Skagit County Planning Commission
Work Session: Shoreline Master Program Update
March 18, 2014

Commissioners:	**Annie Lohman, Chair** **Josh Axthelm, Vice Chair** **Jason Easton** **Keith Greenwood** **Robert Temples** **Matt Mahaffie** **Kevin Meenaghan** **Dave Hughes (absent)** **Tammy Candler (absent)**
Staff:	**Dale Pernula, Planning Director** **Betsy Stevenson, Senior Planner** **Ryan Walters, Civil Deputy Attorney**
Public Commenters:	**Carol Ehlers** **Ed Stauffer**
Others:	**Scott Andrews, Shoreline Advisory Committee**

Chair Annie Lohman: (gavel) I call to order the Skagit County Planning Commission meeting. This is a special meeting. It's a work session on the Shoreline Management Plan. So if you could review the agenda, and any corrections speak now.

(silence)

Chair Lohman: Seeing none, we'll move on to the second item which is Public Remarks. Is there anybody from the public who would like to address the Commission? Step right up. Be sure to give your name and your address, and remember there's three minutes and Commissioner Axthelm is going to be the timer.

Carol Ehlers: Carol Ehlers, Windcrest Lane on Fidalgo Island, the west side of it. And if the people in the booth would –

I have given all of you a copy of WAC 365-190, which are the minimum guidelines to classify the resource lands and the critical areas, one of which is geohazards which you ignored completely at the last meeting and you might ignore at this meeting but you cannot ignore permanently. It's far too great a problem not only on rivers that move but on the saltwater islands. I want to show you a document here on my right – this one – which is from the Coastal Zone Atlas of 1978, done by the Department of Ecology, which is not in your list of references. Where the dark is are the canyons and the slide areas. Over here is the topographic map that also clearly shows slide areas. If the sea floor is at zero feet, Rosario Road is at 300 feet and there isn't much between – maybe 200, 400 feet – between Rosario Road and the top of the cliff. The problem for everything out on the shoreline is one that I don't know how Betsy's going to deal with but she has to.

Every one of those plats – and they date from 1945 to 1998 – mandates in the easement section an easement for water, an easement for power, and the right to drain all streets over and across any lot or lots where the water might take a course after the streets are graded. Which means that it is on the plat that Skagit County road water must go through or around your house and through your septic fields, unless you can figure out how to protect them. The old-timers out where I am knew how to deal with this and they taught us how you put pipes from your roof drains and the foundation drain, which the County didn't leave in for decades after that – I'm talking 1967 – how to take the surface water that you could control and pipeline it over the bank. That's the only reason these cliffs have survived the natural hazards called too much rain, too great a storms, and landslides. I can show you pictures of that at another time. But I wanted you to understand why the Coastal Zone Atlas, which covers the entire county, at least must be part of your basic document for how you're going to understand the regulation of any of the shorelines. It's Ecology. They can't tell you you can't pay attention to it. It's on the Internet, but if it isn't included in your reference list it can't be included in your code and it can't be used by consultants that are talking. John Cooper has told me again and again that unless the evidence is in the code he can't apply it, or unless it's a reference document referred to somewhere in the code. Now if you're going – if the County –

Josh Axthelm: Carol, your time's up.

Ms. Ehlers: It drained the road water down and that's why we have a drainage utility, which is spending a lot of its money to deal with road water draining into property all over the county.

Chair Lohman: Thank you. Next? Ed, can you hold for a second while Commissioner –

Ed Stauffer: You bet.

Chair Lohman: Thank you. Go ahead, sir.

Mr. Stauffer: I'll bet anybody twenty bucks I can finish under three minutes tonight. Any takers? Ed Stauffer, Box 114, Bow. Your process has been going on and it isn't done yet and it's not going to be done for a long time on this issue. I understand the time you're putting in. One thing I would encourage you to do is years ago there was a public session on this matter and they took written and verbal comment. You're not going to get real clean access to that kind of information from the general public for a long time now. To help you through this, I would recommend that you go back to that and refresh your minds of the comments you already have from the public – it's in the record – particularly the one by Paul Taylor where he discussed, amongst other items, the critical areas ordinance. The Shoreline Master Plan is melded with the critical areas ordinance under the police powers act – huge. Secondly, the mandate that I've heard is: We have to do this – the state said. I met a guy who's in the county government in Pierce County last week and they told them to go stick it. Thanks. You could, too.

Chair Lohman: Next? Anybody from the public? Okay, seeing nobody we'll move on to the work session on the Shoreline Master Program. So, Betsy and Ryan?

Betsy Stevenson: I'm assuming you want to take up where we left off, I suppose? Public Access? Does that make sense?

Chair Lohman: Yep.

Ms. Stevenson: Okay. I think we're on the revised memo that I sent and the second e-mail that you got from me last Friday, which would have been dated March 12, 2014, for corrections. The original date was February 25th. Basically, the changes we just attached, so the first part of it there are the policies and goals that would go into the Comprehensive Plan, which we kind of discussed at the last meeting. So we made some revisions to that based on the discussion. And then the development regulations, to my recollection we didn't get to at all. So those are there too and we made a few changes to that based on the discussion that we had at the last meeting. We sort of anticipated, based on the comments about the policies, what may want to be changed and some of the things we just changed because we felt it was important to do that.

You just want to jump in?

Chair Lohman: Yep.

Ms. Stevenson: Thank you.

Chair Lohman: If you could give us page numbers and section numbers so that we can all make sure we're all talking about the same thing.

Ms. Stevenson: Sure.

Chair Lohman: As we go.

Ms. Stevenson: Okay. This is just the –

Jason Easton: Are we starting with General Regulations? That was the first one listed on the agenda.

Ms. Stevenson: Yeah, and in Part III we're going to do the Public Access?

Mr. Easton: So Part III and then the section on Public Access, so 14 – page 73 then?

Ms. Stevenson: Well, it's actually in the – I've got the Comp Plan policies first. Did you want to go back and look at those, or are you okay with the changes that we made? Or did you not –

Chair Lohman: Let's just – let's go back where we were, make sure that we're all on the same page, because I know we kind of ended there and we were getting a little weary and kind of a little bit –

Ms. Stevenson: Yeah. Okay, so the Comp Plan Public Access, the copy that we gave you, the new one – 6E – you would find in your draft document on page 33 is where it starts.

Mr. Easton: So I have a Public Access version with me that's got the cross-outs and the add-ins.

Ms. Stevenson: Right.

Mr. Easton: Those are the edits that we made together?

Ms. Stevenson: Those are the edits that we made based on your discussion, so hopefully we got it right. That's why we're kind of bringing it back – just to make sure that you got kind of what you were looking for.

Mr. Easton: Okay.

Chair Lohman: So the section starting at 6E-1.7 where we talked about striking that language to the end and that's what happened?

Ms. Stevenson: Yes.

Chair Lohman: So 6E-1.7 in its entirety is stricken?

Several people: No.

Ryan Walters: The language that makes it mandatory for applicants is stricken. So all of those subsections under 6E-1.7 –

Chair Lohman: So a., b., c –

Mr. Walters: – you used to have to demonstrate compliance with those. The policy said that an applicant has to demonstrate compliance, but we struck the requirement to demonstrate compliance – or compatibility.

Chair Lohman: But –

Mr. Easton: Did you get the version of 6E that has the changes that they – with the cross-outs in it?

Mr. Walters: This is in the second memo.

Ms. Stevenson: February 25th, revised March 12th.

Chair Lohman: For some reason I don't have that.

Mr. Easton: Here. Use mine. Oh, there's some.

Dale Pernula: There're some more over there.

Chair Lohman: Okay, I have this.

Keith Greenwood: Well, I'm assuming –

Mr. Easton: We're looking for the 6E policy.

Mr. Greenwood: Sure.

Mr. Easton: Are there other policies with that policy?

Chair Lohman: Well, we talked – I know I have a note in my book that we – I know we had a lively discussion and we thought it was too much detail in the twelve letters, a. through l. And the reference to the Open Space Plan. Is that what we're revisiting?

Ms. Stevenson: That's where we are right now.

Chair Lohman: Okay.

Ms. Stevenson: So we took out some of the ones that people seemed to have some problems with. We moved a couple of them.

Mr. Walters: But every indented subsection there used to be prefaced with you have to do these things and now it isn't prefaced with that.

Mr. Easton: Is there a reason why we're starting at 1.7 when there's changes to 1.6?

Ms. Stevenson: It's just the question that Annie asked.

Mr. Easton: Oh, okay. Sorry, I just want to make sure I didn't miss something.

Chair Lohman: There's no dumb question. It's confusing.

Ms. Stevenson: It is.

Mr. Easton: I think I've come close to breaking that rule before, though.

Chair Lohman: I would never admit it out loud!

Mr. Easton: Madame Chair, could I make some comments on this section?

Chair Lohman: Yes. Dive in.

Mr. Easton: I found that the changes to – stay at 1.7 – I found the changes of switching to "strive to" took some of the pressure, to me, off of this section. I think the primary issue I had was the sense of mandatory, which really was harder to dictate from a policy point of view with this – you know, when you lack the specifics. I mean from – I understand what the pos – the positives of this, I think, still remain, but I'm more comfortable with the way this section's been redone. I particularly appreciate your willingness to listen to us and eliminate particularly the section what is now lettered h., as we discussed trails to some degree in this meeting and the confusion that the word seems to breed. So I found in my review of the Public Access changes that came in this memo that was attached to the March 12th were – at least in this case accomplished what my concerns about the Public Access issue. So it's with some reservations, but I'll support it as it exists.

Chair Lohman: I have problems with b., 1.7 b.: "Provide opportunities for linking privately-owned open space systems to the overall public access network." I think that's a little bit wide open.

Mr. Easton: So was it written as "strive to"? You know, because obviously we're reading this in the context of it being under – the subheading under "strive to." I had more issues with b. I feel it's not quite as prescriptive. If this is a compromise between the Department, ourselves and Ecology that we have to work with, that's sort of the framework I'm looking at. Is there a reason why you guys felt so – that that had to stay in place? The linkage issue is important to Ecology?

Mr. Walters: Which?

Chair Lohman and Mr. Easton: b.

Mr. Walters: b.? I don't remember us actually talking about b. specifically.

Ms. Stevenson: I don't –

Chair Lohman: I didn't either.

Robert Temples: Are you going to talk about the term "linking"?

Mr. Easton: I – Chair, you're concerned with the fact that it's too vague?

Chair Lohman: I'm – I think it's a little bit of a reach to private property.

Mr. Easton: I guess I presume the way it's written that linkage would come with this sort of – private property would have to be open to the linkage. I don't know. Maybe I'm Pollyanna-ish on that.

Mr. Temples: I think what she may be implying is a lot of individuals with private property wouldn't want to be linked to public access. Am I incorrect?

Mr. Easton: So these are privately-owned open space systems – this is – this would not be defined as – that would not define as private lots then, would it?

Ms. Stevenson: No.

Mr. Easton: We're talking about more large – we're talking about developments.

Chair Lohman: What's a privately-owned open space system?

Ms. Stevenson: I guess I would assume that that would be something where somebody did a development and provided access within that development and through that development – that this would allow you to connect if you had public to come to it.

Mr. Easton: Sort of the classic trail through the greenbelt? Is it sort of the trail through the greenbelt sort of concept, right? That the developer leaves things for the aesthetics of the – maybe not necessarily because he or she's complying to code but because to help build up the quality of life for the people that are going to buy the property is an amenity, and then tie that into – so if you were abutting a national park then you – you know, something like that?

Ms. Stevenson: I guess I would assume that it was either already established on the private property or because there was public around it something was happening on that private property where they were either voluntarily or being required as part of their development to provide something – that you just make sure that you're trying to coordinate and connect that so it doesn't end up disjointed. If it doesn't say that then we need to figure out a better way to do that maybe.

Matt Mahaffie: It's a policy goal. It is what it is. I don't feel it's a reach.

Mr. Walters: Okay. And the big change is that it's now a high level policy that stays at a high level, whereas before with the language that said that applicants have to demonstrate compatibility it put that burden on the applicant and that burden is now gone. It's more of a burden on the County. But it's not mandatory; it's aspirational.

Mr. Easton: Only aspirational on the County. Not even mandatory on the County.

Mr. Axthelm: To me it seems to read that it's saying provide opportunities for us, not require it except in certain situations it would be required. But if you have your own trail system you don't necessarily have to hook it up to that.

Mr. Greenwood: Could we qualify it by at least specifying that – and the Comp Plan talks about it several places – the old one – about protecting private property rights at the same time while accomplishing that goal or striving to accomplish that goal? I'm thinking of some situations where recently there was a gentleman in here who had some property that had trails that went through his property connecting the two, and he was willing to work with them until it became adversarial and then he was having a hard time with continuing to let that activity continue.

Mr. Walters: The first policy in this section does make reference to avoiding infringement upon the personal or property rights of adjacent residents.

Mr. Greenwood: Okay.

Mr. Walters: But does that address it?

Mr. Greenwood: I think it does. If it's a goal and you've addressed that you don't want to infringe upon those rights then – and it's in the same section – then I think it does. It helps.

Ms. Stevenson: We kind of went back to the old language from the Shoreline Program based on the discussion, so "In conjunction with federal and state agencies, Skagit County should promote safe, convenient and diversified public access to publicly-owned shorelines without infringing upon the personal or property rights of adjacent residents."

Mr. Easton: So the biggest change to this section is we switched out of a requirement situation and we switched who was being required.

Mr. Greenwood: Right.

Mr. Easton: I mean, the heartburn a lot of us had on this section before was the onus was on the landowner. I mean, now, like Ryan mentioned earlier, it's on the County and it's from a point of striving to as opposed to requiring.

Mr. Greenwood: Right, and as you're reading in the mitigation section under DOE's guidelines, they're saying that you can use public access as an opportunity, perhaps, for mitigation – offsetting mitigation – if your commercial use, for example, has compromised some County uses or public uses. You can use that as offsetting mitigation not for environmental necessarily but you can provide public access.

Mr. Easton: I wouldn't want to do anything to limit the ability for developers to use that as an opportunity to negotiate with the County, if possible.

Chair Lohman: Mm-hmm.

Dale Pernula: I read it that this is just a linkage between the two systems. It doesn't say that it would open it up for public access within that privately-owned area. If I lived in a development that a private trail, I would want it linked to the public trail. This doesn't say that it has to be opened to the public necessarily. If they want to negotiate that that may be okay, but the way I read this is that it would just tie the two systems together.

Mr. Easton: This sort of addresses Josh's issues that you had with it, doesn't it?

Mr. Axthelm: Yeah, yeah, part of it. I still – to me I still don't like the reference to the Open Space Plan. I think because it's not a law situation. I think the "strive to" helps but I still feel that's not enough.

Mr. Easton: So by referring back to Open Space in three or more places you feel like it's –

Mr. Axthelm: "…should strive to meet the goals of the Open Space Plan." That's – I mean – I think you've got to have rules somewhere, but the Open Space Plan wasn't finished.

Mr. Walters: Where are we?

Mr. Easton: So there's five different references at the end of a., b., c.

Mr. Walters: Each of those parentheticals are just notes that we plan to take out in later drafts. They're parentheticals throughout the document that reference the WAC or the RCW where they're not part of the sentence, where they're just shoved at the end of a paragraph. We plan to take those out.

Mr. Axthelm: So the "Based on UGA"?

Mr. Walters: Right, right – all those baseds. They're just notes to explain, you know –

Mr. Greenwood: Where it came from.

Mr. Walters: Right – where it came from.

Mr. Axthelm: I don't have such an issue noting where it came from. What I'm concerned on is if somebody says, Okay, these are requirements.

Mr. Easton: No, if somebody reads the code ten years from now and he's not at the table today, it makes them refer back to that Plan.

Mr. Axthelm: Yeah, and there's a lot of work put into it. There's a lot of good things with it. I just think it needs to be done through the proper process in that situation. I want to make sure that it's understood that those aren't laws. Those are ideas. They're things that – they're great, but they're not laws issued to be required.

Chair Lohman: Because remember –

Mr. Walters: Yeah, so –

Chair Lohman: Excuse me – remember the Open Space Plan, though, it reached into some of the NRL open space lands with their beautiful arrows too. So that's what, being an aggie, I recalled when I'm reading this, because I didn't remember that you said the parentheticals were just notes.

Mr. Walters: Right. So those notes go away so there wouldn't be any language that says, Go read the Open Space Plan.

Mr. Axthelm: Well, it's great. Because then everybody looks at these and really people can comment on this and accept the goals or not accept the goals.

Mr. Walters: Right, right.

Mr. Axthelm: And you're just using the Open Space Plan as a base and that's fine.

Mr. Walters: Yeah.

Mr. Easton: That's all I've got on the policy side. I don't know if anybody has –

Chair Lohman: I liked the idea that you moved those things to the Recreation plan.

Ms. Stevenson: It seemed to fit.

Chair Lohman: What do you guys think?

Mr. Axthelm: I prefer it.

Kevin Meenaghan: That's what we talked about last week.

Ms. Stevenson: Okay, without further ado we can move into the development regulations for Public Access in 14.26.360. That's a page from the memo and, let's see, that is on page 74 in the SMP.

Mr. Easton: The memo doesn't actually have page numbers.

Mr. Walters: The next page in the memo replaces what's on page 74.

Ms. Stevenson: Some of these changes were things that we had in the works already and some of them are things that we kind of added based on your comments last time. So we'll see how we did.

Mr. Meenaghan: Just for clarification, everything that was in the memo basically overrides everything that was in the original. Is that correct?

Ms. Stevenson: Mm-hmm. That's what we're proposing.

Mr. Meenaghan: Okay. And what about the table that's on page 78, 79?

Mr. Walters: We wiped that out.

Mr. Meenaghan: It's gone.

Ms. Stevenson: We took that out. It was too confusing.

Mr. Meenaghan: Okay.

Mr. Easton: So I'm a little – I have a question, Madame Chair.

Chair Lohman: Yep.

Mr. Easton: So I'm a little bit confused about why we bounce from four and five. We kind of go back and forth – the definition of "multi."

Chair Lohman: Yeah, yeah.

Mr. Easton: In some places it's four. In some places it's five. Is that because we're trying to be consistent with something that lacks some consistency?

Mr. Walters: Well, there's the threshold of four or fewer, or five or more. So where you cross that threshold you have a requirement.

Mr. Easton: Right, so even after seven years of learning acronyms and coming to way too many meetings – when you scroll the website you can see how many meetings you went to; it's crazy – I still kind of like to help write code that's actually readable by people who don't read code all day. And so when we bounce back and forth from four or less or five or more that we create confusion? Is there any way that we could clean this up a bit? I mean, only refer to it in one version or the other, or do both have to be present – in your opinion? Are you following me?

Ms. Stevenson: Yeah.

Mr. Walters: Yeah, maybe. So basically the code reads you have to do this if you have five or more. Then it goes on to say you don't have to do it if you have four or fewer. The second sentence is implied by the first, right?

Mr. Easton: Right.

Mr. Walters: But occasionally people get confused so that's why we add the second sentence *for* clarity.

Mr. Easton: Which then may also breed more confusion. All right. It's not something that I'm going to hang myself on.

Chair Lohman: I think you have to read the whole thing.

Mr. Walters: Subsection (a) lays out the things that are explicitly included and then subsection (b) lists the things that are maybe implicitly excluded but makes that explicit by listing them.

Mr. Easton: And I will say I think it's clearer than it was. I'm just not sure it's as clear as I would have liked. I'm not sure that as clear as I'd like is a reasonable goal. This document would be – if anything it'd be smaller, if that was a reasonable goal.

This – Madame Chair?

Chair Lohman: Go ahead.

Mr. Easton: This section, section (2) under (b) – excuse me, page 75, I guess – page 75, number (2), the top of the page. These areas that have been added, in blue, were these from our discussions or are these from you guys' findings?

Mr. Walters: That text is required by some case law establishing when you require – when you are able to require public access. And I think we either had that in a previous version or it was in the guidelines or someplace. It got cut out and it really needs to be in there. It's establishing the nexus and proportionality.

Mr. Easton: How do you determine if a project increases demand for public access to the shoreline? I mean, the development by itself does not necessitate, by definition, that that has to happen. I mean, does it? Does the code – Betsy, do you know what I'm getting at? I don't understand what the trigger there is. How do we know that a project necessitates more public access? Is it perception?

Mr. Walters: Basically the code suggests that you are going to have a public access requirement if you fit into one of those first – one of the items listed in (1)(a), right?

Ms. Stevenson: Right.

Mr. Walters: The inclusion list that we were talking about before. It gives specific exclusion for things in (1)(b).

Mr. Easton: So the guy who only puts three there doesn't increase public access but the guy who does four or five does.

Mr. Walters: No, no – not necessarily. It's just that's the bright line rule. So there's a bright line rule that if you're establishing four or fewer you just don't have to do it. It doesn't matter whether you're increasing demand or meeting these other tests. If you're in (1)(a) – if you're one of the developments listed in (1)(a) – then there's going be some presumption that you have to provide public access, but in order to require it the

Administrative Official will have to make those findings and he'll have to make the case for little (i), little (ii), and (iii). The nexus and proportionality test – you've got to make the case for that in the findings requiring public access.

Mr. Easton: So presumably if they can't make that case, even if the development was five or more, then they wouldn't be required.

Mr. Walters: Right.

Mr. Temples: Madame Chair? I have just received a request from somebody in the audience. They would just like a little bit more clarification on what this is referencing, if you might.

Chair Lohman: Public Access, section 14.26.360.

Mr. Easton: Page 74 and 75.

Chair Lohman: Page 74 and 5.

Mr. Easton: Of the February 4th draft.

Mr. Temples: Thank you.

Chair Lohman: As revised by the 3-18 memo.

Mr. Axthelm: Now I got this in an e-mail. Was this posted on the system? When was it posted?

Ms. Stevenson: The same day you guys got it – that Friday.

Mr. Axthelm: Okay. All right. Well, maybe that's where I got it from.

Ms. Stevenson: We e-mailed it to you too.

Mr. Axthelm: Okay.

Mr. Easton: Is letter (d) language straight from case law?

Mr. Walters: No. Letter (d) is language that we found in Douglas County's shoreline plan. We thought it was useful to illustrate, you know, what it is we're talking about when we talk about public access.

Mr. Greenwood: Can you point me to the section in the code that generates this list of applicability, those that are required – because I think I've seen it – those that are required to provide shoreline public access?

Mr. Walters: Section in the WAC?

Mr. Greenwood: Yes.

Mr. Walters: After each item in (1)(a) there's a WAC reference.

Mr. Greenwood: Okay, I'm looking for it in the WAC. 173-26-241(3)?

Mr. Walters: Right. So those –

Mr. Greenwood: I'm trying to find it in the WAC where the list is clear, and of course these are guidelines, correct?

Ms. Stevenson: Yes.

Mr. Greenwood. Okay. So the requirement is designed to achieve the overall objective of providing public access; thus, if you're having a commercial development on public ownership then there's an opportunity there that the County sees to require public access to achieve its goals – overarching goal. I'm just – is it all in one – I'm not seeing it all in one spot.

Ms. Stevenson: No, it's not.

Mr. Greenwood: It's not. Okay.

Mr. Walters: No. That's why there's a WAC reference after each one of those items. The overarching policy consideration here is that the area below the ordinary high water mark in more cases than not belongs to the people of the state of Washington and not the adjoining property owner, and you can't enjoy that area if you can't get to it. So under certain circumstances – they're laid out here. Basically in this applicability section you have to provide access when you develop your property so the people can get to the shorelines that are there.

Mr. Greenwood: And this would apply to new developments, or enhancements, perhaps?

Mr. Walters: Right. It doesn't apply to anything existing.

Mr. Greenwood: We're not dealing with the pre-existing yet.

Mr. Walters: Right.

Mr. Easton: Madame Chair?

Chair Lohman: Yes.

Mr. Easton: Section (3) on that same page. Josh, under (a)(ii), if that provision, which is the provision that reads public access is not feasible – this is under the limited exceptions – public access is not – you'd have an exception if public access is not feasible due to inherent security requirements? This is what was missing from – this is much better than what the trails plan never accounted for.

Mr. Axthelm: Mm-hmm.

Mr. Easton: Because it addresses that security is a viable issue for property rights, for the advocacy of the property rights of the individual landowner over whether or not public

access should be allowed and should be considered. And that's a significant improvement that those are on the Commission now and were in the past would be happy to see, and I want to make sure we make a point of that. That was not included in the way we addressed trails before, to my knowledge.

Mr. Axthelm: Mm-hmm. One of the things – and I refer back to Boise because I saw some things basically where you had trails along in the public access areas and they had issues because the thieves would come and use those trails to pack things off. And so what they did is they put in a policing force on bikes and had that setup to take care of that issue.

Mr. Easton: I mean, I like if you're appealing the administration's decision before the Hearing Examiner's decision that you can use this as a viable piece of the code to discuss. This is an improvement. Can you help me understand the color codes for a second?

Mr. Walters: Is the highlighting.

Mr. Easton: Is highlighting. Highlighting's not new – it's nothing new that's being –

Mr. Walters: No. The strikethrough and underline are the new and deleted. Highlighting is just… something Jill did.

(laughter)

Mr. Easton: Oh, that was nice of her.

Mr. Walters: We're trying to train her.

Mr. Axthelm: Now one of the things that concerns me on the Public Access is that let's say you have a beach that you need to provide access to. But you have a dock on that beach, but it's a private dock. Is it requiring you to have – to make that a public dock or public access to that dock? Or can you say, No, this is a private dock. You can go through the property. You have a trail you can go through but you can't access the dock.

Mr. Walters: Right. We're providing access to the shoreline because the people on the shoreline, they don't necessarily own the dock. It's a private dock.

Chair Lohman: But there are privately-owned tidelands.

Mr. Walters: There are – yes, and that's why I prefaced that by saying more often than not, because it's not 100%.

Mr. Axthelm: Okay, so here's a concern I have with an easement situation, is that you take an easement – you put an easement there. Well, then now you have your dock on an easement. Or can you have actually a trail that goes through that section that separates it from that? Does that make sense? So like if your property is out on the beach, then you say, Okay, I have an easement for so far back from the ocean – is the easement for a trail getting to it? How does that work?

Mr. Walters: Well, I think, in general, we're talking about getting *to* the beach.

Mr. Axthelm: Okay.

Mr. Walters: So we're not necessarily providing *beach* access. It's only the area below the ordinary high water mark.

Mr. Easton: What's the difference between getting to the beach and beach access?

Mr. Walters: The difference is between getting to the beach and walking along the beach. If the beach is a –

Mr. Easton: So I could arrive at the beach but I couldn't – access the beach would be to walk down it?

Mr. Walters: If the beach is above the ordinary high water mark then it probably doesn't belong to the people of the state.

Mr. Easton: Right, I follow that.

Mr. Walters: It's the area below that probably does.

Mr. Axthelm: Okay. So saying the state owns that land along – up to the beach.

Mr. Easton: More often than not.

Mr. Walters: Right. And you need to bring your geologist with you to determine the ordinary high water mark. This is what we're left with.

Chair Lohman: This won't be the last time we look at this, I'm positive.

Mr. Easton: I have something a few pages ahead, but I don't want to jump ahead if nobody's ready.

Mr. Greenwood: I'm just focusing on the commercial development proposed on land in public ownership. It seems like that was derived from a recommendation, but are we going to require it even offsite – public access – if the location where the commercial development is taking place doesn't warrant it? Are we looking to hold their feet to the fire on that as well?

Mr. Walters: What section?

Mr. Greenwood: Applicability. I'm on – in the memo it'd be – still page 74 but the last item. It's (vii).

Mr. Walters: The way each of these is structured is – tried to define what things, what activities the section is applicable to –

Mr. Greenwood: Sure.

Mr. Walters: – and what activities the section clearly isn't applicable to, and then there may be exceptions.

Mr. Greenwood: But it does, in fact, say that if you have this condition in this section they're required to provide shoreline public access. So if the – and I can see where it says that's a suggestion, but it's in the same paragraph which says –

Mr. Walters: Are you reading from the WAC?

Mr. Greenwood: Yeah, I'm reading from the WAC. It says, "Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development, unless such improvements are demonstrated to be infeasible or inappropriate." So I'd kind of like for that to be available to these folks, too. "Where a commercial use proposed for location on land in public ownership public access should be required." So I'm looking at that more – I would like that to be a suggestion and I'd rather that it were, even on public, that they consider it. But if it doesn't seem feasible I'm not really quite as interested in having it be an offsite mitigation banking kind of situation. Can we do that?

Ms. Stevenson: If you move on to section (3), it starts to list possible exceptions for requiring public access, so some of the things that you're considering might fit in there a little bit. And then there's also alternatives under section (4).

Mr. Greenwood: Okay.

Mr. Walters: So kind of what I was getting to about the structure is that if you hit one of those marks in the Applicability section then yes, you do have to read this chapter, or this section, to determine what you have to do for public access. But as you drill down further you may have exceptions, you may have alternatives. So it applies at the outset, but then the exceptions and alternatives may eat up the requirement. So we might have to take like a specific example and drill down through it and see how –

Mr. Greenwood: Okay, but do you see where – because I guess I've been reading too much on the mitigation sequencing where it talks about/looks at providing alternatives perhaps offsite. And that seems like – I don't know – extortion's not the right word, but it's close.

Mr. Walters: Here there's a specific alternatives section, section (4), which provides for offsite public access as an alternative or community access when you have a subdivision.

Mr. Easton: I found point (iii) at the top of page – at the next page under the limited exceptions, (a)(iii). This sentence: "Public access is not feasible as part of an ecological restoration project such as a levee setback." With that edit in there it seems – I'm a little confused at – is it really using a levee setback as an example of the best way to explain that? It seems to leave –

Mr. Walters: As a good example of an ecological restoration project?

Mr. Easton: Well, it just seems to leave – it seems to leave –

Mr. Walters: A good example of non-feasibility?

Mr. Easton: Well, first of all, I'm not sure if it's a good example of how we should use English, but – it seems to leave more confusion than it does – I'm confused by that sentence. Is it only – this exception only applies to ecological restoration projects that *are* levee setbacks?

Ms. Stevenson: No.

Mr. Easton: So you could have an ecological restoration project that's not a levee setback that would then also be exempt? So shouldn't we find a better way to say that? The potential for –

Ms. Stevenson: I think this is probably a really *good* example because we may be having some levee setbacks and we have had some, and a lot of them are dikes –

Mr. Easton: But they're not all for restoration purposes, are they?

Ms. Stevenson: No. But some of them are in cooperation with dike districts that are actually agreeing to move their dikes back, and there may be more of those in the future. And in negotiating with the landowners for placement of a new dike we're saying that you wouldn't necessarily have to try to negotiate for public access across that dike.

Mr. Easton: But that doesn't address the issue of ecological restoration.

Ms. Stevenson: Yes, it does because the levee setback could be for restoration.

Chair Lohman: Or not.

Mr. Easton: It *could* be. It could be for more flood protection.

Chair Lohman: Right.

Mr. Easton: Which would not necessarily –

Ms. Stevenson: Could be both.

Mr. Easton: It could, but it could – you could do a levee setback.

Ms. Stevenson: It should be both.

Mr. Easton: You can do levee setbacks that would not positively or negatively affect the environment. I mean, they would be potentially –

Mr. Walters: That wouldn't qualify as an ecological restoration.

Mr. Easton: That's why I'm concerned that if you put these two things – maybe it needs to be subsetted: two separate points here, one for ecological restoration projects and another for levee setbacks.

Ms. Stevenson: I actually think that was brought up at the Advisory Committee meeting and that was something that was important to one of our flood control folks. So, I mean, we can consider changing it, but…

Mr. Walters: To?

Mr. Easton: I follow the thought that most setbacks would gain – to be eligible for most of them you would probably have to have some sort of environmental factor, but I don't think that's included in all of them? Do you want – you need _____. I just wanted it to be clear that setbacks are – I mean, I'd like it to be split up but I'm one voice here.

Mr. Walters: I think what they're talking about here is not requiring public access for levee setbacks, regardless of why you're doing the levee setback.

Mr. Easton: So then we just pull the words "ecological restoration"?

Mr. Walters: Well, first I'm just trying to get to the –

Mr. Easton: Well, yeah. I think that both of them need to be called out. I found leaving the sentence with "…a levee setback, while tied to an ecological restoration project" leaves it unclear because you can do an ecological restoration project that has nothing to do with levee setbacks –

Mr. Walters: Yeah. What I'm –

Mr. Easton: And you can do a levee setback that has nothing to do with ecological restoration projects.

Mr. Walters: I'm just trying to obtain your – the sense of the Commission is we don't want to require public access for levee setbacks.

Mr. Easton: I don't want to speak for the Commission, but…

Mr. Axthelm: Well, I'll say that.

Ms. Stevenson: Yeah.

Mr. Easton: I just want to make sure that that's clear. And I don't know when I read it this way, they seem like _____. Am I way off here?

Mr. Mahaffie: I'd just treat it as a levee setback with a qualifier in front of it being an ecological restoration. Makes sense to me.

Mr. Easton: You can do a levee setback without ecological restoration?

Mr. Mahaffie: Of course you can.

Mr. Easton: So why would we give people an exception for that?

Mr. Mahaffie: That's not the example they're using. That's for ecological restoration projects. They're just giving that as an example.

Ms. Stevenson: Right.

Chair Lohman: It's probably not the best example of an ecological project.

Ms. Stevenson: Well, under the Applicability section – and maybe this makes it more confusing than not – under (1)(a)(ii): "New public structural flood hazard reduction measures, such as new dikes and levees," – which a setback levee would be – "where access rights can be secured." So it *is* required, to start with, so by including it in the potential for restoration we're trying to loosen it up a little bit so maybe you wouldn't *have* to.

Mr. Axthelm: Okay, as long as the access rights are secured.

Ms. Stevenson: Right. We added that.

Mr. Walters: There's also that exception.

Ms. Stevenson: We'll see if that plays out, but we added that based on your concerns and the Advisory Committee concerns and our concerns.

Chair Lohman: So it's your attempt to soften (1)(a)(ii), right?

Ms. Stevenson: Yes.

Mr. Easton: So we're then by default saying that any other levee setback that doesn't involve an ecological restoration, and those rights can be secured, would require public access?

Mr. Walters: Yes.

Mr. Easton: And I will vote no. I will voice my concerns to my fellow Commissioners and say I don't agree with that. I think that that should not be required. But I'm just one of nine.

Mr. Walters: And so we're clear on this is not something we came up with on our own.

Mr. Axthelm: I understand.

Mr. Walters: Yeah, it comes from the WAC. But, yeah.

Mr. Greenwood: I'm just not as familiar on the situational – the situation as it relates to levee setbacks.

Mr. Easton: So let me give you an example.

Mr. Greenwood: Okay.

Mr. Easton: After a few years on the Flood Advisory Committee when it was functioning, there was a lot of conversation in the valley about setbacks through the three – what's called the "three-bridge corridor." And the idea that one of the ways to potentially

mitigate for some of the issues in potential G.I. solutions may involve setting levees back, moving levees from where they currently are by setting levees further back and maybe taking the levees that were there back so the river has more places to – a wider channel, in theory. So under the way in which we just drilled this down, any of those done by any dike district would come under – if those rights were obtainable – would be required to put public access on that. And I'm uncomfortable with treating levees like they're trails, that they're wannabe trails. I *think* they're supposed to be treated – I'm more of a strict sort of constructionist to saying a levee should be a levee is a levee. Now it can support public access as a separate definition that's fine, but they shouldn't be – levees shouldn't be required to be designed to be a public access point. They should be done primarily for their major function, which is to protect life and limb and property. And public access is maybe a bonus but not by any means should it be a re – I don't think it's a requirement. And the other thing is we're talking about taking costs even higher – I mean, if you have to include that and you're a dike district that's looking to do this, your costs for doing the levee's going to go – has to go up to be able to make it in a way that is accessible – so for the public.

Mr. Walters: Maybe let's back up just a little bit because remember, public access is about getting to the shoreline that is owned by the people. In a dike situation the concern has always been people using the dike as a trail, right?

Mr. Easton: Right.

Mr. Walters: Like you just talked about. So this doesn't necessarily say that. That's the overriding concern.

Mr. Easton: I get you sort of on paper, Ryan, and from a legal point of view the definition of access and a trail are different, but in the real world when somebody accesses something they don't stop where they walk to where they can get to the water. They usually turn east or west or north or south and continue to access it.

Mr. Walters: Well, right. But I mean –

Mr. Easton: Which would actually would be walking on a – I mean in real life people would call that walking or walking on a trail. And so I'm concerned if we're going to do that I think there should be an exception for levees that are serving the purpose of what a levee serves the purpose of, which is protection.

Mr. Axthelm: Here, an example. A levee is just like a utility. It's just like a power line coming through your property or a ditch coming through your property. Just because there's an area where you can access that to maintain that ditch and dig it out – the County can come in and dig it out – does not give a right for the public to come and use that. The public may pay drainage fees, which in this case they do. Around the area they pay for diking fees.

Mr. Easton: Sure.

Mr. Axthelm: But they do not own that property. They pay for the maintenance and they pay for the upkeep of that dike but that's not – that's just to protect them and it *is* protecting them. It's doing what they're paying for but it is not providing public access. So especially like a ditch situation, you know. Just because you have a ditch and a road

beside it doesn't mean it's for the public to access it, and just because it's an easement that the County has doesn't mean that everybody has the right to it.

Mr. Walters: Yeah. I think we're on the same page about that. What you're required to do as part of your Shoreline Plan is provide access to the river, not necessarily access to the dikes.

Mr. Axthelm: If you have _____, or if you have –

Mr. Walters: Under certain circumstances, people _____.

Chair Lohman: But you have the caveat where access rights can be secured.

Ms. Stevenson: Right.

Mr. Walters: And there's that, because in some cases it may be difficult for the diking district to make that happen. But the alternative is you create a dike alongside a river and then you have no access to the river. And that, I don't think, will be acceptable –

Mr. Easton: To Ecology.

Mr. Walters: – to Ecology because you have to provide some access to the river that is owned by the people of the state. If you want to make it very clear –

Mr. Easton: What – every 50 feet? Every 100 feet? I mean, where's the – what's the parameter on that, right? I mean, if 12 does – Dike District 12 does 200 feet in a levee setback to accommodate for some issue that comes up, does there have to be an access inside that 200 feet? What if there's one on the other side in the next dike district's – you know, within a reasonable distance? I mean, it's nice of Ecology to make these glorious statements (that) all us state taxpayers that we're going to get access to public water – I mean, to the public waterways – but how much access do I need? I don't get it every 5 feet!

Mr. Walters: Yep. And we can prescribe, you know. We can add more text to make that clear, if that's necessary – to make it clear that running along the dikes is not what you're targeting here. It's just access to the shoreline, access to the water body.

Mr. Easton: This is not a – Commissioners, this is not a small thing. This is a significant amount of money – hundreds of – millions, tens of millions of dollars over the lifespan of this document that will be spent or could be spent on these kinds of projects, and if we're going to at least attempt to get something past Ecology that they may not be giddy about, or first up to the Commissions who then may send over to Ecology they might not be excited about. This is something that's worth a serious consideration. You know, Jesus said the poor will always be with you, and if he was speaking about the Skagit River he would say flooding would always be with you. These are not short-term issues and public access could be an expensive thing to ask the dike and levee districts to do over the long haul that would take away money that would be spent on actually protecting the public.

Mr. Greenwood: I just think in many cases public access isn't even an issue to be addressed. It could actually be one n/a on the form. If you're doing a SEPA document

and you're talking about putting jacks and logs in the river, for example, to riprap something, why are you even talking about public access? If you haven't hindered it or you're trying to offset it, I think you should just be addressing public access in your project evaluation or documentation, but to require it seems excessive to me.

Mr. Axthelm: The other thing is a safety thing, too, because you take a dike and a lot of the dikes are steeper. They take the equipment that goes along the dike – and those mowers are not safe at all. They have an arm that sticks out and cuts the dike. Out where I live it's farmland and you have haying equipment there. If the general public comes out there and walks through the fields or walks up on the dike, that is a safety issue. If they fall – if it's maintained or it's on your property and they fall down that dike, who's going to get sued? And so what it is is this is private land. It's not for public access, and I could see a safety issue being there as well. I mean, you have some things in there in the exceptions that say you don't have to put it in and I appreciate that. I think that the safety should be one of them. I think it's added to it.

Ms. Stevenson: It's in there.

Mr. Easton: It's in there.

Mr. Axthelm: Okay. I didn't notice it.

Ms. Stevenson: And this is just for construction of *new* dikes. It's not on existing ones, okay, so it wouldn't come up.

Mr. Axthelm: Yeah, but even construction on the new dikes.

Ms. Stevenson: But I mean there's still some language in there that would allow you to go through the whole processes and either be an exception or come up with something else that might work or do nothing. So, I mean, we tried to leave it as flexible as possible but still address the issues that Ecology has raised, and added some caveats and language in there to protect us up here in terms of the dike districts that are in place or could come into play with new dikes being constructed.

Mr. Axthelm: I'd like to see what the diking districts have to say on that because I know that Dike District 3 where I'm at has an issue with public access because of that safety – because of the safety issue.

Ms. Stevenson: And we have a dike district representative on the Advisory Committee and that's why we've added some language that we have in here, because we understand that legally most of them don't own the land underneath the dike and cannot grant public access even if they want to. So we were just trying to make it so if something new were to be constructed and they had to go out and negotiate with that landowner for that land that they weren't required. That's why we added the language there – "where access rights can be secured" – because that's something that we added just so that –

Mr. Easton: If they could be secured – so let's say if I'm the dike district and I'm negotiating with Robert, he has the ability to give that right to me. He's going to set a price or try not – maybe choose not to do that, but the way the language is written I have to make an attempt to purchase that from him in addition – you know, I mean in addition

to my negotiating – I mean as part of my negotiations with him? Are we tying the hands of the district to say that you have to negotiate? And then how do we show that they couldn't obtain it? Where's that part where he just says no and then that means it's not obtainable?

Chair Lohman: How do you rise to the level of undue and unavoidable conflict, which you have –

Ms. Stevenson: Where are you?

Chair Lohman: It would be page 76 at the – it would be 5. Does that answer your question maybe?

Mr. Easton: Well, I'm trying to understand both that and the phrase –

Chair Lohman: But it feeds into the "where access is attainable," and then you talk about "significant undue and unavoidable conflict" and then later on the cost of providing the public access. Are those enough to answer your concerns?

Mr. Easton: So let's – okay, let's take (7) because that's a fair – that's a great question. The cost of – one of the things that has to be considered about whether you give an exemption is the cost of providing the public access is unreasonably disproportionate to the total long-term cost of the proposed development. Well, the total long-term cost of the proposed development is not just measured by the cost of building it. Isn't the cost also a part of an equation of what they're protecting? I mean, so this seems to me sets up a formula where no one will ever get to the point where they would ever cross that threshold because you're protecting – any significant in the La Conner area in a ring dike, in the extension of the Burlington system towards the farmland, or in the conversations about the three-bridge corridor – although most of that's in the city limits, if not all of it so would not apply to this Plan, correct? – would still – excuse me. In all of those areas you're protecting so much I don't think that that's clear enough language. If it costs an additional 100,000 or ten million dollars on a hundred-million dollar project that's 10% – on a hundred-million dollar project to put in public access? I mean, because you can't – I don't understand conceptually how you put in – the guy can get there but is he just going to stand in that one spot? And what happens if his friend wants to come? Do we just deny his friend access because he can't stand on the spot we gave his friend? It just doesn't pass the real world – it doesn't pass the real world test. And it's taking levees and dikes and ask – it's asking our levee and diking districts to do more with less, and they already have a number of battles on that front.

Mr. Greenwood: What about if we look at it from an incentive-based approach whereby there's value given to the person who provides public access? That's the way I know folks deal with public access to timberlands. They look at it as a trade-off in some situations: Where you provide it, there's value there. If there's not, you don't have to provide it. And when we require it then we're pinching it to where it's a – somebody doesn't want it because it's a liability. If it's a significant liability they may not do it, but if they see some incentive to it – like some offsetting mitigation – then folks might do it and then they'll do it with a good attitude towards it and it might be beneficial to the project cost. But when it's – I don't know – when I first got up here I saw where there was like – is it a 1% for a lot of construction projects in the city of art kind of look? Decorative?

Mr. Easton: It's a state deal __.

Mr. Greenwood: Yeah, but that's a 1% thing. It's not hard to go 10%, 20%, 30% on some of these projects.

Mr. Easton: I feel I'm prepared to leave this section as it is. I'm not at the point yet where – suggested changes may be – I might be comfortable with them, but if one major project is limited in its scope in protecting the valley based on us giving people public access on a new levee, then we've gone one – in my opinion – we've gone one step too far. If that has to be done because Ecology requires it then make them say it.

Chair Lohman: I thought it did in the RCW, actually. Doesn't it? I thought it said it pretty boldfaced that new dikes and levees *would* have a required public access. Is that right?

Ms. Stevenson: Depends on how the language reads. That's why we added where access rights could be secured.

Mr. Walters: And we have the WAC citation there. I think in –

Mr. Easton: If it's big enough that we can have this whole list of exceptions, then why not add the word "new" levees, and if they reject this draft let them reject it? I mean we're just – remember: We're writing up a write-up version that gets approved by people who we serve under, who then send it to an agency who's going to tell us what they don't like and like anyway. We're not setting policy today. We're setting policy in motion. We're going to get a – there will be pieces of this that we all send forward, including the Commissioners, that Ecology doesn't like.

Mr. Walters: So we can do those types of things. You know, we can write in exceptions to things where you want there to be exceptions. But as a general matter, my recommended approach would be to have at least an argument for compliance with Ecology's guidelines.

Chair Lohman: Mm-hmm.

Mr. Walters: So that's what we've tried to do here. We've cited the guidelines – said this is what the guideline says, but then we provide that exception for where access rights cannot be obtained.

Mr. Greenwood: But I'd rather we used the language that the code uses then, where it talks about public access is designed so that it can be offsetting. It does make it more of an incentive-based, and then it adds to it: in these situations you can require it.

Mr. Walters: So what are you reading from?

Mr. Greenwood: Let's see, it was –

Mr. Walters: Are you reading from the WAC?

Mr. Greenwood: Yes.

Mr. Walters: 172-26-241?

Mr. Greenwood: 241(3). I think it was under – the example I was looking at was under (d) which was commercial, but I think it probably fits under others. And I read from it: "…where master programs should require public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values." I think that's what we should be saying. It should be considered for – it's a goal. We want to increase public access. We can achieve that goal a number of ways and I don't think that the one way to achieve it is to require it under these circumstances listed. I mean, the overarching goal is to no net loss of ecological functions. I mean, that's kind of the main objective that they've stated over and over here and we're not even talking about ecological functions. We're talking about increasing access, which, in most cases, has some potential harmful effects.

Chair Lohman: Mm-hmm.

Mr. Walters: Well, it's *one* of the goals. There're a variety of goals. Public access is one of the goals.

Mr. Greenwood: Right. Because one of the other ones is to ensure that water-dependent uses have access to it and can use it. And when we – someone proposes a use or development of a use that's water-dependent and then it's tied to public access, it seems a little disjointed.

Mr. Easton: So there's language that I think Annie referenced earlier that the cost for providing public access must be proportional to the total development value at build-out per approved designs.

Mr. Greenwood: What proportion?

Mr. Easton: Who – yes. Who defines the proportion? Does Ecology define the proportion or does –

Ms. Stevenson: The Administrative Official.

Mr. Easton: So the Administrative Official's going to decide that on a project-by-project basis.

Chair Lohman: Where did you read that language?

Mr. Easton: That's –

Mr. Walters: Section (2)(c).

Mr. Easton: Yeah. So that's not a set equation, Dale? That is a project-by-project basis so if the $10,000 – there's no dollar number that'll be triggered; there's no math – there's no magic equation of if public access crosses 10% then it shouldn't be a part of the project or has to be scaled back? I mean, it's just basically left up just to the Administrator?

Mr. Walters: Well, and it's more of a limiting factor than anything else, as well.

Mr. Easton: Limiting it how?

Mr. Walters: It's intended so that you don't have to build some giant public access facility for a small project.

Mr. Axthelm: But it doesn't – the thing is if a small project –

Mr. Walters: Oh, it's all very vague.

Mr. Axthelm: You can have a small project and it can be a very expensive project, and now – but it says right here is that "The cost of providing the public access must be proportionate to the total development value at build-out…" So will you take – it's a more expensive development so it has to give them more expensive public access. I don't agree with that.

Mr. Walters: Well, and that's one way of reading it. But it's – the other way of reading it is as a limiting factor, and it's in this section that's talking about making sure that the County demonstrates the nexus and proportionality at the time it requires the public access. And there are all those limited exceptions where the applicant can make the case that the applicant shouldn't be required to do it or should be able to provide an alternative, one of the _____.

Mr. Easton: And the County can reply with what was proportional. So if you're having a million-dollar setback __ cost you a hundred million, then you need to spend one million, ten million and we think that's proportional, so build the public access. And we take ten million dollars out of play for flood protection and put it in play so that we're at 500 feet down the road one way. We're 7.5 miles down the other way. You can get access to the river because you can't get in the middle of that new dike. Now you have to pay for it.

Mr. Temples: I kind of like Ryan's idea that – as you stated – if it's appropriate. In other words, don't even equate dollars to it or a percentage of it. You know, let the building official be maybe the ultimate judge on the situation.

Mr. Easton: I'd like to give him a little more guidance than that.

Mr. Greenwood: Like not to exceed?

Mr. Easton: Or how about this: There's no language that says "take into account" – that I can find – that says "take into account other access points." Is there a reference in the code that I am missing that says that this should be taken in proportion of what – where the other access points are on the river or the shoreline?

Mr. Walters: Well –

Ms. Stevenson: Demand-created.

Mr. Pernula: I think that's part of it.

Mr. Easton: I mean, it's common sense but I don't know if it's – is it addressed? I'm not assuming that the people who replace Dale in the future will have common sense, so I'm not making that assumption.

Ms. Stevenson: It talks about the demand created.

Mr. Walters: The nexus and proportionality language is still there. Most of this section is trying to address every situation with a set of principles, and if you have a concern about a specific situation like dike setbacks what I'm suggesting is that we add more language to address those concerns *rather than* _____.

Mr. Easton: I have no confusion over what you're suggesting.

Mr. Walters: Okay.

Mr. Easton: I'm suggesting that we add this as an exception, and it doesn't seem that I have the support of enough Commissioners to make that happen.

Chair Lohman: Well, Jason, do you have some proposed language? Because we talked about a –

Mr. Easton: Seriously? The proposed language _____.

Chair Lohman: And where would you put it?

Mr. Easton: Right there in that list of exceptions, and I would say an exception for new levees. Now that puts me at odds with Ecology, according to the –

Chair Lohman: So you would make it a Roman numeral nine?

Mr. Easton: Yeah. But if there's not a consensus on the Commission for that, I have a – I mean, I have an alternative I would suggest.

Chair Lohman: What's the will of the Commission? No?

Mr. Greenwood: Well, I'd like to add more than that myself.

Mr. Easton: Well, you can tweak the language.

Mr. Greenwood: I'd like to switch the word in the very first Applicability (a), (1)(a), to "require to provide," "require to address."

Chair Lohman: Okay, hold on. Let's let all of us get to that.

Mr. Greenwood: That's page 74 –

Mr. Temples: A lot of us are looking at her memo.

Mr. Greenwood: Yeah, okay – which corresponds to the first –

Mr. Easton: Is that 14.26.360(1)?

Mr. Greenwood: Yes. 14.26.360, Public Access, paren (1), Applicability, sub-point (a): "This section applies to the following shoreline uses and activities, which are required to" address or assess "shoreline public access."

Mr. Temples: Here it says "provide."

Mr. Greenwood: Instead of "provide."

Mr. Easton: It's consistent with "strive to."

Mr. Greenwood: I think so too, and that way throughout the document we can talk about, How did you address it? How did you address public access? Because maybe there was never public access in the first place and what you're doing has nothing to do with public access. You're not hindering public access. And there's places in here about industrial uses that talk about you can't block navigational use, and there's a lot of requirements there to keep it clean so that you're not adversely impacting other uses, including public access.

Mr. Walters: So I don't think we're going to get away with changing the word "required" to "address" for a couple of reasons. One, it later on then says again that it's required.

Mr. Greenwood: Well, we can change that.

Mr. Walters: Right, right, right. What I'm suggesting is if you want to take that approach we're going to have to go back and work on it, and if you want to take an incentive-based approach we're going to have to go back and work on it. You're not going to be able to wordsmith it to get there in this meeting. But we could try that and we could – I mean, we had an incentive table in an earlier draft but it presented its own problems.

Ms. Stevenson: It was horrible.

Mr. Greenwood: Sure. I can see where there will be problems, but when they're not linked it seems to be there needs to be an incentive. Incentives – people voluntarily exceed your expectations when you provide incentive almost every time. It's when there's no incentive that you'll get resistance – we get resistance. If we want public access and we make it a penalty for it, then where there's just trash or, you know, whatever – a liability. If we reach liability we have to provide incentive for people not to. Maybe you remove some of the liability. And a lot of open space codes do remove some of the liability.

Mr. Walters: I'm not sure we can do that.

Mr. Greenwood: But from a lawyer's standpoint, I don't think –

Mr. Walters: We can – yeah, there's –

Mr. Greenwood: Like equestrian uses, you know – you know, that sort of thing.

Chair Lohman: I think Josh has a –

Mr. Axthelm: All right. In there it says – it's the levees – the issue says "New" – can I go again?

Chair Lohman: New.

Mr. Axthelm: "New public structural flood hazard protection measures, such as new dikes and levees." Okay? So that's *new* dikes and levees. So if it's an existing dike that's being moved or put in a new location but it still serves the same purpose I think –

Mr. Easton: Is that still considered new or moving?

Mr. Axthelm: I would not consider that new.

Mr. Easton: So you have a dike here. You widen it to here, sort of like the three-bridge corridor, right? You take this dike, you build a dike here, then you take this dike down?

Mr. Axthelm: Yep.

Mr. Easton: Then this is not a new dike?

Mr. Axthelm: It's still the same dike –

Mr. Greenwood: I don't think you get to do that.

(several Commissioners talking at the same time)

Mr. Greenwood: It's like a bridge. You can't move the bridge downstream.

Mr. Axthelm: Can we put a note in there that says "relocated" or "modified"? If we say relocated or modified it shouldn't be new – it's not new.

Ms. Stevenson: We appreciate your concern and a lot of your comments are exactly what we went through with the Advisory Committee and exactly what we went through with you guys the last time we did this. The concern that I have at this point is that we've already stretched the limits a little bit and I think it's in a way that will be okay, but if we start doing too much tweaking – you know, if Ryan wants to kind of try to go back and do that we can, but I think what it does is it sort of draws more attention to it and may flop the pendulum going totally the other way. So there's a risk involved with some of that and it could backfire, so I just would ask you to kind of proceed with caution. I think we've done a good job at addressing what they ask for in the WAC and allowing for the exceptions and a lot of flexibility on the part of the staff and the – whoever the person is that's doing the development. There is some liability relief for people who provide public access, and I don't have it right in front of me. I have it in one of my files that does specifically state that. In terms of incentives for people who provide public access, they can get the open space classification through the Assessor and get a pretty good size tax break for that. You know, if that would help we can include that information here. It's going on now. It has been for years.

Mr. Axthelm: So down farther – let's say on Dike Road as you go towards Conway, there's a section there years ago that they – it used to go out and then come back in. And that – for example – if that section was taken out and they filled it in – does that

make sense? It was a loop that went out into the floodway area and then there was – but it was an issue because I think it was where the water kind of bottlenecked, and they widened it out by straightening out the dike. And so in that situation – I think what it is it went around some houses and then came back – but in that situation, would that be required to be made public, is what you're saying? From this statement? No? Okay.

Mr. Walters: The dike would not be – in no case would this section require the dike to be a public trail. That's not what we're talking about. But there might be a requirement to provide public access to the shoreline.

Mr. Axthelm: Yeah. Okay.

Mr. Mahaffie: I see that working in a lot of different ways. Now if there's a boat launch on the dike district – maybe they improve the bathrooms, maybe they improve the boat launch. You know, it's not, Well, we're doing a project here; we put a trail right here. It could be some place completely different. And that's just, you know, kind of a mitigation sequence, whether it's ecological or economic, works.

Mr. Axthelm: I thought I understood it that you required the access. If it gives a way around that, I just don't think it should require the access if it's not really feasible. And if it gives a way around it, that's fine.

Ms. Stevenson: Right. And there's several ways like –

Chair Lohman: Dale has something.

Mr. Pernula: I just wanted to make a quick comment about proportionality and how it can work properly, and I'll give you an explanation. I worked in a community that required with land development the dedication of parkland. So before we actually required the parkland dedication with subdivisions, we went through and analyzed what our local standards were for parks, what the local demand for parkland was, and we found that for a single-family residential neighborhood it was about 5% of the land area. For a duplex area it was about 7% and for a multiple-family area it was about 9%. So that's where we got our proportionality, is based on local standards and the local demand for that particular service – that land. And it seems to me this is a lot harder to deal with because it's access. It's not a direct demand by a local neighborhood. But that's the kind of thing that we're looking for for proportionality. It's not going to be something that's going to be overly onerous, but it's going to be proportional to the demand on that service or whatever.

Mr. Easton: Okay, but the phrase after proportional is "to the total development value at build-out per approved design."

Mr. Pernula: Okay, I believe that – as Ryan said – that should be a limiting factor. It shouldn't be beyond a certain threshold, but still the proportionality should be proportional to the impact or the demand for that service or demand for that access.

Mr. Easton: So then you would view that, as the Administrative Official, as more than just the cost of the dike then, or the particular levee. You would also include the proportion of what that does to protect the community?

Mr. Pernula: No, I don't think so. I think that could be a limiting factor, but whatever increased demand or would be for access is the proportionate that I would require for that access, and it's not easy in this particular case. With parklands or a school – other things – it's a lot easier, but this is a hard one.

Mr. Easton: I have some proposals –

Chair Lohman: I think some of the – just maybe an observation – our definition of what that public access looks like when you talk about dikes and levees suggests that our impression is it's a trail on the dike top, whereas it may be just up and over. It may be just a gate and that would be it. But it's not – if we're having all this confusion then maybe we need to put the language on what that means. Because if how many of us sitting here are throwing out all these different views then it's not clear. And how is the public or the private landowner then to navigate if he doesn't know, if he has a preconceived idea and the building official has a different one?

Mr. Easton: Josh's experience of living on a dike that he's relayed to me over the years, it's been the public's general perception is they're trails that were placed nicely next to a river. I mean, how many times have you had to stop people from walking down – you stopped people walking across your private property on the dike thinking that it was a trail? They had no idea that they were doing anything wrong.

Mr. Axthelm: But when they go to unhook my electric fences for my horses and open my gates, then I have issues for sure! You know, we've had people walk back and forth, no big deal. But I've had to go up there and pick up garbage and stuff and –

Mr. Easton: ____ the Chair, we need a definition.

Mr. Axthelm: Yeah. But that's a whole other story.

Mr. Easton: The definition without – I mean it's going to be an enforcement issue no matter.

Mr. Greenwood: But it is similar in that – I've got – I'm associated with property that has shoreline – streams – running through it, and if I go in with a development proposal – say it's a bridge, for example; it might even be substantial development – we're going to tie public access to that? I mean, we have waterfalls that are in published books that say, Oh, there's private property so you should consider that, and then it says, This is how you get there. So I don't want to be tied and required to tell the landowner he has to – if he's going to put this bridge in that it's going to tie his hands in a public access way, as well. I want him to voluntarily do that, if that's the right thing to do for that particular watershed or that particular area, and then I don't want him to say, Okay, well, where else can we provide this access? So now we're going into offsite mitigation. I think if the access already wasn't there, other than walking up the stream itself, nothing has changed. So you're addressing the significant adverse effects on these other public resources and benefits, and that's what it talks about even in the WAC code from Ecology talking about –

Chair Lohman: Is this still 173-26-241?

Mr. Greenwood: Yes, but this deals with not even just commercial development. But numerous times they say "…will not result in a net loss of ecological function and have significant adverse impact on other shoreline uses, resources and values provided for in 90.58.020 such as navigation, recreation and public access." So, again, you're addressing it but when we tie it to it as a requirement it may not have anything to do with it but we're using it as a hook, if you will.

Mr. Easton: Madame Chair? So it would appear that I don't have the votes to __, so I have some proposed additional language that I would like to propose to add to two different points that might bring some clarity. _____. Is it all right if I propose that?

Chair Lohman: Yeah. Is this a motion? Are you making a formal motion?

Mr. Easton: Well, I'm not because we're in work session now.

Chair Lohman: Okay.

Mr. Axthelm: Did you ask the question whether you have enough votes to exempt levees?

Chair Lohman: I don't think so.

Mr. Axthelm: Although I don't know if we have a choice.

Mr. Easton: Well, he's leaving _____ so I don't even have half this room and there's still three people – that means five out of the room basically if we're going to make a big change, I would think.

Mr. Axthelm: Okay.

Mr. Meenaghan: I'm not necessarily no; I'm just open-minded.

Mr. Easton: Well, there you go! That's because you're new. You'll get over that. You'll grow out of it.

Mr. Axthelm: I think that they've covered it somewhat in these _____.

Chair Lohman: Okay.

Mr. Easton: So here's some additional language that would make me feel more comfortable. See if you like this. Section (2), under Requirements to provide public access – and first, I want to acknowledge Betsy's warning. She feels like we're – she felt like she needed to warn us that we were getting a little out on the edge, and I'm not just – I don't want to disrespect that. I also am a little _____ in trouble with Ecology and I'm trying to hold that back. So let me propose these ideas: Under sub-point (a)(ii), add this language after the word "and."

Mr. Axthelm: Where are you at?

Mr. Easton: (2), under Required to provide public access.

Mr. Axthelm: Yep.

Mr. Easton: Under sub-point (a) under (ii), it currently reads "the shoreline access provided is reasonably consistent" – this is what the Administrator has to consider – "is reasonably consistent with the nature and type of demand created; and" existing access is considered as to the proximity to other access points. So, in theory, Robert's property –

Chair Lohman: Hold on. …existing access is considered…

Mr. Easton: "…as to the proximity to other access points." It may not be the best language, but do you understand what I'm trying to accomplish, Ryan?

Mr. Walters: I think we could totally wordsmith that, but I think the idea is to –

Mr. Easton: If everybody's agreeable to it, then you could work with it.

Mr. Walters: The idea is if there's already public access why are you providing _____?

Several Commissioners: Right.

Mr. Easton: If I'm next door to him and he's got public access 200 feet away and I'm building a project next door to him that's only 800 feet, why do I have to put public access _____?

Mr. Greenwood: And so long as he doesn't have to go a mile downstream and do something because he can't do it where he's ___.

Mr. Easton: It gives the Administrator a chance what we hope would be somewhat reasonable proximity, you know, thoughts into this. It asks him to consider proximity.

Mr. Walters: And I might want to move that out of (a) into a new (b) or something like that.

Mr. Easton: I'm open to all that if the rest of them are.

Mr. Axthelm: Now would that require them in a situation – let's say they don't provide the public access, but it might – you still have a plan it's as far as improvements –

Mr. Easton: Sure. Sure.

Mr. Axthelm: – or offsite or something like that? I don't know –

Mr. Easton: It's just to be part of the – it gives the – it gives more direction to the code reader that this part – that that has to be considered. It doesn't take any other options off the table or enforce anything. It's just an additional parameter to be considered. Is that reasonable to the staff? I mean, Betsy, does that put –

Chair Lohman: Regardless of whether you're talking a dike or levee?

Mr. Easton: Yeah.

Chair Lohman: Okay.

Mr. Easton: Does that seem reasonable, Betsy?

Mr. Pernula: It seems reasonable to me.

Ms. Stevenson: Right now it does. I mean, there's a whole lot of stuff that we had to consider. There's an attorney general opinion that goes on for quite a bit and there's a lot of law that has to do with this, which I know, Ryan – but we can sure look at that.

Mr. Easton: Okay.

Ms. Stevenson: Some of the examples that you guys are giving wouldn't have to provide public access anyway because it's private property and it's a development that doesn't kick the threshold up because it's not happening on public land. So, I mean, it's okay to talk about it and if you feel more comfortable trying to clarify that we can, but it's not going to apply to those – most of those examples that you gave.

Chair Lohman: But I do think in this county, though, that the dike system – beings that they're in dike districts but on private lands, there's that gray area.

Mr. Easton: Yes.

Mr. Walters: Well, and maybe –

Mr. Temples: I guess part of my feeling is I kind of like the idea of divorcing the idea of the example of levee out of it and just open it up to riverfront property or waterfront property.

Mr. Easton: No, I'm not even making a reference to anything in the shoreline to define which shoreline. It could be the creek example, it could be –

Mr. Temples: So that's what I'm saying.

Mr. Easton: It could be fresh water, it could be whatever if could be – saltwater. I'm just saying other – I think other access points that are in the proximity of the project you're working on, whether it's a major – whether it's private property that gets looped in because of the dike issues or whether it's ____ or whether it's a major dike or levee project that at least should be considered and at least be prescribed to the Administrator that they have to consider it.

Chair Lohman: Okay. But in that section (2) it has proportionality in parens.

Mr. Easton: I don't think proportionality's direct enough.

Chair Lohman: I almost think you need to elaborate that clarification.

Mr. Walters: I sort of think that that is what we're talking about with –

Chair Lohman: But on little sub little (ii)?

Mr. Walters: I might not want to put it there but –

Chair Lohman: But somewhere.

Mr. Walters: Right, right.

Chair Lohman: If you're – I think part of it – you need to leave that explanation in there rather than just have it as a reference as to a prompter.

Mr. Walters: Well, I think some of the things that we're talking about, some of the things Keith is talking about, and some of the things Jason's talking about might not hit those nexus and proportionality thresholds.

Mr. Greenwood: Right. I think Betsy mentioned and the example I gave does not apply.

Mr. Walters: Right, and _____ is not a trigger.

Mr. Greenwood: She's correct.

Mr. Walters: Right, but it doesn't explicitly say that like it does in section (1) where there's an explicit list of things called out and then an explicit list of things that are excepted. So maybe we want to address that through additional text.

Mr. Easton: Is it –

Chair Lohman: Well, and I'm thinking, if I put my finger over the proportionality in the paren and read it, it to me reads differently than when I see that prompter in there of what you're talking about.

Mr. Easton: He keeps referencing nexus but according to the way I'm reading it nexus is going to drop off. It's in parentheticals.

Chair Lohman: Right.

Mr. Walters: Well, not every –

Ms. Stevenson: _____ stay there.

Mr. Easton: Now we're going to put it back – we're going to –

Mr. Walters: References to other places, not every –

Ms. Stevenson: Yeah.

Mr. Easton: Okay.

Mr. Walters: Yeah.

Mr. Easton: So and then I have a second thing that deals with proportionality. This will be slightly more _____.

Mr. Walters: But before you get to that, yes, I do think that that could maybe be made clearer.

Chair Lohman: Well, what does the rest of the Commission think about that idea – expanding that?

Mr. Greenwood: Double i?

Mr. Easton: Yeah.

Mr. Greenwood: I do. I'm thinking, though, to go along with that do we need to have sub-heading (b)? Does that need to be in there as well? Because that seems to cancel it out. "Onsite public access is required except as provided in subsections (3) and (4)." So we've qualified it in (a) and then (b) says it's required.

Mr. Walters: We could harmonize those two better, yeah.

Mr. Greenwood: Yeah, I would like to see that.

Mr. Axthelm: And (b) kind of is in an odd location here. It's right in the middle. And so I think it kind of throws you off because it's like here you have exceptions and then it goes back to the same subject. I'd say to move that (b) up or down. Either put it at the beginning or put it at the end.

Mr. Walters: Yeah.

Mr. Easton: It didn't seem like putting additional language under the exemptions would be like trying to clarify a double negative, so it seems to me adding language under the Administrator's rule was better than to add an exception once it became clear I didn't have the votes to exempt levees.

Mr. Greenwood: I would agree. Definitely. Give him better guidance, I think.

Mr. Easton: The second piece of guidance that I would like to give the Administrator comes under point (c), and it would be something to the effect that after the word "designs" – so it reads currently it reads, for the audience's benefit, it reads, "The cost of providing the public access must be proportionate to the total development value at build-out per approved designs" and I would like to add some language to this effect: "in direct" – after "design," right? – "in direct proportion also to the property being protected." I want an additional qualifier over the – dikes don't live in a floating world where their only value is what they cost to build them. I can't tell you what forty years ago it cost to build that dike that's next to – that's protecting Costco, but I can tell you today it's worth a lot more money in what it protects than what it cost to build it. And so I want the Administrator to consider the total *value* of the project to not just be its cost but also it's protection factor. So if FEMA or the Corps of Engineers with a certified dike says that it does *x* to protect more property, then that needs to be considered in the proportionality about whether or not public access fits in to the budget in a proportional way – if that made any sense at all.

Mr. Walters: That might serve to increase –

Ms. Stevenson: That's what I was going to say. That's going to make it worse, it sounds like.

Mr. Easton: No, because then the – if you're including the value of protected property, the total cost of the project's value would go up, so instead of a ten million-dollar levee it's a fifty million-dollar levee and he's got to consider –

(laughter)

Chair Lohman: Yeah, but it shrinks it.

Ms. Stevenson: Ding-dong!

Mr. Temples: When you say "protect," that opens up a can of worms.

Mr. Walters: We may be able to come up with some language.

Chair Lohman: So do you want to take your words back?

Ms. Stevenson: We didn't say this stuff was easy.

Chair Lohman: Do you want to strike that idea, now that we see it in writing?

Mr. Easton: I just – I'm very uncomfortable in giving the Administrator carte blanche decision about what's considered proportional on projects –

Mr. Greenwood: I don't like it either.

Mr. Easton: – in relationship to this. We need a solution, but obviously it wasn't those words.

Chair Lohman: I've got an idea. Why don't we – we've hashed this out a lot. I think we need to revisit it again and go home and kind of kick the tires and come up with some ideas.

Mr. Easton: Maybe they can bring us some suggestions, too, since we've –

Mr. Walters: Yeah, I think you've identified several of the issues and so we can try to figure out what fits in where.

Chair Lohman: Because I think we're circling the same thing over again.

Mr. Easton: Okay.

Ms. Stevenson: Which is okay. Obviously we still didn't get it clear enough. Annie, when you asked for us to define a little better what we're talking about when we say public access and what we mean, and I think you were talking specifically on the dikes so it didn't necessarily mean walking on the dike like a trail, under (2)(d), that added language in the memo, is there anything in there that we could clarify that would pull that out better?

Mr. Walters: Maybe explicitly mentioning not walking on the dike like a trail?

Chair Lohman: But that is a list of what the public access might look like.

Ms. Stevenson: Right.

Chair Lohman: And I don't think I would put it there.

Ms. Stevenson: Right, but is there anything there that works where you would want something more specific to dike stuff at all?

Chair Lohman: I almost think it needs to go up in applicability.

Mr. Axthelm: It already is.

Chair Lohman: No, the clarified.

Mr. Easton: How about this: Access doesn't necess – doesn't – isn't defined as giving the public entrance to a larger system. Access is defined as only – we can just define – you said earlier, Can we define access? As long as access – as long as we define access in a way that doesn't imply – because it seems like we're now leaving it sort of implied that access gives you the ability to go beyond its bound – natural boundary of it. Isn't there language we could use that says –

Chair Lohman: But (2) is what would trigger a requirement, and then (3) is in the beginning of the exemption, so I don't really think it would fit in either one.

Mr. Easton: I think its own.

Mr. Walters: I think we can figure out where to put it and I think what we would put in is something along the lines of "dikes don't have to provide access to the dikes themselves."

Mr. Greenwood: Is it possible to clarify it within the definitions section? If we were to read the public access definitions perhaps in there, we could better define or exclude or characterize, I should say, a dike-type access. Or what does it really include?

Mr. Easton: Dikes – it's not just dikes, people.

Mr. Greenwood: I hope not.

Chair Lohman: Yeah, but –

Mr. Easton: It's –

Mr. Temples: Well, you've got thousands and thousands of miles of water access.

Mr. Easton: So if I give you public access – if I give you a point of public access on my property, am I giving you access to all my property?

Several voices: Mm-hmm.

Ms. Stevenson, Mr. Walters and several other voices: No.

Mr. Easton: So then is that clear, when half the people in the room said yes and half the people in the room said no? So maybe we need to clarify the definition to that. Matt?

Mr. Mahaffie: I think we're off-task as far as this being for development. This is a – something – a checklist somebody would have to go through for a development. This is not something the public is going to read to find out where to walk. This is: I'm doing a project for five lots. I need to put an easement down one side so somebody can carry their canoe. And that's it. It's not –

Chair Lohman: I disagree because it does include dike and levee as a stand-alone that's outside of whether it's five lots or not.

Mr. Axthelm: Ryan?

Mr. Mahaffie: And then it's still a project _____. Does it need access? Yes. Well, you can put the access –

Mr. Easton: You missed the point here. You're saying this is the development section of the code and people who are – who's going to read this before they go walk on Keith's property?

Chair Lohman: I think –

Mr. Mahaffie: There's nothing that I would read this to say that if you're doing a dike project that the project for access, if it was required, would even be required in that spot. If Dike District 12 did an improvement – they own property that's already moderately improved. They could improve something structurally out of this list. I don't read anything to be, you know, as overreaching that anybody would conceive access to the dike out of this development code.

Mr. Axthelm: Ryan? Some of the dikes are owned by the diking districts and some of them are just easements for access. I know down on – down where I am on Dike Road they had – they were improving it putting a seepage berm on the inside, and they had required that that land be deeded or sold. It was sold – some of the land was sold to the diking district. But when it came down towards – down farther, a lot of the landowners there said no. You can maintain the dikes, you can do everything. You don't *have* to deed the property over. And so it stopped at some point where that wasn't done. So is there a difference in the state law as far as ownership and easements, or setbacks, or – on that dike? It might be something to look into because –

Mr. Walters: Well, the WAC requirement is to provide the access to the shoreline. And, I mean, you could do a shoreline trail. I mean, if you wanted to, the dike could do a trail on the dike, right? But you don't have to.

Mr. Axthelm: Yeah.

Mr. Walters: You just need to get to the shoreline. And *we* added the language that's in here that says if you don't have access rights you may not have to do public access at all.

Mr. Axthelm: No, it's what I'm saying. Maybe there's some confusion there because I know a lot of the – some of the diking districts actually own that property and some of them it's just an easement to go through for maintenance so it's owned by the landowners. I just – a suggestion. Yeah.

Mr. Walters: Right, so in such a circumstance you might not be able to obtain access rights and you might be able to say, Hey, we just can't get those access rights. We shouldn't have to do public access.

Mr. Axthelm: Yeah. It seems to me it's showing that, but I think the differentiation between the two might be – if there's some way to show publicly-owned dikes or – is there a difference?

Ms. Stevenson: The way that Daryl Hamburg explained it to us at the Advisory Committee meetings is a lot of times you just have an easement, but even sometimes when you have the right-of-way for the dike you don't own the underlying land under the dike. It's just the dike. So you don't have the authority to grant public access because you don't own the land underneath, and that's gone through the court cases and done everything else. So that's why we added the language that we did. Other times all you – at least some of the deeds that I've read it's just to get in there and maintain the dike. It isn't even a right-of-way necessarily. It's an easement. So either way – at least how he explained – it is mostly you don't own the land underneath, so you don't have the authority to grant public access. Even though you may have the dike, you don't have the land underneath. So that's what we were trying to respect and felt quite comfortable in including the language that we did.

Mr. Axthelm: Okay.

Mr. Easton: The definition of access needs to be worked on further, in my opinion.

Ms. Stevenson: Mm-hmm.

Mr. Easton: And it probably doesn't belong in this section. It probably belongs in the Definitions, and I think it can be either – I think it can be __ as a point at which you're allowed access to the shoreline in question, not to be misconstrued and extended beyond that in any other direction.

Mr. Walters: Well, and right now it reads – right now the definition – you'll remember the Definitions we really have not worked on. But the definition that came from wherever – maybe the existing Plan or maybe the WAC – says that it can be an access to the shoreline; it can be a trail along the shoreline. So it could be either of those. But we can –

Mr. Easton: I would divorce the word "trail" from the word "access" and let people believe that they're two different definitions.

Mr. Walters: It might not use the word "trail," actually. But we can work on that, and we might also put it into this section somehow. We can look at –

Mr. Easton: Or a reference to it.

Mr. Walters: Have a reference or something.

Mr. Axthelm: Item (2)(d) – a question. Item (2)(d) has "Public access must consist of a dedication of land…" and it has specific items – walkway, trail, viewpoint, deck – is that conflicting with earlier where it has in the Public Access "where appropriate"? This seems like one of those items that it must consist of it and it says exactly what you're supposed to put in there, but earlier where you're referring to the Open Space Plan as a suggestion, or Look at these ___ goals. I'm a little concerned on that one. It just kind of – it's drawing it out pretty definitively.

Chair Lohman: Do you need that definitively?

Ms. Stevenson: It was our attempt because we realized and the comment was made that we were talking about all this public access but we never tell anybody what it is we're assuming public access is or what those things are. So maybe this gets kind of rolled back into a definition or a description of what we're trying to talk about. But it does kind of sound – the way it's worded there – it has to consist of this. We've been trying to ease it up a little bit and then all of a sudden there we are jumping in again. So I understand what you're saying.

Mr. Axthelm: Okay. I'd suggest changing that.

Ms. Stevenson: Yeah. Yeah, that sounds good.

Mr. Temples: What still concerns me, and I don't know how it needs to be properly worded, but we're talking about – I keep hearing over and over like the definition of trail access and dike and all, and it's like it's a small, very small portion of the entire access system to the Skagit River system. It's a very small part. I mean, to provide access everywhere up from the flood control areas is probably relatively possible. And when you start talking what you're saying from what I'm hearing is the dikes and the flood control are areas that really – are not really perceived as trails, though the public may think otherwise. And I think to define it that way is perfectly fine. But it just seems like we're biting the tail, wag the dog. I mean, it's kind of backwards.

Mr. Easton: The three most controversial things I've ever seen happen in this Commission, one of them was when people who live near dikes perceived that the trails plan was giving people access to the dikes and trails. Never saw – I mean, top three most passionate testimony by the public, well attended hearing. This is front of mind for people who own waterfront, whether it's beach in Anacortes, whether it's a stream – a great fishing stream in the east – or whether it's the floodway, this is very – I mean, this is the nuts and bolts portion unless you – because this is where the rest of the public interacts with the few people who do own shorelines. Unless you're that guy who's got that piece of shoreline, the only other time you're going to interact with the Shoreline Master Plan nearly as much is when the public becomes a part of the Plan, and that's here. Most of this regulation's written for people who own land on it. This is that intersection where it's the most – I think it's the most critical. To me it's a major issue

and I think when we – we're kidding ourselves when we go to public hearing if this isn't something we're going to hear about repeatedly.

Mr. Temples: I'm not saying it's important. I'm just saying it seems to me that yes, you can acknowledge there are levee situations, but if you're talking about public access – to me public access and levees do not, should not be in the same sentence. Period.

Mr. Easton: Agreed. I think it only feeds the confusion that's already exists.

Chair Lohman: But –

Mr. Walters: So –

Chair Lohman: Go ahead, Ryan.

Mr. Walters: So I would suggest at this point we've heard the issues and I think we can go back and make quite a few changes to try to address these and maybe bring it back at the next meeting or maybe the meeting after that.

Chair Lohman: No, no, not the next meeting because we've already got a schedule for the next meeting.

Mr. Walters: Sometime later.

Chair Lohman: We're going to have a list of things that we come back to, and I think this would probably be a good candidate. But I think we should come back to it, but that doesn't mean we ignore it in the interim.

Mr. Greenwood: I would argue that Department of Ecology is not going to be as much of a stickler on this issue as they are on the other ones. They're way more concerned about ecological functions than they are about public access. That's not to say the *public* isn't more concerned about it, but most of the Ecology folks I deal with – they don't care so much about the people as they do some of the other resources, if you will, whether it's fish or water quality or other things. So people are a detriment in a lot of people's eyes and so I think there should be more public access and I'd like more access to the shoreline, but how we go about doing that, I think we just be careful.

Mr. Easton: It's a balance between people's private property rights and people's rights publicly to the water.

Mr. Greenwood: Because there're some places that are already built up. They're already built out, everybody's got all the shoreline marked up and nobody can get to it – you know, the Willamette River or whatever and all the septic goes in there and that's not a good situation per se, but we're in a different situation where a lot of it's more wild and we want to keep it that way but we want people to access it and enjoy it, too.

Ms. Stevenson: I think one of the things, too, to remember is we live in a pretty special place in that there are a lot of public lands. And some of you were here, some of you weren't here when we started this process and I had some of the agency folks come. The woman from the Forest Service, they've done surveys, as have our County Parks people, and she basically said, Hey, we're good on public access. We don't see much

of a need for additional public access in this area. So it isn't as it is in some other places. So in terms of the demand, do we need more boat launch ramps and things? They're saying no, so, I mean, those are things we'll have to look at and keep in mind.

Mr. Greenwood: Those are the same people that are closing down a lot of roads and access points in the forest. So to them people are a detriment too, as is the cost of the road.

Ms. Stevenson: Yeah. Yeah. Okay, good point, good point.

Mr. Greenwood: You know, I see that and people get all excited that they're going to close an access point. People really get excited about it.

Ms. Stevenson: Okay.

Mr. Axthelm: I appreciate in here that there some terms with "feasible" – you know, it's feasible, whether it's feasible or not. And the Administrative Official can make the call on that. And I think that that gives a little more flexibility on it or a situation if you can determine or show that it's not feasible or that's not a good situation then you can say no to it.

Mr. Mahaffie: Madame Chair? It's almost eight o'clock and we have yet to actually start our agenda for tonight.

Chair Lohman: Yep. I think we should put this on the come-back list.

Mr. Greenwood: We did Public Remarks.

Ms. Stevenson: You guys might help me out a little bit. I'm not sure I remember from the last meeting in terms of what we go through in Part III and what we discussed or what we didn't have concerns with or – because we got to Public Access somehow but I don't know that we talked about some of the things before that, or maybe you didn't have any issues or concerns. So I just want to make sure that we're not skipping past something.

Mr. Greenwood: Under General Regulations? Is that what we're talking about?

Ms. Stevenson: Yeah. I'm sorry. Starting on page 62 – we started on it I know. I'm not sure how much of it we got through and I don't want to miss something that you guys didn't get a chance to review.

Mr. Easton: 61 or 62?

Ms. Stevenson: 62 for me.

Mr. Easton: I have 61.

Ms. Stevenson: That's weird. Okay.

Mr. Easton: So we don't know where we left off?

Chair Lohman: I thought we were on 62. Is that where?

Mr. Temples: No, we were on (3) at least.

Chair Lohman: 62?

Mr. Temples: I thought we were further than that, but I guess not.

Ms. Stevenson: Well, because we ended up in Public Access I guess I don't have a real recollection of whether we looked at all the other sections first.

Mr. Walters: We were only looking at the Public Access policies. We never got to the Public Access regulations.

Ms. Stevenson: Oh, that's right. Thank you. Thank you. Thank you – sorry.

Mr. Meenaghan: We need to start with 72 and go through – oh I'm sorry – 62 and go through 74.

Ms. Stevenson: Yeah, okay.

Chair Lohman: That's what I took your memo to mean.

Ms. Stevenson: Okay, thank you. I'm sorry.

Mr. Walters: Well, whatever the page number is, it's Part III.

Chair Lohman: For the public, we are on Part III, General Regulations, 14.26.310.

Mr. Greenwood: Can someone – and it's just my ignorance, but on the bottom of page 62 it references under (2)(a) Building mechanical equipment. What does building mechanical equipment refer to?

Mr. Mahaffie: That would be duct work, furnaces, household mechanical.

Mr. Greenwood: Okay.

Mr. Walters: I –

Ms. Stevenson: It should be stuffed in a, like, exhaust things out of the roof and things like that, I think, yes?

Mr. Greenwood: "…incorporated into" the "building architectural features, such as pitched roofs, to the maximum extent possible. Where mechanical equipment cannot be incorporated into architectural features, a visual screen must be provided consistent with building exterior materials…" Okay, so you guys understand that.

Mr. Easton: Is there any other place where we require that we have "Outdoor storage must be screened from public view"? "Outdoor storage must be screened from public view." Is that –

Mr. Temples: Well, things like dumpsters and that kind of thing are usually required to have –

Mr. Axthelm: But that's not outdoor – that's not –

Mr. Easton: You know we don't have any mechanism to enforce this, but we're telling people – very little – I think very little mechanism to enforce this –

Chair Lohman: But –

Mr. Easton: – that they can't have outdoor equipment within public view if they are above the ordinary high water mark?

Mr. Walters: Outdoor storage.

Mr. Easton: Yeah.

Mr. Axthelm: Yeah, but what's storage?

Chair Lohman: Is it parking your car outside a garage?

Mr. Axthelm: Somebody with multiple cars parked on their property needs to have screening and –

Chair Lohman: A boat in your driveway?

Mr. Walters: Well –

Mr. Easton: A stack of lumber to build your dock.

Mr. Walters: No, because this is – no, it's not going to apply to cars or lumber to build your dock because, remember, this is – these are development regulations that apply when you come in for a *permit*.

Mr. Temples: So if you want to have a compressor as part of your system, that has to be screened from public view.

Mr. Easton: So what would then apply as development then?

Mr. Walters: Mechanical equipment.

Mr. Temples: Yeah!

Mr. Walters: Yeah.

Mr. Greenwood: What qualifies as development? Is that what you mean?

Mr. Easton: No, no. So I guess –

Mr. Walters: If you have some –

Mr. Easton: So maybe for your septic system.

Mr. Walters: Right, maybe for your septic system, maybe for some commercial operation or something like that – something that has outdoor storage that shows up on your project permit.

Mr. Temples: That's pretty typical across the state.

Mr. Greenwood: What? Outdoor storage?

Mr. Temples: No, I mean screened from public view.

Mr. Greenwood: Oh, okay. I'm sorry. I see a lot of outdoor storage.

Mr. Axthelm: Again this is a situation that says – right in here in that first paragraph – it says "where feasible." So there are situations where it doesn't – I mean, it's still –

Mr. Temples: If it's not feasible – yeah.

Mr. Axthelm: It has some allowances for it. I mean, there's a situation – like you have certain things like solar panels, you know? You have to have those where they're accessible to the light. I mean, you can't put a whole bunch of trees in front of them.

Mr. Temples: That's true.

Mr. Axthelm: And some people consider those things unsightly.

Mr. Walters: Well, and it gets back to the goal, which is to protect the aesthetics of the shoreline where possible.

Chair Lohman: Number (4) on page 63, "New residential development dependent on a septic system" – that section? Why do you need to specify that out when that's – I thought that was a requirement anyway, regardless of where it was?

Mr. Walters: So without knowing specifics on this, I'm willing to wager that there's a WAC that says we have to do it, even though we already have to address it through our Title 12 health regulations. Do you know, Betsy?

Chair Lohman: (4)(c).

Ms. Stevenson: (4)(c)?

Mr. Walters: This is the requirement to condition residential development on a septic system for routine inspection and maintenance. It's somewhat messy, but there is quite a bit of that where Ecology has special rules that they want you to address through your Shoreline Program.

Mr. Easton: Number (5), changes to topography: Is that section from – is that straight from the WAC and straight from Ecology?

Ms. Stevenson: Yes.

Mr. Walters: Well, it says –

Mr. Easton: Well, I know it references the WAC but the question I have is, How do you measure whether you – how do you measure whether the people _____ changes to the topography?

Ms. Stevenson: Even now they have to submit existing predevelopment and proposed contours on the land.

Mr. Easton: Existing contours versus ____?

Ms. Stevenson: Yeah. So we're doing it now and have been for thirty years.

Mr. Easton: And aren't we doing number (7) now too? We already have the 35-foot rule?

Mr. Walters: 35 feet is a state law provision.

Ms. Stevenson: Right.

Mr. Easton: Which is still in – but it's incorporated into our County law at this time?

Ms. Stevenson: It depends on the shoreline designation – what it is.

Mr. Easton: Oh.

Chair Lohman: Jason, what –

Ms. Stevenson: In most the maximum would be 30.

Mr. Easton: Sorry. I went to (7).

Mr. Greenwood: Yeah, you skipped. I wanted to talk about (3).

Mr. Axthelm: (2)(b) – Ryan, could we get a definition for outdoor storage? Because that is kind of vague, based on – I mean, what you consider outdoor storage and what somebody else considers outdoor storage is a different thing.

Mr. Walters: And we want you to be looking for terms that you think need definitions all along the way.

Mr. Axthelm: Yeah. I think that's one of them.

Mr. Walters: He's already sent a list!

Mr. Easton: Nice. _____.

Mr. Meenaghan: Along those lines, in this section right here we use the word "must" a whole bunch and I know in previous paragraphs in other sections we've used "shall" and "should." So I'm trying to figure –

Mr. Walters: We never use "shall."

Mr. Meenaghan: So we don't ever use "shall"?

Mr. Walters: We have excised it from the document.

Ms. Stevenson: He has a coronary if he sees "shall" in there.

Mr. Meenaghan: So we use the word "must" instead of "shall"?

Mr. Walters: Or "should."

Mr. Greenwood: Some people still do that.

Mr. Meenaghan: So we have "must" or "should."

Mr. Walters: Right. So Annie brought this up, because "should" is defined.

Mr. Meenaghan: Right. It is. Can we define "must" then?

Mr. Walters: We can define "must," but we would be defining it to have the ordinary English word meaning of you have to do it.

Mr. Meenaghan: Okay.

Mr. Walters: But "should" is defined to have a meaning other than the ordinary English word because that's how Ecology likes it.

Mr. Meenaghan: So why are we doing something that Ecology likes when it is completely silly?

Chair Lohman: Bogus.

Mr. Walters: Because that's just put in there. It could be in the existing draft or it could just be something the consultant does because they're okay with it. But I am strongly – I strongly feel that we should not redefine English words to mean something other than what their normal English meaning is. And I don't think in this case Ecology –

Mr. Easton: You feel strongly about Ecology doing that?

Mr. Walters: I don't think Ecology will care that much actually.

Mr. Easton: No, but I mean does your opinion about defining the English words apply to what Ecology's doing with "should"?

Mr. Walters: I'm suggesting that we –

Mr. Easton: I'll know "must" when I smell it but I'm a little confused here.

Mr. Walters: I'm suggesting we not do the "should" that Ecology likes and do "should" just as a normal English word.

Mr. Meenaghan: Yeah, because the way we define "should" really means required.

Mr. Walters: Right.

Ms. Stevenson: Yeah.

Mr. Axthelm: Is that the way Ecology said it?

Mr. Walters: That's what Ecology says.

Chair Lohman: Ecology uses it as a synonym for require.

Mr. Axthelm: So what is "must" then?

Mr. Walters: It's not exactly a synonym. The definition of "should" in the Plan is means must except if not feasible, or something like that.

Mr. Axthelm: Okay.

Mr. Walters: It's a clever shorthand that they have developed but it is problematic, because when you read it you read "should" to mean oh, this is a suggestion –

Mr. Meenaghan: Right.

Mr. Walters: – and they define it completely different without really any warning that that's what they're doing.

Mr. Axthelm: But they have a feasibility clause thing in there, don't they? Is that what you're saying? Because didn't you just say that?

Mr. Walters: It says "'Should' means that the particular action is required unless there is a demonstrated compelling reason based on policy of the Shoreline Management Act and this chapter against taking the action."

Chair Lohman: So you have a gun to your head.

Mr. Axthelm: (2)(a) has a mechanical "must." That's where I would put a "should" in there, though. Because right down below it says where mechanical cannot be incorporated. So it's like it says "must," but then why do you have that other statement down there?

Ms. Stevenson: Because if you don't say it somewhere people won't do it at all, so you have to start with they "should" unless they can't.

Mr. Axthelm: That's what I'm saying – "should." It says "must."

(several people talking at the same time)

Mr. Walters: We can look at that and maybe adjust that.

Chair Lohman: Well, in reference to the –

Ms. Stevenson: To the maximum extent feasible or possible.

Chair Lohman: In reference to Ryan's – how I got in to asking him: Okay, when I went and looked at the legal definition of "should" you're referred to "shall." Right? That's the one – when you go online and look up what the legal definition of "should," they almost use "should" and "shall" on somewhat equal footing. Is that correct?

Mr. Walters: No. If you look at Black's Law Dictionary and all the other books written by the editor of Black's Law Dictionary, he says do not use "shall" ever because lawyers – and other people – cannot be trusted to use it consistently. So he suggests you –

Chair Lohman: I'm glad you said that on tape!

(several people laughing and talking at the same time)

Mr. Easton: Man, that would have been the killer quote and in the headline!

Mr. Axthelm: So is that why you don't like it, Ryan?

(laughter)

Mr. Walters: Yeah. You can look at a lot of different examples of how "shall" is used and it is – they refer to it as a "chameleon-hued" word because it can change its meaning even sometimes within the same sentence to sometimes mean just the future "will," or sometimes actually mean requirement, or sometimes just a prediction.

Mr. Easton: "Chameleon-hued."

Mr. Walters: Yeah. There's actually quite a bit of literature in the legal writing community about this that is not persuasive to most of my brethren, but… So what I'm suggesting that we do here is use "must" to express a requirement. Use "should" to express a preference. And if we want to do anything other than that, spell it out. So "should where feasible"; "must where feasible" – you know, something like that.

Mr. Axthelm: Then I would suggest for (a) – for (2)(a) and (2)(b) that it be changed to "should" instead of "must."

Mr. Easton: That's what you want.

Chair Lohman: With the understanding that "should" implies –

Mr. Axthelm: Well, that's what he just said.

Chair Lohman: – you have choices.

Mr. Axthelm: Mm-hmm.

Mr. Easton: Of how to do it. Choices *to* do it or choices *how* to do it?

Mr. Walters: If you say "should" then you do not have a real requirement. If you have "must" you have a requirement, and then you may also have choices or options on how to accomplish the requirement. But you don't have a requirement if you don't use –

Mr. Easton: Josh, you trying to change it so it's not required?

Mr. Axthelm: Yeah. I mean it's required in a sense, but what it is is what you're doing is you're determining – what you're saying is that in a building, architecturally you have to do it this certain way, and I don't think that that's appropriate.

Mr. Walters: Well, except the second sentence.

Mr. Axthelm: But you have "must," so the second sentence doesn't do any good because it already has "must" there.

Mr. Walters: Well, you have to read both sentences together. But maybe the appropriate fix is to integrate the two so it says you have to do this unless this applies, in which case you can do this.

Mr. Axthelm: Okay. If that's the case, yeah. If not, I would put "should" in there!

Mr. Walters: Throughout the regulations we pretty much do not have "shoulds" throughout the regulations. There are lots of "shoulds," I think, in the policies but to have an effective regulation you usually need to use "must" or you don't have a requirement. And if you want to provide flexibility, you say you *must* do one of the following or another thing that accomplishes the goal. But if you don't use "must," you're not really anywhere because you don't have a *requirement*. You don't have the verb that *requires* you to do something.

Mr. Temples: And when a jurisdiction is providing and requiring screening of mechanical systems and everything, you will find the specifics on how those are to be designed dimensionally, what kind of screening is required – it's pretty involved. Is that not correct? You say it's a must it really becomes part of a requirement.

Mr. Greenwood: Unless you have a qualifier.

Mr. Meenaghan: Yeah, like "to the extent feasible."

Mr. Greenwood: Yeah, "unless no other location is feasible." I see that in several places.

Mr. Meenaghan: Which provides the leeway.

Mr. Axthelm: I just want to make sure that there's – leaves options available. It doesn't mean you're not going to screen it. It just means you don't have to do it by the specific – incorporating in the roofs and pitches. You have other options available. And that's architecture background!

Mr. Walters: And there's at least one place in the code – I don't remember where – where it says we want you to do *x* and you can accomplish it in a, b, c, or d method, in descending order of preference. So there are a variety of ways to phrase it.

Thank you for allowing the time to talk about "must" and "shall."

Mr. Greenwood: Well, that handles my question on section (3) then.

Mr. Easton: Shall we move on?

(laughter)

Mr. Greenwood: That's what I was looking – I was looking at the "must." Is it a preference or is it a requirement? And if we're stating it's a requirement conditionally then it's clear.

Mr. Easton: I think at this point we *must* move on.

Mr. Greenwood: We *shall*.

Chair Lohman: I have a clarification on page 66, number (12), where you're talking about trash removal.

Mr. Axthelm: Does anybody have anything before that point?

Mr. Mahaffie: Yeah, I did.

Chair Lohman: Okay, sorry. I'll back up.

Mr. Mahaffie: Number (6), Soil disturbance, (a) and (b). Start with (b) actually – Stormwater Design Manual. Is that really the appropriate document you want there for stream bank erosion control BMPs?

Mr. Walters: Where?

Mr. Easton: (6)(b).

Mr. Mahaffie: Page 64.

Mr. Greenwood: I'm there.

Mr. Temples: (a) or (b)?

Mr. Easton: (b).

Ms. Stevenson: (b).

Mr. Mahaffie: I'm thinking in my head Stormwater Design Manual doesn't really have much of anything to do with stream bank erosion control.

Mr. Walters: We'll look at that.

Mr. Mahaffie: And above that, temporary erosion and sediment control plan: Are you sure it wants to – you want it to read like that? That can only be written by a certified Erosion and Sediment ___. That acronym _____. In other words, you have to have an engineer write it.

Mr. Easton: To do a temporary?

Mr. Mahaffie: Or somebody that's certified. Just a thought there.

Mr. Temples: But you're basically saying that would be a jurisdictional requirement on a normal basis.

Mr. Easton: How do you get from that that it has to be ___?

Mr. Mahaffie: That's an official document form report required by the Department of Ecology for large-scale ___.

Mr. Easton: So how should it be worded so that temporary plans can be submitted by homeowners?

Mr. Walters: Well, the temporary erosion and sedimentation control plan is a term of art. It should probably be in capital letters.

Mr. Mahaffie: So if you leave it lower case you can make it a different thing?

Mr. Walters: No, no. No, I'm just saying that it should be in capital letters to indicate that it is a term of art.

Mr. Easton: It's an actual form.

Mr. Meenaghan: Yeah, a plan.

Mr. Walters: But we should talk about what we're filling out.

Mr. Temples: The plan's certified – is that what you're saying?

Mr. Mahaffie: Yeah, I mean it's word for word – you know, the official plan.

Mr. Walters: Right, right, right.

Mr. Mahaffie: So if that's not your intent, maybe change the words up a little bit.

Mr. Axthelm: Yeah, because if you do a temporary sedimentation control plan and it determines that it's – without all this extra stuff they've written in here – it takes care of the problem, why do we have to have all the extra stuff written in?

Mr. Mahaffie: Not that people that do this for a living wouldn't love doing these for every single-family home that they have.

I actually have a question on number (7) too. Shoreline Variance: An applicant for a Shoreline Variance must submit a view analysis.

Ms. Stevenson: For a Shoreline Variance for the height.

Mr. Mahaffie: For the height. That's what I'm taking it. It took me a minute to read it that way.

Mr. Easton: Is it referencing back up to (7) then for the height of 35 feet? So that's the variance for from above 35 feet. Right?

Mr. Mahaffie: Yes. I just think that –

Ms. Stevenson: Clarify that.

Mr. Mahaffie: Yeah, a little bit – that it's just for the height.

Ms. Stevenson: Yep. Thank you.

Mr. Walters: Same with (b) probably?

Mr. Axthelm: Are there not exceptions for residential – that there's a few exceptions that they allow here?

Mr. Walters: For above 35 feet?

Mr. Axthelm: I thought there was something with the – well, with the shoreline that there were certain things that were exempted before for residential versus commercial.

Mr. Walters: For the height limit?

Mr. Axthelm: I thought one of them was the height –

Chair Lohman: Well, little two i: "The structure will not obstruct views from public property or a substantial number of residences." That's an exemption, isn't it?

Mr. Mahaffie: For a variance. If you wanted a house 45 feet tall you have to show that, yeah, you're not obstructing a view.

Mr. Easton: Isn't (a)(i) a bit unclear that you're actually – you just say analysis but you don't actually say analysis that shows that you're not damaging other people's views? I mean, it just sort of lists all these things on how to do one but it doesn't actually –

Mr. Mahaffie: Number (iii) – (a)(iii): demonstrating what you must show in that.

Mr. Easton: Oh. So those are all just to be taken together in the one view analysis?

Mr. Axthelm: The view analysis – Matt, is that something that has to be done by a specific professional or is that something that's –

Mr. Mahaffie: Heck if I know. I've never seen such a thing, but…

Mr. Walters: I've seen them before. They're interesting.

Mr. Axthelm: Is it a narrative or does it actually have to involve a professional? So can you go in there and just describe your property and describe –

Mr. Walters: It doesn't seem to indicate it has to be done by a professional.

Mr. Easton: Yeah, but neither did the one that Matt read before to me, but when _____.

Mr. Axthelm: A temporary sedimentation control plan.

Mr. Walters: Right, but that's a very – that's a term of art. The view analysis – the view analyses I've seen do have the photographs and I think they are usually done by professionals because they have the photographs, they have maybe some modeling of what it will look like afterward. But, conceivably, maybe it wouldn't have to be done by a professional.

Mr. Axthelm: Well, and the temporary sedimentation and erosion control plan doesn't necessarily either. I mean, you could –

Mr. Walters: Well, if Matt says it does.

(laughter)

Mr. Axthelm: No, I think when we submit sometimes you don't have to as long as you have the information on there. If it specifically says that it has to be prepared by or stamped, then that's a difference.

Mr. Mahaffie: Well, somebody – correct me if I'm wrong – somebody in your office has gone to the CESCL training to fill out those.

Mr. Axthelm: Yes.

Mr. Mahaffie: So that's what I meant by that. Normally they're an engineer that is a CESCL in an office per se. I went through the training. I found it worthless for my work. I mean I could do it, but – not anymore. But, I mean, as I read that that's – when you've got to follow state guidelines you have to be certified through the CESCL training to actually sign one of those.

Mr. Axthelm: To sign it? Yeah.

Mr. Mahaffie: So the homeowner doing it –

Mr. Axthelm: The homeowner doesn't always require it to be signed. So as long as you have the elements on it and the Building Official's all right with that, that's – we haven't had any issues that way.

Mr. Mahaffie: It's not the Building Official I'm worried about. It's the Department of Ecology.

Mr. Axthelm: Mm.

Mr. Easton: Mm. _____.

Ms. Stevenson: So would you be more comfortable with us putting some thresholds in there in terms of if you're disturbing more than an acre and all of that where you do kick into it? No. He's not more comfortable.

Mr. Mahaffie: When you build a house now the homeowner can – Here's what I'm going to do – but it's not called that. Here's my plan. I'm saying just change the words around.

Mr. Walters: Yeah. We can just probably vet it with Public Works and see what they think.

Mr. Axthelm: And I think Public Works does address that because they do have thresholds where if you're disturbing more than an acre or if there're certain things you're doing, you have to do it, instead of like a drainage plan or a temporary sedimentation and erosion control plan.

Mr. Mahaffie: I mean, if you need one, yeah, it's going to get triggered anyway. But, you know, somebody…

Ms. Stevenson: I'll look into that.

Mr. Walters: And it may be that where – it may be that we – here's what I'm thinking out loud – that we already have thresholds that kick this requirement in and we might be able to rewrite this such that it says when you already are obligated to do a temporary erosion control plan separately, then it has to do this. But if you're not obligated, you don't have the obligation of the Shoreline Plan.

Mr. Mahaffie: Well, regardless of what you're doing it is construction in the county, whether it's a plan or something a homeowner does, you still have to do *something*. When you submit your building application you have to have *something* as a site plan of what you're going to do. It could just be a sketch saying, I'm going to throw hay out there, but you have to have *something*. So I wouldn't discount it.

Mr. Walters: Right, but if that plan doesn't rise to the level of a temporary erosion and sedimentation control plan – I think we can figure this out. I'll find out.

Mr. Axthelm: I think there is a threshold with Public Works.

Mr. Walters: Yeah.

Mr. Axthelm: I'm pretty sure there is a threshold.

Mr. Walters: I just don't think we should restate that threshold here because it may change outside the Plan.

Mr. Axthelm: No.

Ms. Stevenson: Should we address it as BMPs instead of a temporary erosion and sedimentation control plan like we do in (b) – only (b)'s not very good either – but just call it the BMPs need to be kind of identified?

Mr. Mahaffie: Yeah. I mean because you can pull BMPs out of multiple different documents.

Ms. Stevenson: Right. Well, and we get them in our site assessments all the time and that's – yeah, okay.

Mr. Greenwood: I mean, it's pretty much covered in (6) without having subheadings of (a) and (b). You're already saying they must be addressed – to "stabilize soil exposed during construction." So what the formality of the plan is doesn't seem to be – there might be a threshold that kicks some other level of requirements, but if it's a small project it doesn't require a high level.

Mr. Axthelm: Ryan, I think I like your idea with that definitely. What was it you just said with the threshold? If it's required – is that how you put it?

Next one?

Mr. Greenwood: Did we do everything on the view you wanted to do already, or has that been addressed – the View corridors?

Chair Lohman: I have something on 14.26.320. I want to do some research on whether the drainage-fish initiative and the tidegate-fish initiative, how they would fit into that.

Mr. Walters: Any particular section of .320?

Chair Lohman: Well, there're several things that jump up: water-dependent in-water structures, and I can't help but think about our pump houses and our – and that infrastructure. I just want to do a little more research and I don't – I don't have enough to discuss it tonight.

Mr. Easton: The timing _____ to do anything about, too.

Chair Lohman: Well, there's an awful lot of that because of already having those drainage maintenance plans. I want to see if there's a possibility of weaving it into here – sort of similar to what we did on the flood hazard mitigation.

Ms. Stevenson: We can try to work together on that, if you want.

Chair Lohman: Yeah. I don't have enough to – information – but I wanted to flag it.

Ms. Stevenson: Anywhere you see that kind of come up, please note it, okay, so we can work on it.

Chair Lohman: Yep.

Ms. Stevenson: How are we doing? How much further? What's the next one?

Mr. Mahaffie: Can I make one small comment on (7)(b) on page 66? Would it be possible to put just a "where feasible" at the end of that? As in I've got an excavator sitting on the beach putting in a bulkhead and he's refueling, do I want to drive 200 feet up through an upland buffer when I brought it through on a barge? Just a thought.

Mr. Axthelm: Or, for that matter –

Mr. Mahaffie: Kind of silly, but I've been there.

Mr. Axthelm: Yeah, and driving back and forth would actually do more damage. I mean, they're already restricted to not doing spills and cleaning up.

Ms. Stevenson: (inaudible)

Mr. Mahaffie: Huh?

Ms. Stevenson: It's not going to run out of fuel in that amount of time, is it?

Mr. Mahaffie: Or just ignore it because anybody's going to refuel it anyway.

Ms. Stevenson: Really?

Mr. Greenwood: What I would run into would be pumps, diversion pumps, that are in the stream or in proximity to it as we're replacing some structures sometimes so that you'd have to drag that thing up in your own equipment.

Chair Lohman: Do you need (b) at all?

Ms. Stevenson: Should we just put "where feasible"?

Mr. Greenwood: Yes.

Mr. Axthelm: Mm-hmm.

Mr. Greenwood: I like that.

Ms. Stevenson: Okay. Thank you.

Chair Lohman: Do you need to have that?

Mr. Mahaffie: They seem to think so. It must come from somewhere.

Chair Lohman: What was that?

Mr. Pernula: This is a development regulation and that's not development at all.

Mr. Greenwood: What's not development?

Mr. Pernula: "Necessary refueling of motorized equipment…" What does that have to do with development? That's an activity that occurs.

Mr. Greenwood: Well, development for me means – you know, under a strict definition – bridges and culverts and things like that, too. Now I'm not going to put a culvert in a shoreline of the state typically, but bridges I do and they get replaced, and if they become substantial and they're not routine maintenance or replaced due to wear and tear from the elements, now I'm getting into that category.

Chair Lohman: Yeah, but it hasn't –

Mr. Mahaffie: I watched an excavator refuel two or three times at Day Creek, you know, doing the restoration work.

Ms. Stevenson: Okay, okay. No, we'll add that. Thank you.

Mr. Walters: And this has come up a couple times and there's a provision in our Drainage chapter that addresses illicit discharges, which is what these are. And we've talked internally about, Should that be in the Drainage chapter because it's – if you're pouring gasoline into the stream, that's not development. You're going to jail, but that's not development.

Chair Lohman: Let's – can we strike it?

Ms. Stevenson: I think we just add "where feasible" at the end?

Mr. Mahaffie: I don't think it really hurts anything being there.

Mr. Easton: What about Dale's argument that it's not development?

Mr. Mahaffie: It's necessary *to* development, though.

(several people talking at the same time)

Mr. Greenwood: If you can, you're smart to get out of it before you refuel. I don't bring the fuel truck down to the creek and then fill her up.

Ms. Stevenson: Yeah. Good catch again.

Chair Lohman: On the Trash – on the bottom of 66, number (12). I understand unauthorized fill. What are you referring to – like a sunken car or a what?

Ms. Stevenson: Concrete blocks, pieces, bricks, asphalt – whatever it might be.

Mr. Mahaffie: Can there be a "where feasible" at the end of that one, too? I mean, you're kind of getting into – if you're putting a small armament project on the river and you see something out there, now you're into property that's not yours.

Ms. Stevenson: I mean, I think that – I was assuming that it was on the same property or at least on the area so you wouldn't be trespassing. We wouldn't ask you to go trespass on somebody else's property without their permission to take stuff off, but it doesn't say that.

Mr. Mahaffie: At below the ordinary high water mark, so chances are –

Ms. Stevenson: It doesn't say that. Sure, why not?

Mr. Mahaffie: Well, I mean, it –

Mr. Easton: She said, Sure, why not.

Chair Lohman: But then (b) –

Mr. Mahaffie: I've just seen some things that say – it relates to (b) – where you can do more damage trying to remove stuff. You know, kind of blanket. You know, if you're having an excavator down there to get concrete out when you didn't have one there to begin with.

Mr. Axthelm: Well, and some of these areas were used for garbage and dumps, you know, years past. Where does that stop? You know, when you find something.

Mr. Temples: And that brings up unauthorized dumping.

Ms. Stevenson: Okay.

Mr. Greenwood: I mean, I can see a lot of times where you want to do that. I mean, I've got an excavator in there. I'm replacing a structure. Maybe they built it out of creosote ties at the time and now we're not doing it that way. You know, it doesn't make sense to leave it in there. So I could see application for it.

Mr. Axthelm: Where is the limit? Where does it stop?

Ms. Stevenson: Where feasible. We added that.

Mr. Axthelm: Oh, okay.

Chair Lohman: Same thing with where you put it after you haul it out, which is (c).

Mr. Temples: That's probably why the County's put in things like a disposal site like over there on Highway 20 – areas for people to dispose of things other than next to river banks.

Mr. Walters: Yeah, I would think (c) you *wouldn't* want "if feasible" there.

Ms. Stevenson: Yeah.

Chair Lohman: I thought (c) was kind of contradictory to (a) and (b), but maybe the slope is too steep to haul it all back up. I don't know. I thought it was –

Mr. Walters: Maybe the standard for feasibility is a lot higher there, or lower.

Chair Lohman: I put a flag by it because I thought it was weird language, but I don't remember why.

Mr. Axthelm: Was that – okay. No, I'm just thinking about the creek situation – or not a creek – a drainage ditch. You clean out a drainage ditch and you take the fill and you put it up on the shore. That's not referring to that.

Ms. Stevenson: I think that's probably why it's "if feasible," because you're not always going to do it. It doesn't always make sense to take it outside of the shoreline area.

Mr. Axthelm: Yeah, because it might take more – it might do more damage in doing that.

Mr. Mahaffie: Can I just ask a quick question on (17)? Where did that come from? I'm just curious.

Mr. Meenaghan: Tires are bad for the – I mean –

Mr. Walters: Tires are frequently used around docks as bumpers, right?

Mr. Mahaffie: Yeah. I'm just curious. Is there a white paper out there that says something about tires being bad? I mean, I wouldn't just throw them in the water, but using them as a bumper? Just curious.

Mr. Walters: It came from somewhere.

Mr. Greenwood: I was in a –

Mr. Walters: We'll track it down.

Mr. Mahaffie: I was just curious.

Mr. Greenwood: I was in a boat recently and the whole outside of the tug was made out of cut up tires.

Chair Lohman: So that's not allowed?

Mr. Greenwood: _____ take that thing out of the water or what?

Mr. Walters: Maybe they are not preferred because they can break off.

Mr. Easton: I'm really curious where they got this one from.

Mr. Temples: I mean, if they're concerned about the illegal disposal of tires into river areas that would be one issue, but I agree with you. It's sort of like it's used on docks, it's used on boats. But I don't know if you've seen some of the pictures they show recently of some of these little lakes and everything and there are literally thousands of old tires laying on the bottom of the –

Mr. Greenwood: But they're talking about you're doing something new – do we want you to use tires or is there another alternative that's preferable to the environment? And that's where they're throwing a different suggestion to you and making a requirement.

Mr. Easton: Well, including flotation as an example? Well, does that mean that kids can't float on Clear Lake on an inner tube?

Mr. Greenwood: Not below the ordinary high water mark.

Mr. Axthelm: Well, now if you have an existing dock and it has one of these flotation devices does this situation here, or this statement, require you to pull it out?

Mr. Greenwood: No.

Mr. Walters: No.

(several unintelligible comments)

Mr. Axthelm: Where does it allow it? I missed that.

Mr. Walters: In no case – hopefully – do the regulations provide specific exemptions for existing uses except in the chapter about existing uses, Part VI, which we may or may not get to next time. But all these regulations are supposed to be written for *new* uses.

Mr. Axthelm: Yeah.

Mr. Temples: So (17) sounds like it's really trying to imply that they're trying to discourage the use of the tires in favor of flotation devices with approved plastic encapsulation. Is that what I'm reading?

Mr. Walters: I think so.

Mr. Greenwood: What would you want done with that, Matt? Do you suggest we take it out, or you just had a question?

Mr. Mahaffie: No, I – as I told Betsy, I was just curious where it came from, just from a curiosity standpoint.

Mr. Greenwood: I'm sure you could find someone who will say –

Mr. Easton: Is it safe to assume that the Environmental section – now we would head to 14.26.340 –

Mr. Walters: What about 330?

Mr. Easton: I'm very happy with 330.

Mr. Meenaghan: The only comment I had about 330 was: Would we be willing to put the words "Native American" in front of every place we address "Indian" and make it "Native American Indian"?

Mr. Easton: That would seem more appropriate.

Mr. Mahaffie: Correct me if I'm wrong, but I do believe all our local tribes reference themselves as Indian tribes.

Ms. Stevenson: They prefer Indian. That's my understanding.

Scott Andrews: Madame Chairman? I wasn't going to say anything, but it might be appropriate. I worked at the Swinomish Tribe. Indian is fine. It's a term of art. Indian is a technically defined thing. Either tribal or Indian is fine. Native American is sort of like it's a nice PC term but it really isn't defined anywhere. _____. "Indian" is legally defined and "tribal" is legally defined, if that's helpful.

Mr. Walters: At least one place here is referencing the title of an RCW chapter, so I don't think we would change that one.

Chair Lohman: But I thought that was going to get taken out. It's in a bracket.

Mr. Walters: No, this one's not in a bracket.

Chair Lohman: Oh, okay.

Mr. Walters: The ones in brackets go away. Yeah.

Chair Lohman: Okay, okay.

Mr. Easton: Thanks for that clarification, by the way. I didn't know that. That's helpful.

Now can we move past the Archaeological stuff?

Chair Lohman: Yep.

Mr. Easton: Can I assume that the portions that I've read of the section 14.26.340 – these sections are really similar to my understanding of what's in the critical areas ordinance? This is about bringing these things into alignment and not about challenging or extending those buffers – or mitigation requirements. Is that what we – isn't that what – wasn't that the intention?

Ms. Stevenson: Yes.

Mr. Easton: So one could say that this section is very – you could find sections with very similar wording to the CAO?

Ms. Stevenson: I hope so.

Mr. Easton: Okay. Thank you.

Mr. Greenwood: You know, Betsy and I, we've talked about this before but for me – and I think Matt's more used to the mitigation sequences. And the mitigation sequence – the language here can be found in the WAC from Department of Ecology. But I would like to encourage us to – because I've been involved in situations where we do it – we want mitigation and a negative declaration, if you will, project by project so that we don't have a net loss, if you will, of ecological function. And then we go, County – so the County is told you can't have a net decline in ecological function, and then we also, project by project, require no net loss. So I'd like us to look broader, if we can, to a countywide cumulative assessment, not for each little project – somebody wants to do a development, you know, what are they going to do there? But when we get into a

situation where you go down through and avoidance isn't possible; minimizing, you've minimized the effects, you've reduced the impacts. At some point in a project we need to be able to consider some sort of offsetting activities, if you will. And, you know, whether the County has a mitigation bank or not, I think we do have an account with Department of Ecology. We have an account that says, Look at all the restoration work that we're doing, and we encourage that through a collaborative effort through many different groups, you know, public and private. And I'd like that to be at least recognized so that – I know there's a lot of them that are required but a lot of them are voluntary. And to get some bang for our buck, if you will, we might lose in some areas, but our net loss is not there.

Ms. Stevenson: Part of this process requires a cumulative impacts analysis and a restoration plan to do exactly what you're saying.

Mr. Greenwood: Okay.

Mr. Walters: But there's going to be not quite as much emphasis on the accounting for the things that we happen to be doing.

Mr. Greenwood: Well, hopefully Ecology will take that into account when we do a subsequent update we'll do an assessment that says, Okay, where did you start and what do you have now?

Ms. Stevenson: We are required to do that as part of it, so monitoring things over the next seven years to be able to show, Hey, it's working. We're not going to change much.

Mr. Greenwood: But it never lets the proponent of a project take any level of credit for that. He has to chip into the bank, too, in some ways even though he might have mitigated already. Because mitigate just means to lessen and I don't think we let them have any impact. We want to make sure there's no impact, and if you have an impact that you can't mitigate or soften enough then we're going to make you do it offsite, and that's where I start to have a little heartburn. But, you know, I just want to be able to let the Shoreline Administrator look at some reasonableness, if he can, at least in some cases, to say, Guess what? You know, we just did this major restoration project right here. Your impacts are not – and it's for the overall beneficial uses of the county at large – we'll give ourselves some grace there.

Mr. Walters: That could be problematic.

Mr. Greenfield: Well, I mean from an Ecology standpoint. I mean, they're asking us to do it both ways. They're asking us to it project by project *and* overall. And every time you move the bar down, it gets harder to do the limbo.

Mr. Walters: Right. It does seem to me that the keeping track of the credit that we should be getting for things that we're doing good separate from projects is important to showing the no net loss overall.

Mr. Greenfield: Right.

Mr. Walters: If you didn't track the no net loss per project than it would be very difficult to tract no net loss overall and avoid no net loss overall.

Mr. Greenfield: I don't think it would.

Mr. Walters: Really?

Mr. Greenfield: I think it'd be real easy. And the reason I say that is because we spent probably a whole lot of money developing this Shoreline Assessment, which characterizes reach by reach by reach, and I just think with the way we don't do things the way we used to do them, with the approach that we're taking and the restoration we'd better be getting better or they need to replace a lot of folks who are telling us how to do it. I think we're not doing things the way we used to do it.

Mr. Temples: And you're hoping they will listen.

Mr. Walters: I think I see your point. I don't think we're going to be able to do that but I think I see your point.

Mr. Greenwood: Well, I think if nothing else we can keep Department of Ecology behind us, supporting us, instead of – you know, I don't think they should have as big a hammer maybe. We should have a little more discretion, I guess is what I'm looking for, because of the amount of work we're doing and the condition we are in. We have some remarkable fisheries and shoreline attributes that not everybody has.

So maybe just some way that we could link. We've got this project that's just doing enhancement-wise. Is there some way that we could – people always use the collaboration and partnership kind of words, so if there's some way – somebody's got a development project, let him buy one of those big concrete blocks and tie some logs to it and he's done his part perhaps.

Mr. Temples: Maybe on a simpler level even – I don't how you guys approach this when you submit this back to the environmental agency, but, you know, I would assume if you're sending the report and all this that we're recommending there would probably be a cover letter and maybe that's a place where some of this, Hey, look what we've done, is just even outlined in a cover letter. I mean, just something that says, Hey, we're doing okay here. Just a thought.

Mr. Greenwood: Or it could, as a qualifier in our draft, which maybe hasn't been submitted, make sure that it says what we think it should say. Does that make sense? So, I mean, it's a baseline. You've got to establish a baseline somewhere, but I really don't want to make it harder on ourselves to achieve the benchmark that we set. Thanks. That's all I had on that.

Chair Lohman: You have a qualifier on the Flood Hazard Reduction, so do you want to just skip that for now? Is that your intention?

Mr. Walters: I think we did, in fact, go through Flood –

Mr. Greenwood: What page?

Chair Lohman: Page 71. It's 14.26.350.

Mr. Meenaghan: Well, you said section in development.

Mr. Greenwood: Yeah.

Mr. Walters: Yeah, we have no changes in the memo from the last meeting. If you want to skip over that we could look at that again.

Chair Lohman: I got the impression it was not finished.

Mr. Walters: By the fact that says it's not finished at the top, yeah. Yeah. That could have just been accidently left on there but _____.

Chair Lohman: Okay, so let's move on to the next – what?

Mr. Mahaffie: But I had questions!

Chair Lohman: Well, I did too, but I wasn't sure if it was ready.

Mr. Walters: We can talk about it now, too.

Chair Lohman: All right. Jump in, Matt.

Mr. Mahaffie: Page 72, number (3)(a): "New development or uses in shoreline jurisdiction, including the subdivision of land" is prohibited. I get the gist of that why you would say that, but I can also see why subdivision of land might not correlate to flood control or stabilization or anything like that. If you had a very large piece and you just tried to divide it between two kids or farm land or things like that where you wouldn't have an actual building proposal with it – just a thought.

Mr. Walters: Mm-hmm. Well, so the qualifier there is when it's reasonably foreseeable.

Mr. Mahaffie: That it would require a structural –

Ms. Stevenson: That it would require those things?

Mr. Mahaffie: So going backwards, that would make it up.

Mr. Walters: Maybe we could clarify a word's not needed at all.

Mr. Mahaffie: And then on (c): big question on how that would work. I'm on page 73.

Mr. Easton: On what page?

Mr. Mahaffie: Page 73.

Mr. Walters: (3)(c).

Mr. Mahaffie: (3)(c): "New structural flood hazard reduction measures must be placed landward of associated wetlands and designated shoreline buffers…" When I think of

structural flood hazard reduction measures I think of dikes or riprap or something like that – or am I thinking wrong? How could you put a dike on the outside of a buffer?

Mr. Axthelm: I think that's similar to –

Ms. Stevenson: Well, "…may be authorized if it is determined that no alternative to reduce flood hazard to existing development is feasible."

Mr. Axthelm: Betsy, is that similar to the situation like out on Dike Road where they had to put that seepage berm on the inside of the dike? They couldn't put it on the opposite side of the dike.

Ms. Stevenson: Yeah, and I guess – this is for any kind of new stuff. We're dealing with the BiOp. We're not supposed to be putting structures in there anymore. So this is kind of identifying that it needs to be outside of those areas unless you can show that that's not feasible. It's just going to take going through a few more steps than just an automatic yeah, you can do it because you've asked to do it kind of thing.

Mr. Mahaffie: It seems kind of counterintuitive. It almost seems like it would be better just not to even *be* there. Let BiOp handle it.

Chair Lohman: Yeah. You have the chapter. I think it adds a level of confusion.

Mr. Walters: We'll look at that WAC and see what –

Mr. Mahaffie: I mean, admittedly there're very few people going to ever be looking at that section.

Mr. Axthelm: It only takes one.

Mr. Mahaffie: And then (d). I think we've already beat that.

Ms. Stevenson: Yeah, (d) is gone.

Mr. Mahaffie: Okay.

Ms. Stevenson: Thank you.

Chair Lohman: It is gone?

Ms. Stevenson: We just scratched it out.

Chair Lohman: That's official?

Ms. Stevenson: It's official.

Mr. Easton: I have a question on the top of page 72.

Mr. Walters: What number?

Mr. Easton: It would be right before Public Access, the last – it's after (e). I mean, it's the tail end of (e).

Mr. Axthelm: Which page?

Mr. Easton: 72. Or in your case – yeah. I don't know.

Mr. Walters: The disposal provisions?

Mr. Easton: Where it says "Disposal." I was wondering – could you tell me what geomorphological is?

Mr. Meenaghan: Changes in the geology.

Mr. Easton: So "Disposal provisions of this SMP, and be allowed…" I think that's not probably how they want to say that. "…be allowed only after a biological and geo" – did I say that right? – "study shows that extraction has a long-term benefit to flood hazard reduction…"

Ms. Stevenson: Basically you're just studying the river characteristics and whether or not taking that material out is going to be helpful to those processes.

Mr. Mahaffie: "Geomorphology is the study of water's actions on the land."

Mr. Easton: Thank you. I'm assuming that that would be done by a professional.

Mr. Mahaffie: A geomorphologist. There's very few of them out there.

Mr. Easton: So if your geomorphologist determined that this would be beneficial, then you could do it.

Ms. Stevenson: Are you okay with that now?

Mr. Easton: Yeah. Sorry. I was a little stumped.

Ms. Stevenson: No, I just wanted to check before –

Mr. Easton: No, it's good, it's good. We need those in the state of Washington, Matt.

Chair Lohman: Okay, are we through with that section?

Mr. Easton: Yeah. We're going to move on to Public Access and get that done before the end of the night?

Several Commissioners: We already did.

Chair Lohman: So we're moving on. So we completed Part –

Mr. Easton: Critical areas?

Mr. Meenaghan: No, we're on – page 81 has Vegetation Conservation, and then we're done after that.

Mr. Easton: Oh, right, right.

Chair Lohman: And just to back up a second, on page 78 and 79 you're striking both tables, 14.26.360-1 and -2?

Mr. Walters: Right.

Ms. Stevenson: It's the only section to put in here for those that we gave you.

Chair Lohman: Okay. Well, I guess it goes all the way to the top of page 81? The whole thing gone?

Mr. Walters: Right – all of 360.

Ms. Stevenson: All of number (10).

Mr. Easton: Those are all being removed and replaced – is that correct?

Mr. Walters: All of 360 was substituted with the version in the memo, which will be substituted with some later version.

Mr. Easton: Excellent. I'll make a note of that.

Chair Lohman: Okay, so that goes back to the memo.

Ms. Stevenson: Right.

Chair Lohman: Okay, sorry.

Ms. Stevenson: No, that's good.

Mr. Easton: So we're on Vegetation Conservation, Madame Chair? Is that where we are?

Chair Lohman: Yeah.

Mr. Easton: Excellent.

Chair Lohman: 14.26.370.

Mr. Greenwood: I do like the opening statement: "Vegetation conservation standards do not apply retroactively to existing uses and developments."

Mr. Easton: There was a lot of debate about this part during the CAO concerning trees and the planting of full-size trees on slopes with or without soil, and some of the other oddities that the CAO sort of set it up for. It seems that some of that was dealt with, the way I review it. But there may still be some – where the real life hits the road here, especially under retention, is sort of concerning to me.

Chair Lohman: On the top of page 82, number (6), where you have – middle of the second line – "…significant tree retention in shoreline buffers, critical areas, and critical area buffers must be 100 percent." Are we setting ourselves up for failure? Can we comply with 100 percent requirement?

Mr. Easton: Yeah, that was one of those that seems –

Chair Lohman: I remember that in an earlier draft.

Mr. Walters: The alternative would be to specify some lower percentage, which would explicitly be *allowing* removal of vegetation in buffers.

Chair Lohman: Well, I was thinking like die-off, and not necessarily logging. I was thinking success.

Mr. Walters: I don't think you have to worry about that because this is what you have to do –

Mr. Easton: In a new development.

Mr. Walters: Right – as part of development. I don't think we have to monitor this.

Mr. Easton: So like in new development – this came up in some testimony – so in new development it's yes, if I remember right. Keith, jump in here if I'm wrong, or Matt, but sometimes new development's going to disturb things that are quite a ways away from where they would – they don't appear to be congruent. If there's a large space between the two they wouldn't – you're digging a foundation for a house here and you may end up with a problem – a tree that was fine before that house was put there, but now inside the buffer a ways away from where the house has disturbed the land as it was, you may end up having die-off that is unrelated to – wasn't directly intended. You weren't trying to clear that, but _____ on the vegetation is what you've done upland of it.

Mr. Mahaffie: And that's part of the reason we have the maintenance corridor in the critical areas ordinance. It's a 15-foot setback to protect root zones. And it's something that *is* thought of and other jurisdictions are very, very cognizant of this. Oftentimes even in excess of the setback you have to prove you're not harming trees in a buffer.

Mr. Easton: Including their rootball?

Mr. Mahaffie: Including the root zone. And this is pretty onerous, I guess, compared to what we've had in the past, but it's still pretty mild compared to other jurisdictions as far as what's required.

Mr. Easton: So this is bad but it could be worse?

Mr. Mahaffie: It could be way worse.

Mr. Axthelm: See (10), there. It talks about the dripline – the 15 feet.

Mr. Walters: And (11) addresses the question of what happens if you do damage a tree that was identified as you were supposed to retain it.

Mr. Easton: Did we define – again, something that came up during the CAO – I don't believe we ever settled on a definition for a "significant tree."

Mr. Meenaghan: There is one back here.

Mr. Easton: We have one now?

Mr. Meenaghan: Yeah.

Ms. Stevenson: Yeah.

Mr. Meenaghan: It says "Over 8 inches in caliper as measured 4 feet above grade."

Mr. Easton: Thank you.

Mr. Mahaffie: Sure, because you still have the hazard tree divisions of the critical areas ordinance, so, I mean, it allows it. So even if you go below 100 percent momentarily you can still replace them in a ratio.

Ms. Stevenson: Yeah. And if you have to take them out then you replace a significant tree with three, so that's how you stay at your 100 percent. It doesn't mean you can't cut any of them necessarily. You're supposed to not mess with them.

Mr. Easton: Right.

Mr. Mahaffie: I like that you've given an actual ratio instead of having something that's –

Ms. Stevenson: Right.

Mr. Mahaffie: You can just –

Mr. Easton: I just want to reference number (15) here for a moment, which is something that I will never be able to obtain, which is, quote: "Selective pruning of" a tree "is allowed, but must maintain" its "existing" percentage of "canopy" coverage. In case my children ever get really bored in life and decide to watch this, I've never successfully pruned a tree that kept all of its canopy, and I don't know how you can successfully prune a tree and maintain 100% of canopy coverage.

Mr. Mahaffie: I would think that looking up as a circle you wouldn't take a chunk of a pie out.

Ms. Stevenson: Yeah.

Mr. Easton: But isn't removing any portion of the tree affecting the canopy? I guess I didn't do well in geology or morphology.

Mr. Temples: Well, most of the professional arborists and everything will even tell you you can remove some of the canopy but it grows back.

Mr. Easton: Not in this definition.

Mr. Greenwood: Well, I'll tell you what. If I were reading this definition and I looked at a tree. If you want me to retain the existing percent canopy I'd keep the longest branches you have and bob the rest off, I mean, and you still have the same canopy cover. So it would look like a palm tree when you're done. You could take a Doug fir and chop the top off and you'd still have the same percent canopy.

Mr. Easton: That is not – there's no way –

Mr. Greenwood: Selective: I selected the top ones, you know?

Mr. Easton: What a classic example of how two people could read the same code and have a different idea! My tree's still there and you only have half of one.

Mr. Mahaffie: You've got to remember, too, there's other sections of code relating to critical area zones that reflects this with a percent of going up the stem what you can remove. So if you're making a window, you can take the bottom third out or you can actually go up in the middle of the tree and take a chunk out if your house is sitting on a hill and you want a window.

Mr. Greenwood: But if you took out the lower ones you'd reduce the canopy.

Mr. Easton: That wouldn't be reducing the canopy by taking out the middle of the tree?

Mr. Greenwood: It is, because you're taking out the biggest branches that shade the ground the most.

Mr. Easton: Do I just have a misunderstanding of the definition of "canopy"? Because it seems like the way we wrote this is that pruning is extremely limited unless it's __ for when he chops that Douglass fir off. That *can't* be how it's interpreted, right?

Mr. Temples: I think you have to know what the percentage is.

Mr. Mahaffie: I'm reading the intent. He's specifying –

Mr. Easton: Oh, wait. Number (16) says topping trees is prohibited, buddy. You're out of luck.

Mr. Greenwood: Selective pruning of trees. Well, I'll leave the top. I'll take all the branches off. I mean, I'm being ridiculous, but, I mean, do you want – what do you want? Do you want the tree to look the same essentially? Reduce the crown by 10%.

Mr. Easton: I would like this section to be a little bit – I would prefer that this section was a bit more readable for the average person and not the arborist and the wetlands specialist that can understand it. But I don't know if I'm going to accomplish that.

Mr. Mahaffie: As a forester, I don't usually deal with this selective pruning, so I don't know.

Mr. Mahaffie: I mean, Betsy can correct me if I'm wrong, but I think the intent of this is from a water cycle perspective. Rain comes down. Branches intercept it. That water stays on all the little needles, re-evaporates into the air.

Mr. Easton: To help control erosion, right?

Mr. Mahaffie: Erosion, stormwater control, water quality control. That's kind of how I perceive where that's coming from. You want as much volume and surface area in the air. It's a surface area equation.

Mr. Easton: So as long as my umbrella is still doing its job, I can prune.

Mr. Mahaffie: And you also have other regulations that you can – a third, give or take; I could be wrong – you can remove a third –

Mr. Easton: There's actually a part in here that says a third? I didn't see that.

Mr. Mahaffie: I think it was 30% or something like that – if you go back into 14.24.

Mr. Meenaghan: You know, I'm guessing that's how we came up with the three-to-one ratio, as well. It's that same surface area description. If you take down one, you've got to replace it with three, and that's mentioned in here a couple places and I suspect that's for the same reason.

Mr. Mahaffie: Previously our hazard tree section didn't have a ratio, I don't think.

Mr. Easton: We changed that when we did the last critical areas ordinance update? Did we change the hazard – didn't we change the hazard trees down to three-to-one?

Mr. Mahaffie: I think it just says you need to replace it, but it has to be – it's kind of hard to equate one little tree to a big tree.

Mr. Greenwood: Well, I think from a rainfall impact standpoint, vegetative cover does its job. But to think that the tree is a sponge up there absorbing a lot of moisture I think is a fallacy, really. Now a redwood tree can intercept fog and actually cause more rain to hit the ground because it sucks it out of the air. But the reverse I don't think really happens. So, you know, if you're looking for erosional impacts, that's going to work. But as soon as you get a little more than a trace, it's going to hit the ground.

Mr. Easton: I have an aqua weed question.

Chair Lohman: Well, say where you are.

Mr. Easton: Section (20).

Mr. Temples: Page 84.

Mr. Easton: Page 82.

Chair Lohman: 84 for the rest of us.

Mr. Easton: I don't like the last sentence under number (20): "Removal using mechanical methods is preferred over chemical methods." That doesn't seem strong enough to me. Chemical methods to remove aqua weeds would be the preferred? We'd give that much grace for people to use chemicals to remove aqua weeds?

Mr. Greenwood: Oh, really? I'm sorry.

Mr. Mahaffie: In my mind you have to be a certified aquatic –

Mr. Easton: No, I'm saying I don't think it's strong enough.

Mr. Greenwood: I think it's way *too* strong because I think we –

Mr. Easton: By saying "*preferred*" is too strong?

Mr. Greenwood: Yeah.

Chair Lohman: Let Matt speak.

Mr. Easton: Matt.

Mr. Mahaffie: I was just saying, by default, chemical application in water you have to be a licensed applicator to do it.

Mr. Easton: Yeah, you're not running down the shoreline with a bottle of bleach trying to kill the _____. I mean, I get that. But is that strong enough?

Mr. Mahaffie: Well, sometimes it needs to be done.

Chair Lohman: Sometimes there's no alternative.

Mr. Mahaffie: Quite often you – I mean, that's why a licensed applicator would do it.

Mr. Greenwood: From my experience, I've seen where noxious weeds have been treated by boat with a jet nozzle as a preferred methodology over ripping it out. For one, ripping it out isn't effective and it exposes soil. Anything you apply is a – it has a label for aquatic weed application. I mean, I'll give you an example of one product. Roundup, don't put in the water. Glyphosate, the active ingredient, is safe in the water and an approved aquatic pesticide. It works really well and it's less disturbing. Why is it that the same product? Well, to make Roundup you put soap in it so that you break down the surface tension, which is not good on fish's gills. So you could take one thing that you might be afraid of and it's actually a safe product to use.

Mr. Easton: Well, I feel better now that we've had some discussion about it. It just felt too thin to me on that particular issue. I want us to proceed – I mean, look, I'm willing to take some gambles with Ecology. I don't want their perception to be that we're going to take gambles on things that I know are third rail. You touch the third rail here, it's called fish.

Mr. Greenwood: They'll advocate it. They'll promote it.

Ms. Stevenson: Yeah.

Mr. Walters: They'll promote what?

Mr. Greenwood: Treating. A lot of noxious weeds are treated that way.

Ms. Stevenson: Yeah.

Mr. Easton: I just wondered if this language was strong enough for them. That's all.

Mr. Walters: Well, and the language actually might –

Mr. Easton: – be theirs?

Mr. Walters: No – might want to go in the opposite direction.

Mr. Greenwood: The most environmentally sensitive way is the way to do it.

Ms. Stevenson: Right.

Mr. Greenwood: I'll give you one more plant: knotweed. It's called Japanese knotweed and when you take it out mechanically you break all the little pieces up and they float down the stream and then they lodge in the bank downstream. So if you don't control it – and we have watershed restoration groups that go up and down the stream and treat it. So when it's identified as the best way to do it, people will do it.

Mr. Easton: Okay.

Mr. Mahaffie: Betsy, can we go back to the tree retention plan section just real quick? What do you foresee getting with one of these?

Mr. Walters: What section?

Mr. Mahaffie: 82, number (9). You've created a new document and come into your office, basically. I'm just kind of curious: What kind of standards do you foresee being behind that? What I'm used to seeing is where traditionally Skagit County's just had a Fish and Wildlife assessment come in, now you're by necessity involving a surveyor and an arborist. Is that what you foresee?

Ms. Stevenson: Surveyor, you think?

Mr. Mahaffie: Existing and proposed contours.

Mr. Temples: Is this number (9), Tree retention plan?

Mr. Walters: You can get contours off of IMAP.

Ms. Stevenson: Yeah.

Mr. Mahaffie: I mean, that is my question. I mean, what are the standards that you're going to expect? I'm just curious.

Ms. Stevenson: Yeah, that's what we mean. That's fine.

Mr. Mahaffie: I mean, and the same for –

Mr. Walters: What I've seen for that before is a very simple drawing with just locations of trees.

Mr. Mahaffie: And, again, I guess that was just my question of what you expect. I've seen the full spectrum of, you know, individual ___ and arborists with an arborist report behind it on a survey topo, and that's what's expected in the City of Lake Forest Park.

Ms. Stevenson: I don't think we're asking for that. I mean, we would have _____. You just need to make sure that all this is there, but I think if the landowner's capable of doing that then, you know, it doesn't say it has to be by a qualified professional or ___.

Mr. Mahaffie: Yeah, that's kind of my –

Mr. Axthelm: It's the same situation with that soil erosion.

Ms. Stevenson: Right. Right.

Mr. Temples: Yeah, I was down in Lake Forest. I know what you're talking about.

Mr. Mahaffie: I would see no reason in Skagit County a landowner shouldn't be able to do this.

Ms. Stevenson: Yeah. Yeah, I would agree.

Mr. Walters: Moving on to 380.

Mr. Mahaffie: Madame Chair?

Chair Lohman: Go ahead.

Mr. Mahaffie: May I point out the time?

Mr. Walters: 380's really short.

Mr. Temples: Yeah. We can finish 380 real quick.

Chair Lohman: Yeah, and we never did get to V.

Mr. Walters: V's also not too bad.

Chair Lohman: Let's finish 380 and then we'll see.

Mr. Walters: So 380 we do have one change in number (2), but number (1) is simply a list of the codes that we would apply that already exist.

Mr. Easton: What's the change to number (2)?

Mr. Walters: Makes the second sentence that begins with "Materials" read "Decking or other structural materials must be used consist with state or federal standards for contact with water to avoid discharge of pollutants from bleaching, wave splash, rain, or runoff.

Mr. Easton: Did you say "bleaching"?

Mr. Walters: Bleaching. So not a big change there.

Mr. Easton: Isn't this odd? They go into this level of detail and then don't include the tire problem here?

Chair Lohman: Didn't we have similar language somewhere else? I thought I saw this somewhere else.

Mr. Easton: They list everything *but* tires.

Mr. Walters: Well, there was some discussion of some of these things –

Chair Lohman: Not today.

Mr. Walters: And it was next to tires.

Mr. Easton: In that same section they had similar stuff.

Mr. Walters: Right.

Ms. Stevenson: There might have been something in Boating Facilities at one point too.

Mr. Walters: Yeah.

Ms. Stevenson: We went through that. I'm not sure either. I'm sorry.

Mr. Mahaffie: So can I dig into number (2)?

Chair Lohman: Yeah.

Mr. Mahaffie: Are you aware of any actual list of approved materials by state or federal agencies? Because I'm sure not, of an actual list. And I've got in nit-picky arguments with state regulators on their personal preferences for materials. It's *personal* preferences.

Mr. Walters: And that's exactly why we changed this. So now you don't have to be preapproved. The line now reads you just have to use it consistent with state or federal standards.

Mr. Mahaffie: Their personal standards as I've – there's a ton of white papers that say different things even about the same products. But when you apply for a dock permit you're going to have one habitat biologist say one thing and another say another of what they think's okay.

Chair Lohman: What's your recommendation here, Matt?

Mr. Mahaffie: I have no idea.

Mr. Easton: Can't strike it, can we?

Mr. Mahaffie: I mean, down to the type of steel for pilings. One – Oh, yeah: Use galvanized. Another one – Do not use galvanized. In the same agency in the same office.

Mr. Walters: Yeah.

Mr. Easton: I have a suggestion. What if we ended it at the word "animals" and get out of the such-as department?

Mr. Temples: Are you talking about federal review?

Mr. Mahaffie: I kind of was referring to state review.

Mr. Easton: If you stopped at "animals," just put a period, and then stayed away from all this other suggested stuff.

Mr. Mahaffie: I mean, obviously you don't want to use creosote or dump wet concrete into the water.

Mr. Easton: What you would be saying – you would say: Construction materials. All development that may come in contact with surface or ground water must be constructed of materials that will not adversely affect the water quality or aquatic plants or animals. Period. I would drop the rest of the paragraph.

Mr. Temples: Well, I think part of the issue that you're dealing with here is we're talking about as approved by – or applicable to state and federal agencies, and that's kind of part of our section but we can't have any control over what the state or federal agencies are going to recommend. And that's kind of a problem for you in some respects and I understand that.

Mr. Easton: His real life experience says that he's not going to get consistency. Let's not set the code up to set us up against it. At least try to remove the reference at all to the type of materials other than making sure that they're not adversely affecting the water.

Mr. Walters: Well, and that is why we dropped that approval thing and –

Mr. Easton: Yeah, I'm just strengthening your argument for dropping the approval. I'm saying that we – if there's no list that exists then why reference it?

Mr. Mahaffie: Really on a project basis it's probably not going to change anything but it does create time issues. You design a project one way –

Mr. Easton: Then you have to go redesign it.

Mr. Mahaffie: Well, okay, we did it per them and now somebody else says something different.

Mr. Easton: Yeah, whether we leave this in or we take that out that's not going to change, is it?

Mr. Mahaffie: It eliminates one section of time. The County – say I'm building a dock – the County just knows I'm building a dock to the proper dimensional standards. They're not reviewing it to material choice.

Mr. Easton: But you'd also be committing to building a dock to the, quote, construction of the "materials that will not adversely affect" the water quality.

Mr. Mahaffie: Yeah.

Mr. Easton: The County could hold you to that. I don't want to green-light people building decks with creosote, or building docks with creosote.

Mr. Mahaffie: I'm just worried about conflicting science. I mean, literally I had one biologist say, Yes. Use galvanized steel. That is the best choice for this. The next one said, No, the ions in the zinc confuse the fish. I mean, it's –

Mr. Easton: Does it make it better to change it?

Mr. Walters: And there's no list?

Mr. Mahaffie: Yeah, I was just worried that you're referring to something that doesn't exist as a list or approved or –

Mr. Easton: Well, there's another problem with it. It's not complete because we don't know what's going to go on that list – what would be on that list tomorrow that's inappropriate. I mean, if this is a document that –

Mr. Mahaffie: Well, you've got two at the end that are flat out inappropriate.

Mr. Easton: Right, but you're not listing any of the other ones.

Mr. Mahaffie: But you have nothing that *is* appropriate.

Mr. Easton: Not exhaustive. Well, I propose that we put a period after the word "animals" and axe the rest.

Mr. Walters: Well, part of the rest is the prohibition on creosote.

Ms. Stevenson: Yeah.

Mr. Easton: Well, you could include the prohibition on creosote, I guess.

Chair Lohman: You could leave the last sentence.

Mr. Easton: Sure. That would probably make Ecology feel warmer – fuzzier?

Mr. Mahaffie: I think it reads good as it is. It's just –

Ms. Stevenson: Okay. We can _____ and see.

Chair Lohman: But it can't read good if you're asking those questions.

Mr. Mahaffie: Well, I mean it *reads* good but, you know, once you dig into what it means it's –

Mr. Axthelm: I mean, it's really important because those items you wouldn't do. So, I mean, it's just extra words that they put in there which save paper but –

Mr. Easton: I don't want to create a situation wherein we're asking people to refer to a list that doesn't exist.

Chair Lohman: Okay, so the recommendation is to reword that somehow? That's a real bright line recommendation there! Sorry.

Ms. Stevenson: No, that's good.

Chair Lohman: Okay, what is the will of the Commission? Push on? Let's finish the Critical Areas, number V?

Mr. Walters: So that skips through to page 158.

Mr. Easton: So we do both portions of the Critical Areas then?

Mr. Walters: So this is – what?

Chair Lohman: Section V. It's Roman numeral V.

Mr. Easton: Yeah. Are you intending – are you asking for the will of the Commission to do Roman numeral V *and* 6H-2? Or are you just asking for Part V?

Chair Lohman: Roman numeral V.

Mr. Axthelm: And we did part of this last time, didn't we?

Several Commissioners: No.

Mr. Walters: No, there was another paragraph elsewhere in the document that looked very similar.

Mr. Axthelm: Oh.

Mr. Walters: So this one will be important to read through with the memo, because I think we simplified things quite a bit.

Chair Lohman: Okay, for the public it's 14.26.500.

Mr. Easton: And we're referencing the memo of?

Ms. Stevenson: March 11th. So, at least from mine, the first one is on page 158. So we added a number (2) under 500.

Mr. Walters: It addresses the questions from last time about how exactly that would work – how the CAO is incorporated and what happens if you change the CAO later.

Mr. Easton: Uh, so you added a number (2) under 500 that is in the – *isn't* in the February 4th draft?

Ms. Stevenson: Right.

Mr. Walters: Right, right, right.

Ms. Stevenson: The language is there in the memo under number 1.

Mr. Easton: Got it. Sorry.

Ms. Stevenson: No, you're good. I want to make sure everybody's in the same place.

Chair Lohman: Was that an Ecology requirement? Just due diligence?

Mr. Easton: I think it was –

Mr. Greenwood: That was us.

Mr. Easton: Actually it was us.

Mr. Walters: We talked about it at the last meeting.

Chair Lohman: Well, I know we talked about how everything has a different schedule. Is that in reference to that?

Mr. Walters: That was part of the discussion. The question is, How do you address critical areas within shoreline jurisdiction, and we talked about jurisdiction and we'd bring those changes back to you sometime later. But the approach here is to incorporate the critical areas ordinance so we're not dealing with two different sets of regulations for critical areas whichever permit you've got to get. But under state law, you have to address your critical areas in your Shoreline Plan, so we are incorporating them by reference but we have to incorporate a dated version, which will be whatever's in effect on the date we adopt the Shoreline Plan. And then if we change the critical areas chapter at some point in the future we will still be working from that pre-changed version when we do shorelines, unless we get a shoreline amendment to bring it up to date with whatever change we make to the critical areas chapter. Does that make sense?

Chair Lohman: So until they're simultaneous that's how we're going to handle it.

Mr. Walters: Right.

Chair Lohman: Okay.

Mr. Walters: So it simplifies things dramatically until we need to make a change.

Ms. Stevenson: At least it clarifies it. I don't know if it simplifies it.

Mr. Walters: Simplifies. And then later on in this document you'll see that we propose one change to the critical areas ordinance. We propose to make that at the same time as we adopt the Shoreline Plan because the critical areas ordinance just doesn't mention lake and marine buffers. Everything else is good in the existing critical areas ordinance, so rather than having that section in the Shoreline Plan where you've got to read both of them, we just add a column to the table or a second table, Critical Areas Ordinance, and then it will be much more straightforward to read through.

Ms. Stevenson: And that's number 5 in your memo – just if you're trying to keep track of where we are. That's what that refers to. Everybody's okay with number 1 then?

Mr. Walters: So you'll see that there's a lot of changes on this memo list that are just Delete, Delete, Delete, Delete.

Ms. Stevenson: Okay, number 2 is under 510. We just changed it to make it be worded a little differently that we thought was clearer.

Mr. Easton: Yeah, it flows.

Mr. Greenwood: Makes sense.

Ms. Stevenson: Okay. And number 3 is 520(1) and (2). Basically we just got rid of them. It says basically the same thing that's already in the critical areas ordinance. I'm assuming you guys are going to holler if you have a question or anything. I'm just going to kind of – if I start going too fast, let me know. Otherwise I'll just keep moving, okay?

Mr. Greenwood: So – I'm sorry.

Ms. Stevenson: Go ahead. No – that's good.

Mr. Greenwood: We struck that whole section, 520, Additional Provisions? Okay.

Ms. Stevenson: I think we'll do a "reserved" there, too, just in case we need to add something back like we did with the fish and wildlife habitat conservation area at 530.

Mr. Greenwood: Okay.

Ms. Stevenson: But I can just – (I) kind of added some language in here so that we had something, and it doesn't really make any sense to do that. It's already in the critical areas ordinance.

Mr. Greenwood: Well, it was more of a flow thing. It seemed like it flowed from one to the next. But if it's gone it flows just fine.

Chair Lohman: And then you delete 540 and 550, right, in its entirety?

Ms. Stevenson: Yep.

Mr. Walters: There's some stuff left in 550, but 540 no.

Ms. Stevenson: 550 we propose to delete number (1).

Mr. Mahaffie: I have questions on number (2).

Ms. Stevenson: Okay.

Mr. Mahaffie: In general.

Ms. Stevenson: Okay.

Mr. Mahaffie: What and why? Why just critical saltwater habitats? I'm assuming you're referencing ESA critical habitat?

Mr. Walters: We didn't find that there was any place in the critical areas ordinance where critical saltwater habitats were included as a fish and wildlife habitat.

Ms. Stevenson: And under WAC 173-26-220(1), under Critical Areas. I think it's under (c), something, and then a little (iii).

Mr. Mahaffie: So you put that there as essentially a placeholder so if it didn't fall under some other fish and wildlife habitat it have still triggered it somehow.

Mr. Walters: The line that's in the memo?

Mr. Mahaffie: No, just number (2) in general.

Chair Lohman: But it's under Fish and Wildlife Habitat Conservation Areas.

Mr. Walters: Right.

Mr. Mahaffie: Yeah, but there are certain fish and wildlife habitat conservation areas that are listed, but just being saltwater isn't one of them.

Mr. Walters: Right.

Ms. Stevenson: Yeah. Well, critical saltwater habitat includes kelp beds; eelgrass beds; spawning and holding areas for forage fish such as herring, smelt and sand __; subsistence, commercial, and recreational shellfish beds; mud flats; intertidal habitats with vascular plants; and areas with which priority species have a primary association.

Mr. Walters: But are you talking about in the critical areas ordinance?

Mr. Mahaffie: No, I'm talking about critical saltwater habitat is also a designator for Endangered Species Act for like Chinook salmon habitat, near-shore ___, deep water, and it's mapped that way. You go to the Fish and Wildlife website – actually you'd have

to probably go to National Marine Fisheries website and they have mapping of Puget Sound and critical saltwater habitat is the label of it. That's not what you meant, I guess.

Ms. Stevenson: I'd have to look and see. It doesn't reference that in the state WACs so if the definitions are different I'd have to look.

Mr. Mahaffie: Yeah, the definitions are different.

Ms. Stevenson: Okay.

Chair Lohman: You're just making sure that the same name _____.

Mr. Mahaffie: Yes. Because, you know, my second question would be the methodology would be different.

Ms. Stevenson: Maybe we can talk about that? Are we asking for a different layer then and something totally different than what you have to do already for something else?

Mr. Mahaffie: I could just kind of be worried that somebody might read it that way.

Ms. Stevenson: Right. Okay – because we don't – we're trying really hard in this document not to be redundant or ask for something slightly different than what somebody else is already asking for. So maybe we could talk about that and just see if it's in line or not, because we're not trying to do that.

Mr. Walters: Well, and we can maybe say "Critical saltwater habitats, as defined in WAC 173 –

Mr. Mahaffie: Yeah, it's –

Mr. Walters: Because kelp and eelgrass beds are already defined as fish and wildlife habitat critical areas in our critical areas ordinance and they're included in the definition of critical saltwater habitat, but not everything that's in that definition is in this definition. So we could maybe package them up that way.

Mr. Mahaffie: Yeah, critical, it's also in the Federal Register that it's 50-point-something that critical saltwater habitat for Chinook salmon is also – has its own definition and it's *nothing* like this.

Ms. Stevenson: Okay, okay.

Mr. Mahaffie: Not that it doesn't include the eelgrass beds and whatnot.

Ms. Stevenson: Okay.

Mr. Walters: So obviously we would try to avoid using that term except the WAC already uses it.

Mr. Mahaffie: It's a mess to try and dig into that one.

Ms. Stevenson: Well, we might want to at least acknowledge it.

Mr. Mahaffie: I mean, it's defined by astronomical high tides and extreme maelstroms.

Mr. Walters: It's defined by what?

Mr. Mahaffie: I would stay with the WAC. Yeah.

Ms. Stevenson: Okay.

Chair Lohman: Go ahead.

Mr. Greenwood: In point 1, did we make any changes to that last sentence that describes – I thought we had some discussion about it last time – where the horizontal distance of the sloping area is greater than the required standard buffer, the buffer must be extended 25 feet beyond the top of the bank of the sloping area. I think Ecology said we could do that, but it seems like it might be extending beyond shoreline jurisdiction.

Mr. Walters: We haven't made those changes yet to the Jurisdiction section.

Mr. Greenwood: Okay.

Mr. Walters: But we deleted one here so that's _____.

Mr. Greenwood: Okay, 1 is gone?

Chair Lohman: It's gone. Yeah.

Mr. Greenwood: Okay. I'm sorry.

Ms. Stevenson: No, that's okay. That's good.

Mr. Walters: But the same issue was in the Jurisdiction section. We're working on that separately.

Mr. Greenwood: Okay, that one concerned me.

Mr. Mahaffie: A question on number (4), Unavoidable impacts. "…a critical areas site assessment must be prepared…for which Total Maximum Daily Loads for that pollutant have been established…" Would that be the proper professional and proper document to deal with that? It seems more going back to engineering. And I hate to say it with my profession, but I wouldn't want any wetland specialist biologist writing that! Really, unless you're out of a larger, multi-disciplinary firm.

Mr. Walters: Who do you think should?

Mr. Mahaffie: I'm thinking more back to the civil field.

Mr. Walters: Civil deputy prosecutors?

(laughter)

Mr. Mahaffie: Whoever's dealing with the Stormwater Manual on a daily basis.

Ms. Stevenson: Okay.

Mr. Mahaffie: Was there any comments from Ecology on that by chance? I would have thought they would have picked up on that.

Ms. Stevenson: No.

Mr. Walters: This might not just be stormwater, though, either.

Ms. Stevenson: It's just water quality.

Mr. Walters: Yeah.

Mr. Mahaffie: Water quality, but it's –

Chair Lohman: Yeah, but it's in – again it's in the fish and wildlife habitat conservation area.

Ms. Stevenson: Yeah. I think some of them are –

Mr. Mahaffie: Yeah. I mean, Total Maximum Daily Loads – I mean, that's specific pollutants.

Ms. Stevenson: Some of them are temperature, dissolved oxygen – you can do that kind of stuff.

Chair Lohman: Turbidity.

Mr. Mahaffie: But there's others.

Ms. Stevenson: Yeah. Okay.

Mr. Mahaffie: I don't know. I just – when you see pollutants, yeah, it's just that can of worms – yes, temperature can be a pollutant.

Ms. Stevenson: But those are usually the things that are identified in the TMDLs.

Mr. Greenwood: They are.

Ms. Stevenson: In terms of impairments. I mean, I'll look at it and see if there's some better way to – we kind of left it open. We didn't say who had to do it.

Mr. Mahaffie: Yeah, I'm just thinking of, you know, a construction site. You know, that's just what popped to my mind – discharge from a dairy farm – whatever.

Chair Lohman: So number 6 – you're striking the table as well?

Ms. Stevenson: Right.

Mr. Walters: Yeah, we found that that didn't make any sense at all.

Ms. Stevenson: It'll still be in the critical areas ordinance.

Mr. Walters: But it didn't make sense to match the environment designations up to the standards.

Ms. Stevenson: Right.

Mr. Meenaghan: (unintelligible)

Chair Lohman: I forgot to say at the very beginning of part V, where you have the little table of contents – the page numbers?

Ms. Stevenson: Yes.

Chair Lohman: And then the same thing on VI, Roman numeral VI.

Ms. Stevenson: Okay. We haven't updated all of those yet.

Mr. Walters: We did print it an hour before we gave it to you.

Ms. Stevenson: We didn't necessarily tell it to update everything as we went through, but yeah, okay.

Chair Lohman: I have the same problem – oh, wait. It's on page 41.

(several inaudible/unintelligible comments)

Chair Lohman: You're jumping back to the policies – Comp Plan.

Ms. Stevenson: Two of them that were pretty much the same and we just –

Chair Lohman: Was that it on critical areas?

Ms. Stevenson: Yes. Page 40 on my version – sorry – right?

Chair Lohman: 6H, the one you –

Ms. Stevenson: 2.1, right?

Chair Lohman: Yeah. 41 on ours.

Ms. Stevenson: Oh, __ – my bad. So, page 41. So I finally found my spot there: 2.10 and 2.12(a) pretty much say the same thing, I think is what we're saying.

Mr. Greenwood: Which do you prefer? Or do we have a preference?

Ms. Stevenson: I don't think it says the same thing at all, but that's okay!

Mr. Easton: So who did?

Ms. Stevenson: I don't know. We must have talked about it at some point. Existing and future beneficial uses are the actual use of that water. The 10 talks about groundwater quality and quantity. You're protecting the quality and the quantity. Okay, so maybe we can combine them somehow.

Mr. Walters: We might have done it already.

Ms. Stevenson: Yeah, maybe we already did. We'll take a look at that again. It seems to me there's some repetition between 2.10 and 2.12. We just have to figure it out, and maybe we already entered 2.10 into 2.12. So we'll figure it out.

Mr. Greenwood: Yeah, because you could just add "for existing and future use" to the back end of the opening statement on 2.12.

Chair Lohman: Okay, it's 9:30. What's the will of the Commission? Do you want to –

Mr. Meenaghan: I say that we move on to –

Mr. Axthelm: Keep going or adjourn?

Mr. Meenaghan: I say we move on to the agenda, number 4.

Mr. Greenwood: Yeah, I'd like to save Administration for a future date.

Mr. Easton and many other Commissioners: Agreed.

Chair Lohman: So do we want to have it at the very next meeting? Put it at the top of the – the first item then for the next meeting? I just want to make sure that staff knows what we're trying to do here.

Okay, so moving on to the Department Update.

Mr. Greenwood: Department Update?

Chair Lohman: On the agenda.

Mr. Pernula: Okay, over the last few meetings several of you have asked me what's happening with Bayview Ridge and its implementation of the Plan. I gave you a – most of you, except for Keith – a copy of a memorandum from me and a resolution by the Port of Skagit Board. As you all know, last December the Planning Commission and the Board of County Commissioners adopted a new Subarea Plan for Bayview Ridge. In January the Port of Skagit adopted a resolution and I put a copy of that in what I just handed out, and I'll go over a couple of the points that they made, not in the Whereases but in the actual Now Therefore Be It Resolved, item number 2. Part of it says "…urges Skagit County to complete an update to the AEO to adopt the most current WSDOT-recommended safety overlay zone dimensions and to amend the language of the code to 1) bring it current with FAA and WSDOT Guidance on Airport Compatibility Issues, and 2) to provide the necessary protection of the airport to ensure its future vitality." Then item number 3 says, "The Port Commission respectfully that Skagit County review land use within the Bayview Ridge UGA and, where appropriate, adopt additional

industrial land use designations for land in the UGA between the Skagit Regional Airport and existing urban density residential development on Bayview Ridge."

Well, I took a look at the Airport Guidelines by WSDOT and here are some of the recommended uses for zones 4 and 6, which would be expanded – actually it's zone 4 that would get the most expansion. As far as industrial uses go, most industrial uses are permitted but not those that emit fumes and dust and those kinds of things. Schools are not permitted in either zone 4 or 6, and there's very few areas within the entire Bayview Ridge area that would permit schools.

Residential uses: Urban residential uses within an urban growth area, what it says is that we should be promoting high density and intensity mixed-use developments with fifteen or more dwelling units per acre. And remember, this is in an area where schools would not be permitted.

In rural areas – that's if it's outside of an urban growth area – the maximum density that would be permitted is one dwelling unit per 5 acres. For zone 4 there would be the added requirement to cluster to preserve the open space to maintain open approach corridor at or near runway ends.

Now County staff has worked with the Port of Skagit staff and also consulted with our attorneys to see how we could actually implement those recommendations of the Port Board. Okay, I have a copy of one way you could do it – a draft plan that I gave you that would essentially expand the Light Industrial area to all of the flat lands that aren't developed on Bayview Ridge or aren't already zoned Light Industrial. That includes an awful lot of land that's currently zoned for residential development that would extend it all the way to the existing residential. Well, as you all know, we have a limited amount of industrial development that we're allowed, so, working with the Port staff, we found that there are a lot of lands at either ends of the runway that's shown in that green BR-OS – that's Bayview Ridge Open Space. Right now that's zoned Light Industrial and it's taking up an allocation of something like 197 acres. About 25 of those acres in the northwest portion of the area can still be used for industrial development, but the rest is either wetlands or at the end of runways and the Port has no desire to develop it as industrial. So we have something on the order of about 171 or 172 acres that we can transfer elsewhere, and we believe that most of the flat area up on top of Bayview Ridge could be rezoned Light Industrial. And so the proposal is to consider that and also consider removing that area to the northeast of Bayview Ridge from the urban growth area and zone it Rural Reserve. Rural Reserve permits 10-acre lots, or with a CaRD you can have one dwelling per 5 acres. That would conform with the guidelines that we have. So this Plan – there may be other plans – but this Plan *would* conform with those guidelines.

I asked the Board for direction this morning and they passed a motion to go ahead and work with the Port to develop those new AEO zones and the associated regulations, and to pursue this Plan – it's kind of a sketch plan right now, but to pursue it. So I thought I'd let you know. We're going to be working on this quite diligently and bringing it back to you soon.

Mr. Easton: Thank you.

Chair Lohman: That *is* a big change. Okay, Planning Commission Comments and Announcements. Jason?

Mr. Easton: Yeah, that's a huge change and that change passed two to zero with one abstention. The reason for the abstention was that he – one Commissioner felt that he didn't have all the materials in front of him to make the decision. So I just thought that was a footnote that you might find interesting.

Chair Lohman: Okay. I guess my announcement would be that I really urge the public to look at the Shoreline Update Plan and let their Planning Commissioners know if they see something and to please participate – that we'll be having public hearings someday – but to kind of be looking at it.

So anything else? A motion to adjourn?

Mr. Easton: And we're back together on our regular scheduled time on the 2nd?

Chair Lohman: Yes.

Mr. Easton: We're planning to meet in April –

Mr. Temples: Is it the 2nd or the 8th – or 1st or 8th? 1st is on –

Mr. Easton: I'm sorry, the 1st. Thank you. I'm missing a page. The 1st to the 15th – is that correct? We're meeting on the 1st and the 15th in April?

Mr. Temples: Or the 8th and the 22nd.

Mr. Meenaghan: I believe it's the 1st.

Mr. Axthelm: It's the 1st.

Mr. Easton: The 1st. The 1st and the 15th. Awesome.

Chair Lohman: Okay, Josh has said he is not going to be here.

Mr. Easton: On the 1st.

Chair Lohman: So, okay. Does somebody want to make a motion to adjourn?

Mr. Easton: So moved.

Mr. Axthelm: Second.

Chair Lohman: (gavel) Adjourned.