wide levee setbacks did not pass cost-benefit. It did not reduce the amount of spill at Sterling and the spill at Sterling is what enters the city of Burlington, which is a high economic damage reach. So some of the ideas in this alternative is to tie the upstream terminus of Dike 12's levee into Burlington Hill and tie Burlington Hill to I-5, and this gets a little bit to the Joe Leary Slough Overland Flow because you'd still have water leaving here and exiting the system to the north, but the urban area would be protected. And we've been calling it the Urban Protection alternative. Some of these levees would need to be a uniform height so some would be heightened and some would be widened, and that holds through to the three-bridge corridor, and then the heightening and widening ends when you get to the rural areas, such as Riverbend. The orange line is just the existing levee. This alternative includes a cutoff levee for Riverbend, which follows the urban boundary here, tying it in to the existing levee – greater protection for west Mount Vernon – and tying in Mount Vernon's flood wall into and doing some improvements on Dike 3's levee in this location.

So some of the things the project delivery team is currently working on is implementing Northwest Hydraulics' contract. They've done some modeling of the BNSF bridge – obviously that bridge is a flash point during a flood – and in the __ model. They're looking at the additional storage at Lower Baker and changing the seasonality of Upper Baker. They're building the hydraulic design of the three alternatives into their modeling software so we can come up with the idea from the model and see what type of economic damages they are. And then they will update the H & H Technical Reports – the Hydrology and Hydraulic Technical Reports – which will ultimately be part of the final plan.

The next step – and when I'd like to come back to the group is when we have outlined and narrowed down and refined the alternatives and basically do a bit of a pros and cons list with some homework and numbers on each of these alternatives, and then just take a look at the alternatives – how they compare to each other, some of the basic criteria to evaluate the alternatives: Does it reduce risk to life safety? Does it reduce economic damages? Which alternative has the least impact to agriculture, environmental resources, cultural resources? Which alternative has the greatest construction costs, greatest O & M costs? And which alternative is acceptable to the sponsor and to the public?

And here's a general timeline. We are currently in alternative analysis, and by the end of the summer we'd like to get to a tentatively selected plan. And, as I mentioned, that tentatively selected plan will continue to get further optimized and refined for approximately a year until we get to a Corps decision milestone.

The final outcome of the feasibility stage of the General Investigation is an Integrated Feasibility Report/Environmental Impact Statement, and ultimately this gets incorporated into a Chief's Report which will later get congressional authorization for funding. So a couple of the key formal public comment periods that are coming up in the project include the Draft Environment Impact Statement.

And I'd really like to again thank you for coming today. I do have and try to maintain a Skagit River GI website on the Skagit County's website, and I post like the project status summary that you received as part of your packet. I post those to this site. I post PowerPoint presentations to this site and any documentation coming out of the process. Please feel free to also call me at Skagit County Public Works. There is lots of information on skagitriverhistory.com. And also anytime I speak I like to remind everyone that Skagit County Public Works keeps a river level hotline during the winter months for anyone who's interested in knowing where the river level is at. We update it daily and say what river stage the river's at – flood stage at both the Mount Vernon and Concrete gauge is 28 feet – and we'll also summarize forecast models. So if you're interested in knowing what the river's doing over the winter, please feel free to use that river level hotline.

And, with that, I'd like to thank you very much for your time. Kirk, yes?

Kirk Johnson: You may have mentioned it, but is there a possibility that both the bypasses would be a part of the same final recommendation – that we could have both bypasses proposed, rather than kind of one or the other?

Ms. Symonds: Well, at this point we're looking more like one or the other. But the ultimately tentatively selected plan may be an amalgam of different concepts from each of the alternatives, would just – just a basic assessment would be – I doubt that would pass the cost-benefit ratio, because the Joe Leary Slough does require a significant amount of excavation to get the fall to meet the nearshore, and also approximately 14 miles of new levee.

Ms. Ehlers: What happens to the land that's in the middle of these bypass levees?

Ms. Symonds: That's a really good question. As I mentioned, impacts to agriculture is a key criteria, and taking land out of production – the more land we take out of production the least acceptable it is as a concept. There is some idea that you could keep the land in production with flowage easements as opposed to outright acquisition.

Mr. Easton: That'd be best. _____ if you've explored more. From the meetings I've been in, that seems like something that needs to be explored more with the agriculture community.

Ms. Symonds: Absolutely.

Chair Lohman: As long as we have more outlets we could – what'll kill us is the standing water.

Mr. Easton: Right. So we get an easement to put water on your property but we never take it off is a problem.

Chair Lohman: I mean, because in the Samish I know we have trouble getting it off sometimes in certain locales.

Mr. Easton: I can hear the voice of Dave Hughes in my head right now.

Ms. Ehlers: Yes. I remember that tour we took about drainage that was in the Skagit and in the Samish. It was an eye opener.

Ms. Symonds: Yeah, impacts to existing agricultural drainage are a key criteria as well. We just recently invited all dike and drainage district commissioners to this same update and that was a key concern. Obviously the Joe Leary Slough bypass with levees and a channel would completely theoretically obliterate the existing drainage system out there. So that is definitely a key concern, because there's a whole series obviously of drainage ditches to meet agriculture's needs.

Mr. Easton: It should be mentioned just for the public, too – this board probably knows it – but the Flood Control District Committee, which is made up of three local mayors, three at-large appointments and then nine appointments from within technical committees – I serve as the Vice Chair – meets six times a year to work with and advise, and a number of dike and drainage commissioners are on that, a number of folks from the DOT, folks from some of the power companies that are involved, and just a lot of the players are there at the table. There has been a lot of outgoing outreach on this. And then the one factor, too, that I know you don't like to mention in your speech, but there is still contingent – the GI will be contingent on funding until it's finished. Our end of the funding isn't so much of the concern on the Skagit side. It's the federal funding that's – it's an issue every congressional year. So if you're watching at home and you want to see this study get finished, please remind your congressmen and your senators that you want to see it funded.

Ms. Symonds: Absolutely. I should put an asterisk by every timeline saying "dependent on funding."

Ms. Ehlers: Well, Kara?

Mr. Easton: Great presentation.

Ms. Ehlers: It seems to be you ought to keep in contact with Kirk and his TDR committee, because that would be one of the reasons why you'd have it.

Ms. Symonds: The Transfer of Development Rights program?

Ms. Ehlers: Why you'd have TDR – yeah. Because if you have something effective – and I'm thinking the Swinomish because I don't really know anything about Joe Leary; I haven't heard very much in all of these years because it's a fairly new proposal – if you have two levees all the way down on the Swinomish, you can have an interesting time with vehicles climbing up over the levee to get into the ditch that's in between. The logistics strike me as being difficult.

Mr. Temples: Maybe they're called bridges.

Ms. Ehlers: Well, that would mean you'd go over them but you couldn't get down in very well. And we're talking – apparently – about ten feet high. So –

Chair Lohman: Any other questions from the Commission?

Ms. Ehlers: Yes. I'd like to know if this map is what you're looking at? There is a map that was given to us and others in 2003 that purports to be the federal version of the urban growth area map. And it's this map that we used when we agreed to put urban growth area up on Bay View Ridge because, according to this map, Bay View Ridge was urban. I'd like to know –

Ms. Symonds: When we talk about protecting urban areas we're talking about existing urban areas. And is that map the census-defined urban areas?

Ms. Ehlers: Supposedly this is a census-defined urban area map, and this being – here's the river. Here's Mount Vernon. There's Burlington. There's Bayview Ridge. And this was given to us – this is the map that determined that Bayview Ridge should be in the urban growth area. Now this doesn't represent what the County's Comp Plan map says is the urban growth area according to GMA. And you can see partly – because we didn't do the GMA urban growth area down in the floodway on the north side of the Skagit River, nor did we include Avon as part of it. And at the last flood meeting Avon was described as being in the urban area, so I think there's a need to find out which one of these maps that people are looking at is the one the federal government's looking at, because there's a big difference.

Ms. Symonds: Water's very difficult to follow boundary lines. The concept is more protection for urban areas, but a potential consequence of that is to protect more rural areas. So it's a very delicate balance of protecting urban infrastructure, which are the high economic damage reaches, but keeping rural rural.

Chair Lohman: Any other questions from the Commission?

(silence)

Chair Lohman: Thank you, Kara.

Mr. Easton: Great job.

Ms. Symonds: Thank you, guys, very much for having me.

Chair Lohman: Okay, moving on on our agenda. We're on number 5 – Kirk. We're going to have a discussion, an update on the Transfer of Development Rights project.

Mr. Johnson: So I'm here to give kind of an informal update of where we are. We're not in any kind of big threshold period with the TDR project. This isn't to announce a proposal or anything like that. I just kind of want to let you know where things are.

I did send about a thirteen-page document by e-mail to you all. I didn't think to bring printed copies so _____ if anyone didn't bring them. But what this is is we've had about a half-dozen TDR Advisory Committee meetings. I would say there're some emerging themes from those discussions. The summary paper is my effort to distill the discussions. I spend a lot of time with the meeting notes that I write up after each meeting and send out to the Committee. I have tried to capture the major themes, the major points of – I wouldn't say unanimity, but where people seem to be coming together and then the differences of opinion that there are. The summary doesn't necessarily reflect the views of any individual Committee members and it's not a Committee product as a whole. We didn't put this up for a vote. So this is my effort to kind of say, Here are the things we're talking about.

So one of the things we started with early in the process was a goal statement: What would a TDR program – if one is created in Skagit County – what should it strive to achieve or be like? And it seemed like after about a couple meetings in the fall we were getting pretty close, I thought, to agreement and then I pulled it out for re-discussion at the last meeting and there were some significant changes. So, again, this is a document that's in process and it will continue to be in process, I think, as the Advisory Committee and the project staff learn more about TDR. And *if* this process moves on to you in a formal way, which would be a decision that the County Commissioners would make toward the end of this year, whether to move it on to a formal TDR proposal or not, this would probably come into your hands for further work.

I did want to identify what I think some of the key points out of the goal statement, which is in process, are. One, which it says right in the first

paragraph, it would be a "voluntary, incentive-based, and market-driven" program. TDR is generally viewed as an alternative – not an alternative to zoning and comprehensive plan policies, but uses the existing policies and regulations that you have in place but it's more of a market-based, voluntary and incentive program to achieve conservation goals. It's not additional regulation. So I think that's important to stress. If we have a TDR program, there's a very strong interest that it complement existing land conservation and development incentive programs in Skagit County, and the premier land conservation program that we have is Farmland Legacy. And the agricultural community has made it very clear and the County Commissioners have made it very clear and I'm happy to make it very clear that nobody wants to hurt Farmland Legacy, and that will be one of the key goals going through the process. And if there's a decision that TDR could have some benefit here but we're not sure how it would affect Farmland Legacy, you could have a TDR program that just wouldn't deal with agricultural natural resource lands and that would help to keep them separate.

There are some people in the agricultural community who think that TDR may be important to help supplement Farmland Legacy due to some of the things that are happening to federal funding for farmland conservation. So there's kind of that difference among the ag community itself.

A TDR program should enjoy broad support from members of the public, should work in close cooperation and coordination with participating Cities and Towns. Unfortunately there aren't that many participating Cities and Towns yet at this point. Burlington has expressed interest in working with the County on this. Burlington, as I think I've talked with you in the past, already has a density credit program where a developer can access additional development potential in the city by purchasing density credits and then those funds go to the Farmland Legacy Program to purchase residential development rights. So that's a program that's TDR-like that is actually supporting and helping to reinforce Farmland Legacy. Burlington is saying, We'd be happy to look at whether the City can fit into a broader countywide program.

Mount Vernon has had a TDR program that was in operation and was working for a number of years, and then there were some policy changes at the City level where they decided they didn't like the shape that some of that development was taking and so they've made changes where their program isn't active at this point.

I've had some promising conversations with some Anacortes City Council members, but there's nothing specific that's resulting from that at this point. Several of the City planners have said if people want to see other Cities consider TDR that they should be talking to the City Councils and to the Planning Department is a part of the Cities' 2016 Comprehensive Plan updates, which they are required to do just we're required to do to update the Comprehensive Plan, kind of like the 2005 Update but this'll be the 2016 Update.

The Advisory Committee has said strongly that we should be looking – and we are looking – at using incentives other than additional residential density, whether it's in a city or at Bayview Ridge, as something that can drive a TDR program forward, because while there are some very good examples of higher density residential development in our cities here and in other cities elsewhere, there's also a lot of resistance to higher density development. And it was actually some of the higher density development that was occurring in Mount Vernon that the City Council and Mayor at the time said, We're not sure that we like that. So there are TDR programs or TDR-like programs in other parts of the country that are using additional commercial development potential or additional industrial lot coverage potential or the ability to do mixed use in a – which would be like residential above retail on a ground floor. And so we are definitely looking at the potential for increased development opportunity in commercial and industrial and mixed use zones driving a TDR program rather than just telling the Cities, If you want to be a part of this you've got to accept more residential density in your existing residential neighborhoods.

And then kind of going back to the theme of a program should be voluntary, incentive-based, and market-driven, it should respect the property rights of participants. That would be both the participants who might consider selling their development rights from their rural lands as well as participants who might consider purchasing development rights so they could do more development in a given receiving area. Basically a true TDR program works through a market transaction where the buyer and the seller agree to a price that they both feel is fair, and then the development right is transferred to the buyer, and they both come out of the transaction feeling that they've, you know, they've reached a fair price – kind of like buying a car or buying an apple at the store, but more of a negotiated price. So in that way if you have a program that functions successfully, you are respecting the property rights of both sides.

And there's been a lot of talk about what exactly would you be retiring from the sending property. Would it be just the residential development right or would it be additional property rights that go along with property ownership? And a number of the Committee members feel very strongly that we should just be talking about the residential development right. For instance, if you're a farmland owner and you want to sell your residential development right the program wouldn't take away any ability of yours to continue to farm your property. Or if you're a forest landowner and you voluntarily sell your residential development right you could continue to conduct your forestry operations. If the zone you're in allows construction of a sawmill, you could construct a sawmill. Because basically one of the key goals of a TDR program is to keep natural resource lands in working status, and so in retiring the residential development right you don't want to take away other rights that are important to be able to conduct forestry or farming on those lands.

And then basically TDR is meant to be a complement to publicly-funded conservation programs. It's using market demand as a way to try to generate support – market support or revenues – for land conservation so it's not going back to the taxpayers and saying, You know that Farmland Legacy property tax increment that's on your bill, well, we'd like to create a forestland legacy tax on your bill and, you know, who wants to volunteer for that. So it's an effort to try to use market forces to achieve land conservation.

So in some ways that's a summary of the whole presentation and in some ways that's just the first page. So are there any questions, based on what I've said so far? Yeah, Carol?

Ms. Ehlers: Have you folks thought about the issue that the Shoreline Management document's raising? There are places – I think of east Fidalgo Island, for example – where the lots were platted in the 1890s. Some of them are small. Some people are not allowed to build because of the minimum lot size issue. Is there some way that they could sell what they consider to be a development right that Growth Management has taken away from them?

Mr. Johnson: So we've discussed that in the Committee and I just looked here. It's kind of addressed on page 10, under number 5, "Proposed framework for determining whether a sending-site property has a development right for sale through TDR" or not. And I – again – you know, I can't say, It is the consensus of the Committee that… But I think I can say pretty comfortably that the general feeling of the members is that if a parcel of property has absolutely no residential development right – let's say it's in the floodway – and there's no way that you can put a residence on it, that there's no residential development right to sell. And the same might be true for Industrial Forest land that's outside of a fire district and more than 200 feet away from a public road. It may have a development right but that can't be exercised under current policy, and so they don't have a development right to sell. But there's another level which is that you may have property – with a development right there's no, you know, specific piece of code that refers to a class of properties – all properties that are in such and such an area – but you might – like the Nookachamps basin has been brought up. Those people aren't precluded from development at this point. They just – they can't drill a well and so it's, you know, maybe effectively precluded from development where the alternatives for getting water to the property may be very expensive or just not desirable, like trucking it or like paying for PUD to pipe it to your property. I think the general feeling there is that if – in an instance like that, you would have a development right to sell, but in negotiating with a buyer they might be – you know – they might be willing to pay less for that development right than they would for something on the outskirts of Mount Vernon that has full water, sewer, a view and the like. So, you know, we would need to figure out somewhere in there where you can't sell what you don't have at all, but if you have a property that has a lot of critical areas – as I understand it, our critical area regulations almost never say you absolutely can't build on the property

because that would be a taking, but they often say that the best place to build is over here. We're not saying that anybody would have to go out and spend tens of thousands of dollars to survey the property to figure out what the development potential is. We'd look at – you know, if it's Rural Reserve and it's 10 acres, you would have one development right or two per with a CaRD. So I think that's some of the thinking along those lines.

Ms. Ehlers: I can see how that thinking goes. What I'm talking about is the Growth Management Act is what killed the development rights in the ag land and that's what killed the development rights on the shoreline – the same law at the same time.

Chair Lohman: So you're saying it's not a relief for people who have had their development rights that they might have had at one time that got extinguished because of a political reason or a rezone or something else in the past.

Ms. Ehlers: No, I'm talking about the Growth Management Act because this ag business, as I understand it, was a GMA taking from the farmers. And it took from a lot of other people, too.

Chair Lohman: But it didn't take everybody's development right; like in Skagit, it wasn't unilaterally everybody was one in 40. Because there's an awful lot of sub-40-acre lots that were somehow, for a variety of reasons, been able to be preserved as a building lot, where other folks, their lot was extinguished.

Mr. Johnson: Right, but as I understand it, the 40-acre zoning goes back to 1970 so it was twenty years pre-GMA. It was a local decision that was made here to protect farmland. What was put in place maybe three years ago was the Administrative Interpretation where our code, you know, for the last fifteen years has said you can only build a residence on ag land if it's accessory to a farm operation, we had no way to actually implement that. And I think about three years ago the Department came up with the rule, after working with the Ag Advisory Board, that you had to show three years' farm income on that property to be able to build a residence. So I don't think it's correct to say that GMA obliterated property rights on farmland. I think the County Commissioners in the 1970s made a decision to go to one per 40 zoning because they saw either economic or other merit to doing that.

Ms. Ehlers: Well, it did – it was the GMA that damaged the Rural Intermediate – the LAMIRD group – and some of them have been rescued by the 14.16.850, the Reasonable Use. But I'm hearing stories of people on the east side who are being denied. I don't know the details. I just wish to bring it up as something for you to please look at because it would make their reception of the Shoreline Management Act a good deal more financially acceptable.

Mr. Johnson: Yeah, I need to talk to Betsy about that and find out, you know, her understanding of whether there are properties that would simply not be developable under the Shoreline.

Ms. Ehlers: And while you're talking to her about that, please explain the LAMIRD because the last time I raised it with her she didn't understand it. I raised it at the next meeting and Gary agreed with my understanding. She wasn't part of that process. There's no reason for her to have endured the hours and hours that you spent on it.

Mr. Johnson: Okay.

Ms. Ehlers: But as I see it, the LAMIRD is – on the shoreline – is a classic illustration of residential zoning, and then it's what else happens as a result of that.

Mr. Johnson: I can look into that.

Chair Lohman: Jason, go ahead.

Mr. Easton: Two quick questions, mostly for the public's benefit on TV. Total – can you remind us? – total grant was from, when your deliverables are due, and what do you think roughly on a timeline of when you'll be finished?

Mr. Johnson: Total grant is $200,000. It's through the Department of Commerce. The funding is –

Mr. Easton: Federal or state?

Mr. Johnson: State Department of Commerce.

Mr. Easton: Sorry.

Mr. Johnson: The actual funding source is the EPA. It's estuary protection funds, so in some ways it's linked to Puget Sound protection in the thinking that maintaining resource lands in resource use or rural lands in rural use rather than urban use, it results in better watershed outcomes than otherwise. Basically the way the work program is set up is that this is kind of an exploratory year, so through this year we'll – one of the things we're doing right now is the market analysis to determine, Is there strong enough market demand in Skagit County to create demand to purchase development rights to make the whole program work? And I'd say we're maybe about a third into the process and hope to have some preliminary results from that by July and some more final results maybe early September. And a lot of members of the Advisory Committee have said, You know, we really don't know if there's anything here to go on until we get the results of the market analysis to tell us whether there's strong enough demand

even to make this viable. By the end of the year the work program is to take kind of all of the compiled information to the County Commissioners and say, Here's what we've discovered. Here's what the market analysis has found. Here's et cetera. And probably the Planning Department would make a recommendation to the Board as to, you know, We think a TDR program could be viable and this is what it would look like, and the Advisory Committee would be a part of helping shape that and also saying – you know, probably individual members being able to say, I agree with that recommendation or, I disagree with that recommendation. But then it would be up to the County Commissioners to decide whether to move into a formal program development, which would mean turning it into policies and code – draft policies and code. It would then go through the public review and comment process that Ryan outlined earlier. So that –

Mr. Easton: And how much of the grant have we spent?

Mr. Johnson: I couldn't tell you right on.

Mr. Easton: Are we halfway through?

Mr. Johnson: Well, so 50,000 of it has gone to – well, it hasn't gone to Burlington, but it's dedicated for Burlington doing some redevelopment planning, some economic development/redevelopment planning in its retail core area. You may have read about some public meetings there that have talked about, you know, What would you like your town to be like in the future? How could we strengthen it economically? How could we make sure that the mall is a thriving place ten, fifteen years from now? And also as part of that process, looking at how future potential development in the retail area might result in demand to purchase development rights that could then purchase residential development rights from sending areas – areas that we're trying to conserve through the program. So that's $50,000. I would say we're – I don't know – maybe a third of the way through on the grant fund's $150,000 that the County is using.

Mr. Easton: So a question for Dale – two questions for Dale. So is this the majority of what Kirk's working on from a work load point of view?

Mr. Pernula: It definitely is. There will be plenty of other projects come along this year, if not next year. Next year remember we've got a 2016 Comprehensive Plan coming up, which means we need to docket it by 2015, which means during the year of 2014 the major portion of the work is going to have to be done. Now Kirk's not going to do it all but I'm sure that he's going to be given quite a bit of it. But for this year right now this is the majority of what he's doing and probably for a good part of next year.

Mr. Easton: Are you able to use the grant money to help offset Kirk's expenses as an employee against your budget?

Mr. Pernula: Oh, yeah.

Mr. Easton: Okay. Thanks.

Chair Lohman: Matt, did you have something?

Matt Mahaffie: Yeah. I got a little side-tracked last time we were talking. A lot of what you've spoken about – the very abstract, multi-use kind of thing – I think spatially – and what kind of discussion would there be, you know, resource land to still within the county, not to a defined urban area like a city – like Rural Reserve? You know, being the person that was a few thousand square feet short on adding another lot to a CaRD, I would have happily paid whatever somebody wanted for their Secondary Forest or whatever for an extra CaRD lot. Is that a discussion? I mean, you're taking resource land without the associated infrastructure and people still are developing them, not particularly right now but they have recently – versus, you know, not necessarily urban but still where the infrastructure the County already has in place – roads, power, things like that. Is that in the discussion at all?

Mr. Johnson: Maybe not that exactly, but there's been thinking about – so let me tell you specifically what we are looking at and then how, just to try to wrestle with that a little bit. So we're specifically looking at some non-city areas – Bay View Ridge, the urban growth area, where the Commissioners, I don't know if it was five or eight years ago already decided in policy – and this went through the Planning Commission through the Bayview Ridge Subarea Plan – that urban development at Bay View Ridge would have to be four units per acre – that's kind of the standard definition of urban densities – but that it could go to six units per acre with the additional two units being able to be done through purchase of development rights. So that's one of the things we're looking at is, How would you create a mechanism where people can access those two additional development rights through TDR?

Another one is also looking at the industrial land up there and looking if there's something that developers want and there's strong enough demand that isn't already granted through the code where there might be some leverage or ability to turn that into purchase of development rights. There's the program in – I think it's Warwick Township, Pennsylvania, that allows developers to buy additional lot coverage. They started it on industrial land. They start at a very low level of 10% coverage and I think they go up to 15% max, and you can buy increments of 4,000 square feet. So that would be another example.

We're also definitely looking at rural upzones, so like, you know, maybe Jensen-Peck, the Rural Reserve to Rural Intermediate proposal that you considered last year. One of the Commissioners in particular thinks there shouldn't be any more upzones in the county without some contribution, or participation in TDR. So you

– one way that's been proposed is that you would review the rural upzone – so a request for additional residential density – on its own merits, based on the Comprehensive Plan policies. But if that were granted, there would be some requirement to actually be able to exercise it to purchase development rights or somehow participate in TDR.

One of the challenges is it's very expensive to do a decent market study to determine what the value or willingness to pay for something is, so maybe we could talk a little bit afterwards or by phone sometime on the particular situation that you encountered. Because one of the things we'll be doing through the market analysis is talking to people, to developers, to builders, to people who do land development who, you know, can say exactly the kind of thing you're saying – is, I would have loved to have been able to buy a few extra thousand square feet.

Mr. Mahaffie: I mentioned it for two reasons. One, there's been some discussion over the last year about maybe revisiting CaRD regulations.

Mr. Johnson: Yeah.

Mr. Mahaffie: Kind of like an obvious place to stick it in there. And two, some of the things you mention – or to me – multi-use zoning – to me that's something the cities should be doing *anyway*. It's like you're paying extra for something that they should already be doing. It just – I like the idea of transfer of development rights. It's just, you know, making a sales pitch into a broader approach.

Mr. Johnson: I went to a meeting of ten Cities that are moving forward with TDR and I think it kind of depends on how strong the market demand is in your jurisdiction, but I'd say two-thirds of them saw TDR as an incentive. Developers here can access, you know, additional floors or something like that. They purchase development rights but what they receive in terms of additional development potential significantly outweighs that, and so it's worth it to do that. And another third saw it as a tax or a burden or a disincentive. So I think it kind of depends on how strong your market is – how you – you know, whether you see it as a – Mount Vernon has said, We want to encourage mixed use development and redevelopment in our downtown with the floodwall project and we don't want to do TDR right now because we want to make it more attractive to people rather than less attractive. So I think part of that – what you're saying about the city areas is, Is it an incentive or is it a disincentive? It kind of depends on –

Mr. Easton: Well, and the hard part with that is markets change. I mean, today's – sixteen, eighteen months ago the volume across the title and escrow desk that I'm working at is significantly different than what it is today, and I think the answer you get from a Brian Gentry or a Joe Woodmansee tomorrow about what they think about this could be so vastly different, you know, twelve months from now.

Mr. Johnson: Yeah. But I definitely have to talk to you about, you know, kind of what you've experienced and come across, because probably the less explored area of potential is what you can do in a county in the rural area or at Bayview Ridge that's still consistent with your overall Comprehensive Plan and development regulations and your GMA vision, but, you know, like you said.

Mr. Mahaffie: Six years ago this was – it would have been a lot different topic. Who's done a CaRD lately? You know we don't even think of that, but it'll come back.

Mr. Johnson: Yeah. Well, I know the Mary Heinricht study that was done about six years ago said there's no demand and they look at that and it's – in Skagit County – that was, like, 2006. From what I remember, things were going gangbusters here. So, yeah, there's no demand now but who's to say that there won't be ten years from now?

Mr. Easton: That literally – 2006 was literally the lowest point in the history of the county for, like, twenty years on inventory units. I mean there were literally like under a million dollars in February of 2006: sixty-one pieces of property for sale in Anacortes. For the whole city.

Mr. Johnson: And there were new, you know, hundred-acre subdivisions going up left and right in Mount Vernon, so the markets are definitely cyclical.

Mr. Easton: Seems like a strange phenomenon to me.

Chair Lohman: How do you keep it on the books, then? How do you make the program have some longevity? Because it's been referenced multiple times that Mount Vernon's was suspended because the way that it was going: uh-oh, we've got *too* much here. And how do you keep the program from undermining things? Because I'm thinking about the PUD ordinance that you're working on for Bayview Ridge. There's a ton of balancing and deliberative work that goes on in figuring out a density, so how do you bring a program like this in there? And then you can't have it here today and then not here the next day, kind of in an arbitrary manner.

Mr. Johnson: Yeah. I think that's a really good point. I happen not to think that TDR is a Ponzi scheme but if you're the developer in Mount Vernon who bought development rights and now you can't use them you might think the TDR *is* a Ponzi scheme. So, yeah, one of the things that to be a successful program is you need to have certainty – particularly, I think, for the people who are buying the development rights – that they'll be able to exercise them. And that's been brought up. Don't give away additional commercial square footage in a city as an incentive if your drainage regulations won't allow you to actually implement it. So you've got to be sure that you're not, you know, saying, Well, this is this great

incentive that you can buy, but then when you go to try to develop it you're stymied because of some other regulation. I would definitely say TDR is not easy. I think there – I've read enough that I think that there are working examples and I think it's worth a look, but I can't tell you – I mean, you know, elected bodies change their minds over time and so that –

Chair Lohman: Well, and zoning is somewhat arbitrary, too –

Mr. Johnson: Yeah.

Chair Lohman: – because it changes over time.

Ms. Ehlers: Well, and there's something else. It will depend upon how the initial operation works. For example, when you do mixed use – most European cities and towns are mixed use. What you hear when you go over and listen is the bitter complaining that now there's boom boxes and a lot of drunkenness. The people who live in those areas have no peace and quiet and that turns out to depend – I found in New Jersey – depend entirely on the laws. I was in one town where you could not make any noise that went outside your property line. That meant outside your apartment wall. And the police walk by and if they could hear it then it – now that was a lovely place to live. Another place I lived where they didn't have that rule was pure hell because everybody in the building had their boom box on in a different throb.

Chair Lohman: But that might have been – somebody might have had the opposite opinion. So, I guess, what's – how does a rural County entity partner then with a City? I mean, our goals and our desires are somewhat different and somewhat on a collision course in a way, because GMA kind of wants to prefer Cities put all the density in – industrial and all that. Well, that puts the County at a disincentive because –

Mr. Easton: Tax base.

Chair Lohman: Yeah – income generation is lost. So how does that tension – how do you make that work?

Mr. Johnson: Kind of gets to another issue that I was going to talk about, which is, you know, What would your conservation goals be through a TDR program and how would you implement that? It seems a lot easier to talk about natural resource lands because I'd say generally there's a pretty strong agreement that people in Skagit County value the agricultural land and they value the forest land, and we also have good ways of identifying and designating them, and we've *had* to designate them through GMA and through the Comprehensive Plan. So we know what the Industrial Forest land, the Secondary Forest, the Rural Resource – we have Ag-NRL – Rural Resource with ag soils – and we can identify Rural Reserve lands that have active agricultural use. Those are all pretty easy to

capture. And the County, I think, through its policies, through the Comprehensive Plan, has said, We want to continue to be a natural resource county. So I don't know that retiring residential development rights from natural resource lands based on willing participation of landowners, and not the enforceable thing, I don't think that's necessarily contrary to the County's long term economic interests. I think the Cities will tell you that residential development costs more than it pays, and that's one of the reasons why some don't want to take more residential development.

So I'm not sure transferring residential development rights out of rural lands to urban lands would be a net loss financially for the County. I don't know. I haven't done the study. I've just – I mean, if the county controls land use regulation over Bayview Ridge, there's talk about additional industrial land being needed in the county and, you know, a lot of people think that would be a great place for it. So I think that the County just kind of needs to think fiscally over the long term about what it needs to do to retain its economic viability. I'm probably not answering your question very well. I don't necessarily think that _____ Cities and the County. I mean, I'm a city resident who cares about the farm community and the like and I think there are rural residents who want healthy cities in the county. So I think in some ways our goals are similar. You know, like someone'll say, Well, why the heck would Burlington care what happens outside of its limits? But Burlington, if you talk to Margaret Fleek or go to some of these community meetings I've been to, they say, We're defined as an agricultural community and so we want agriculture to continue to function around us even though it's outside of our limits, our city boundaries. So I kind of think TDR is, I guess, in an idealistic way, a way to help people understand how their fortunes are interrelated. Maybe that was a little more philosophical.

Ms. Nakis: I just had I guess a comment. With both the Shoreline Master Plan and the TDR, for example, the goal is conservation, right? So if there's a 200-foot setback on – you know, and there is in the Shoreline Master Plan on certain lands, and that's because of conservation and whatnot – then that land loses its value and is not worth anything as a TDR. You know, it couldn't be put in the TDR program, correct?

Mr. Johnson: I've talked to Betsy about this, and Dale's been following the Shoreline Update closer than I have, but I'm pretty sure she said that the Shoreline rules would not preclude somebody from building on a property because there's – what is the doctrine? The reasonable use doctrine. You can't simply remove somebody's right to develop.

Chair Lohman: I don't believe that's in the SMA.

Mr. Easton: That's open to interpretation.

Ms. Ehlers: I don't think so.

Chair Lohman: It's in the critical areas one, but I don't believe we have that protection in the Shoreline.

Mr. Johnson: I can't speak to that specific situation. I'm happy to talk to Betsy to try to understand that a little bit better.

Ms. Nakis: Well, I mean, I just think that in a lot of different areas we've removed the person's ability to have property that's worth anything, or – I mean, so therefore it wouldn't be – it wouldn't qualify for the TDR plan. So you're taking – I mean all these different conservation plans are kind of removing – each year, you know, there's another plan and more land taken out for conservation. I mean, I believe in conservation but, therefore, there would be less to – there's not going to be more land going into the TDR but there might be more development that would like to go into cities and that would want to buy the rights.

Mr. Johnson: You would need a willing seller who lives on rural land and if somebody doesn't want to sell that right there's nothing that would force them to sell that right.

Ms. Nakis: But I think – didn't you say that there are some lands that wouldn't have those? If they were flood – if they were deemed flood –

Mr. Johnson: Well, if you're in the floodway – which, in a flood, is where the water is rushing very quickly and your house is going to get swept away – you don't have a development right. And so through our discussions several of the members said if they don't have a development right then they really don't have a residential development – a *residential* development right – then they don't have one to sell through TDR, versus you're in Rural Reserve and you may have a lot of wetlands on your property, but through – I mean, as I understand it there's always somewhere to be built on a piece of property because of the Reasonable Use Doctrine – that our critical areas ordinance doesn't preclude somebody from developing. So in most cases a rural property is going to have a development right. I mean the few instances I can think of where policies or codes explicitly say that right can't be exercised are the floodway and in Industrial Forest land outside of a fire district and more than 200 feet from a county road.

Chair Lohman: Dale?

Ms. Nakis: Okay.

Ms. Ehlers: But –

Chair Lohman: Let Dale.

Ms. Ehlers: Dale? I mean, Kirk, have you talked to the Assessor's office?

Chair Lohman: Carol? Carol, let Dale answer the – answer the question.

Mr. Pernula: Yeah, I just wanted to make a point that if you remember our – when we were looking at the Shoreline Master Program a major part of the time was spent on, How do we deal with those very small lots – the non-conforming lots, expansion of non-conforming structures, or if you have a structure that's now too close to the setback, can they build on the other side and so on? Hopefully the outcome will be favorable to the County's position and the property owner's position that every lot will have somewhere it can build on it, you know? I think that's the intention of where we are going. Well, that's yet to be seen, but, if you remember, that's where we spent an awful lot of time in talking about the Shoreline Master Program.

And the other thing – I think Kirk said it, but the Transfer of Development Rights is a *voluntary* program. It is conservation measures but it's totally voluntary, based on what the property owner wants to do.

Mr. Mahaffie: One clarifying thing that seems to be getting forgot a lot: You say "lots," just kind of clearly; it's "legal lots." People seem to forget that. There's a lot of lots out there that weren't created legally by today's standards and don't have a development right. It happens a lot ____. It's a lot of little lots that don't come with a development right.

Mr. Johnson: So the process is sketched out here just as a proposal. It talks about going through lot certification as the initial screen. So you'd have to have a lot that's been certified for development purposes before you'd be able to develop.

Ms. Ehlers: The platting process helps that.

Mr. Easton: So currently – you touched on this a little bit ago about the agricultural requirements that were drafted in, I think you said five or six years ago when we realized that people were building on farmlands. They were using their one development right but it wasn't really; they hadn't actually been using it to farm, so we came up with this. You've got to prove you've been a farm for three years, sort of, and then we'll allow you to build a home on the given 40-acre lot or whatever. Would those same kind – are you guys discussing will those same standards be applied then for that person to be able to sell that development right? I mean, could – if ground's not being – you know, currently zoned ag land – not being used in the last few years, would that still qualify for his property right to be able to be sold? Because it seems to me you'd want that stuff in the inventory more than putting it through a means. Like, we're means testing them now to get their development right.

Mr. Johnson: You'd want what stuff in what inventory?

Mr. Easton: I think you would want non – you'd want ag land that may not have been used in the last few years actively. So we've held back development in some places in relationship to ag because we wanted to make sure that the spirit of the rules that we as a community have embraced about wanting to protect ag land were actually being executed on and people weren't just going out in the middle of farm land and building. Are we going to see those same sort of rules in place to try to hold back the selling of the development right?

Mr. Johnson: I don't know. I mean, what I'm trying to do here is reflect things that we've talked about through the Committee, and that hasn't come up and I don't – I guess I don't feel like I have enough time to sort of browse it. But I think – so Taylor, who works with us from Forterra, when we talked about, Would you recognize CaRD density bonus lots as salable lots or not? And basically he said, Well, you want to think about are you creating a good incentive – that the landowner, you know, would encourage them to at least consider the TDR program, and if you want it – if your goal is to encourage conservation, then you want to make it an attractive program and so you would probably want to recognize those density credit development rights as developable.

Mr. Easton: And I think that goes to my question, which is I think you want to make it as attractive to the seller as you do the buyer and making it simple for development rights, regardless of whether the land's been worked or not in the last three years and whether you could prove that you actually worked it or not. Leaving that development right off the ag land is in the benefit of the whole idea of conservation, which is the reason that the two parties – or one of the reasons the two parties are potentially getting together, or the whole reason the Commissioners want us to consider this is at least investigating this idea.

Mr. Johnson: Yeah, that's a good point. I will say, I mean, really I think the sending areas will – you know, if we go down the road – will be fairly focused and targeted on lands that where there's a general consensus that they deserve protection and that they're not so – one of the earliest conversations among the Committee is there's all sorts of conservation priorities in Skagit County. You could say the whole county could be protected, but then you would – number one, it wouldn't be a good goal but, number two, you'd also totally overwhelm the market demand that you have to purchase development rights. So probably you're going to be looking at more targeted areas rather than big, broad areas. So I think, for those who are concerned that this is somehow an effort to stop growth in rural Skagit County or depopulate the county. That's where I would say that, number one, it's not and, number two, the market demand isn't going to be so strong that you couldn't _____. So I think there'll be an effort to really be pretty targeted and focused, and that's what we've heard: TDR programs work best when the residents of the receiving area, whether it's Bay View Ridge or Burlington, see some value in the lands being conserved. Like Burlington has

said, We really care about the agricultural land surrounding us. Mount Vernon residents might care about lands in their urban growth area or immediately outside of the city more than they would care about lands in Marblemount, and so there might be an effort to tie the sending areas to the receiving areas.

Mr. Easton: You know, Annie, I think the one thing that gives me hope that you can overcome – in our area uniquely – overcome sort of this issue of the changing of the guard at the City council, the example being what happened in Mount Vernon – you start a program and then stop it – is that uniquely in this county, which I think is probably unique in a lot of places, we actually have a place that we could send to that we still have jurisdiction over. So as long as the Commissioners' vision – as the Commissioners change over the years – stays relatively stable, we're actually – we only have one political jurisdiction that's covering half of the market, or we have one jurisdiction that's covering both halves of the market, where in Mount Vernon's case or in Burlington's case we're susceptible if we get into a – if we get into an agreement with Burlington and they change mayors, change points of view and councils, they could go from being a partner to being not interested in the program, where at least we have both ends of the potential there. It gets confusing. I think it gets confusing, though, when you mix – this is where I'm a little concerned, is when we confuse people by adding – I get the whole resource land side of it. It gets confusing when you start talking about the industrial land side of how to make TDRs work and that.

Chair Lohman: Well, and I think you have to be up front when you're talking devaluation of a development right under the Farmland Legacy Program is a totally different animal compared to buying a development right from a TDR program. They're like light years different in economic value.

Mr. Easton: So how do figure out whether there's a market? How are you figuring out there's a market?

Chair Lohman: The other thing – but one other point is over time, though, some of the federal monies coming with some fairly hefty strings that are making people kind of look at that on whether they want to participate – strings that had nothing to do with preservation of ag land that have some real restrictions to –

Ms. Ehlers: Such as?

Chair Lohman: Conservation and buffers and setbacks and stuff like that.

Ms. Ehlers: You mean things that would prevent you from actually farming?

Chair Lohman: Yes.

Mr. Johnson: Yeah, I think that's one of the reasons there's a Catch 22. Like Skagitonians is saying, Hey, we really need to look at TDRs as a possible

complement to Farmland Legacy because we don't know – you know, farm landowners may not want to participate where there are those strings attached.

Chair Lohman: Is there any Commission member that hasn't spoken that has something they want to ask Kirk?

Mr. Easton: Could he just answer that last question I had about marketing? How do you figure out if there's a market? Everybody wants to know that.

Mr. Johnson: So you look at past demand and projections for future demand. You look at, you know, past development trends – I mean, I've been compiling packets of data – parcel number data, what kind of development is happening, what the zoning potential is. So you want to look at demand and you also want to look at what's allowed through zoning currently. So if you have demand for 1,000 new residences in the next ten years and already through zoning you've got supply of 2,000 and those are just provided outright, you really don't have a way to make a TDR program unless you want to essentially downzone people on the receiving side, and I don't think the Commissioners want to do that. If you find that there's demand for 2,000 residences in the next ten years and you only have supply on the books for a thousand, then you could say developers could access that additional thousand by participating in a TDR at some point.

Chair Lohman: Keith?

Mr. Greenwood: Kirk, I guess I'm trying to equate it with what I'm a little bit familiar with which would be like a land trust that buys a development right. And they have a board basically of people who have decided what their goals and objectives are and they can target specific parcels. How would we – I'm struggling a little bit to see who that group would be that identifies. Because I think your paper's really good. It helps me a lot to see what kind of discussion's taken place, about identifying – so that everything's not worth, you know, like a wooden nickel. You know, there's development rights all over the place and if I get to sell mine up at, you know, the upper reaches of Marblemount, you know, hey, it didn't have any value but now it's got value, that doesn't really – it's not real money, you know? And so I think you've identified a need to target those sending areas and those receiving areas, and maybe if we have a structure in place, one that formalizes that process, then when the market's there it happens. When it doesn't there's no money.

Mr. Johnson: I mean you might say, like, Rural Resource lands are – we think Rural Resource lands are valuable but they're subject to development pressure that could diminish their value as resource land. So Rural Resource land could be – can have ag value, it can have forest value, it might have mixed value. It also can have four units – let's see: one unit for 5 acres or four for 40 through a CaRD. So you might say Rural Resource lands are a top priority and we're interested in Rural Resource lands within six miles of any city.

Mr. Greenwood: Okay, so you could identify it by a geographic region and a zoning type.

Mr. Johnson: It'd be sort of a zoning overlay. Yeah, because I think – although I think there are some TDR programs where applications are reviewed individually, I think there are others – and I'm kind of thinking in Skagit County, you know, we _____ program, we should try to keep it simple where it's just – you have predetermined areas on a zoning map or a zoning overlay that's gone through the Planning Commission, public written comment, the Board of County Commissioners. These are our priority conservation areas. These are potential sending areas. If you own property here you're eligible to go through this review process to see if you have development rights that can be entered into the TDR market.

Mr. Greenwood: Does it seem to you that it would make sense to keep it small and then let it expand, rather than if it's too big then you don't achieve your goals in conservation?

Mr. Johnson: Yeah, I think – and, again, I'm learning along with everybody else – you don't want it so small that the sellers kind of have a monopoly or there's like not a truly active market. You know, when it's so big you get a little conservation here and a little there and a little there and a little there and you haven't – there's no critical mass.

Mr. Greenwood: Yeah, I can see part of that. I guess part of my thinking was that I remember I think it was Commissioner Dahlstedt who said, We've got some values that maybe we've been just giving away in the past and we want to recognize that value. So I guess we're seeing some values in some of these cities or some of these urban growth areas, and rather than give them away we might want – it might make sense to say, Okay, we want five for such and such a size lot but the default is four, so if you want five we're going to sell that.

Mr. Johnson: And it – I mean, a true TDR program is a market transaction between buyer and seller so they set the price. But it's only going to work if it's – say, if the buyer on the receiving side, you know, if still there's an economic incentive to do it.

Mr. Greenwood: Right, right.

Mr. Johnson: So if the price is the same as the profit potential then it's not going to happen, so there has to be something on that receiving side to make it worthwhile.

Mr. Greenwood: Thank you.

Chair Lohman: Any other last questions from Commissioners who haven't spoken?

(silence)

Chair Lohman: Okay. Thank you, Kirk, very much.

Mr. Johnson: Thank you. I would stick around for the next session but I've got relatives who have just arrived in town so I'm going to go home and greet them.

Chair Lohman: Okay, moving on to item number 6 –

Mr. Axthelm: Thank you.

Chair Lohman: This is the bylaw review committee so, Keith? He is the – you *are* the Chairman, right?

Mr. Greenwood: Still.

Chair Lohman: Okay.

Mr. Greenwood: Sure.

Mr. Easton: No coup? You're announcing a coup?

Chair Lohman: No!

Mr. Greenwood: No. Actually we had a meeting and I don't even remember the date but it was quite a while ago, except that it ran pretty much by itself. I thought it did pretty well. Robert and Carol were there and it didn't even run very late. I thought it was pretty good.

I do think that, you know, being that it was initially started as a bylaws review it had the additional attachment of the proposed ordinance for legislative reform. So this particular – the task that we had – what we had left on our task list or came up as new for our task list was to address two particular items that came to my mind but Carol reminded me of an additional one. So we came up with three items and tasks, and I'll just go over those three tasks and then what I thought I'd do is just go from findings to recommendations for each one of those tasks so there's some continuity there.

We had a task to look at the distances for mailing specific notices to specific sites – site-specific Comprehensive Plan or zoning map amendments, and then look at those. We have a requirement if it's within 300 feet then there's a – it was brought up, Is that an adequate distance to be addressed?

The second one pertained to notification dates, and because in the previous one we had some options or alternatives. We had, I think, in some cases ten, some cases fifteen, some fourteen, and I had put in there an option of thirty. So I guess I put a high enough one to get a rise out of folks because thirty didn't seem very desired. So, with that, we looked at that period of time.

The third one was again brought up by Carol: evaluating the adequacy of the documentation for our formal reviews by the Planning Commission – whether we're getting enough information. So we looked at a bunch of – as many documents as we could find that pertained to these issues and maybe even some that didn't directly – didn't come out with fruitful findings. But we did find on the first one, number 1, distances for mailing notices, that in most cases notices, when they are mailed, they're mailed to neighboring or adjoining properties if any at all, and many cases they weren't required. And our County – well, there was one point also that was brought up pertaining to aquifer recharge areas. That was one of the points that Carol thought we should look at as far as notification pertaining to it, and there's a whole different section of code dealing with those recharge areas and it talked about a thousand-foot distance. So it was looking at affected properties for that particular issue and it didn't pertain, we didn't think, to the issue we were talking about for zoning map changes.

Ms. Ehlers: Keith?

Mr. Greenwood: Yes, ma'am?

Ms. Ehlers: I'd like to bring that issue up _____ because I have an update beyond what we talked about.

Mr. Greenwood: Okay. All right. So the recommendation on that mailing of notices is that it was found that since our County seems to go above and beyond most notification requirements in our Unified Development Code giving notice to affected properties. And this is in quotes: "Owners of affected properties and to all property owners within 300 feet of the subject property": It looks like we've covered more than adequately notification requirement. And that's for site-specific cases.

Chair Lohman: But that's –

Mr. Greenwood: Yes, ma'am?

Chair Lohman: That's in addition to all those others.

Mr. Greenwood: Yes, yes. Yes.

Mr. Easton: In addition to it. You mean in addition to adjoining and –

Chairman Lohman: No, in addition to all of the other noticing requirements.

Mr. Greenwood: Well, the news –

Mr. Easton: The newspaper and –

Chair Lohman: The newspaper, the e-mail list –

Mr. Greenwood: Every time we make a change to the Comprehensive Plan there's a major list of notification issues or methods, and we're attempting to update some of those to get into the ___.

Mr. Easton: But your recommendation is we don't need to take any additional action.

Mr. Greenwood: Right, yes. So that's item number 1. Task number 2 pertaining to the extension of minimum notification dates – and at this point we found that there was a wide range of requirements for hearings. Carol pointed out and I saw it again today in the latest e-mail we got pertaining to the Hearing Examiner actually making a notice time which seems to be – it looked like it was – I don't know how many business days – but it looked like it was three weeks essentially of a notice. I brought that with me.

Ms. Ehlers: He's using – the Hearing Examiner is using 21 days and that works out in practice to either be 14 business days, depending on how many holidays and furlough days there are that lurk. It's either 14 business days or 15 business days.

Mr. Greenwood: Right. So the one that Carol pointed out to me that was posted on May 23rd for a particular issue – and, again, these are a little bit different – they're hearings – but it's just an example of how notice is given. It came up to 21 calendar days and 14 business days, which included Memorial Day.

So that brings me to what we had discussed and kind of settled on was a recommendation for – and it shows up in several places in the additional document that you have that we revised, Public Participation Enhancement. You'll see on page – I'll try and hit all the right pages – page 4 in two places I've highlighted those in red, if you've got color, to 15 business days from 14 days, and 15 business days from where it said "at least 10" – the 15 business days. And then on page 5 we settled on 15 business days as well.

Ms. Ehlers: At least.

Chair Lohman: Minimum.

Mr. Easton: More's okay.

Mr. Greenwood: Right. More is okay. Right. And that's the only place, the only additional place that – there was another reference to 14 days but that pertains to – I think that was for written notice, but – oh, no, that's passing. On page 6 there's another reference to numbers of days but that's passing on recommendations to the Commissioners.

Mr. Easton: Oh, that's when the Commissioners – when they have to sign the motion.

Mr. Greenwood: Yes. Correct. So we'll just kind of leave that as it is and we could address with comments later, but I'm hoping that you can kind of see our thinking there. So that was our recommendation, was extending that notice period to 15 days – business days – so that we can incorporate and accommodate holidays, so we don't have a 14-calendar day window which overlaps what was reported in one case to be Thanksgiving week-end or holiday week-ends and then there wasn't very much time or notice. One thing that Matt brought out which I think is important was that if we make the period of time too long people lose a level of interest and it gets kind of vague. It kind of gets lost.

Mr. Easton: I have a question to ask of the Chair. So how do you address the definition of – because we're in a period where we've now through a couple of other cycles had furlough days, will the County – the County's closed on a given Friday. Is that going to then not count as a business day? Will these be business days as defined by the County calendar?

Ms. Ehlers: No, these are –

Mr. Easton: Or would they be business days defined by – the only reason I ask is because especially around holiday week-ends and the regular rotation of furloughs we've been dealing with somewhere between six to twelve furlough days in the last couple of budget cycles, roughly. And so that could affect how you count the days so how would that be addressed?

Chair Lohman: Wouldn't that be – wouldn't it *not* be a business day because the County offices are closed?

Mr. Easton: I don't want to make any assumptions but I – that's why I had the question.

Ms. Ehlers: Look. There's a couple of things that feed into this. The first is that there were a number of – the Commissioners have asked that things be reasonably consistent between the Hearing Examiner and the Planning Commission.

Mr. Easton: Makes sense.

Ms. Ehlers: That makes sense. There have been a number of times in the past couple of years when there were legal notices, or because it was written in such a way that it had to be, they were due on the Friday of Thanksgiving, which meant that they were accepted until –

Mr. Easton: I totally understand the why of them.

Ms. Ehlers: I want the audience to understand. And so they were turned in on Monday and date-stamped on Monday, but that meant that in a court they would be deemed late. Then there was the problem that Roger Mitchell brought up on January where he said that there was eleven days for discussing the subject and the County was only open for four.

Chair Lohman: Right.

Ms. Ehlers: That was the background for my thinking about turning to business days.

Mr. Easton: So I just wonder if, maybe for clarification, maybe we just add the word "County" business. If we just add the word "County" to "business days," would that imply that – would that make it clear that those are measured by whether the County's opened? Then we don't have to go into some sort of definition – I just want to make sure that we're clear about –

Mr. Greenwood: Well, the other option here that we threw out initially was 30 days: too long; 15 days seems to at times be too short or 14 days. Make it 21 days and you've pretty much covered your –

Mr. Easton: 21 County business days.

Chair Lohman: Which was going to be my question where you had on your page 5 where you went to15 business days from 30 calendar days. So I got out my calendar to arbitrarily count and it appears to be about actually 21 calendar days.

Mr. Easton: Yes.

Chair Lohman: So it's shortening it a week essentially, in round numbers.

Mr. Easton: Right.

Ms. Ehlers: And lengthening it a week.

Chair Lohman: This is in the section that it would be formal review and it would be in the section where the staff report and all of the drafts of the plan and all of

that stuff would have a minimum number of days. Is that acceptable? And there again, you know, this is kind of a committee report –

Mr. Greenwood: Yes.

Chair Lohman: – to the Planning Commission and then we need to formalize it and get it out to the public.

Mr. Greenwood: Right.

Chair Lohman: So we're still in the process.

Mr. Greenwood: Yes.

Mr. Easton: I think we need to recommend to them and then they decide _____ the hearing, right? We're calling our own public hearing on this?

Chair Lohman: I'm not sure how we do it.

Mr. Easton: I think we actually ask them – we recommend to them that we'd like to have a public hearing on this, would be my guess.

Chair Lohman: Have a public hearing on this. Put a proposal to the public.

Mr. Temples: Jason, my only quick comment would be when you're saying add "County business days," this is a Skagit County document so it seems a little – it's like we're not going to say "Pierce County."

Mr. Easton: Well, at times these overlay with requirements by the state, so some of what these have to be in compliance with are dealing with issues that were relayed to us by the Department of Ecology, Department of Commerce and Department of Fish and Wildlife. And so I just want to make sure that if the average public is reading this – part of the reason why this all came up is because of furloughs – I want to make sure we address furloughs. I'm open to the option – I like 15 days. I like 15 calendar days.

Ms. Ehlers: Business.

Mr. Easton: I mean 15 business days.

Ms. Ehlers: Thank you.

Mr. Easton. But I'm actually – I actually would probably lean towards 21 calendar days. Then it doesn't matter what the County does with furloughs.

Mr. Greenwood: Well, and, you know, we just kind of – we felt that the 14 days being a minimum – felt that it was – we got the impression that it was exercised too much as a minimum. If it goes to the minimum and it goes to a minimum, that looks like a pattern of too short and people feel like it's too short. And we're not talking about, you know, somebody who's put in a plan and they're getting a hearing of some sort and you've got a certain timeframe within which they have to get a response to. We're talking about legislative amendments here or legislative regulations/development regulations. So usually those aren't emergencies, I don't think, and there doesn't need to be a rush, but rather there needs to be information in people's hands soon enough. And again that's why I kind of like what Kirk has done and Betsy has done to where we get to digest this stuff along the way. Obviously people change along the way, too, so some things come back up that have already been handled at one time. But we seemed to think that that was a compromise. It would be 21 days or 15 business days, but business days seemed to make sure that we got two weeks' worth of opportunity for people.

Mr. Axthelm: Dale, how does that work with as far as getting from one place to another? Say you have your different meetings – is that going to delay things a month? So, say you can't fit it into the next meeting –

Mr. Easton: Are you talking about more the calendar?

Mr. Axthelm: Yeah. So basically –

Mr. Pernula: I think 15 business days – normally to get it in within 15 business days we would probably have to advertise it today. So if you took an action like tonight and you wanted to re-advertise, it would be two months from now.

Mr. Axthelm: Yeah, and that's what I was trying –

Mr. Pernula: That's one problem with it.

Mr. Greenwood: I thought that's what we said when it was 30 days? And that's the same with 21?

Mr. Pernula: Well –

Mr. Greenwood: I think you need three weeks –

Mr. Pernula: We're only – we're about one day short on this, I think. Betsy did the calculations on it today and to publish it for next week we'd have to have published it today. Now that would be –

Mr. Easton: Now that's the *Herald*'s deadlines, right? Is that –

Mr. Pernula: That's part of it, yes. Because we have three full weeks here plus the lag time between when we have to get it in and they publish it. It might be that we could talk to the paper and get it published on a different day than we normally do it.

Ms. Ehlers: Well, you have done that.

Mr. Pernula: Yeah, we could do that but we'd be changing our own procedure. We'd have to talk to the newspaper. I'm not so sure it's going to be that much of a problem because I think usually if you want to continue it to the next meeting you can just continue it. The only time that you're going to have to re-advertise it is if you make a substantial change in the code and you want to have another hearing on it, in which case the Commissioners probably should know about it as well. So it may not be a problem at all.

Chair Lohman: Because this body, we can extend the hearing.

Mr. Pernula: You can just –

Mr. Easton: We have a practice – a lot of times – probably 60% of the time – on major projects or more, we've extended the comment period too. This doesn't preclude us from doing the ___ – the baseline –

Chair Lohman: This is a minimum.

Mr. Easton: If we come into a place, with the SMP as an example, it's clear that we want to give the public twice as much time we can do that and we have a history of doing that, and we have a history of letting people just comment in person and to leave their paper or turn their – they can turn written testimony in at a later date, you know, later than that night.

Chair Lohman: And, well, and we can also call special meetings.

Mr. Easton: Right.

Mr. Axthelm: What I'm more concerned about is a situation where you have a meeting here, you want to get it into the next meeting. We've had our hearing or whatever else and then to bring it to the next meeting and then have a two-month delay or a month delay. Because when you skip a meeting, odd situations.

Mr. Easton: But don't –

Ms. Ehlers: Well, wait a minute. What sort of thing are you thinking of? We only deal with things where you have a year to do it, and what I've noticed – boy, have I noticed it – is that the County takes 90% of the year and then tells us, the

Planning Commission and the public, You've got ten days; we don't have any more time.

Mr. Axthelm: And I'm not trying to rush things through. It's more a situation where if you have a meeting on something and then you skip a meeting and then you have another meeting on it, it just becomes a little inconsistent for people when they miss it. I think the more consistent we can be the better.

Ms. Nakis: No, I think he means if the time period goes too long, then we can't get all that information compiled for our next meeting.

Mr. Easton: Couldn't the staff look into – I mean, so what we're doing now is this a standard meeting?

Chair Lohman: Wait a minute. Wait a minute.

Mr. Easton: Is it standard that you advertise, that you advertise only one day a week? Is that why this is scheduling_____?

Chair Lohman: Wait, Jason. Let's get back on – the train is slightly off track, I think. We need to keep it in context to what the 15 days is about, and it's about the public comment period. We're not talking about –

Ms. Ehlers: Deliberations.

Chair Lohman: – deliberations or –

Mr. Easton: ____ advertising of it, though.

Ms. Ehlers: Yeah.

Chair Lohman: But we're – okay, the first part – if we go – the first part is "A public hearing must be advertised" 15 days, okay? Prior. Business days. "15 business days prior." Then the second instance it's when the information and all the stuff needs to get to us and to the public. It's 15 days prior – business days. So you have to kind of keep it in context of what you're talking about.

Mr. Easton: I agree but the context that's confusing the situation is that the County has a deadline from the *Herald* because of the way the GMA's written about how they – when they could advertise, which means even – I mean not – the GMA – the requirement that it's advertised is a factor that Dale has to factor into how it's distributed. There's ways they have to put notice out to the public.

Chair Lohman: Right.

Mr. Easton: So we're going to take what we were trying to make sure we had – the subcommittee, and I appreciate their work – and try to not make it too long because of momentum in relationship to the issue – not make it too shore because, like, I agree with Carol: There's no reasoning for a 1000-page or a 50-page document, for that matter, to be given such a short amount of time to respond. But if the deadline's overlaying the way – now Dale's saying we might be in a situation where we're waiting sixty days before we actually have a meeting.

Chair Lohman: I guess I have a hard time thinking that you can only have a public hearing or a public notice in the *Herald* on Thursdays. I just don't –

Mr. Easton: That's what I'm getting at. That's what I'm wondering can be changed.

Ms. Ehlers: It used to be – I used to tell people it's always on Thursday except when it isn't.

Mr. Easton: Oh. That's perfect.

Chair Lohman: Dale? Let's let Dale have a shot here.

Mr. Pernula: Once again, I really don't think it's going to be a problem other than 1% of the time because if you have it already noticed and you want to continue it to the next meeting, you just continue that same item.

Chair Lohman: Right.

Mr. Pernula: If you have something that you want to change in a major way then you would have to re-notice it, but you're probably going to take that to the Board anyway because that's not – it's probably something that the Board of County Commissioners isn't aware of. So I don't know that it's really necessarily a problem that we're talking about here. The one problem that I do see here is that there is some ambiguity in "15 business days." Does that mean fifteen *County* business days, you know, not counting the furlough days? I'm not sure what it means. Or if we have a furlough day, does – everybody else's business is open. Do we count it as a business day?

Ms. Ehlers: Well, you guys don't.

Mr. Pernula: Well, I just think we need to do away with the ambiguity here.

Mr. Easton: Okay, would you prefer "calendar days" to "business days"?

Mr. Pernula: Probably. That or define what the "calendar days" are.

Mr. Greenwood: I think 21 days – calendar days – would accomplish the same objective and I think it still gives us enough of a window to where we could – I mean, I'm okay with "business days" – "15 business days." That makes it real clear to me. You might have to define "business days," but I really think that if we were to – we get a presentation usually and we'll get a PowerPoint or something like that. We want more information to be able to make a decision, and after our meeting we should know whether we're going to have a hearing or not. And if it only takes a week, how would it take us two months to decide if we're going to have a hearing or not?

Mr. Axthelm: For the County it's the calendar days that matter because your notification happens at a certain point. So it really doesn't – the business days don't necessarily matter. It's the calendar days. But if you pick 21, then you know you're going to get at least 10 – well, how many working days are you going to get even if there are furlough days and –

Mr. Greenwood: Yeah, I guess I'm less concerned about the furlough days. I'm thinking about people's days.

Mr. Axthelm: Yeah. No, no – that's what I'm talking about. But it gives them enough time in there.

Mr. Temples: I also see furlough days as really a temporary situation.

Chair Lohman: Right.

Mr. Easton: Historically the longest furlough day – furlough day combined with weekends has been 4 that the County's done, where they took a 3-day weekend and added a furlough day before it. That would – so even in a 21-day – calendar day – example, without having to define "business day," you're still, you know, you're still over 15 days.

Mr. Axthelm: Yeah.

Chair Lohman: Right.

Mr. Easton: So we meet the objective and –

Chair Lohman: Do we want to have somebody make a motion and memorialize this for you, or do you want to just take it back to committee and do some more work on it?

Mr. Greenwood: Well, actually, what I was thinking when we initially set up the committee – correct me if I'm wrong – but we had a motion that would need to be formulated for our bylaws – and I think that we did that last time – so that the

bylaws would be modified, and that's done by the Board of Commissioners. We got the proposed –

Mr. Easton: Let me clarify: We recommended that they modify our bylaws. We can't dictate.

Mr. Greenwood: Exactly. They're the ones – well, we have control of our rules but they have to approve them. Right?

Mr. Easton: Right.

Chair Lohman: Right.

Mr. Greenwood: Okay. So they would do that if they choose to do so. And so I'm just thinking we would pass these on to them, because they were waiting, I think, for something back from us pertaining to this proposed legislative revision, right? And I don't think they've seen that yet.

Mr. Axthelm: Does the public have opportunity to comment on it?

Ms. Ehlers: No.

Chair Lohman: Not yet. But you also had some language in there that had nothing to do with the 15 calendar days, and it wasn't in your task. And it was on page 1, where any interested person may suggest a development regulation. I think that you should probably – because that is definitely not in there now.

Mr. Greenwood: Well, there're several sections of this – and I tried to put in a document introductory portion to the front just to – because some of the public said, Where did this come from? What is this all about? And we just took the elements of the revised development code that was formulated from the seventeen questions, and we took the portion of it – just chopped out the portion that pertained to public participation enhancement, notification, and tried to refine that. And whether we forward that in a formal motion, if you think that's the best way to do that, or as a recommendation for the Commissioners to decide on/rule on – do they want to keep it moving?

Mr. Axthelm: What's the next step?

Mr. Greenwood: Yeah, what's the next step that they want to do? It's just a committee report, I guess. Can we give them a committee report or do we need to have a Whereas?

Ms. Ehlers: Well, they're the ones who had a hearing on a section of code that normally comes to the Planning Commission.

Mr. Greenwood: And then it came back to us – then it dropped down to us.

Chair Lohman: Yeah. And now we're kind of coming up with a totally different idea – stealing some of the idea that was in there and sending it back to them, and it says, Well, why don't you consider this and put it out to the public? So …

Mr. Easton: Extending the invitation that we're open to hosting a public hearing on it for them.

Chair Lohman: That we need them. We're going to do that. We need somebody to craft a motion, and we discuss the motion and vote on the motion.

Mr. Easton: Do we need to talk about this third point first and then do them all together?

Chair Lohman: That would probably be a good idea. Then it could be a total package.

Mr. Easton: Okay. Because we haven't touched on the documentation.

Mr. Greenwood: Right. Right. And I think that's a pretty simple point, and it's just a clarification of the adequacy of documentation before we make our formal reviews. And I think it comes up in the findings. I put in quotes here that it "shall" – I pulled that portion out where it says it "shall refer expressly to any maps, descriptive materials, and other matters pertaining to the particular amendment. And I think it's referenced on – somebody can help me if they know where it's at.

Chair Lohman: Page 5 at the top.

Mr. Greenwood: Oh, yes. There you go – thank you. But it should be underlined here. We're looking for the staff report, together with proposed drafts of the plan, plan amendment or development regulations, and we wanted that to be consistent and added to the portion where it's given to us as well. And, again, it's – I'm sorry but I lost my clarity on that issue.

Chair Lohman: That, at the very top, it says "Prior to a formal review by the Planning Commission."

Mr. Greenwood: Maybe it's the copy that I'm looking at. I'm confused.

Ms. Ehlers: Where did it go?

Mr. Greenwood: Yeah, maybe I left it out. I probably just didn't underline it.

Ms. Ehlers: I see it on page 1 at the bottom.

Mr. Axthelm: In the middle of the paragraph on that first one? In the staff report?

Ms. Ehlers: In number 3. Oh, here, number 3. Yes. Findings, number 3. "Since Commission recommendations to the Board on any plan, plan amendment or development regulation 'shall refer expressly to any maps, descriptive material and other matters'…" Those words were in 14.08 and were taken out, and it was significant last year on, I think, all three.

Mr. Greenwood: Right. Thank you.

Chair Lohman: So the words that are underlined are what you're proposing to add to number 1?

Mr. Greenwood: Actually it shows up – Jason just pointed out to me – and it should have an additional underline or highlight to it. But if you look at item (5) on page 5 where it says "Commission recommendation to the Board on any plan, plan amendment or development regulation," and then it talks about voting, and underneath it says –

Mr. Easton: The last sentence.

Mr. Greenwood: The last sentence – "The indication of approval …shall be recorded on any map…" But before that – oh, okay. Yeah, that's what it is. Okay, this is – I'm sorry. I really apologize. Number (5), in the middle, it says, "Recommendations shall be" recorded by a "motion which shall incorporate the findings of fact of the Commission and the reasons for (its) recommendation, and the motion shall refer expressly to any maps, descriptive material and…matters intended by the Commission to constitute the recommendation." That particular section was reconstituted up above in (1) under "Prior to formal review."

Mr. Easton: So some of that is new language?

Mr. Greenwood: Yes, that's correct. Some portions are new language – staff report together with proposed drafts of the plan amendment, okay?

Ms. Ehlers: Because if the Planning Commission is going to report facts, they have to be given them.

Chair Lohman: Right, right.

Ms. Ehlers: And facts should be a basic part of the record.

Mr. Easton: Right.

Chair Lohman: Okay.

Mr. Easton: Madame Chair?

Chair Lohman: Yeah?

Mr. Easton: So is it your desire as Chair to entertain a motion now to recommend that the Planning Commission take a vote on whether to send these as recommendations for changes to the County Commissioners with the opportunity for them to decide whether we should have a public hearing about it?

Chair Lohman: Put it out to the hub?

Mr. Easton: Do we have consensus about what to do about the days? Did I hear we switched to 21 calendar days? It would be simpler for the County and – does everyone agree over that or should we discuss that further? Before I made my motion I wanted to see if I should clean that up.

Mr. Axthelm: Well, the Planning Department and legal will look at this to see if that's going to give them the times they need and comment on it, right?

Mr. Easton: I'm just saying that number needs to be clarified before we – I was going to clarify the number, Josh, before we took a motion to the floor because I'm not sure if I'm recommending this, with a change from 15 to 21, or I'm recommending this.

Ms. Ehlers: Well, I like the 15. There could be an appendix which said if the Commissioners prefer 21 we would not be opposed – something like that.

Chair Lohman: This is why you propose a motion first.

Mr. Easton: Right.

Chair Lohman: So, Jason, how about you make a motion?

Mr. Easton: I move that we take the committee's recommendations as presented, send them from the Planning Commission to the Board of Commissioners with a recommendation that we would like these changes made to the applicable sections and we believe a public hearing is in order before we formally send this back to you for your vote.

Chair Lohman: To initiate it.

Mr. Easton: Right.

Mr. Axthelm: So I'll second that. How's that?

Mr. Easton: And then if someone else wants to – if there's – I'm going to leave it at 15 business days, unless someone else wants to make a motion to amend it. But at this time that's just as it's proposed.

Chair Lohman: Dale?

Mr. Pernula: You said a public hearing's in order by –

Mr. Easton: In addition to the recommendations that are here from the committee, the Planning Commission further recommends that the Planning Commission host a public hearing on these changes – proposed changes. We can't tell them what to do. We just can ask them if we could help them by doing a public hearing about our own rule changes, basically.

Chair Lohman: And is there a second?

Mr. Easton: Josh seconded.

Mr. Axthelm: Second.

Chair Lohman: Okay. So correct me if I didn't get it all recorded quickly. The committee recommends – well, the Planning Commission, actually – recommends to the Board of County Commissioners to make the changes proposed by the Planning Commission committee about the public participation enhancement section of the current code 14.08.080, and to initiate a public hearing on the proposed public participation enhancement suggestions, and that the Planning Commission host a public hearing on the proposed.

Mr. Easton: Right, so that your second point is similar to your third – it's just that we're recommending that *we* host the public hearing for them.

Chair Lohman: How about – I got this – how about this? "…and initiate a public hearing by the Planning Commission."

Mr. Easton: Yeah.

Mr. Greenwood: After 15 business days.

(laughter)

Mr. Easton: No, because you can't – we couldn't make a recommendation for them that's not –

Mr. Greenwood: I'm kidding. I just wanted to see if it worked, you know?

Mr. Easton: We have to learn the rules that we currently are under before we can actually change them.

(several joking comments made almost simultaneously)

Chair Lohman: You know – bless Ron Wesen, but he does watch us!

Mr. Easton: They do. There are people that watch this.

Chair Lohman: So, do we need discussion, any further discussion?

(silence)

Chair Lohman: Seeing none, all those in favor, say "aye."

Mr. Easton, Ms. Ehlers, Chair Lohman, Ms. Nakis, Mr. Axthelm, Mr. Greenwood, Mr. Temples and Mr. Mahaffie: Aye.

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

(silence)

Chair Lohman: Motion passed (gavel). Dale?

Mr. Pernula: At the last meeting a committee also presented a different report and one of those recommendations was to adopt those bylaws, and those will also be presented at the same time, I'm assuming? To the Commissioners.

Mr. Greenwood: I would think so.

Mr. Pernula: Do you want the rest of the report to go as well? I mean, you're dealing with some other issues –

Mr. Greenwood: I think it's supportive documentation.

Mr. Pernula: Okay.

Mr. Greenwood: I don't know. It's up to you.

Chair Lohman: I thought it was two pieces.

Mr. Pernula: Well, there were some recommendations. For example, not taking action on the staggering of the terms, and a few other things.

Chair Lohman: Right.

Ms. Ehlers: Mm-hmm.

Mr. Easton: Yeah.

Chair Lohman: But that all had to do with the bylaws.

Mr. Pernula: No, it dealt with the ordinance and not adopting portions of it.

Chair Lohman: Oh, true.

Mr. Easton: Because we can't set that stuff on our own.

Chair Lohman: Right, right.

Mr. Easton: Will *that* be coming back for a public hearing, Madame Chair?

Chair Lohman: I don't know.

Mr. Pernula: No, not the bylaws.

Mr. Greenwood: I think it puts it – the whole thing – back in the hands of the decision-makers. And we've looked at it and our recommendation is for adopting – not even adopting – recommending that they consider for adoption these language changes.

Ms. Ehlers: In both of these documents.

Mr. Greenwood and Mr. Easton: Right.

Mr. Axthelm: Well, and either way they could take this. We recommend that it comes back to us; it doesn't mean that it'll come back to us. So they could just handle it in committee – or, I'm sorry, in their hearing.

Mr. Easton: They could choose to ignore us. They can choose to have their own public hearing. They can –

Chair Lohman: This is not final by any means.

Ms. Ehlers: I hope they don't choose to ignore it.

Mr. Easton: Don't expect it.

Mr. Greenwood: No, because I need to fix it now. I'm looking at a couple changes.

Chair Lohman: So now do you want a second motion to change your proposal to the 21 days, or are you going to leave it?

Mr. Greenwood: I'm not going to – that's just motions.

Mr. Easton: No, I didn't do it in my motions.

Mr. Greenwood: Okay.

Chair Lohman: Did you want to do that or did you want to just leave it as is and let it sort itself out as it goes through the process?

Mr. Greenwood: Leave it as is. Leave it as is. There is a section even in here that has some optional language that came in that proposed ordinance, and it has in brackets (a) or (any), so there're some optional in the public comment section already.

Mr. Easton: In staff presentation to the Commissioners and to us – if they do a staff report on this, which I would probably expect would be really short – if they need to recommend it – "We understand the spirit of what you're trying to do from a notice point of view, but after we did the math and looked at the *Herald* and all this stuff, we're going to say this is a better option." They'll have a chance to present that to us before we deliberate.

Chair Lohman: Well, and when the public gets hold of it, too, they're going to have their recommendations also.

Mr. Easton: Sure. Right. So I mean we'll hear from both of them.

Chair Lohman: Yes.

Ms. Ehlers: Just don't forget the horror that's Christmas-New Year's. Well…

Mr. Axthelm: That seems like that's what's most important is the public right now has been asking for more notification. I mean, if that's what they want, the Commissioners will listen to it.

Chair Lohman: Elinor?

Ms. Nakis: If this discussion is over, I would like to make a motion that we table the Department Update until next month.

Mr. Easton: Oh, the Department – Planning – Update? I'll second that motion.

Ms. Ehlers: Well, can you afford it?

Mr. Easton: Are you trying to close the meeting?

Mr. Pernula: It was just a quick report.

Mr. Greenwood: And you already gave a report of a similar nature to the Commissioners, did you not?

Mr. Pernula: It would be exactly the same report only a little more abbreviated.

Mr. Greenwood: I think it would be good to have –

Chair Lohman: I think we need to have it.

Mr. Greenwood: – available.

Chair Lohman: Okay, so moving on then, we're on the Department Update, item number 7.

Mr. Pernula: Okay, what it is is I have a memorandum that went to the Board of County Commissioners. It included a resolution of what the legislative work program would be. As I discussed it with the Board earlier this winter and during the spring, they said, Make sure that you keep it as short as possible – something that's attainable. So as far as the legislative work program, I only included four items that will be coming to the Planning Commission. That's what it is: the 2012 Comprehensive Plan Amendments. That's not even set what it's going to be yet because they haven't docketed those amendments yet, mainly because of the Anacortes UGA thing. We're waiting for a legal opinion on that.

Ms. Ehlers: Wasn't that a docketing hearing, though?

Mr. Pernula: That was a docketing hearing. They have not taken action on it.

Ms. Ehlers: Okay.

Mr. Pernula: So that's one of the items. The second one is the Shoreline Master Program Update. Hopefully we can get that done this year. And because of this large program and some others that I'm going to talk about we're keeping our work program pretty small. The Capital Facilities Plan Six-Year Update – that is a lot of legwork but it's not a lot for the Planning Commission. I think we can get that done pretty easily. Bayview Ridge PUD Ordinance and Design Guidelines – a major thing. We're going to try to get it done this year. It's been hanging around for – what? – fifteen years or so now, but we're going to get it.

Ms. Ehlers: No, not that long.

Mr. Pernula: Well, it was 1997 that the – it was designated on the Comprehensive Plan, but then we had the subarea plan we wanted to –

Mr. Easton: What happens first, Bayview or the GI? _____.

Mr. Pernula: We do have a work program with specific steps on how to get it done this year, so we fully expect to get Bayview Ridge done this year.

Attachment B is a longer list of projects, including those projects that don't necessarily come to the Planning Commission. Those that are the highest priority include those 2012 Comprehensive Plan Amendments, the Shoreline Master Program Update, the Bayview Ridge Subarea Plan – of course, those are the three really big items. Something that won't come to you but we have to get done is the adoption of the 2012 International Building Codes and, as I mentioned, the Capital Facilities Plan Update. I have another item that seems to be a very high priority of the Board of County Commissioners and to the Planning Commission, and that's the Rural Forestry Initiative. I intend, and I mention it in the memorandum, to get it begun this year, and depending on if it's controversial, maybe we can get it done this year, but I didn't put it down as something that would be pushed as hard as those other items.

Then there's a whole list of other items that we're working on that we're not trying to get done this year. Envision Skagit, some of the details – some of the GIS mapping, for example; TDR; the legislative process reform. That's what we were talking about tonight here; wind power regulations – adoption of that is optional; and there're several other projects that I'm not going to go into. But, as you can see, our highest priority items that will be coming to the Planning Commission are quite large. And once those are done – if we get them done – next year we're going to pull full on to the 2016 Comprehensive Plan Update because we have to docket it by 2015, which means next year's going to be a big push. So it's a big push now to get these big projects done this year. That's it.

Chair Lohman: Thank you, Dale.

Ms. Ehlers: I wanted to quickly say the 1000-foot issue, which comes out in 14.24.320, deals with aquifers. There are two kinds of aquifers in this county. Aquifer 1, Category 1, and Aquifer 2. Category 1 is a Department of Ecology-determined document; Category 2 is what's left. Category 1 severely is the low-flow stream issue and it severely limits the building in many large areas of the county, and that is why where it doesn't severely limit it's called Aquifer 2; however, there is a section in the code which says the following are not permissible in Aquifer 1, and then it lists a bunch of horrors like hazardous landfills, injection of radioactive materials, injection of chemicals. There's a whole list of things which I don't think are allowed to be injected anywhere but they're in this list as if it were permitted for someone to apply to it. And then the next section of this code says that all the things that the County will do in order to

keep these things from being installed. And that notification distance is 1000 feet.

Now the problem comes – if you order the paper map – I ordered the paper map in 2008, which was right after we passed it in 2007, and it clearly shows Aquifer 1 and Aquifer 2. I asked for a copy of a newer map last week and it doesn't show Aquifer 2 at all. So you have no way on earth of knowing whether you are within an area that is susceptible or vulnerable to this, and with a 1000-foot – it doesn't say "notice"; it says "if there is an impact" – well, the southern part of Fidalgo Island is a hydraulic zoo. It's mostly wells, and it is Aquifer 2. Why you would put any kind of radioactive material in an island in the saltwater is beyond me, but *supposedly* someone in the Department of Ecology told Gary Stoyka that we had to have these things in every county. Now my trouble comes: If you have a map that's supposed to be used to regulate by and the map doesn't give you the criteria to regulate by, it makes it very tough for anybody in the government or in the public to know what you're doing. When you look at this map and you then look at the Shoreline Management map you wonder how you're going to correlate them, because one part of DOE created one and one part of DOE is dealing with the other and they are not quite meeting. Then I started looking at other maps.

Now this is something that you haven't got time to do now, I'm sure, but next year while you're starting the 2016 we've got to have a situation where the maps in this county agree with one another and agree with the code so that the process is at least known to people. Because what I saw this last week – and I know what it's supposed to look like; I was involved; most people weren't, so they can only be caught. And the staff people can be caught just as much as any of the rest of us. So it's a win-win, as I see it, to get these maps and the code agreeing with one another. But I thought I had to bring it up tonight because if you're only going to notify 300 feet that means that you could put something in the middle of Fidalgo that could destroy all the wells in the whole area and nobody but maybe one or two people would be notified. And that isn't my idea of due process.

Mr. Axthelm: Three minutes are up.

Chair Lohman: Any other –

Ms. Ehlers: I said I could do it short.

Mr. Easton: So the Realtor Association mailed all of us an envelope that has an invitation to a half-day sort of seminar – a three-hour seminar – with a really well-respected water rights attorney who's very versed in some of these issues that Carol kind of has mentioned that are going on out in the Nookachamps. He's somebody – who is Bill Clarke – and I know him well (and) worked with him for years. He has worked for the County in the past on issues that have to do with wells, and this is to do with well metering and aquifer issues and Department of

Ecology. If that interests you at all they're willing to buy you lunch. I would not normally recommend you go to any three-hour meeting unless you have to – except for this one; this is the best one ever – but I will recommend this one in this one case because lunch'll be free. So I'll have the invitation, but you do need to RSVP.

Chair Lohman: That alone, right?

Ms. Ehlers: You recommended one –

Mr. Easton: Unsaid, it's the Cotton Tree.

Ms. Ehlers: Jason, you recommended one a couple – a year or so ago –

Mr. Easton: Oh, no – I did?

Ms. Ehlers: – about the Shoreline Management Act, and that was a goldmine of information.

Chair Lohman: Okay, any other PC information?

(silence)

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

Mr. Easton: I'll do that one.

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