

**Skagit County Planning Commission
Deliberations: Stormwater Code Update
July 21, 2015**

Commissioners: **Josh Axthelm, Chair**
 Keith Greenwood, Vice Chair
 Annie Lohman
 Kevin Meenaghan
 Tammy Candler
 Kathy Mitchell
 Amy Hughes

Staff: **Dale Pernula, Planning Director**
 Mike See, Public Works Water Resources Section Manager
 Ryan Walters, Civil Deputy Prosecuting Attorney
 Bill Dowe, Planning Customer Service Manager
 Lori Wight, Public Works Stormwater Specialist

Consultants: **Damon Diessner, Brown and Caldwell**
 Patrick Weber, Brown and Caldwell

**Public
Remarks**

Commenters: **Ellen Bynum, Friends of Skagit County**
 Carol Ehlers

Chair Josh Axthelm: (gavel) I call this meeting to order. It's Tuesday, July the 21st – the Planning Commission. And if you notice your agenda on – oh, do we have any changes from the Commission?

(silence)

Chair Axthelm: Seeing none, we'll proceed to the Public Remarks on the agenda.

Ellen Bynum: Good evening. Ellen Bynum, Friends of Skagit County. I wanted to bring to the attention of the Planning Commission and the staff and the audience the fact that the Recreation and Conservation Office has awarded additional money to the Farmland Legacy Program for us to purchase development rights off of the farmland. We've been funding this through a tax, the state tax which has allowed conservation futures. Every person in the county gets a very small property tax and it would be very – you know, \$16 per 100,000 valuation or something – and that goes into a kitty and we use that to purchase development rights off of farmland, which protects it from ever being developed in the future. The thing that most people don't know about the program is that the County can receive tax deductible contributions from individuals, so I was just going to say to people if you would like to help in conserving farmland in Skagit County you can write a check in any amount and send it to the Farmland Legacy Program at 1800 Continental Place, Mount Vernon 98273. And if you have questions about it, you can go on the County website and look up the Farmland Legacy Program. If you put that into the search you can get it. I just wanted to point that out because we have about 90,000 acres and we've conserved about 11,000, 12,000 – something like that. This new amount of

money is going to give us another thousand acres, but we've got a long way to go to get, you know, to even half of the number of acres that need to be conserved. So I just wanted to bring that up as a piece of public interest. And I end up giving contributions to the program from time to time in honor of people's birthdays and also in memoriam to people who have died. So, you know, use any excuse and you can write the check for any amount. Thanks.

Carol Ehlers: Carol Ehlers to continue the education on the subject of geohazards that I was asked to give you more information on.

I want to thank Bill Dowe and Mike See for being sure to get copies of this to put on the Net. There are three of these. They were done by the Department of Ecology in the 1990s using grant money from the federal government as part of a major scientific effort to understand the geology left by the glaciers in the Puget Sound area. And while they're not the end of knowledge, because that was 1993 and this is 2015, they're a mighty good beginning of it, and I would suggest that you bookmark it somewhere so that you don't have to depend on this hearing record to find it. And then look at it when you're doing other ordinances and codes that we have to do, particularly the shoreline one.

I'd like to illustrate something. In this Vegetation Management, the first illustration says you have bought this piece of property. That's a platted lot? What kind of government permitted, approved something that hazardous to plant on? Then as I look – when I first saw this I was horrified, and then I looked around Skagit County and found there were quite a few. And then I listened to meetings in south Sound and it was almost a style. Not only did they put buildings up here, sometimes they tried to put them here. You know what happened, don't you? Sometimes – and imagine this is a bluff. You can have a bluff on a shoreline. You can have a bluff in the middle of what looks like nowhere because that's the way the glaciers left it. Lots of times on the bottom of a bluff like this there's a road. South Skagit Highway, Rosario Road from the farm store west – lots and lots of roads in this county that are at the bottom of a bluff like that. So it was widely done, and all of this was before the Growth Management Act, which no longer allowed you to be deliberately stupid in what you permitted. That doesn't mean it stopped it but it reduced it a lot.

Notice there's trees on here but it's not completely vegetated and that's considered a no-no. But let me warn you about something that the old-timers warned me about. You don't want heavy trees on this bluff along with heavy, saturated water because if the weight gets to be too much the trees will slide down. They told me this and then about 15 years after they told me one night I heard a *whump*, and the next time I went down on the beach the neighbor's cliff had slid. He had a beautiful stand of gorgeous Doug firs, which were now on the beach. So it's an illustration that you need vegetation – and I'll go into that later more – but there has to be a balance. The issue of weight is not brought up in any of these books, but the professionals tell me that weight is crucial.

Keith Greenwood: Carol, that's 3½ minutes so if we could –

Ms. Ehlers: That's it? I'll talk about illustration 2 later.

Mr. Greenwood: Okay. Thank you, Carol.

Chair Axthelm: Are there any other public comments?

(silence)

Chair Axthelm: Okay, seeing none we'll proceed to the Stormwater Code Update Deliberations.

Annie Lohman: Mr. Chair, point of personal privilege. I need to go get a drink. I'll be right back.

Chair Axthelm: Okay. Sure. Let's just hold for a minute.

(short break)

Chair Axthelm: We're back on.

Mike See: Good evening. I'm Mike See, Water Resources Section Manager for Skagit County Public Works. We'd like to start by showing you a short clip of the demonstration we held next door at the LID demonstration parking lot. It was a great event. For those – I think you all know that was an old movie theater parking lot that, you know, we were able to get grant funding to assist in not only making it a usable space but incorporating about five different LID techniques with significant Ecology grant funding. So I will –

Ryan Walters: Wait, wait – do you want to set up the clip?

Mr. See: Okay.

Mr. Walters: You've got to set up the clip – like on the *Tonight* show.

(laughter)

Mr. See: So setting up the clip.... We had a bunch of dignitaries out there and elected officials and invited guests from the State Department of Ecology. We had a gentleman from, I believe, SICBA – was that correct?

Mr. Walters: Oh, we had SICBA.

Mr. See: Yeah, speaking and talking about LID and how it works and the effects of it, and he on cue signaled Randy to start pouring water, and I think we explained last time it's an impressive sight.

Mr. Walters: What you don't see in this clip is the people running away.

Unidentified female voice from the audience: They thought a tidal wave was going to wash them out!

Mr. Walters: Yeah.

Mr. See: For a moment there we had to wonder.

Mr. Walters: And how much water?

Mr. See: Oh, I don't know.

Bill Dowe: (unintelligible)

Mr. Walters: Thousands of gallons of water that could have gone to the farmers to help.

Mr. Greenwood: So they were standing in the 100-year floodplain?

Mr. See: Yeah!

Mr. Greenwood: Within the floodway.

(video plays)

Mr. Walters: So the video captures a lot of it. Maybe not –

Mr. See: It was more affecting –

Mr. Walters: The emotions are maybe lost.

Mr. See: It looked bigger.

(laughter)

Mr. Dowe: Yes, it did. When you're standing there, it looked way bigger.

Mr. Walters: So the Rice Krispie Treats that you each have in front of you are a symbolism of that pervious pavement in the parking lot. And, in fact, you go take your Rice Krispie Treat and set it next to the parking lot it will be somewhat indistinguishable, the difference between the two. The taste is only slightly different.

So we've had our public hearing. We've had our public comment period. You have a staff report summarizing the public comments with some responses, some suggestions for changes. You also have in front of you a draft recorded motion. There are no suggested changes in there, just blanks for us to fill in tonight. And there are draft Findings of Fact that we can take or leave or modify or add to however we want to do that. So we'll put the recorded motion on the screen, but we could start with some general discussion or summary – whatever your pleasure is. And we do have the consultants here from Brown and Caldwell. They could introduce themselves now, I guess. Maybe that would be appropriate.

Damon Diessner: Good evening, Commissioners. My name is Damon Diessner. I'm with Brown and Caldwell. We've been helping the County and other jurisdictions in the Puget Sound region with implementation of their Low Impact Development regulations.

Patrick Weber: I'm Patrick Weber. I'm a stormwater engineer with Brown and Caldwell. I'm working with a number of jurisdictions on these same issues.

Mr. Walters: So Brown and Caldwell assist the Public Works Department with all the permit requirements. As we talked about before, there are permit requirements other than development regulations. There's education, and enforcement, outreach – a whole bunch of different things – reporting. So Brown and Caldwell assist with that. We also turned to Brown and Caldwell to help us design the approach to this Stormwater Update Code Update, and they came up with the land use intensity scheme that's in there. And we also asked them to help us analyze some of the public comments and respond to them. So Brown and Caldwell are really experts on the Stormwater Manual and the permit requirements. Maybe they are less of experts on our own code, but that's why we brought six or seven staff people.

Chair Axthelm: So we can just start with some general comments. Is there any general comments?

Ms. Lohman: I have a couple. One of them is I'm struggling for just unilaterally considering gravel as impervious, because I know for sure last year when we had a 1¼-inch rain event it was a torrential rain and it lasted for maybe 15 or 20 minutes. And I took a picture and everything is just immediately flooded, but the very next day you had no idea it had happened. And this was at our farm, and our driveways and our barnyard has a lot of gravel. And so I was struggling with just carte blanche calling all gravel driveways impervious. And so I was wondering if there was any room for some low tech stuff that people could do rather than just categorically calling it impervious.

And then the second thing I was struggling with had to do with when we're talking about the NPD – I always get the letters all mixed up – the area, it's basically been crafted because it's urban census data. Well, if it's potentially going to be more urban, why are we putting so much emphasis on using only native plants? Why couldn't you use some ornamentals or some other horticultural choices? And I know for a fact that grass does take up a lot of water and a lot of grass is used in filter strips, so why couldn't you use non-native species and why do we always just say native species?

So those were my two general things that I saw when I was reviewing.

Mr. Walters: We'll take the first question second, so take the second question first. The permit area is the urbanized area but the permit area doesn't prescribe what land uses will take place in there. So especially previously there was really a lot of unincorporated, non-UGA area inside the permit area. We have been able to extract a lot of that in this new permit. But just because the census data block calls that an urbanized area doesn't mean that it is going to become urbanized. It's still our land use code that will control the levels of density and that kind of thing; however, there is a lot of density in the permit area. But it's what's prescribed by our land use code.

The question about gravel, I'm hoping that Brown and Caldwell can address. And while they're working on that, I want to think a little bit more about your native plant question.

Mr. Diessner: Well, with respect to the gravel, the impervious nature of a lot of gravel roads and parking lots and that sort of thing, I think what we have is a situation where – and I'm interpreting – you know, channeling the Department of Ecology because this comes through in the state Stormwater Manual. And so when you look at how gravel roadways and parking lots are built around throughout western Washington around the Puget Sound Basin, oftentimes they're using, like, 5/8-minus gravel and they're compacting the heck out of it, and so a whole bunch of it does end up as impervious. On the other hand, not everything's built that way so I understand what you're saying. But we have – at the same time, we have a permit and a manual that's associated with it that calls out using it that way. It calls out in looking at compacted gravel areas as impervious. I don't know that there's anything in there – and, Patrick, correct me if I'm incorrect on this – that would allow a designer to use a gravel surface for a pervious area as part of a design. So I think that your concern could be addressed but I also understand why you might be worried about that.

Mr. Walters: So within the definition of impervious it does call out gravel roads, but it says that "common impervious surfaces include" and then lists a number of items including gravel roads.

So yes, driveways. And it says driveways and it doesn't say what type. It also says parking lots or storage areas. So I think within the definition there is room to figure that out, but the manual might have more constraints.

Chair Axthelm: Comment: I think the Department of Ecology probably struggled with that too because it used to be that asphalt and gravel were all considered impervious surfaces. And so now they're taking those and separating those out to hard surface and impervious surfaces.

Mr. Diessner: Exactly. And that's why they now use the term "hard surface," because it may be hard and you can drive on it but you can still get water through it, as the parking lot demonstration showed. So it seems to me that if we can have a pervious pavement we can design a pervious gravel area as well. I mean, certainly you can. You know, I've seen it done. So I don't think that you're trapped within the manual to always consider all gravel surfaces as impervious. I think it depends on what the design is, what the intent is, what the design process demonstrates it's going to be used for, and then I think you're okay.

Mr. Walters: I think that's key. There's a lot of ability when working within the manual to *demonstrate* how a technique will work or not.

Your question about native vegetation: I would say that the reason the permit requirements in the manual calls out native vegetation is because there is a lot of variety in terms of vegetation that you could plant. The definition from the permit that is in the code proposal says "Vegetation composed of plant species other than noxious weeds that are indigenous to the coastal region of the Pacific Northwest" – so that's a fairly large area – "and which reasonably could have expected to occur naturally on the site" – that might constrain it quite a bit more, but I am assuming here that the policy reason behind that is because if you have non-native vegetation it's more likely that you might have to water it to keep it alive, or if you don't water it it won't stay alive and then you will lose the benefit of having the vegetation. I think that that's probably the rationale behind that. Can you expand on that any?

Mr. Diessner: Yeah, I think that's essentially the deal. I think what Ecology is looking at is trying to use LID to mimic natural processes and, in general, trying to reboot, if you will, natural kinds of systems. And so they're thinking about drought tolerance, about water requirements, the need for pesticides, herbicides, fertilizers to keep plants going. But again, I think if you have a design that goes through the process and the plant materials meet the requirements I think that's going to be approvable. I mean, certainly we see ornamentals in the implemented projects in other parts of the Puget Sound region – you know, in Seattle some of the rain gardens and roadside rain gardens. As you mentioned, some of the bioswales use grasses. So we don't always have to have cattails and willows. There are other plants that can work in these areas. But the main things that we want to try to do is not set us up for failure and drought; require a bunch of irrigation and using water resources; and to have hardy plant materials that can allow us to avoid the use of pesticides, herbicides and fertilizers because all of those are pollutants and they all go downstream.

Chair Axthelm: Okay. Anyone? Kevin?

Kevin Meenaghan: (inaudible)

Mr. Greenwood: I guess one of the questions I have is pertaining to – do you think the EPA was accurate in their assessment of LID in saying that the Low Impact Development/LID function is essentially for the first inch-and-a-half to one inch of rainfall and then after that it's – they don't

say it's ineffective but it's not affecting that additional or supplemental rain. Do you think that's accurate?

Mr. Diessner: Okay, that's one of those questions where no matter what I say I'm going to be wrong because –

Mr. Greenwood: Well, do you support that or not?

Mr. Diessner: That's pretty much okay, yes. The reason I'm hedging my bets here –

Mr. Greenwood: Sure.

Mr. Diessner: – is because the soils make a big difference, the geomorphology, the slope – you know, how deep is it to groundwater? How deep is it to hardpan? I mean, EPA is looking at that but they aren't looking necessarily at a glaciated area like this. So, you know, in some cases they're probably right and in some cases it's not going to work for that much.

Mr. Greenwood: Right. I think that's true.

Mr. Diessner: And so as I've been talking earlier, I'm hearing my little voice in my head saying, Geez, you sound like an Ecology apologist here. I'm often somewhat critical of implementing some of these techniques because in certain conditions in the Puget Sound region they're not going to work that well. There are other areas where they're going to work great and there are other areas where they might work too well. So we – really we have to look at each site individually and have onsite analyses, and make sure we have people who are experienced in designing these kinds of facilities, and use some common sense and build them the right way. I mean, we don't want to, for instance, put a whole bunch of water in the ground in an infiltration system at the top of an unstable bluff. You know, that's not a good plan. And the Ecology manual recognizes that and makes sure that it requires that there be onsite analyses and geotechnical people who are qualified to assess those potential impacts. And I think you see that kind of throughout the manual for all of these different things.

Mr. Greenwood: Sure. I guess what I'm looking for then is based upon what the staff in working with your base work in support – the language, does it reflect that flexibility, the desire to be flexible and implement in the proper location the proper design?

Mr. Diessner: I believe – yeah, yeah, for sure.

Mr. Greenwood: Because the same thing goes with gravel: How much gravel? Is the whole site gravel, you know? Or how much is compacted? There are runoff factors based upon all the different elements that go into a site, right? That's part of your site plan and your design.

Mr. Diessner: Absolutely correct.

Mr. Greenwood: So I guess then as a follow-up would be, Are we then prepared to – with this language that has been drafted – to handle the maintenance aspects associated with low impact development? Because we're requiring it now and that has been put upon us, and I think we can do it, but to be able to do it in a way that is able to accommodate the required maintenance. Some of the things I read about maintenance requirements and follow-up talk about after five to ten years in some cases having to remove the soil and then replace it. Dead vegetation – remove it and replace it. I mean, I've lived in my particular place that has bioswales

and I'm kind of watching some of the LID-type low impact stormwater runoff design and I'm just trying to see how long it's going to last. Because I've been there nine years, and if it's starting to already become silt-laden, if you will, and I've heard this from others related to pervious pavement where they have to be blown off, cleaned off or they plug up. So I don't want to design ourselves into a corner where we're boxing ourselves in to problems. And if you think that our code is reflective of what you think is appropriate – because you've probably seen – well, I know you've seen a lot more than I have.

Mr. Diessner: I think your code is doing the best it can do in the requirements that are laid down by the state. It's set up to provide as much flexibility, I think, as the state allows. At the same time, I think, you know, there's a certain amount of experimentation involved here by the state on these requirements. On the one hand, I share your concern about the long-term life cycle costs and how often we might have to do replacement or refurbishment on some of these systems I don't think we had. I don't think the jury is out on all that – or in on all that. You know, we're going to be finding out as time goes on. At the same time, I mean, many years ago when I was Director of Bellevue Stormwater Utility I put in some sand filtration systems that were very experimental and I was sure that they would last five to ten years, and that was 25 years ago and they're still running. So, you know, it's just we have to wait and see. And we at the local level don't really have a choice on whether or not we allow LID. I mean, that's something that the state is requiring as a primary approach everywhere all the time.

Mr. Greenwood: I guess I'm looking for – is our code – Dale, do you think it's going to be flexible enough for someone to implement a design that provides better or equal protection? Or are we required to look at LID first, and if they can do it we're going to make them do it?

Dale Pernula: I think it provides flexibility in the manual, from what I'm hearing. I'm certainly not an expert in this area, but from what I understand, yes, it provides flexibility. There's lots of different designs that you can use based on the type of soils and the slope and so on.

Mr. Diessner: And the manual also recognizes that there are conditions in areas where LID is not feasible. And if in the design process the site analyses suggest that it's infeasible then you don't do it. You go to something else.

Mr. Greenwood: And there are a vast number of best management practices under the capstone of LID.

Mr. Diessner: Yes.

Mr. Greenwood: I recognize that. So hopefully we can allow our engineers or our designers to utilize the appropriate measures for the appropriate site. And obviously, if you disturb less, in most cases you're going to have less runoff.

Mr. Diessner: Exactly. And I think that's – I think most jurisdictions are struggling with the same issues and they're pretty much taking the same approach.

Mr. Walters: To follow up a little bit, the code proposal would – consistent with the permit, it would require a development to consider and implement LID if feasible inside the permit area. Outside the permit area, you would not be *required* to do LID but you could if you wanted to. If you do an LID facility or any stormwater facility to manage your stormwater, you will need to submit a maintenance plan. So your maintenance plan is drawn up by whoever is drawing up your stormwater facility. And then there is a requirement to do the maintenance that the

maintenance plan prescribes. So if your maintenance plan says you need to check on it every five years or every year or every ten years, then you do the check. And then if it says the check yields this result, then you do this. It can have that type of flow chart approach. A maintenance plan has to have some meat to it. It has to be accepted by the County as part of the development review, but it is somewhat flexible that way.

Inside the permit area the code proposal would require, consistent with the permit, County inspection of the stormwater facilities to make sure they're working. Outside the permit area the Administrative Official would be authorized to come up with a system of inspection, which would assumedly be much less restrictive. What we had talked about was something sort of like Septic 101 where you can get a coupon for an inspection or you can take a class and do your own inspection – that type of thing. But that all remains to be figured out. That's all *outside* the permit area.

Tammy Candler: Mr. Chairman, I have a question about that.

Chair Axthelm: Okay.

Ms. Candler: Ryan, is that the kind of thing that runs with the land then? If you are a developer and you make this and you've agreed to all this maintenance and then you sell it, who is going to be responsible at that point?

Mr. Walters: Yes. Yes, that is key. The code prescribes that the maintenance plan remains in force for the life of the development or until the County approves a new one – because you could write a new plan – and that it's recorded.

Ms. Candler: So it goes right on the deed?

Mr. Walters: Yes.

Ms. Candler: Okay.

Chair Axthelm: So I had noticed one thing about – in the comments was – there was talk about easements, requiring easements for that situation.

Mr. Walters: The code proposal first of all says that the maintenance plan is recorded against the title of all properties using the facility, which is also helpful. So if you look up any of them you can find it. And it provides – I'm pretty sure it provides that you need to provide an easement, although I don't see that. Yeah: "Where a stormwater facility is required, the applicant must dedicate an easement to the County for access and inspection."

Chair Axthelm: Where's that at?

Mr. Walters: That is in proposed 14.32.050(5) – no – 050(3).

Ms. Lohman: I found it on 14.18. – right before 500.

Mr. Walters: Right before 500?

Ms. Lohman: You're looking in the code proposal?

Mr. Walters: Yeah. Code proposal 14.32.100(3)(a). If you're looking at the annotated code proposal, that's page 23. I could put that on this screen, too.

Chair Axthelm: Is that all cases that would have an easement?

Mr. Walters: Yes. I'll put it on the screen here in just a second. So (3)(a) there in about the middle of your screen.

Ms. Candler: It says the *applicant* must dedicate an easement, though – not the property owner. Is that a concern? Because the property owner won't necessarily be the applicant, right?

Mr. Walters: Yes. That could be changed from applicant to property owner. Usually it's just written all in passive so you can't tell who's doing the acting.

Chair Axthelm: The reason for the easement? I mean I – it's similar to a septic system. Are we in the future going to be expected to have an easement for all our septic systems?

Ms. Lohman: Well, I'm struggling with that word "easement" because it's – all you're asking is the right for inspection. I'm struggling with giving an easement. An easement is where you're allowing the use of a –

Mr. Walters: Not necessarily. You can have an easement for a variety of different things. You can have an easement simply for – in light and air for views, which allows no use of the underlying property. You could have an easement for solar panels – promise not to plant trees. You could have an easement in this case just for the inspection, which provides no use of the property other than access to get in there and inspect the stormwater facility.

Mr. Greenwood: I'm not going to speak for you. Address it if you think I'm incorrect, but there are times when while there's a permit, an active permit, in place, oftentimes agencies have the rights to inspect that process, but as soon as the permit expires and it's no longer an active permit, sometimes the agency has difficulty getting on to a piece of property to inspect it. And so I think that's what we're looking for since it's a long-term maintenance issue.

Chair Axthelm: So what difference is this than a septic system?

Lori Wight: Sorry – I'm not answering Josh's question about septic system, but adding on to what Keith was saying. We have a lot of locations that do not have easements on them and are within people's yards, and we are not able to go out and inspect without their permission to enter the property because there are no permits and no easements were ever recorded. So that's kind of one of the reasons behind easement. Also because the permit pushes us into a situation where we are to inspect these after they've been approved.

Mr. Walters: The NPDES Permit.

Ms. Wight: Yes, the permit.

Mr. Walters: Yeah. So we have an obligation to inspect them but not the authority to inspect them.

Ms. Wight: Right.

Mr. Walters: So it's problematic.

Chair Axthelm: So why couldn't you treat it like a septic system where there's a requirement to have an inspection every so often and not have to do the easement? Because an easement is – that attaches to the property. It's – I think it's very problematic.

Mr. Walters: So we're proposing that outside the permit area that outside the permit area we would develop a system probably like the septic system. But inside the permit area we have to inspect them. That is a permit requirement. So we can't rely –

Chair Axthelm: You couldn't have like designated or like approved installers or approved inspectors, similar to septic systems?

Mr. Walters: Well, it doesn't have to be *Lori* doing the inspection, but it has to be the *County* doing the inspection – if I have that right.

Mr. See: That's how the permit's written as.

Mr. Walters: Yeah. So the County could contract with people to do it. And then I think that the proposal here requires the easement both inside and outside the permit area, because we anticipate that 10 years, 15 years, next year everything will be inside the permit area. The next permit is due when? 5 years out?

Mr. See: 2018.

Mr. Walters: So about when we get finished with this one they'll be on to the next permit. And the permit area this time got smaller because we were able to back things out, but ultimately we anticipate that the permit area will be able to include the whole county like it does in other counties. And when or if that happens, it would be a problem for us if there was no ability to inspect facilities.

I guess the other policy reason for that is that these systems are functioning as part of the overall county stormwater system. In the traditional sense you would have bigger ditches and more conveyance and that kind of thing, and if these systems fail – this distributed Low Impact Development or onsite management systems fail – it affects neighboring properties and ultimately the whole county. So they need to work.

Mr. Greenwood: Annie's got a section of the permit that talks about right-of-entry.

Ms. Lohman: G-5. It's on page 60 of the Western Washington Phase II Municipal Stormwater Permit.

Mr. Walters: So in this instance here it's referring to the permittee. The permittee is us. G-5 applicable here?

Mr. Dowe: I can read it.

Mr. Walters: Is G-5, section G-5, of the permit applicable to development regulations?

Mr. See: That's for Ecology to be able to check up on the permittee, i.e., the County.

Mr. Diessner: The requirement for onsite inspections of the permit is elsewhere. I don't believe this is the section.

Ms. Lohman: What premises would the County have that has the discharge that they're talking about then? I took it to mean the development person.

Mr. Walters: The same permit is written for both the County and all other Counties and Cities, so those – each of those entities may be managing significant stormwater facilities – physical facilities. So if I'm reading this right on the fly here, I tend to think G-5 applies to facilities that the County operates. Is that –

Ms. Lohman: Then it talks about property rights further down so it makes you think they're talking about the property owner.

Mr. Walters: Well, that section – I don't know. That section has the one line there that says "This permit does not convey any property rights." I don't think that that...

Mr. See: I was just going to add that when in sections of the permit like that when Ecology is referencing the discharge points, the County's stormwater systems – so all the ditches and the whole system of infrastructure we maintain – where those systems enter waters of the state are considered discharge points, in Ecology's view. So that might help in understanding other sections of the permit.

Chair Axthelm: So it's only at those points of entry of waters of the state that they have access to. Is that what you're saying?

Mr. See: I'm not sure about this section G-5.

Mr. Diessner: I think what Ecology's trying to do here is for them what they are expecting local government to do at the local government level. They want the local government to make sure that by some mechanism they have the legal right to go onto private property to inspect these systems to ensure their functionality over time. Likewise, I believe this section of the permit is giving Ecology the right to go onto County- or municipally-owned properties to inspect *those* systems to ensure their functionality over time.

Mr. Walters: I concur with that. This section right here reads "to enter upon the permittee's premises." The permittee in this instance is Skagit County. So it's to enter Skagit County's premises. It's not a private property owner's. There's that other obligation for the County to require an inspection of private property, but that's not this section.

Mr. See: An example, maybe, where G-5 could be used by Ecology is such as our Public Works Road Shop. There's areas in the NPDES Permit that require operation maintenance best management practices be applied by us, Skagit County. So we have to do things differently at our shops and have stormwater pollution prevention plans and all these things in place where Ecology could use that section as authorization to come inspect our County-owned facility.

Mr. Greenwood: Are we then thinking – Annie, tell me if I'm not characterizing this right, but the proposed code gives that type of authority to the County to inspect. And they're looking at doing it through an easement process rather than just claiming a right of entry. Is that – it seems like it's a little bit different, right?

Mr. Walters: The proposed code, yes, prescribes that you provide an easement, and that is an alternative to just having the County show up and knock on your door –

Mr. Greenwood: Which is the way it is now, right?

Mr. Walters: – and possibly be denied access. Right.

Chair Axthelm: Kathy?

Kathy Mitchell: (inaudible)

Chair Axthelm: Any other general comments?

(silence)

Chair Axthelm: So should we move on to the Finding of Fact?

Ms. Lohman: You got all the way through that?

Chair Axthelm: Yes. Okay. All right, so, Finding of Fact. Number 1, Effective management of stormwater from development is important for the protection of neighboring and downstream property owners, and the environment. Do you have any changes to that one?

(silence)

Chair Axthelm: Okay. Number 2, Controls on both water quantity and water quality are key to effective stormwater management. You all okay?

Mr. Greenwood: Okay.

Chair Axthelm: Number 3, Onsite stormwater management reduces strain on the County's stormwater system and preserves system capacity.

Okay. Number 4, Low Impact Development techniques mimic natural processes and are effective means to manage stormwater quantity and quality.

Ms. Candler: I have a question on this one – or a proposal. We just heard this gentleman tell us that that's not always the case or not always possible on every land, so I think we should make our language reflect that. "When possible," or something along those lines. Or "When..."

Mr. Walters: Something like that?

Ms. Candler: Something like that. Or even "Low Impact Development techniques in certain areas" or "when appropriate" – something along those lines.

Mr. Dowe: "Is usually effective" – something like that?

Mr. Walters: The manual language is "where feasible."

Mr. Diessner: Right. And you might want to say “are intended to” and “where feasible.” So if that were to read something like “Low Impact Development techniques are intended to mimic natural processes and...”

Mr. Walters: “...where feasible...”

Mr. Diessner: Yeah, “...where feasible are an effective means to manage stormwater...”

Ms. Candler: I don’t think “feasible” is the word I’m looking for. I’m thinking more like “where appropriate.”

Mr. Diessner: You know, I picked “feasible” because that’s Ecology’s language that they have in their permit and their manual.

Ms. Candler: But they’re two completely different –

Chair Axthelm: Before we get too far on this, I think we should probably follow the proper motion procedure.

Ms. Lohman: Well, aren’t you? Because you’re trying to get the language crafted and then we can –

Chair Axthelm: If you’re okay with it that direction I’m fine with this. Is everybody all right with changing the language?

(sounds of assent)

Chair Axthelm: Kevin?

Mr. Meenaghan: Maybe get through the Findings of Fact and then we can make a motion after that.

Chair Axthelm: Okay, if everybody’s all right with that let’s ____.

Ms. Lohman: So you want to keep it as “feasible”?

Ms. Candler: Do you want me to make a motion right now? I want to – my motion is, if we’re making a motion, to add “where appropriate” to the end of that sentence.

Chair Axthelm: As it’s shown here on the screen or as it shows on the sheet of paper?

Ms. Candler: As it’s about to show on the screen.

Chair Axthelm: Okay.

Ms. Candler: Does anyone second my motion?

Amy Hughes: Second.

Chair Axthelm: Do I need to vote on it now if I do that?

Mr. Walters: If there's no objection.

Chair Axthelm: Any objection to that?

(silence)

Chair Axthelm: All right, so are we okay with that one now?

Mr. Greenwood: That's reasonable.

Chair Axthelm: Okay. Number 5, Stormwater infiltration helps preserve groundwater supplies and stream flows. Okay? Okay.

Number 6, The Ecology 2012 National Pollution Discharge Elimination System permit requires the County to update its development regulations to use the 2012 Ecology Stormwater Manual and to require Low Impact Development techniques, where feasible, inside the NPDES permit area.

Mr. Greenwood: I think that's a fact.

Mr. Walters: I'm just going to add "...for Western Washington Phase II..." A little more specific.

Chair Axthelm: Okay. Is that all right?

(sounds of assent)

Mr. Walters: Most of those words are in the title of the permit anyway. I'm not sure if that's the order.

Mr. See: Ryan, I think it's the 2013 Permit and the 2012 Manual.

Mr. Walters: 2013 Permit – do you know where "Western Washington" goes in this list of – string of words?

Ms. Lohman: I have on the cover –

Mr. Walters: "Western Washington Phase II" – okay. There we go.

Chair Axthelm: You okay with that?

Mr. Greenwood: Well, there's a "for" in there that doesn't fit but that's just language.

Chair Axthelm: Okay.

Ms. Lohman: What? What was that?

Chair Axthelm: Number 7, Outside the NPDES permit area, development should have incrementally increased stormwater management requirements based on the intensity of the land use. Okay?

Ms. Mitchell: Well, I'm wondering why.

Mr. Meenaghan: Isn't that part of that matrix we looked at last meeting?

Mr. Walters: Yeah, that's the idea, that less intense land uses have less requirements (and more intense have more requirements).

Chair Axthelm: Is that a "should"? Or is that just ___?

Mr. Walters: It's just a "should" because it's your – your reasons, your Findings of Fact.

Chair Axthelm: You okay with that one?

Mr. Greenwood: I think that reflects our discussion last time. I don't think we – I don't think the public or us had an objection to it.

Ms. Candler: Kathy, are you thinking something else?

Ms. Mitchell: I'm struggling remembering that conversation. Let me think about it a few minutes. Go ahead.

Chair Axthelm: Okay. Number 8, The entire existing Drainage code chapter as it applies inside and outside the NPDES permit area would benefit from the significant reorganization and rewriting to make application of the code clearer and easier. Yeah.

Ms. Lohman: As long as you limit the number of times you use the word "effective" and "ineffective," because sometimes – I was reading that going, What in the world? – when you could have used a different verb or adjective or whatever – what would it be? It was both. Because sometimes it was just lazy writing, I thought, and they got into a thing where they liked using that word, and other times it was tripping on it.

Ms. Mitchell: She's right!

Mr. Walters: Well, it's a defined term: effective impervious surface.

Ms. Lohman: Well, I realized that when it said "effective impervious surface," but when it becomes ineffective that kind of – hello...

Mr. Walters: Yeah. That's the permit definition. We tried to use all the permit definitions.

Ms. Lohman: But they also used it and we did too, because we copied them, because it was almost like you got into the funk of using that word.

Mr. Walters: Well, I don't find it in the code proposal except as part of the defined term "effective impervious surface." Is it elsewhere?

Ms. Lohman: Well, maybe it's because I've read all this stuff. I saw it a lot! But I would really like in the Definitions when we get to there – I'm going to bring it up because I circled it – because sometimes "ineffective" was meaning that they weren't calling it impervious. You had to read the whole thing to understand they weren't talking about it being an impervious surface, because it was ineffective.

Mr. Walters: I think I see the issue there with the definition.

Ms. Lohman: But let's hold on to that because that's getting off the Finding, but – so when I read that number 8 tonight, since we got this tonight, I almost laughed because some of it wasn't clearer.

Chair Axthelm: Well, I think that's what he's saying, is "rewriting to make application of the code clearer and easier."

Ms. Lohman: But we probably need to work on a little more rewriting.

Chair Axthelm: Say that it needs to be rewritten even more than what it is.

Mr. Greenwood: Well, I'm just going to suggest that we change the word "significant" – to just strike the word "significant" to just indicate that it would benefit from reorganization, rewriting, because there were sections that we all acknowledged when we looked at it last time was that it was *more* organized and it *was* clearer. So that and it was appreciated. So whether it's significant or not I don't think is necessarily important. But just recognizing that a reorganization would be helpful – more helpful – that we still had questions for clarification. What does inside the permit mean? What does outside the permit mean? What were some of the acronyms – MR: What did that stand for? I thought we felt there needed to be some further clarification for people to understand it. But I got the impression that we all thought it was more clear than it was before, and it was complicated before and it's still complicated, no doubt.

Mr. Meenaghan: So then to clarify that in number 8, maybe we should put something in it that talks about the fact that this is a big improvement. Maybe start this in – so, "While this is a major improvement" – "While this rewrite is a major improvement," and then go into the rest of it.

Mr. Walters: Well, first of all, should we strike "significant"?

Several Commissioners: Yes.

Mr. Meenaghan: Does that help, you think?

Mr. Greenwood: I think so, and then perhaps if you think that there's improvements to be made those could fit into the Recommendations," I think as Annie was bringing up. There's still opportunity there.

Mr. Walters: Well, and this recital is just talking about what's there *now*, so if you wanted to say more – like what Kevin said – it could say "The entire existing Drainage code chapter, as it applies inside and outside, will benefit from the proposed reorganization and rewriting." Does that accomplish that? "...which makes it more clearer and easier."

Ms. Lohman: Yes.

Chair Axthelm: Okay.

Mr. Meenaghan: Yeah, try that.

Ms. Lohman: More declarative.

Chair Axthelm: I even think *beyond* the proposed reorganization.

Mr. Walters: What was that?

Chair Axthelm: You were limiting it to will benefit from the proposed reorganization and rewriting, so I think it would benefit beyond that. It seems like it's limiting to what we're suggesting.

Mr. Meenaghan: And, Josh, what you're saying is that after it is approved, although this is a big step, it still needs more.

Mr. Walters: The proposal is what eventually gets adopted by the Board, so this sentence is not limited to just your recorded motion. I think this sentence is talking about the whole code proposal.

Chair Axthelm: Okay.

Mr. Walters: So shall we move on to what changes you might want to make?

Chair Axthelm: Okay. You want to do that and adopt this as a whole afterwards?

Mr. Greenwood: What about Kathy's reservation on –

Ms. Lohman: On number 7.

Mr. Greenwood: – number 7?

Ms. Candler: Oh, yes. Any thoughts on it?

Ms. Mitchell: I'm okay. Go ahead.

Chair Axthelm: Okay. So we're okay with those?

Mr. Greenwood: I just think that it was helpful, the conversation that suggested and supported the notion that we're going to put a table in there and the table does show the intensity and how it's applied. And I think that does clarify. So that's just – from my recollection of it – is to at least simplify it that way. Because often there's reservation in putting tables in there, but...

Chair Axthelm: Okay, so approved changes – any changes you'd like to propose? Start down here.

Ms. Candler: I don't have anything right now. I don't know where we're going to start exactly. I guess we start at the beginning. Ryan, can you put it up there or no?

Mr. Walters: What?

Ms. Candler: If we're starting with the beginning – well, where do we want to start?

Mr. Walters: Do you want to start with the definition we were just talking about – “effective impervious surface” – just to kick something off, get the juices flowing? I have a suggestion for that.

Chair Axthelm: Sorry, one more time?

Mr. Walters: I was just suggesting that maybe we start with the definition of “effective impervious surface.” So this definition is from the permit. Most of these are, where indicated, verbatim from the permit. The one exception, notably, is this definition, where Bill insisted that we add “for example, pipe culvert” to this definition. I thought that was fine, even though it’s slightly inconsistent with – or it expands upon the definition from the permit without changing its meaning in any way.

Mr. Dowe: “Discrete conveyance” didn’t work for me.

Mr. Walters: Nobody knows what a “discrete conveyance” is, but “pipe culvert” is really straightforward. So, similarly, the next sentence in the definition is “Impervious surfaces are considered ineffective if...” And so we could change that sentence to again not change the meaning of the definition from the permit but to make it clearer. And so it could just not use the word “ineffective.” It could say “Effective impervious surfaces do not include the following” – something like that.

Ms. Lohman: Yeah, because that’s what you said. That’s what it says, but you had to kind of screw your head around what it said.

Mr. Walters: And from my search of the code proposal here, that’s the only time I find the use of the word “ineffective,” but I definitely agree I have stumbled across that a couple of times.

Ms. Lohman: I was under the impression 1, 2, and 3 are good.

Mr. Walters: Right, but no. Yeah, and it relies on you finding the word “in” in front of “effective” in that other part of the sentence.

Chair Axthelm: Any objection to that?

Ms. Lohman: No.

Chair Axthelm: Okay. Sounds good.

Mr. Walters: So I will add “Rewrite the definition of ‘effective impervious surface’ to avoid using the word ‘ineffective.’”

Ms. Candler: And do we need to add the table or is that just something that’s –

Mr. Walters: What table?

Ms. Candler: I’m sorry. I’m going back to the last comment that Keith was making.

Mr. Walters: Oh, that table is in the code proposal. It’s just black and white.

Mr. Greenwood: It’s on page 16.

Ms. Candler: So we don’t have to address that as a change. Okay. Thank you.

Mr. Greenwood: How are you going to rewrite that? Because an impervious surface, it's designed to be impervious! You make it effective or ineffective by whether it's still impervious or not! Ryan, so, I don't know. Good luck.

Mr. Dowe: Could you classify them as exceptions?

Mr. Walters: Yes. I think that's what the definition is trying but failing to do. So, yeah, we'll fix that.

Chair Axthelm: Moving on with Definitions. "Impervious surface."

Ms. Lohman: But even "hard surface" right below it.

Chair Axthelm: Oh, yeah – "hard surface." It just seems odd how they have –

Ms. Lohman: Permeable pavement.

Chair Axthelm: Yeah, permeable pavement or vegetative roof!

Ms. Lohman: Can you explain that?

Mr. Diessner: So the reason we have all this confusion, I think, is because in the last iteration of the permit we didn't have these pervious pavements and hard surface. "Hard surface" is a new term that Ecology inserted this time around. Before they talked about effective and – you know, I agree that it's either impervious surface or it isn't, you know? So "effective impervious," that goes back to some – that's a holdover term used a long time ago in trying to figure out how to deal with sites and runoff calculations, and I think this is kind of a vestige of that history. So "hard surface" is the new, important term. "Impervious surface" is a new, important term – or is an old term that's carried forward that's still important. "Effective impervious surface," I don't know if it's really applicable anywhere in the regs. I hate to say you can just throw it out right now because, sure enough, somewhere back on page 425 there'll be some reference to "effective impervious surface" that you still need. But I think the proposal to kind of rewrite them, get them to make common sense is a reasonable one.

Mr. Walters: And there are references to "effective impervious surface" in the code proposal. We could maybe go back and rewrite each of those references to "hard surface" instead of "effective impervious surface."

Mr. Diessner: We should take a look at it.

Mr. Walters: And you could make a recommendation to that effect – that we look at changing that and possibly eliminating the definition of "effective impervious surface" in favor of just using "hard surface" instead.

Ms. Lohman: Is your parking lot – your demonstration parking lot – considered a hard surface? It is? Okay. So they're not using it to switch out pervious or impervious then. It's just a new word.

Mr. Walters: A broader – yeah.

Mr. Greenwood: It's not an *effective* impervious surface, right?

(laughter)

Mr. Greenwood: Because it's a hard surface! But it is pervious.

Mr. Diessner: That is correct.

Ms. Candler: I think they're actually saying that's, yeah, more effective than impervious surface – right? – as far as effective.

Mr. Diessner: Well, they aren't using these terms as it's more effective or it acts more effectively. You know, it's not an adverb. The confusion is that it's just odd language and they are terms of art now. They've come down to us and here we are, and they're not real clear, you know? If you read them in a normal way you would think if it's an *effective* impervious surface, does that mean that it's good, you know? Ordinarily we think of effective as good. But when we have our – some of these surfaces in the past that, like “hard surfaces” in the definition today, they looked like they were impervious but they weren't so we measured effective imperviousness. I think we probably can get rid of it, but we really need to go back and make sure that we're not messing something up by doing that.

Ms. Lohman: I think what is confusing to me – and I really pound on wanting plain language – is good and bad.

Mr. Diessner: Right, and this isn't any – it doesn't have a value judgment here.

Ms. Lohman: Right.

Mr. Diessner: It's “effective impervious surface” means it's *really* impervious surface, and before there was some – they would talk about it as an *ineffective* impervious surface, that means it's not an impervious surface. So it's kind of goofy language. And so I think that's one of the reasons that Ecology started using the “hard surface” language in this permit iteration, is because we have these hard-looking surfaces that we drive on but water goes through them and can go back into the ground and infiltrate.

Mr. Webster: I think the primary use of “hard surface” in the permit is to have a development that has a significant vegetative roof or pervious pavement not be able to duck the stormwater threshold entirely. And because it's not impervious surface, to be able to avoid other stormwater requirements – the other __ requirements.

Mr. Greenwood: Would you characterize like a – how would you characterize these rain gardens, these vegetative roofs? Because they collect water, they slow down the runoff, but then they have to get rid of that water – at least whatever's left over – at some point, and you can't just dump it straight in without some – unless it's a means of treatment, but it doesn't reduce the quantity but it improves the quality.

Mr. Webster: If you had a development that used a vegetative roof or a pervious pavement, that feature could be used to meet the stormwater requirements but they still want you to be caught by the threshold of, say, 5000 square feet so that you go into having to do stormwater requirements, that you're not missing that section of the code entirely.

Mr. Walters: So based on this discussion, I might suggest we add to number 1 here – put a comma and say “or evaluate whether we can delete the term ‘effective impervious surface’ and replace it with ‘hard surface.’”

Ms. Lohman: Well, one more time.

Mr. Walters: But that’s going to require some analysis, but – so maybe it might say “or consider deleting effective impervious surface throughout the proposal and replacing it with hard surface,” or another term that makes more sense.

Chair Axthelm: How does the Stormwater Manual – because they have the “hard surface” and “impervious surface” in there.

Ms. Lohman: Yeah.

Chair Axthelm: Is it the same definition?

Mr. Greenwood: I don’t think so.

Mr. Walters: It is not the same definition. But our code doesn’t need to have the defined term unless we’re using it, and we *are* using it but we could look through each of the times that we are using it and see if that’s an appropriate place to replace that term with “hard surface.” And then the manual can do whatever it wants to with “effective impervious surface” and it will, but in our code we could probably just – from me glancing through here – probably just delete it. For instance, the first place that our proposed code uses the word “effective impervious surfaces” is under the list of goals of LID. And the goal is “Reduce hard surfaces and effective impervious surfaces.” Well, that’s a completely non-binding statement anyway so we could get rid of “effective impervious surfaces” there.

Ms. Lohman: But that’s not necessarily true. If you use hard surfaces they could be – maybe you *want* to have that, because you’ve included some permeable pavement and the vegetative roofs so –

Mr. Walters: Well, that goal, I think, is –

Ms. Lohman: – so maybe the def – how you use the word “hard surface” may be incorrect.

Mr. Walters: I think the goal of LID still does include reducing the total hard surface. That section was written by AHBL, who wrote the Low Impact Development Guidance Manual. So I think that probably is accurate. But also it’s not a regulatory sentence because it just lists the goals of LID. The next section *is* a regulatory sentence. It says, “Within the NPDES permit area, projects subject to minimum requirements 1 through 9 have to comply with the following,” and one of the things they have to comply with is not have a net increase in effective impervious surface above the limit on the permit plat or site plan. That may not be a place where we can eliminate that term. We might have to keep it. We may not be able to swap in “hard surface.”

Mr. Greenwood: It seems important to me that we stay consistent with the Stormwater Manual in terminology, especially, as you stated earlier, Ryan that the incorporation of a larger percentage of the county is forecasted. So I think if we start to change terminology I think we can create more confusion than improvement. So if they’ve got a definition I think we should at least try and grapple with it and understand it now rather than later, because they are dovetailed

together. I mean, we've got inside the permit, outside the permit area, and that's confusing enough.

Mr. Walters: And I think we can probably help the definition but we should not change it and change its meaning.

(sounds of assent)

Mr. Greenwood: Like adding "or a culvert," right?

Mr. Walters: Right.

Mr. Greenwood: Examples, so people understand. I think we're not going to put pictures in there, but examples can be helpful.

Ms. Lohman: Well, in one of the – in the permit, and I don't remember which chapter, it had something in parens. I wrote it down. Oh, I did not. I did not write it down. I wrote "short of that." But they had something in parens that referenced the pipe under the ground. But I don't remember seeing "culvert."

Mr. Dowe: The 2005 permit included "pipe" and "culvert" in there and it was more clear to me than the current one. That's why I thought _____.

Ms. Lohman: I'm not sure that I agree with the "or consider deleting" from there on. I'm struggling with – kind of pursuant to Keith's comment about trying to be consistent with the manual, that we don't throw in new words. I'm not sure.

Ms. Candler: I kind of got that from what you were saying – that maybe it would be more clear if we changed it. Do you have an opinion about that?

Mr. Diessner: I'm sorry. Which change are we talking about now?

Ms. Candler: Changing whether or not we want to consider using a word like "hard surface" instead of "effective impervious surface."

Mr. Diessner: Right, but we do need to go back and make sure that we aren't getting crossways with their definitions in the permit and the manual. So I think for me I would explore making the changes but, like I said earlier, you don't want to change it and then find out somewhere else that now you've caused yourself a problem. And I just – it's hard to keep all of these things straight, and remember the volumes of material. I just think we need to on the one hand try to be clear and change it where any change we make's for the better, and, on the other hand, make sure that we don't get crossways with the permit or the manual as a result of our changes.

Mr. Greenwood: Appendix I of the Western Washington Phase II Municipal Stormwater Permit – the copy that was given to us earlier, dated August 1st, 2013, modified January 16 – it has Definitions section, section 2, and on page both 2 and 3 they describe – actually page 3 describes and defines "effective impervious surface," "hard surface," and "impervious surface." So those same terms have already been defined, and I guess I'm wondering if I'm looking at this appendix, did this – was this something we revised in the process of doing this one or was this the old permit? Or where did this appendix come from – Phase II Municipal Stormwater Permit? Was this something we crafted for this particular round?

Mr. Dowe: No, that's what the state gave to us. That's our permit.

Mr. Greenwood: Okay. So I think that would be a good place to go back to.

Mr. Dowe: We don't get to revise that one.

Mr. Greenwood: Yeah, so I think to ___ the Definitions there.

Mr. Meenaghan: So maybe tag onto the end of that recommendation there in 1: comma, "consistent with the manual" – with the manual and the permit.

Mr. Walters: Yeah.

Mr. Meenaghan: "...and/or the permit." One of those.

Mr. Greenwood: Because that's in our existing permit.

Chair Axthelm: And I think that kind of applies to any of those. I mean, that's – you're talking permeable pavement – I mean any of those definitions. I don't want a conflict with the Stormwater Manual.

Ms. Lohman: No.

Chair Axthelm: If that's what's regulating us then it just creates confusion when you have a different definition.

Ms. Lohman: Or a competing one.

Mr. Walters: And that's why we went back and modified quite a few of the definitions, because they either weren't consistent with the permit definition to begin with or the permit definition changed

Chair Axthelm: All right. Are we okay with that? So the next one – where are we at? Hard surface. I think "hard surface" is the same thing.

Mr. Greenwood: What do you read off of here? What do they call it?

Chair Axthelm: "Hard surface: An impervious surface; a permeable pavement or a vegetative roof."

Mr. Greenwood: I think the commas and everything are in the same place as the permit. The definition's exactly the same.

Chair Axthelm: Okay. The nice thing about us defining it is if we define it and Department of Ecology changes theirs we're still holding the definition till we change it, right?

Mr. Walters: Yeah.

Chair Axthelm: Would that become problematic?

Mr. Walters: Under our current code, we have gone so far as to say we're going to use the latest version of the Stormwater Manual regardless of what it is. *That*, I think, is problematic because that means Ecology issues a new one – which they have multiple times since we adopted the last code – and then we are supposed to be using it. Dale and I both argue strenuously that we should have certainty in what our development code. If their permit changes, if they change the permit, then we will have time to come back and update but we'll do it in a methodical way so we know what's happening and what's changing.

Chair Axthelm: Okay. So “hard surface” – we okay? So not impervious surface.

Mr. Greenwood: I might be surprised if it's different than the permit language.

Mr. Walters: The annotated code proposal has comments that indicate that we checked on these.

Chair Axthelm: Updated to match the permit. Is that right?

Mr. Greenwood: That looks like the language that was used in the updated permit.

Chair Axthelm: Okay. All right. The next page was “land-disturbing activity.” So again updated to match the permit. Okay there? And then “low impact development.” Okay, that was already there. And “native vegetation.” Do you just want to look at these as a whole?

Mr. Meenaghan: Yeah, I may suggest that just to keep this moving along that maybe we –

Chair Axthelm: It's going to take a long time to go through so many pages.

Mr. Meenaghan: If we have things to bring up, we just go at them rather than going through every single comment.

Mr. Greenwood: Yeah, because I'm not seeing any difference in – the only added language was “pursuant to the NPDES permit” and then they quote it.

Chair Axthelm: I guess we're okay with page 3. How about page 4? One thing I have a question on is “qualified professional,” is that it has “must have obtained a B.S. or B.A. or equivalent degree in biology.” So there are people that are certified in certain things, as let's say inspectors or certified to do certain things. It's not – that don't have to have a B.S. or B.A. How do we cover that?

Mr. Walters: Well, that's an existing definition in our code and we are tacking on another sentence at the end there that would enable us to use the term “qualified professional” in the Stormwater chapter. But a professional engineer is always going to have a B.S., and that's the section that we are currently looking at.

Ms. Lohman: That's there now, right?

Mr. Walters: Everything other than 4 is there now.

Chair Axthelm: Must be a professional engineer.

Mr. Greenwood: And I think we discussed that at some length at maybe one of the first meetings we had pertaining to what types of – there was some reference to licensed and unlicensed and I think we just made it “qualified professional” so as to address who could, depending upon their discipline.

Mr. Walters: I think that that has also come up in Shorelines because the same term is used in the Shoreline Plan and in the critical areas ordinance.

Mr. Greenwood: Right, I think Matt brought that up.

Mr. Walters: Yeah.

Chair Axthelm: Okay. So the next page, page 5. We okay there? Does everybody have the same page as I do? Okay, I just want to make sure. All right. And then chapter 14, Variances. Any issue with chapter 14, Variances?

(several negative sounds)

Chair Axthelm: Okay.

Mr. Greenwood: This does not incorporate any of the County-initiated proposals, Dale, to change this administrative appeal process? Because there was some reference to removal of, I believe, it’s administrative appeal pertaining to a variance as it relates to setbacks or something like that. That’s one of the County proposals. I don’t remember which –

Mr. Walters: For the 2016 Update?

Mr. Greenwood: Yeah.

Mr. Walters: Right. This section –

Mr. Greenwood: They’re going to act independent – there’s not going to be any conflict there?

Mr. Walters: Yeah, so this proposed change fixes that issue for the Stormwater chapter. It doesn’t fix it for anything else. So the last blue addition there is that adjustments or exceptions from the Stormwater chapter are decided using the process in the Stormwater chapter and not in the Variance chapter. And that was the issue that is proposed to be addressed during the 2016 Comprehensive Plan Update. Yeah, because we have things where the Administrative Official can approve some variance from the code, some exception to the code, but it’s not really a variance. But the Hearing Examiner has found that you should use the variance criteria and the other criteria that are outlined in the code. And so the 2016 Update proposal is to go through this section and change it so that you’re only using the criteria listed next to each one of these. So alternatives to the Public Works Standards, the ag siting criteria, all of the (a) through (e) here, you’re only using those criteria and you’re not also calling them an administrative variance that has to use the variance criteria. I guess, where appropriate, somebody’s going to be looking at each one of those.

Anyway, so we’re not suggesting in this code proposal to fix that big problem. We’re just fixing it for the problem of the technical deviation here. Because technical deviations – first of all they’re not called out by the permit or the manual. They’re called adjustments or exceptions. We changed the name of them. And second, they have a specific set of criteria that you *must* use to

determine if you get an adjustment or exception. And the existing code, based on the Hearing Examiner's and the Board's interpretation of existing code, would have required you to also use the variance criteria. That creates some problems, so we fixed it here. We'll probably fix it again next year when we do the code update for the Comp Plan.

Chair Axthelm: So in chapter 14.16, Zoning, on that first page, page 7. Any objection?

(silence)

Chair Axthelm: All right. And then page 8. I appreciate the flexibility in some of the definitions now. Okay, page 9. Any objections?

(silence)

Chair Axthelm: Okay. All right, so section 14.16.830, Landscaping requirements. Okay, any changes to that section?

(silence)

Chair Axthelm: Okay. And then chapter –

Mr. Greenwood: I have a question. What is the standard protocol for when you use – is it section by section when you use the full verbiage versus the acronym? Like on page 10 where we actually describe – where we say “Where a Low-Impact Development stormwater facility is required” and then when do we flip it to say “LID”? Do we keep it where we spell out the whole thing? Because at some point we get to where we use acronyms, like MR1 through – is there a standard procedure for that? For methodology?

Mr. Walters: I don't know. If the – thinking about it just now, if the acronym is defined in the Definitions, then maybe you could use the acronym everywhere. But it still might be helpful if the first time you saw it in – for instance, the Landscaping section. LID is not used at all except right here so if you use Low Impact Development the first time in this paragraph it's going to be very clear.

Mr. Greenwood: Okay, I just – I saw the full word there and I just didn't know if that was a common practice to – when you do and when you don't.

Chair Axthelm: There was a note in the documents before – the staff – I think it was the staff report, one of them – that said that Low-Impact Development can take the place of or can fill the requirement for landscaping.

Mr. Greenwood: Or landscaping can fulfill some of the requirements for Low-Impact. Is that what you said?

Chair Axthelm: Well, no. I'm saying basically if you have to do Low Impact – LID techniques or if you have to put in a rain garden then that would fulfill the requirement of landscaping.

Mr. Walters: That's (2)(c) here. It doesn't specifically say a rain garden will fulfill the requirements of the landscaping, but it says if you do a rain garden and the rain garden does fulfill the requirements of landscaping you don't have to do both the rain garden and the landscaping. So the landscaping is usually required as a buffer between types of uses and that

kind of thing. And if you do a rain garden and it fulfills the other existing requirements, you don't have to do both. That's all it's trying to get at.

Chair Axthelm: I just want to make sure it says it can fill the requirement of landscaping. It doesn't directly – it's not clear to me that way.

Ms. Lohman: Do you want to add "and may fulfill landscaping requirements"?

Mr. Walters: Well, I think that we didn't write it quite like that in the code simply because it probably won't *fulfill* landscaping requirements, but it could be used as *part* of them.

Chair Axthelm: If you – well not – because Low Impact Development may not be landscaping.

Mr. Walters: Well, you probably have to start looking at the precise requirements of the Landscaping section, which include things like planting trees at certain distances and that kind of thing. So you might have those in a rain garden and they might – like, have you seen the rain garden out front here? It's very full. And it might achieve some of the buffering that the Landscaping section might try to achieve. But it doesn't achieve the precise landscaping requirements in the Landscaping section because the Landscaping section of code says you need to plant trees at certain intervals. That doesn't. But you could redesign your facility to meet the landscaping requirements if you don't compromise the stormwater features of the facility.

Mr. Pernula: I think simply put it's just giving credit to the landscaping you're putting it towards your landscaping requirement. If it fulfills it, fine. If it doesn't, you can augment it adjacent to it and meet the requirement.

Mr. Dowe: Josh, one example would be landscaping is pretty often required on side property lines for commercial stuff. Your LID work probably wouldn't be that expensive so the LID would be a portion of it.

Chair Axthelm: Yeah, and that's what I want to make sure it says. We need something in there to say *may* fulfill landscaping requirements. It may be used to fill landscaping requirements.

Mr. Dowe: Okay.

Chair Axthelm: Ryan?

Mr. Walters: Yeah, I'm thinking about how to word that.

Chair Axthelm: Landscaping can be pretty significant sometimes when you're building. If you're having to put in a rain garden the materials in that most of the time fulfill those landscaping requirement. But what I don't want is to have a situation where you put in all this landscaping and then you have to put additionally some of the LID stuff.

Mr. Walters: Which is the purpose of the –

Chair Axthelm: Or they can work together.

Mr. Walters: Right.

Ms. Lohman: Aren't you coordinating?

Chair Axthelm: Coordinating or may be used as part of the landscaping requirement.

Mr. Walters: What you might do here is suggest for change number 2 that we rewrite that to make it clear that you can use one to credit the other.

Chair Axthelm: Yes. What you just said, yeah.

Mr. Walters: So maybe rewrite 14.16.830(2)(c) to make it clear that LID stormwater facilities can be used as credit for landscaping requirements where they would meet the landscaping requirements.

Mr. Pernula: Or meet all or a portion of the landscaping requirements.

Chair Axthelm: I'm not writing it here. I just want to make sure credit's given. Okay. So Land Divisions. Sorry – anymore on Landscaping requirements? Are we okay with that statement?

(sounds of assent)

Chair Axthelm: Any objections?

(silence)

Chair Axthelm: Okay. And any other general Landscaping requirement comments?

Ms. Candler: No.

Chair Axthelm: Okay, so 14.18, Land Divisions. The whole section – any comments?

(silence)

Chair Axthelm: Okay, seeing none we can move on to the Stormwater Management section, 14.32. It looks like there's no changes to that.

Mr. Walters: No, this section is the one that is wholly – this section is not shown in strikethrough and underlines because of the significant organizational changes, which is why we went through and added all the comments to explain how things were rearranged.

Chair Axthelm: So it did change, it's just that it wasn't stricken through.

Mr. Walters: Dramatically, yeah. It got really messy when attempting to show it in strikethrough and underline.

Ms. Lohman: Well, you had that standalone document where you showed on the existing what you took out.

Mr. Walters: Right. Yeah.

Ms. Lohman: _____ document as separate.

Mr. Walters: Mm-hmm. I forgot we did that.

Chair Axthelm: So possibly – okay, so the Stormwater Management Policy section. Do you have any comments for the Policy section?

(silence)

Chair Axthelm: All right, so Applicability? It's on page – starting on page 13 and ending on page 14.

Mr. Greenwood: Do you want to go through them page-by-page, Josh, or would it be more efficient to go where people have changes recommended?

Ms. Lohman: We're halfway through.

Mr. Greenwood: Well, there's a lot of pages – 32 pages, I believe. 27.

Ms. Lohman: We're on 13.

Mr. Greenwood: I was just thinking it might take a little longer.

Chair Axthelm: I can cover it as far as this: Does anybody have anything on the Stormwater Management section?

Mr. Greenwood: Yeah, that makes sense.

Chair Axthelm: Through page 15. Does that clear it up? Okay, seeing none, let's move on to the table, page 16. How about just take a second and look at this?

Mr. Greenwood: Sure. I was just going to suggest that, based upon our last discussion for, I believe, comments from the Commissioners, that we wanted a footnote or something to identify the acronyms used in the table. I think that would help with clarification. Just MR1, MR2, 3 –

Mr. Walters: So we addressed that in the staff report.

Mr. Greenwood: Okay.

Mr. Walters: Minimum Requirement is the name of the column header, so that might be an appropriate place to put MR in parentheses.

Mr. Greenwood: Right.

Ms. Lohman: But SWPPP...

Mr. Walters: Where is – oh, the Stormwater Construction MR2? Yeah.

Ms. Lohman: You tripped, too. I saw you!

Chair Axthelm: If you spend any time looking at this code, the MR1...it's a good thing to be there but when you first look at it it's a little overwhelming.

Mr. Greenwood: Sure. Sure. Yeah.

Chair Axthelm: I've actually been working on a couple projects this way and so this – although this is not currently adopted, it sure helps out to understand it.

Mr. Greenwood: Well, I think so too. Just a footnote of clarification would be helpful, or in a header – however you think best.

Chair Axthelm: Okay. So are we okay with the tables?

Ms. Candler: If we're really just talking about SWPPP, wouldn't it take up less room to just spell it out than do it in a footnote?

Mr. Greenwood: There's room for it there, I think. Well, maybe not.

Mr. Walters: I don't really think you need to worry about that one. A footnote – we don't use a lot of footnotes in the code. We use no footnotes that don't have a particular place. Like footnotes in the traditional sense are at the bottom of a page. We have none of those. We have some notes that are maybe more like endnotes. I sort of don't like those.

Mr. Greenwood: Because they get lost or –

Mr. Walters: We could spell it out but we could also just abbreviate it in some other way there, because it doesn't really matter because MR2 is what you've got to go read and you're going to find that when you read it in the plan. So we could maybe come up with some other abbreviation for that. I also don't think we should spell out the whole thing right there in the cell because then it's really big.

Chair Axthelm: In this case, I can understand leaving it SWPPP because of the – we know what it means.

Mr. Greenwood: Okay, what does it mean? Don't look. Tell me.

Chair Axthelm: Stormwater Pollution Prevention Plan.

Mr. Greenwood: That's what I thought it was. Very good.

(applause)

Chair Axthelm: It does tie your tongue up a little bit.

Mr. Greenwood: So we're going to put your phone number at the bottom of this table and if you have a question, call Josh.

Chair Axthelm: I better know what that is!

Mr. Walters: Well, and I think the other reason that it's abbreviated is because – like that – is because people – these people – call it a “construction swip.”

Chair Axthelm: Mm-hmm.

Ms. Lohman: Yeah, but the everyday public, it's not their everyday –

Mr. Greenwood: We're told not to use jargon.

Mr. Walters: No. Well, and we could also have in this table simply have said MR1, MR2, MR3, MR4 because the introductory line to the table says "The Stormwater Management Manual's minimum requirements are modified as provided in the table below." So there is a – there's a line. On your copy the table is on the next page and there's a big space because it didn't fit and I didn't want to break it across the page break, but when you read it in the code it's all going to be on the same webpage so you'll see that right next to each other. But the label's there simply so you know, Oh, yeah, MR2 that's the SWPPP; MR3, yeah, that's Source Control. But it's not regulatory.

Chair Axthelm: Keeps it at a glance. Okay. Good? So are we okay with those tables?

Mr. Greenwood: I think they're helpful.

(sounds of agreement)

Chair Axthelm: Very much. Thank you.

Mr. Greenwood: They're not easy.

Chair Axthelm: Okay, so page 17. Go ahead.

Ms. Lohman: Wait – back to the table. So are we wanting to eliminate all the acronyms then? Because you get O&M. I mean, I'm assuming we're saying Operations and –

Chair Axthelm: No, I said *leave* the acronyms because you have a definition in your – in those individual sections that defines it. This is just another glance.

Ms. Lohman: Oh. Okay. I see what you were saying now. I wasn't jumping to what *you* said.

Mr. Walters: So before you move on from the table, there was a comment that we received during the comment period about stormwater impacts on neighbors, and we looked hard at that one. We looked at the existing code. We talked to Brown and Caldwell. And, by the way, that's not Brown and Caldwell; it's just the name of the firm. And we came up with a recommendation, at least for your consideration. So this is on page 3 of the supplemental staff report. The existing code really does not include a constraint on you gathering up your stormwater and pointing it at your neighbor until you reach the threshold of large development. For large development, you're prohibited under the existing code from directing your runoff to downgrading of properties.

So the suggestion in the supplemental staff report is that we use some – add some language to 14.32.080(1), which you haven't gotten to yet, but also to modify the table to use MR4, which is Preserve Natural Drainage, across the board like MR2 is currently applied in the table there. "Outside the permit area" – I'll read from the staff report here – "Outside the permit area, the proposed table there would require MR4 for low intensity land uses only those ones that meet the 7000- or 14,000-square foot threshold. But upon further review and after discussion with our consultants, staff believes that MR4 is not particularly onerous and recommends that the table be modified to apply to all projects." And the pertinent section of MR4 is "Natural drainage patterns shall be maintained and discharges from the project site shall occur at the natural location to the maximum extent practicable. The manner by which runoff is discharged from the

project site must not cause a significant adverse impact to downstream receiving waters and downgradient properties. All outfalls require energy dissipation.” And, you know, it explains what that means. So the supplemental staff report suggests that you either do that or the modification to 14.32.080 to add a new paragraph to say that runoff from development may not cause a significant adverse impact to downgradient properties or both.

Ms. Candler: So, Ryan, if we want to do this, we need to put it as a recommendation?

Mr. Walters: Right. Yeah. Because otherwise there would not be a requirement for development that’s under those thresholds – under the 7000 square feet – to not divert their stormwater onto neighboring properties. And there isn’t a requirement now in the current code.

Mr. Greenwood: What about 14.32.080(2)(b), and then say all runoff from impervious surfaces, roof drains and yard drains must be directed so as not to adversely affect adjacent properties?

Mr. Walters: Are you talking about the current code?

Mr. Greenwood: Well, it’s the current language in the proposed document.

Ms. Lohman: What page are you on?

Mr. Greenwood: I’m on page 21, and also on page 20 under Generally – maybe you must have looked at this already, but “All proposed developments must provide onsite Stormwater Conveyance Facilities, pipes, ditches, and storm drains with sufficient capacity to convey without flooding or otherwise damaging existing or proposed structures, consistent with the Stormwater Management Manual.”

Mr. Walters: What was the first cite that you read?

Mr. Greenwood: The first one was page 21 at the top, which is 14.32.080(2)(b).

Ms. Candler: Because I think we’re not talking – MR4 is not Stormwater Conveyance Facilities. Is that right?

Mr. Walters: Yes. I think that’s the problem with that section, is that that is constrained to Stormwater Conveyance Facilities. That’s under the Easement, Tracts, and Covenants section.

Mr. Greenwood: “All runoff from impervious surfaces”: So you think that just applies to a drainage facility, conveyance facility?

Mr. Walters: Well, it’s under a section with that title, but generally –

Mr. Greenwood: Pull it out then and put it under “Generally.” Can we do that?

Mr. Walters: Yeah, it’s under a section with that title. The section name is “Stormwater conveyance facilities.” The subsection is “Easements, Tracts, and Covenants.” The titles typically don’t matter, though. There needs to be a sentence that says this is the constraining applicability statement. So yes, I think that (2)(b) that you cited there could be moved up to “Generally” and be maybe in a better place, and then (2)(a) – there wouldn’t need to be an (a). It could just become part of (2). Because (b) does not seem to actually be about easements.

Mr. Greenwood: I don't think so.

Mr. Walters: I guess it's about covenants, but the first sentence could have a more general applicability.

Mr. Greenwood: I don't think ___ to have an impact on your neighbor, but... Because we go into wetlands and basin planning and regional facilities and all that afterwards, too, and that's not just –

Chair Axthelm: Well, and see in the table, the table's pretty basic. It does not give you all the answers. It's just a quick reference. So how you go about it is defined further in the section. So I hate to put too much information in the table when we're keeping it simple.

Ms. Lohman: Yeah, but I think you need to have the table reflect any kind of requirement so that everybody knows.

Chair Axthelm: Some of the requirements are there but it doesn't refer to how you come about those requirements, because the restrictions on those requirements are still back in the main section. And that's for all of them.

Ms. Lohman: But back to the table again, it's that line item – it is applicable to everybody, is what the – why he directed us to the staff – supplemental staff report – was when they were talking about a single-family home, a single development, or a fairly small development, they still aren't allowed to just flood their neighbor.

Mr. Greenwood: Well, it requires them to actually – it says, "Wording to this effect must appear on the face of all final plats, and must be contained in any covenants required for a development." So it's attaching it to the project and the plats.

Chair Axthelm: You're talking further in this section?

Mr. Greenwood: I'm still talking about section (2)(b), about "All runoff from impervious surfaces, roof drains, and yard drains...not to...affect adjacent properties."

Chair Axthelm: Now this comment they were making here, he was going to the natural drainage pattern, right?

Ms. Lohman: Right.

Chair Axthelm: Isn't just impervious surfaces, so that's *any* drainage.

Mr. Greenwood: Well, you can't alter the natural drainage, can you?

Ms. Candler: You're not supposed to.

Chair Axthelm: No.

Mr. Walters: Well, you could have hard surfaces with runoff, I guess.

Chair Axthelm: I guess sometimes you can't really have control over a natural drainage system. You have a seasonal creek or a seasonal – an area where normally it's not running water but

during the wintertime it may have some sheet flow running off to your neighbors. But if that's the natural drainage that's already existing...

Mr. Walters: And that's the idea behind MR4, that bad natural drainage you don't have to fix.

Chair Axthelm: That's my fears. If you put it in there, is it going to be too restrictive or pushed to a point where you're having to modify the natural drainage? I don't know.

Mr. Greenwood: This only affects new developments, right? It doesn't affect –

Mr. Walters: Correct.

Mr. Greenwood: – existing?

Chair Axthelm: Okay.

Mr. Greenwood: Because close to me is a chain link fence with a pipe that stops at the chain link fence. And so, you know, that's one of the things where now it's my water but, you know, that's one of those where now I get to do the energy dissipation and that. So new developments hopefully won't do the same thing, even though it was new when I moved in. But – yeah.

Mr. Dowe: My neighbor's done the same thing and I don't want to see it happen again.

Mr. Greenwood: Yeah.

Mr. Walters: So I like the idea of moving at least the first sentence in (b) up to Generally. I think that makes sense. And then we can probably adjust the rest of (b) to talk properly about what needs to be contained in any covenants and on the face of the plats. It's somewhat problematic to have language about the face of plats here in the Drainage section because it probably should be in the Subdivision chapter, if anyone is to ever read it and require it. But I think we can leave that as it is for now but it does seem to me to make sense to move (b) up into Generally, or half of (b).

Mr. Greenwood: This falls into the category of reorganization for improvement, right?

Ms. Lohman: So that's number 4 on our changes?

Ms. Mitchell: To move the first sentence? So are we moving the whole thing or just the first sentence now?

Ms. Candler: He said first sentence.

Mr. Greenwood: Yeah, that was just because we were looking for something to address that staff comment or suggested change in the table. And I felt it was already addressed in that section.

Mr. Walters: So MR4, the staff report suggestion is to just apply MR4 everywhere. MR4 would be somewhat different than using this line because MR4 says natural drainage patterns must be maintained and discharges from the project site must occur at the natural location. And (2)(b) here that we're moving up, "All runoff from impervious surfaces, roof drains, and yard drains must be directed so as to not adversely affect adjacent properties." That is clearly a helpful

sentence, but it doesn't say quite the same thing because you could change your project site in such a way as to maybe just by moving dirt around direct all your drainage onto your neighbor's property, whereas MR4 would not allow you to do that. It would require you to have discharges from the project site occur at the natural location to the maximum extent practical.

Chair Axthelm: So it's discharging to the natural location but it doesn't mean it's going – you don't want that to increase or impact your neighbor more significantly.

Mr. Walters: Yes. The next sentence is "The manner by which runoff is discharged must not cause a significant adverse impact to downstream receiving waters and downgradient properties."

Mr. Greenwood: I think that's more encapsulating than just talking about the impervious surfaces, don't you think?

Mr. Walters: Right. That's my point. Yeah.

Ms. Candler: In addition to moving the first sentence, we're adding that paragraph, right? Is that the idea? Add the paragraph that's –

Mr. Walters: In the staff report? The suggestion is not to add the paragraph because that's from the manual, but to add the line at the bottom of that page: "Runoff from development may not cause a significant adverse impact to downgradient properties," which is summarizing some of that.

Chair Axthelm: _____. Okay.

Mr. Walters: Do we want to do that?

Ms. Candler: I think we should.

Chair Axthelm: Everybody agree with that?

Ms. Mitchell: Yep.

Mr. Greenwood: Yep, I do.

Chair Axthelm: Okay, I guess the question here is we have other things on our agenda. Do we want to keep going with this right now?

Ms. Lohman: Mm-hmm.

Mr. Meenaghan: Yeah. It's almost done.

Chair Axthelm: Okay. I want to make sure we're giving this enough time and covering it. Okay.

Ms. Lohman: So what page are you up to now?

Chair Axthelm: So we're on 16. Any other changes to the tables on page 16?

(silence)

Chair Axthelm: So then let's go through – so page 18 up to Low Impact Development. Any changes or comments to those?

(silence)

Chair Axthelm: So then Low Impact Development techniques and facilities, that section. It should be page 18, 19, 20.

Mr. Greenwood: My only question would just be the implementation of that notification on page 19 (b)(ii). It talks about another statement to be added to the face of the plat, and I think Ryan mentioned that or maybe observed that if someone read it they'd get it on the plat. Is that a likelihood that they would not add that language to the plat, where it says "For subdivisions, the maximum effective impervious surfaces allowed for each lot must be added to the face of the plat"?

Mr. Walters: Well, it depends on who's doing the review. The stormwater review people should be identifying stormwater things that need to go onto the plat, but they're not actually issuing the document that says that, I think, most of the time. Bill or Dale should jump in as needed here. In the Subdivision chapter we did make a bunch of little tweaks to make sure that there is some reference back to the Drainage chapter, but it's not real detailed.

Mr. Greenwood: Because I'm trying to think if any impervious surface language is on a plat that I'm familiar with, which would be mine, and there's changes within that development and are those even being implemented or considered when those changes take place? And maybe that's just part of the whole maintenance, inspection – you know, because you develop a design and then people change the design within because you've got individual owners within. So it's nice when it's one big development when you've got one person in charge, but usually you don't. That's why I'm concerned about the whole maintenance aspect of these.

Mr. Dowe: Well, and henceforward we're talking about in the NPDES area so we're only talking about a portion of the development that'll happen in the county. So the maximum impervious area for each lot is supposed to be put on this by the civil engineer that draws it, and then the review people are supposed to catch it. There are millions of notes on plats and so, Will they do it or, How will this be implemented? And people will do the best they can, I'm sure.

Mr. Pernula: And it's a new requirement. It may not be reflected on existing plats.

Mr. Greenwood: But it's on some plats now? Or there aren't any that have it on there currently?

Mr. Pernula: I don't think it's a requirement currently, is it?

Mr. Dowe: It's not a requirement currently. There may be some drainage plans where they do that for certain lots, you know, where the drainage is –

Mr. Pernula: It seems helpful. I mean, if – it's a trigger when people go to do something different on a plat, right?

Mr. Dowe: Right.

Mr. Greenwood: I would think so. If you're in the Planning Department and you're reviewing somebody's project proposal, What subdivision are you in? It's kind of important to know that.

Mr. Dowe: Yes. Well, this would just tell the world our drainage for the subdivision is designed using these criteria, and so they would know. You're right. It would be helpful.

Ms. Candler: Ryan, didn't you say you're anticipating maybe that the entire county or close to would be in NPDES next year?

Mr. Walters: No, not next year.

Ms. Candler: Next permit, I meant.

Mr. Walters: But that seems to be the direction things are headed.

Mr. See: Damon and Patrick could comment on this as well, but on the federal – go ahead.

Ms. Lohman: I've got to ask the question: How, when the next area is ag and we have some of the most restrictive land use regulations for agriculture. So how is it going to be? I'm struggling.

Mr. Walters: Well, ag is exempt. Ag activities are exempt and we have –

Ms. Lohman: But then the next predominant land use is timber which is also exempt, so –

Mr. Walters: So you can expand the geographic area and have very little effect on some of those activities.

Ms. Lohman: Or a lot.

Mr. Walters: Well, yes, but if you exempt the activity it doesn't matter where the geographic line is drawn, I guess is my point.

Mr. See: I'll add maybe some commentary that will help. At a federal level on EPA in the last couple years there's been talk of changes to the Clean Water Act that would possibly impact Phase II permits like ours and result in something like a change of boundary where it would be countywide. When I have talked to people higher up in Ecology, the likelihood of that in the near future, I think, is minimal. Damon?

Mr. Diessner: Well, certainly that's what you hear now, but how that may look five or ten years from now I don't know.

Mr. See: Currently the way the Clean Water Act and these rules are written is it's based off of population. And for a community like ours where we're considered a Phase II, it's the census-defined urbanized areas and UGAs. That's how it's written. Things can change on the federal level and then go down to the state level and change, but I don't know. Ryan?

Mr. Walters: Yes?

(laughter)

Chair Axthelm: You were saying that agriculture is exempt and that's not necessarily the case with all of it, because I know LID techniques have to be done on agricultural land as well.

Mr. Walters: Agricultural *land* is not exempt and buildings are not exempt. It's the – although we have in this code made them a low intensity land use – but ag *activities*. I'm not sure exactly what the language is but I'll give it to you here in a second.

Chair Axthelm: The reason – we had a project where we had a building built for maintenance for tractors and stuff. And the runoff from the roof we had to put a 50-foot area – he had to take another 50 feet of his field and designate it to grass so that he could drain his – to drain the roof drains.

Ms. Lohman: He didn't tile it over to the ditch?

Chair Axthelm: No, he couldn't do that. He had to have a grass – at least that's the way it came out, is we ended up having a grass area that we had to have it – to have the downspouts go to the grass area.

Ms. Lohman: You could not have gone to a dedicated tile?

Chair Axthelm: If you went to, like, to retain it, but you had to retain the water.

Ms. Lohman: Well, that makes me ask the next question: So in the future, you wouldn't be able to drain right to the drainage district? All your roof buildings? Staff, what's –

Mr. Dowe: For new buildings they would have to follow what's in the code.

Ms. Lohman: Everywhere?

Mr. Dowe: Everywhere, but there's first of all the exemptions – commercial, agricultural practices involving production of crops or livestock are – they're exempt. However, a conversion from timberland to ag or the construction of impervious surfaces are not exempt.

Ms. Lohman: But Ryan said buildings are not exempt.

Mr. Dowe: Buildings are not exempt, but if we go to the table –

Ms. Lohman: So if I were to build, say, a spud shed and I wanted to gutter and downspout all my water, I would not be able to put in a tile to the ditch? A dedicated tile for those downspouts?

Mr. Dowe: I don't – I'm looking through the answers. So agricultural buildings are described as a low-use intensity so it would depend on how big the building is. If it's 60,000 square feet you would probably have to do something with your drainage water.

Mr. Walters: Well, except that I think Annie is suggesting she has a plan for what she's going to do with her drainage water and that is send it to the ditch. So this is a question in terms of what the manual would allow, I think. Could you divert your water to the ditch, or do you have to infiltrate it onsite?

Mr. Weber: It would depend on whether the area is inside the permit area or not.

Mr. Walters: So say it *is* inside the permit area.

Mr. Weber: If there's an agricultural area inside the permit area, then it would need to follow the triggers that are in the manual – follow them.

Chair Axthelm: So anything in the floodplain then would have to have – would have to implement the procedures.

Mr. Weber: In the floodplain?

Chair Axthelm: In the floodplain.

Mr. Greenwood: Because of the map? Because of the permit area currently or –

Mr. Dowe: The floodplain regulations are separate from what we're doing here.

Chair Axthelm: No, no, no. I'm not talking floodplain regulations. What I'm talking is because it's – it has to do with stormwater. Oh, okay, it might have had to do with critical areas. But we had to implement the Low – the LID techniques.

Mr. Walters: LID is a requirement of the floodplain code as well for compliance with the NMFS Bi-Op, and that's somewhat different and we will probably have to be looking at that soon. But I do wish we had more detail on an answer to Annie's question about, Can you send the water off to a ditch that has plenty of capacity, or do you have to infiltrate onsite for, you know, other policy reasons like aquifer recharge or that kind of stuff? Would the manual allow you to get to a place where you could discharge to the ditch?

Mr. Weber: If you're in the permit area, I think you have to meet the minimum requirements that are triggered by the threshold of how large your development or redevelopment is.

Mr. Walters: So would that be MR4?

Mr. Weber: Well, it would be – if it was big enough to trigger MR5, then you would need to do LID to the extent that it's feasible. And if it triggered MR6 or 7 then you'd be into flood control and water quality as well.

Mr. Walters: MR5 is the infiltrate, disperse and retain requirement?

Mr. Dowe: Are we talking inside or outside the permit area now?

Mr. Walters: Assume we're talking inside the permit area because then it's very clear that the entire manual applies where the thresholds are met.

Ms. Lohman: Well, I'm even asking the question for outside.

Mr. Walters: Well, and we're talking about the possibility of maybe – I mean, the inside is going to be more onerous, but you're talking about the possibility of maybe the permit ultimately being countywide?

Ms. Lohman: Yeah.

Mr. Walters: Outside the permit area under the current proposal MR5 is never reached by an ag building, so infiltration is never required by an ag building, because an ag building is low intensity and MR5 you never get to under low intensity.

Ms. Lohman: Then what triggers it now? What triggers having to build retention ponds now then?

Mr. Walters: A retention pond is usually going to be used for flow control, right? So under our current code – well, again, our current code, the question depends on whether you're inside or outside the permit area.

Ms. Lohman: Outside.

Mr. Walters: Outside the permit area? Do you have a particular example you're working through, do you think?

Mr. Greenwood: Do you want to give your parcel number?

Ms. Lohman: I haven't had to dig one, but other people have.

Mr. Greenwood: That's what they all say.

Mr. Walters: Feel free to jump in.

Mr. See: I don't know the answer under the current code what's required, if anything.

Mr. Walters: Well, under the current code there're a whole series of technical requirements that kick in at various thresholds, like the large development threshold.

Mr. Greenwood: Where can we go with this discussion, Josh?

Ms. Lohman: I mean, we could move on because nobody knows the answer. But it's a – that's the point, is we can't answer the question.

Mr. Dowe: The flood damage prevention ordinance, the 14.34, and the critical areas ordinance each have requirements that are different than these so they may be triggered on some developments.

Chair Axthelm: So this may require an LID but the flood, in my case, did.

Mr. Dowe: The flood did in your case, yes.

Chair Axthelm: Does that answer it?

Ms. Lohman: Possibly.

Chair Axthelm: Okay. Any other questions here? Okay, where were we? Low Impact Development techniques and facilities – any other questions on that?

(silence)

Chair Axthelm: Okay, so Stormwater conveyance facilities, which is page 20 and 21 – actually 20, 21, 22, 23.

Ms. Candler: We covered some of that already.

Chair Axthelm: Part of it. Any other questions on 20, 21, 22, and 23 – pages with the stormwater? The only one I still have an issue with is that last section, Inspection of Stormwater Facilities. I still have a hard time with the inspection of those. I just think –

Ms. Lohman: What page are you on?

Chair Axthelm: That's page 23. I'd like to see where that requirement – I don't – where that requirement is because it seems to me that it just – it parallels the septic systems so closely I would think that you would have the same type of requirement. What I don't want is the County to have to put easements all over the county because of this to get access and have free access to your property. I think a requirement to have it inspected is appropriate and inspecting authority's appropriate, but not free access.

Mr. Walters: So the permit, the NPDES Permit, provides that the ordinance that a permittee – thus, us – the ordinance or other enforceable mechanism that the permittee adopts must include at a minimum a whole bunch of things and 3 is the legal authority through the approval process for new development and redevelopment to inspect and enforce maintenance standards for private stormwater facilities approved under the provisions of this section that discharge to the permittee's MS₄ – MS₄ is the Municipal ___ Stormwater –

Mr. Dowe: Storm Sewer System – yeah.

Mr. Walters: Okay. The 4 is an exponent.

Chair Axthelm: So this is directly referring to an MS₄.

Mr. Walters: That is what the whole permit is about, is the County's stormwater system. If you are able to make the stormwater disappear, then the permit would maybe not apply to you. So the permit does not require that we obtain easements, but the permit requires that we demonstrate that we have the legal authority to make the inspection system happen and we believe that easements are the way to make that happen.

Chair Axthelm: And I disagree. I think that that needs to change, similar to the septic systems. Have the requirement to be inspected – have that set in place, but not granting authority for easements. I think that would be too much to regulate because so many properties would have easements to it and it's just – I think it'd be too much. Because as this goes on, as many properties will have to have that, why –

Mr. Walters: I would just suggest that the septic inspection system is not really working very well.

Ms. Candler: It's also more expensive to landowners because you have to – you pay some private person to come and do that inspection – which you can take the septic classes and get – at least at one point there was a rebate. But I'm assuming – maybe the County is going to charge also, but I guess that might make a difference.

Chair Axthelm: The County would have somebody – it would have – somebody would have to be paid to do that.

Ms. Candler: They will have a fee but I don't know if it'll be as much as a private consultant that you would have to pay. I don't know.

Mr. Walters: I'm not sure how the County could charge, actually, for the inspection.

Chair Axthelm: Through taxes because you have to pay somehow. So it still would be –

Mr. Walters: Yes, there're general taxes but I don't know how the County would charge a fee to an individual property owner for the inspection of that facility. I don't know what authority we would have for that.

Chair Axthelm: Does anybody else have the same feeling I – I mean, I could write it here but it's not going to make any difference.

Ms. Candler: I totally see your point. I'm torn. I'm really torn which way that should go.

Ms. Lohman: Isn't it already a condition on the permit when you apply for your development permit that these are the expectations of the County when you apply for the permit? And by signing your name on that, doesn't that right there give access? I'm asking the staff.

Mr. Dowe: For a development permit, yes – for the life of the permit but not forever. So this only applies where a stormwater facility is required so it's only going to be in large development. So it won't be – you know, if you live in a house in a plat it's not going to be in your yard. It's going to be if there's a stormwater facility for the plat, or commercial will have it.

Ms. Lohman: So you're not going to come out and look at individual – an individual homestead and their rain garden or their vegetative roof or –

Mr. Dowe: The answer is yes and no. So inside the permit area we have to. Outside the permit area, if you do a rain garden – well, if you do it when you don't have to we won't come look at it at all. We'll just leave it up to you. If you use it as your drainage, then we'll have you look at it and give us a report periodically. And how often that period is remains to be seen. This is new to us too. We're not going to do it every year because we don't have the staff to do it.

Ms. Lohman: You're only inspecting then the big ticket stuff?

Mr. Dowe: Stormwater facilities, yeah, so that's right. Your house doesn't have one, I bet.

Chair Axthelm: Well, it may not but within your requirements it seems like it goes down to 2000 square feet, so anything – there's different thresholds, and so when you go down to those square footage you may have a small one but then you have to designate an easement on your property even for a single-residence over –

Mr. Dowe: An easement isn't necessarily, you know, an access road-wide. It's just access to go look at it.

Ms. Hughes: And I'd like to – I think that that might be the issue. It seems like "easement" seems to cause some emotions and some issues because there might be a perception that an

easement means that, Oh, they can come in and they can, you know, do whatever they want out here. But that's – like Ryan had said earlier, you can actually bracket an easement to be just – have bookends that say, This is strictly for the stormwater facility inspection. You can write it in any way that you want. So an easement isn't – you know, you can bind that easement to be just one particular thing, if that's the concern. I'm hoping that that's –

Chair Axthelm: Yeah, and that helps, I just – it just, to me, and it's not a matter of access necessarily. I mean, that's part of it – for privacy. But the other issue is that putting the County as the regulating authority it gives you that much more things that you have to do and that much more for taxes, where private industry, like the septic system, can do that – can be certified to inspect and make sure those things are working right. So and I think that becomes sometimes more cost effective than what the government would be to have to go in and do it all.

Mr. Dowe: Well, outside the permit area that's exactly what will happen, is someone – maybe the designer inspects them or somebody like that. And it won't be staff.

Chair Axthelm: Okay. And you couldn't do that within the permit area.

Mr. See: That's correct.

Mr. Dowe: That's right.

Mr. See: Yeah, Ecology has been pretty clear with the permittees that, you know, Within our permit area, self-inspection programs will not be sufficient.

Chair Axthelm: Okay.

Mr. See: And the responsibility to inspect is on us, the County. It's under our operation/maintenance responsibilities, I believe.

Chair Axthelm: If that's the case, I guess that's what it is.

Mr. See: Yeah, outside the permit area we have a lot of flexibility so we were looking at some examples of other jurisdictions having similar self-inspection programs where you – you know, property owners could be like a Septics 101 class could be taught how to inspect their facilities. That's a program, though, that would have to be developed and carried forward for *outside* the permit area. But, yeah, within the permit boundary, that census-defined – or the UGAs and urban growth areas we're somewhat boxed in by what the permit says we have to do.

Chair Axthelm: You said that's *now*, but then you said eventually the NPDES area will be the whole thing so then it'll end up going eventually to everybody.

Mr. See: It's a possibility. Like I said, it's not – I don't see that forecasted immediately.

Ms. Hughes: What about a better definition for "easement"? Binding – can we redefine "easement" right now to keep this going?

Mr. Walters: First of all, there isn't a definition for "easement" and there may be just a misunderstanding as to what "easement" does or does not include. I don't think that we should propose a definition for "easement," but you might amend this section of code here to say more about what that easement would do.

Ms. Hughes: Clarification.

Mr. Walters: Right. On the other hand, maybe that doesn't address the concern either. Because if you just want no access and you don't want the County doing the inspection, well, that – the County *has* to do the inspection, so that part I don't think we can get away from inside the permit area.

Ms. Lohman: What mechanism are other counties using?

Mr. See: You know, these regulations to require LID in the Puget Sound region are new to everyone. Some of the bigger counties like Snohomish County and King and Pierce and Whatnot, they've had permits longer, but these LID requirements came to all of us at the same time so jurisdictions are at different points. Maybe Damon has some perspective on other jurisdictions.

Mr. Walters: Although before you get into that I just want to point out that the inspection thing is not limited to LID facilities. It's all stormwater facilities.

Mr. See: Right, a traditional pond.

Mr. Walters: Right. A traditional pond would also have the – and there is probably even greater need for the traditional facilities, because if your pond fails you could have some significant problems.

Mr. Dowe: I can tell you that we already have an inspection program and we inspect annually inside the NPDES area. It's about 30 or 35 sites – somewhere in there. And so it isn't – we don't go out and inspect the whole world. We just look at where there are stormwater facilities.

Ms. Candler: And your authority for that, what does that look like? Is that on a deed somewhere? Is it an easement per se? What does it look like?

Mr. Dowe: I don't know. It's a requirement of the permit is why we do it. Most of them are in places where we can get to them right from the road, so there's that.

Ms. Lohman: But what other – what devices are these other jurisdictions using?

Mr. Diessner: They have ordinances that give the jurisdiction the police power to enter onto property and do inspections. The Phase I communities – you know, Seattle, King County, Pierce County, Snohomish County – have been doing outside inspections for years. The City of Bellevue has been doing onsite inspections of stormwater detention facilities for decades and it does so under the authority granted by an ordinance that allows them to do private site inspections.

Ms. Lohman: But are they using a title encumbrance?

Mr. Diessner: No.

Ms. Lohman: Well, there's – that's the question. I'm not – nobody's refuting or arguing against the need for inspections or having the County come and do inspections. Where we're hiccupping in is the encumbrance part because then it's not your property anymore. Because

then the County can – it seems like then it's just an open road. And I think that's the struggle. That's the struggle I'm having because we're not understanding what the procedure's going to be if you just have an easement. Are you going to get a notice? Are you going to get a phone call? Or are they just going to show up. You're going to be looking out your kitchen window and there's the County car in your yard and they're out on an inspection. And that's what I felt like when I saw the word "easement." But I don't have any problem with the County wanting to make sure that my – if I had a facility, that it was up to snuff.

Mr. Diessner: Yeah, there are a couple of different things going on here. On the one hand, we have the authority. What allows you to go onsite? And I think what is proposed here is an eased area and the authority would come that way. Other jurisdictions have done it other ways. Then the other piece is how do you go about doing inspections, and that's a different thing. Do you do it with self-certification? Do you allow third-party inspections? Do you have the local jurisdiction go on and do it? Do you give written notice? Do you give phone calls? How does it work, you know? And then the kind of how-it-works thing in other jurisdictions is it's anticipated in the enabling legislation, but it's an administrative function and so there's kind of a handoff where it becomes an administrative program as to how you actually implement the inspections. And then the policy piece, this spills back to that authority. What is the authority that enables you to carry out that inspection program? There are a lot of different options, and jurisdictions throughout the Puget Sound region are struggling with which one fits best for them.

Mr. Walters: So we could – I think by far – to be very candid – the easement approach is the easiest from the County's perspective. And I think quite likely it would be the latter scenario where the County would just show up, look at the facility, and not provide notice in advance. But there could be constraints on it.

I think that we could write an ordinance that wouldn't be a development regulation, wouldn't necessarily even come to the Planning Commission, but would simply say, Stormwater facilities are really important. We have a significant government interest in inspecting them and we're going to inspect them, and we will do it with certain constraints but you must permit us access to your property for that purpose. And we did not plan to write it that way so we haven't researched how we would do that and how well that would work, but the easement would work for sure. If you just have the stormwater facility on your property and we can just show up and look at it, I think that that's fine. If you put a fence and say "No Trespassing," then we may have some additional issues.

Chair Axthelm: Many stormwater facilities actually have fences.

Mr. Walters: Especially ponds so people don't drown in them.

Chair Axthelm: I would like to motion that we take the (3)(a) and strike it. Take it out. And the process similar to inspecting your house or septic system, and also the process similar to for appraisals be implemented.

Mr. Walters: Assessments?

Chair Axthelm: Yep. Use the same process. Don't mess with the easements, don't mess with the title. We already have enough title notifications and attachments to titles. Let's strike it out.

Mr. Walters: A couple comments on that: The assessment procedure is specifically authorized by statute so that wasn't something we created. So I don't think we could – we could maybe imitate that process but we wouldn't be using that authority – just FYI.

Chair Axthelm: Yeah. Do I have a –

Mr. Greenwood: I would support that. I would support the striking of (a) additionally, and if we have to solve an inspection maintenance program – programmatic implementation problem, maybe this just isn't the way to do it. It hasn't been fully fleshed out. I think if you want to see this room packed you initiate an ordinance that says, We want to do this and we're just going to go do it by hook or crook anyway. I mean, when it's a standalone ordinance that says, We want the authority to come inspect, I think you'll get into the property rights issue with everybody who's interested in property rights all in the room at the same time. So how we want to handle administrative inspections I think isn't handled very well with just one line like this. I think it already says that inside the permit area inspection of the stormwater facilities is required, and then it talks about the frequency, and then that's it. And that's what we're doing now. We don't have easement attachment.

Mr. Walters: Yes, but what we're doing now is after the fact inside the permit area where facilities haven't been permitted in maybe the way that we would prefer with easements.

Mr. Greenwood: Sure.

Mr. Walters: What happens now if someone denies us access to inspect their stormwater facility, Bill? We don't do it.

Mr. See: And I'll add that our current program right now within the permit area, with the recession, there has been very few qualifying stormwater facilities built since the 2010 – since – that requirement took effect in 2010 forward, so since 2010 we've had very few qualifying stormwater facilities built within our permit area. The majority of what we're looking at are older facilities that – per the permit, we're not necessarily required to go retroactively back to old facilities. We just think it's good management.

Mr. Greenwood: And, Josh, wouldn't you say then that the striking of this, being a recommendation, the Commissioners can accept it or not accept it and they can – you know, we're not proposing an alternative necessarily but we're not solving the problem, I recognize, either. But we're avoiding another problem, which would be the easement.

Ms. Lohman: But you could suggest a path.

Mr. Greenwood: Do we have one to suggest, I wonder?

Ms. Lohman: Well, the gentleman over there talked about having an enabling ordinance on how to do that and I think it's a little clearer than burying it in – on page 23 of 27.

Ms. Mitchell: Well, the other part of this, what keeps coming to my mind is it's back to those devilish little details in how it's done, and I think people would want to know if there was an easement or any other way to describe what's going to be done for the inspection is assurances of what will be done and what won't be done. One person might follow whatever is expected, where the next guy might not. You might have somebody else that's a little freelance and doing other things as a property owner. Those are the kinds of exceptions where I would be

concerned. It's not the guy that does the things right. It's the other kinds of things. And I think that's where opening this up is where you're going to meet some resistance until something is really clear on what can and can't be done. And maybe that should come up in another discussion.

Chair Axthelm: Dale?

Mr. Pernula: I'd just like to make one point and that's that I understand your concern about having an easement where you have a facility on an individually-, privately-owned property, but we're also going to have subdivisions where they have a common area often owned by a homeowners association or something else. That has to have an easement. I think that that's a clear case where you really need an easement where we can go and inspect it, and those are the ones with the largest impact. So, you know, don't throw the baby out with the bath water and just say that it's never going to be required because we do have subdivisions and some of them do have to have stormwater facilities.

Chair Axthelm: Okay.

Mr. Walters: I would also ask consultants if – it is my impression that Cities are more likely to require you to simply deed them the stormwater facility.

Mr. Diessner: For the public facilities that's correct. They're – oftentimes municipalities require that there be a deeded piece of land, a dedicated tract, or within the right-of-way – within a public right-of-way.

Mr. Weber: But with Low Impact Development that may change.

Mr. Diessner: And so we're entering into kind of a new area so when I talk about what they're doing now that's for kind of the retention/detention stormwater pipes. Now we're talking about having all kinds of smaller systems on individual lots so it's a different kind of a program. Here you've got a situation where you've got inside/outside the permit area, whereas in a lot of the municipalities we work with it's all inside the permit area and they all have to be dealt with. So it's just a kind of a different situation here in some ways. And then, you know, the authority – the best authority to use to achieve your goals – it's a policy question but it also is kind of a legal issue. You know, what makes the best sense for what's the best vehicle? You know, I don't know that I'm the best person to advise you on it. I'm certainly not an attorney. And I guess the one point I would like to make is that there are a lot of different ways to do this. And so what works best for your community is kind of a question, I think, that your staff could probably help you with better than I can.

Chair Axthelm: Possibly a change to that statement might be to require it for multi-unit or commercial developments to break it down so it's not single-family residential.

Ms. Candler: Is that going to be in compliance with the permit?

Mr. Walters: I do not think we can simply strike (a) and walk away. We will have to substitute something else or we will not be in compliance with the permit, because we need to show, as I read before, the legal authority to inspect and enforce the maintenance standards for private stormwater facilities. So we're going to have to come up with something. If we don't do easements –

Ms. Lohman: Why don't you just say the applicant must provide the County access?

Mr. Walters: Because –

Ms. Lohman: Because it's a condition of the permit that the County is issued.

Mr. Walters: But permits have a life cycle and when they're finalized the permit's done. So you could put it on a plat as a plat note, but that's an easement.

Chair Axthelm: Okay, so section (5) then, I think you hit it just right. It's like basically leave that same statement there and then right behind it put something that – find other options for obtaining legal authority to access properties similar to what's used in other counties.

Mr. Walters: I'm using the language from the permit here.

Chair Axthelm: Then we aren't coming up with a solution but just keeping it away from that easement. I don't like it. That's too much. That goes into too many titles and too many issues, especially if the NPDES area gets expanded to the whole county, and the issue's going to be a logistics nightmare, I think.

Ms. Candler: My concern is also the homeowner or landowner will have, like, no choice but to sign over this easement if they want this permit, and there's just all kinds of problems. I wouldn't support that language.

Ms. Mitchell: Same here.

Mr. Greenwood: I think there's consensus.

Chair Axthelm: Okay. Are we okay with the language as stated here?

(sounds of assent)

Chair Axthelm: Okay, thank you. All right, so anything more on that?

Ms. Lohman: Was there anything in that – you kind of jumped from 20 to this section. Was there anything in that –

Chair Axthelm: Oh, I was asking anything in between that. So Stormwater conveyance facilities – so then anything on Stormwater conveyance facility?

(silence)

Chair Axthelm: Okay, and County acceptance of stormwater facilities on page 21. Any comments?

(silence)

Chair Axthelm: Okay, and Operations and maintenance.

Ms. Lohman: I do have a – when you're talking about regional facilities – and we already have like our drainage districts and they're fairly robust. Are you anticipating just incorporating them with this? Could that happen under what you have here?

Mr. Walters: A drainage district?

Ms. Lohman: Well, I mean, we already have drainage districts and we're handling a lot of stormwater.

Mr. Walters: I wonder if Mike can talk to that? I sort of feel like the regional facility language might be sort of like a Bayview Ridge type of thing.

Ms. Lohman: I want to make sure that we don't hamstring what we already have by calling it something different.

Mr. See: Are we talking specifically – where?

Mr. Walters: Regional facilities. This is existing code

Chair Axthelm: *Mostly* existing code.

Ms. Lohman: Because when is it just drainage and when does it become stormwater?

Mr. See: That's a good question. When we talk about the *permit* anyways, there is one drainage district, District 19, which has a secondary NPDES permit issued to them, and they don't have land use authority so those type of requirements fall on us. Regional facilities – an example would be, like Ryan was saying, Bayview Ridge where we're talking about stormwater and the County system, our system of ditches and culverts, and facilities that can handle sub-basinwide issues or problems. I don't think with that we would be considering doing the district's regional facility indefinitely, their own entity as a special purpose district. They're not – they're independent of the County.

Mr. Walters: Especially when we were talking about doing a whole bunch of residential development at Bayview Ridge, there was a lot of talk about how you would handle drainage. And at Bayview Ridge you had one large property owner, but you had a couple of other largish property owners as well, and it might have behooved them to construct a single regional facility for at least some aspect of their stormwater management, rather than each of them constructing individual ones. So this provision, which predates this code proposal, seems to get at that. As you're talking about doing that kind of development, the Administrative Official could say, Hey, it just doesn't make sense for all these little developments to do their own separate stormwater facilities. It may make more sense to have the County construct one and then have a latecomers agreement, which is essentially what this section is about, to pay for those facilities.

Chair Axthelm: All right, anything else on that?

(silence)

Chair Axthelm: Next, County acceptance of stormwater facilities, page 21. Oh, no – sorry – Operations and maintenance. Does that not cover the inspection? Because each of those items would have – back to our property thing –

Ms. Candler: That's because we were on that section when we were talking about it.

Chair Axthelm: Yeah. I would think the maintenance plan would give provision for it. Okay. Anything else?

(silence)

Chair Axthelm: So Public Works Standards.

Ms. Lohman: Well, you have to record the maintenance plan.

Chair Axthelm: Yeah. That's recorded? "...as-built record drawings..." Okay, so that just goes in with your building permit in the final record set. That's pretty standard sometimes. Okay. So Public Works Standards – Stormwater, on page 23. Any comments there?

(negative sounds)

Chair Axthelm: Okay, that's it. Comfortable with the recommendations?

Ms. Hughes: Did we handle, under the staff report, "It may be prudent to add a line to a stormwater code as a note related to development review that does not require septic permits to ensure sheet flows..." Did we handle that one?

Mr. Walters: We didn't talk about that.

Ms. Hughes: Did staff want us to talk about that?

Ms. Lohman: Where are you in the –

Ms. Hughes: On page 2 of the staff report there was under the bold – one, two, three, four, five – the fifth bold statement. I'm just seeing a staff note: "It may be prudent to add a line to the stormwater code..." Does staff see it?

Mr. Dowe: I talked to the septic folks from the Health Department and they said in the building of septic systems first of all most drain water from the site is from roofs so they are around the buildings or on property lines. They're not generally out in the middle. The septic systems have setbacks from both the property lines and buildings so they're out in the general areas, and they also wouldn't let you drain across a septic system. So they govern that. We don't need to here, I think.

Ms. Hughes: So we don't add – need to deal with that.

Mr. Dowe: I don't think we need to.

Ms. Hughes: Okay.

Mr. Walters: Well, except that if you have some later construction that doesn't require septic review they wouldn't be involved. I think that's the only –

Mr. Dowe: Okay.

Mr. Walters: It should not be a problem during, like, construction of a house because there would be the septic review there.

Ms. Lohman: So you're wanting to add that?

Ms. Hughes: Well, I don't know. I just want – making sure, as long as we're going through this that – I highlighted it because it looked like staff wanted us to look at it. I just wondered if we had.

Chair Axthelm: I can see that, that you might have an impact to a neighboring septic system.

Ms. Lohman: Yeah. No, I agree.

Mr. Walters: Do you want me to put that as a recommendation?

Chair Axthelm: Yeah. How would you phrase that, Amy?

Ms. Hughes: I don't have an idea. I just highlighted things that the staff felt was important.

Chair Axthelm: Anything else from the supplemental staff report? Did everybody get a chance to look at that? Let's take a moment and go through it real quick, or just skim it on your own for a second here – making sure we're picking up __ a comment.

Ms. Mitchell: Well, is everybody satisfied with the answer about the soils questions?

Mr. Greenwood: Highlight that one. Which one is that, Kathy?

Ms. Mitchell: Page 2 at the very top. One of the commenters asked to address soil analysis requirement and the response was the threshold.

Ms. Lohman: I have a question, Ryan. Is that okay, Mr. Chair?

Chair Axthelm: Is that question answered? Is everybody satisfied?

Ms. Mitchell: Is everybody satisfied with that?

Ms. Candler: I am.

Chair Axthelm: Looks like they've answered the question. Okay, Annie?

Ms. Lohman: In Carol Ehlers' submittal, she had the restrictions from her plat. How does the County handle where you have an ancient – some ancient language that we would never allow it to happen like that again? So how do you go back and correct stuff like that? Is there a mechanism, or is it once the plat has been developed it's in eternity, that you can't ever fix what's in?

Mr. Walters: The restrictions from the plat that Carol included, they were – they were sideways. The concern was "easement for roads, water mains, and power lines on such lots or tracts as is necessary for ingress and egress to adjacent lots or tracts." That's not it. Okay. And also "the right to drain all streets over and across any lot or lots where water might take a course after the streets are graded." I guess I am not particularly concerned about that because it is a right to

drain the streets, and hope is not a plan but hopefully Public Works would not attempt to drain the streets over and across any lot or lots where water might take a course after the streets are graded. But your question specifically was, How would you fix that? We wouldn't fix the plat. We wouldn't fix the plat note.

Ms. Lohman: So if you were to get a plat like that today, how would you address that?

Mr. Walters: If we were to get a plat like that? What do you mean?

Ms. Lohman: With that kind of language.

Mr. Dowe: We wouldn't approve it.

Mr. Walters: Well, we wouldn't require that language to be added to a plat today.

Ms. Mitchell: Maybe the other half of the question is if you ran across something like that now on this individual's property the way it is written the guess is is that you wouldn't be doing it this way, either. Is that right?

Mr. Walters: An applicant surely –

Ms. Mitchell: I mean, (with) today's methods, they wouldn't drain it that way.

Mr. Dowe: They wouldn't drain it like that, no.

Chair Axthelm: Carol, go ahead and make your comment if you want to approach us up there.

Ms. Lohman: But somebody's dealing with that language now.

Mr. Walters: Not necessarily.

Chair Axthelm: This is pretty specific to Carol – or not specific to Carol but she understands it. I would like to have her comment.

Ms. Ehlers: I'm sorry to say that I know of parcels, platted parcels, that cannot be built on according to the County because the road water flows over and across that land because Public Works – for one reason or another; I do not wish to decide that – has not been able or has been unwilling to control the road water so it does not. So there are platted lots that people bought innocently, assuming they could be built, and they can't. The question of road water going onto people's property became crucial in November 1990 when in conditions of – extreme conditions, not the one-inch or the one-and-a-half that's been mentioned tonight, but an inch a day for four days and then saturated soils and clay and the rest of it. The water flowed over and across the lot or lots for a number of subdivisions, and I am told that the people in those subdivisions had to pay to replace and repair the septic fields that the County road water changed. Now as a result of this catastrophe, the County did put in the drainage utility – created a drainage utility for Bayview, Fidalgo and other areas similar to it – so the County made a huge effort. But individuals still had to pay. And it's clear that no one really knows how to deal with the consequence of that language. It was – I mentioned Seaview IV. I wish you would look at that plat because most of the issues you've been discussing tonight theoretically came up in the nine years it took us to get that plat successfully drained and protected. John Moffat told me that when that plat was approved in 1998 that it was law that that had to be on the subdivision.

When I asked him where he refused to tell me. And I was involved because it was a lawsuit from the plats downhill, the people downhill and corporations against what was going on. So this is – this language, I understand – I'm glad to hear you would not approve it now. I'm delighted. But it's still an ongoing problem. And do you remember a couple of years ago in the Capital Facilities I brought up the Lake Chiquita Bypass and you guys said it wasn't your responsibility to deal with drainage? That's a classic illustration of uphill drainage – perfectly natural uphill drainage – draining down across the lot or lots. There's no easy solution. I'm not sure tonight is the night to do it. But I'd hate to have you put it off and forget it another ten years. And thank you for letting me comment.

Chair Axthelm: Thank you. I think that kind of goes along with, like, some of the natural drainage. You have natural drainage that happens down a hillside –

Ms. Ehlers: The road is graded to direct it onto it.

Chair Axthelm: Yeah, yeah, so that –

Ms. Ehlers: Not into the natural drainage –

Chair Axthelm: Oh.

Ms. Ehlers: – but onto you down the driveway, down the lane.

Chair Axthelm: Okay.

Ms. Ehlers: *Inches* deep.

Mr. Walters: Just a little bit of additional commentary: Under the existing code – you know, just to bring it on back to the code proposal here – under the existing code, construction conducted by the County, which is pretty much all Public Works, doesn't have to comply with the procedural requirements of the code. It supposedly has to comply with the substantive requirements but it doesn't have to get any permits, so the permit people aren't checking that the construction people are. That's problematic and we took that out of the code proposal, so now Public Works will have to get permits for construction of roads and perform all the procedural requirements in addition to the substantive requirements. That doesn't apply to maintenance of existing roads. There's an exemption for maintenance, but for new ones that –

Chair Axthelm: So this would solve the situation – or in a new situation it would take care of it.

Mr. Walters: Yeah. New roads would have all the same requirements as other kinds of development. They'd have to follow the manual.

Chair Axthelm: Okay. Does that satisfy you? Okay. Any other – anything else you want to integrate out of the supplemental staff report?

(silence)

Chair Axthelm: Okay. I think we just – we can share this. Back to our recorded motion.

Ms. Lohman: (unintelligible)

Chair Axthelm: Unless Annie has something else.

Ms. Lohman: Okay.

Chair Axthelm: Okay. So let's go back – can you flip back up to the beginning of it, the Findings? Do we have any additional Findings to add to the Findings of Fact?

Mr. Walters: That would be your opportunity to explain the easement stuff and that kind of thing, because otherwise you won't have explained it.

Mr. Meenaghan: We either put it in there or you, when you take it to the Board, explain our –

Mr. Walters: Or make up a reason.

Mr. Meenaghan: Explain our concern about the emotionally negative connection with –

Ms. Candler: So let's add a number 9 to deal with that, or whatever number we're on now – something along the lines of the Commission is uncomfortable with the idea of an easement and would like – or no...

Mr. Walters: Explain more.

Chair Axthelm: Easements would be undesirable for access.

Mr. Walters: More.

Chair Axthelm: What's that?

Mr. Walters: More.

Chair Axthelm: More?

Mr. Walters: Tell us more.

Chair Axthelm: Oh. Our desire for access –

Mr. Walters: Because...

Ms. Mitchell: Could we go back and see what we wrote on that? Read that first. Number 6.

Mr. Meenaghan: It's not necessarily easements themselves. It's using the term "easements" in this context.

Mr. Walters: Is it? I heard a lot of different reasons before.

Ms. Candler: I think it *is* the actual easement.

Chair Axthelm: I think easements would be appropriate like in a big – in a larger setup, but because there's a potential of this changing from a smaller area to a much larger area and encompassing everybody, that's where the issue is. I just don't want to see any issues for that.

Ms. Lohman: You know, you have to ask permission for everything else, and I just think that you should be asked permission.

Chair Axthelm: Let's say subdivisions, commercial developments.

Mr. Walters: I'm trying to get you to say more than problematic or undesirable or controversial and say *why*.

Mr. Greenwood: Why they're controversial? Well, a property rights issue, if nothing else.

Mr. Walters: Yes, and not because –

Mr. Greenwood: Well, a property rights issue, if nothing else.

Mr. Walters: Well, raise issues of property rights and privacy and time.

Chair Axthelm: Infringing on property rights and privacy? It's not really infringing. I don't want to make it a naughty word.

Ms. Mitchell: Well, it's understanding what the expectations and the executions of anybody that would be doing that.

Chair Axthelm: There we go – raise issues. Thank you. That's much better.

Mr. Greenwood: Just for us with a blanket statement to infringe upon the rest of the public seems a little powerful, authoritative.

Chair Axthelm: The Commission would rather have other options.

Ms. Mitchell: Especially in the light – because this is part of it – especially in the light if it does expand in the near future.

Mr. Walters: Or ever.

Ms. Mitchell: It could be for – or ever. Hopefully not, but if it does this would set a precedence (sic) that could be potentially really sticky.

Mr. Greenwood: I like that better.

Chair Axthelm: Yep. Thank you. Is that all right?

Ms. Lohman: You know, they said the social security card was not to be allowed for i.d. purposes. It says it right on your card. That is such a bald-faced lie.

Mr. Walters: Well, actually you can't use it for i.d. It doesn't even have your picture.

Ms. Lohman: It is the idea of the world for identifying you for everything without a picture.

Mr. Walters: It's more for tracking, I think.

(laughter and unintelligible comments)

Chair Axthelm: Come on. Okay, so any other Findings of Fact? Can you roll down just a little bit to see the full number 9? Thank you.

Ms. Mitchell: That's a lot better. It's a lot better.

Chair Axthelm: Okay.

Ms. Mitchell: Because that really tells them why we're concerned, too.

Mr. Walters: That is what we try to get you to do with this section. Yeah.

Chair Axthelm: Okay. All right, so any other concerns that we need to express here from the other section, from the Recommendations? Let's roll down to the Recommendations and we'll check that. Do we need to explain the impervious surface portion?

Ms. Candler: Do we need to explain number 4 for the runoff?

Ms. Mitchell: I think we should explain every single one of them.

Chair Axthelm: Some of them are already explained.

Ms. Candler: Yeah, but we added the runoff from one of the comments, I think – number 4. Do we need to indicate, you know, we can't infringe on neighbors' property and that kind of thing?

Chair Axthelm: Okay, start with number 1. Number 1 –

Mr. Walters: There is one of them that – sorry, I was skipping ahead there but “It is important for the protection of neighboring and downstream property owners.”

Ms. Candler: That probably works then.

Chair Axthelm: Okay, so number 1, “effective impervious surface,” let's explain that. Any explanation to it?

Mr. Walters: I think you maybe have captured it by the aggressive verbiage that someone wrote there – another term that makes more sense.

Chair Axthelm: Okay. I still think we probably should rewrite that ____.

Mr. Walters: No, I'm saying that that one might be self-explanatory.

Chair Axthelm: Okay. All right. So number 2, credit for landscaping. Yeah, I'd put that one up there in the other section so that –

Mr. Walters: Property owners should not have double landscaping requirements

(sounds of assent)

Mr. Greenwood: You can't just put that in the Recommendation?

Chair Axthelm: You still have to explain it, yeah.

Mr. Walters: There's a flexible threshold between the two so, yeah, you could put it in the Recommendation – but wherever you want to put it here.

Ms. Candler: What if we put in the Findings that we have to balance these techniques with feasibility for property owners. Would that –

Chair Axthelm: Yep.

Ms. Lohman: There you go. I like that.

Chair Axthelm: That works. I think they'll understand. ____.

Ms. Lohman: As a standalone?

Ms. Candler: Yeah, because that way it should cover a couple of these Recommendations.

Chair Axthelm: What's that?

Ms. Candler: When we spend a lot of time explaining why we need to have all this stormwater – the LIDs and all the stormwater – but we don't indicate why we back it off at some points.

Mr. Walters: There is number 8 that sort of is related.

Chair Axthelm: Okay, so which one are you talking about now?

Ms. Candler: No, I just think one Finding can cover a couple of the Recommendations if we indicate that we have to balance the need for the drainage rules with feasibility for property owners, or something like that. The whole point is you don't want to double – double require landscaping in one of them, and there're some things that we're doing to try to not go – overboard's the wrong word, but just to not be too cumbersome to the developer.

Chair Axthelm: Yeah, or landowner. Yeah. I'm more thinking personal property owners just basically – well, or small commercial developments.

Mr. Walters: Feasibility? I'm running out of steam here.

Mr. Greenwood: Feasibility of what?

Ms. Candler: Feasibility or – not even feasibility. It's more –

Mr. Walters: For small property owners?

Ms. Candler: What I'm trying to say is not using – not doubling up on any requirements, that kind of thing. So what's a good word for that? Feasibility is okay. Practicability is okay.

Ms. Mitchell: Overlap?

Ms. Candler: Overlap is good.

Chair Axthelm: Any ideas?

Mr. Greenwood: I don't know. I'm not sure where we're going with it.

Ms. Candler: We're trying to encompass a couple of the different Recommendations down below by indicating why we're recommending things like including language about the landscaping and whatever else we put in there that would be covered by that.

Ms. Lohman: I think we don't want to lose sight, too, that we are not New York City, and I almost think sometimes Ecology forgets that.

Ms. Mitchell: We're not even Everett.

Mr. Walters: Do you want to say something like "Stormwater management requirements should be imposed at a level consistent with the impacts that are caused"?

Ms. Mitchell: That sounds better.

Ms. Candler: I'm just trying to make our Recommendations make sense.

Chair Axthelm: Unfortunately, some of those things – there some of the things in the new regulations that it's going to be hard for a lot of people to stomach, and I can understand it. But, you know, we've been doing so much with our environment we need to have some of these things in place too. So where do you draw the line?

Mr. Walters: How about that? Stormwater management requirements should be imposed proportional to the impacts caused by the development?

Ms. Lohman: I don't think that's what you said.

Chair Axthelm: Nope. It's feasible because sometimes requirements are given that it's just economically not feasible to do.

Ms. Mitchell: Or impractical.

Chair Axthelm: Or practical, yeah.

Mr. Walters: That?

Chair Axthelm: We're not giving an answer. We're just saying, Protect us here.

Ms. Mitchell: Yeah.

Chair Axthelm: Right?

Ms. Candler: Where this started from was trying to explain why we don't want to double up on like the landscaping requirements, so maybe this is even right phrasing.

Chair Axthelm: I think 7 kind of covers that pretty good.

Ms. Candler: Okay, yeah. I think leaving the balance in there is not a bad idea.

Ms. Mitchell: Well, it's a good reminder anyway. That's what we were intending – weren't we, Bill? – anyway with the __ thing?

Mr. Dowe: Mm-hmm.

Chair Axthelm: Are you okay?

Mr. Greenwood: If it helps. I don't see it hurts necessarily.

Chair Axthelm: Let's roll back down to the Recommendations. All right, I think "MR" is pretty clear. We don't need to explain that one. What about the number 4? Anything else?

Ms. Lohman: No, because it's specific.

Mr. Greenwood: I would just add to 3 – just qualify it here; it doesn't need another Finding of Fact – for clarity.

Chair Axthelm: Mm-hmm.

Ms. Mitchell: Okay.

Mr. Walters: Whose clarity?

Mr. Greenwood: To the reader, user.

Mr. Walters: Oh. Oh.

Ms. Mitchell: We're talking everyday person.

Mr. Greenwood: Starting with the Planning Commission, moving down to the end-user.

Ms. Lohman: (unintelligible)

Mr. Greenwood: MR could stand for a few things.

Chair Axthelm: All right, number 4 – anything else there on number 4? Do you think we explained it up above or that explains it enough? Okay, number 5.

Ms. Candler: We explained it.

Chair Axthelm: We explained that one. And number 6? I would say – I would go back up to the other section. The reason for number 6 is to protect adjacent properties, drainage, and septic systems.

Mr. Walters: What are we doing here?

Chair Axthelm: Well, it's basically "Stormwater flow should protect adjacent property, stormwater and septic systems."

Ms. Candler: I think Ryan indicated number 1 does that. No?

Chair Axthelm: Well, for example, when you put in a septic system you have to look at the wells in the area. So by the same situation, you should know where the septic systems are so that it doesn't – is there any other way to put that?

Ms. Candler: But look at Finding number 1.

Chair Axthelm: I mean, it's what we typically do when you want to put in a well. You have to check for the septic systems. Or to put a septic, you have to check the wells.

Ms. Candler: Josh, look at Finding number 1 and see if that does what you're talking about.

Chair Axthelm: Okay. Well, yeah.

Ms. Lohman: I think you already said it. I think it's redundant.

Chair Axthelm: You think that's redundant there?

Ms. Lohman: Yeah. You said it in number 1.

Chair Axthelm: Okay. I would add to that then. I would add to number 1 and put "drainage/septic systems" or "stormwater/septic systems."

Ms. Lohman: Why do you care? You don't want to damage the neighbor's property at all.

Mr. Greenwood: Right.

Mr. Walters: Well, and it's not just the neighbors. It's your own septic system.

Ms. Lohman: Well, that's true but –

Ms. Candler: But that's part of the environment.

Chair Axthelm: So just put "for example, stormwater, septic, wells." How's that?

Ms. Mitchell: It makes you think about it.

Chair Axthelm: That covers the idea and at least they're aware of it.

Mr. Walters: Right there?

Ms. Lohman: No.

Ms. Candler: At the end?

Chair Axthelm: There you go. Well, the "septic systems, stormwater, and wells." That was just an example. Yep. Does that work?

Ms. Candler: Yes.

Ms. Mitchell: If it's awkward, it could be wordsmithed, right?

Chair Axthelm: Well, it's not – yeah, I think it's the gist of what we're trying to get across. Right?

Mr. Greenwood: That's fine. I don't think it hurts anything to put that in there.

Chair Axthelm: Is there any other Recommendations that we'd like to make or Findings of Fact? Are we okay about –

Ms. Lohman: Can you roll it up a little bit so I can see 8?

Mr. Walters: What?

Ms. Lohman: Number 8 – can you roll it up just a bit? There you go.

Chair Axthelm: Okay, so we need a motion.

Mr. Greenwood: I'll make the motion that we accept the Findings of Fact and Recommendations to update the – to make the code changes necessary to update and apply for our new and revised NPDES Permit – if that encapsulates the thinking here.

Ms. Mitchell: Second.

Chair Axthelm: As shown here?

Mr. Greenwood: As I see on the screen, yep. Any second?

Ms. Mitchell: Second.

Chair Axthelm: Okay, ___ have to rephrase that. How would you phrase that again?

Mr. Greenwood: Which one?

Chair Axthelm: Okay, all those in favor of Keith's recommendation – or not recommendation – motion, say "aye."

Mr. Greenwood, Ms. Lohman, Mr. Meenaghan, Ms. Mitchell, Ms. Candler and Ms. Hughes: Aye.

Chair Axthelm: All those opposed?

(silence)

Chair Axthelm: Oh, I should have said "aye." I'm sorry. Okay, so all are in favor or support of.

Mr. Greenwood: We better. We chewed on it enough.

Chair Axthelm: Yep. Okay, good. All right. Well, it's late. What is the Commission's –

Mr. Meenaghan: I think we skip the next two, number 4 and 5, and move on with Department Update – in five minutes.

Chair Axthelm: How long _____ take?

Mr. Pernula: I'd rather just defer those last two items to a later time, but I would like to go over a few Department Update items.

Chair Axthelm: Okay. So we'll move on to the Department Update.

Mr. Pernula: Okay. Last week Kirk Johnson sent you an e-mail asking you to look at the final language that he put together on the Housing Element. And if you have comments, please make those so that we can finalize that. He just wants to put a lid on that and then move on to other sections of the plan. So I think his comments did address those items that you asked him to.

The second thing, and this came from Carol. She wants you to know that the Natural Hazards Mitigation Plan, the annual review will occur Thursday at 3 p.m. at Burlington City Hall.

Planning Commission schedule. Right now we don't have any meetings scheduled in August but we do have a fairly aggressive schedule for probably the rest of the year. There's a lot of things that have to occur, including two items off of tonight's agenda.

The final marijuana ordinance was adopted by the Board – well, not adopted today by the Board. They gave us final direction on what they want to have in that final ordinance. I think it included a lot of the recommendations of the Planning Commission. I would say the only one major difference between what the Planning Commission recommended and what staff recommended is that they did not accept the 400-foot setback from residential structures. And there's a number of reasons, and one of the reasons is that they did adopt one of the other recommendations of the Planning Commission that marijuana production facilities only be in opaque structures. So you're not going to have the security cameras, you're not going to have the fences, and so on. And also there were a number of facilities that people spoke up about that were within 400 feet of residential facilities that seemed quite reasonable. One item that the Board did go with, and that was the Planning Commission's suggestion that if there's a special use permit requirement that it go to people within 1000 feet. They did accept that. Staff recommended that if they went to the 1000 feet we should consider having that same 1000-foot notice go on all special use permits. So we're going to explore that and see how that will affect other special use permits as well, because if it makes sense here it makes sense everywhere else.

And the last item I have on the agenda is that I received the resignation from Matt Mahaffie today from the Planning Commission. He said he just can't do his new job, his old job, and be a member of the Planning Commission. He liked being on it. He liked the work that you guys do. He thinks it's important, but he just couldn't balance it working up in Bellingham and having to – closing out his present – his old private firm. So we are advertising for two openings on the Planning Commission from District 3. And that's all I have.

Chair Axthelm: Thank you.

Ms. Lohman: Last can we do Planning Commission Comments? Are we skipping that?

Chair Axthelm: What's that? I'm sorry.

Mr. Greenwood: She was wondering if we could do number 6 on the agenda.

Chair Axthelm: Yep, number 6 on the agenda. Any comments from the Planning Commission?

Mr. Greenwood: I do, but –

Ms. Mitchell: I'd like to say something too.

Mr. Greenwood: Mine was just related to Matt Mahaffie, because I spoke to him in the parking lot just as I was coming in. And he made a good point, which I think he expressed to Commissioner Janicki, who might be making one of the recommendations for a replacement. But he made a good point that having a correct balance of types of folks he thought would be more important – and I agreed with him – more important than just filling a seat. So having a good balance rather than an imbalanced Commission, even if you had to wait, wait till you find the right person. So, anyway, I valued his perspective. We didn't always agree, but the perspective was helpful – someone who knows the code.

Ms. Lohman: Well, and I thought he was a – I thought he was a call out to younger folks to participate, that this isn't an old-timers club. And I thought it was – I just thought it was –

Chair Axthelm: Well, I was still pretty young, wasn't I?

Ms. Mitchell: Yeah, you're the only one with brown hair!

Chair Axthelm: No, it's getting gray.

Ms. Lohman: Some of us prematurely turned gray. But I thought he did a marvelous job and I'm going to miss him and I thought he was a real asset to this Planning Commission. I just wanted to – Matt, if you're listening, we are going to miss you.

Ms. Mitchell: I'd like to second that. I hope so. I think Matt had – when he spoke he had salient points, important points. Sometimes they were different from other things that we were considering but that's – it may have been exactly what was needed at the time. And so I know other people wish him very well as well. I do wish him well and I'd like to thank him very, very much for having done all his service for a long period of time. I thought he did a good job. He'll be missed.

Chair Axthelm: I'll definitely miss Matt. And I actually didn't – since I was gone last week I didn't get to comment on Robert but I really appreciated him and I've said this _____. I really appreciated how he came to me after the meetings and he would tell me little pointers and things that would help out and very nicely about it – very nice man. It's sad to see him go. But and we'll miss Matt as well. I think Matt was a definitely good asset for the Planning Commission. We have some hard places to fill – or the Commissioners do.

All right. Are there any other comments? I know we went late tonight but I appreciate the Planning Commission's comments. I think it's important. We hit things and sometimes we hurry through things too much. And this taking a little more time, as difficult as it is, is great.

Mr. Greenwood: Did we address Dale's point about upcoming meetings and our schedule for the remainder of the year? Because we do have a couple of tabled items – I guess I'd like to refer to it that way – in the sense of we were working on the code amendments and we got part way through and then we postponed them, and then we wanted to have them meet with the

FAB and then get back. And they did have some meetings with the Ag Advisory group and the Forest Advisory Board and then so I'd like not too much time to pass. I wanted to say water under the bridge but that was inappropriate. So just not to have too much time pass before we hit those things. So not knowing what our meeting schedule is, but if we – what was it scheduled for August? What did we have?

Mr. Pernula: No meetings scheduled right now. I'll look at the schedule moving on because, you know, we do have some Comprehensive Plan Amendments, one from the 2014 docket, and we have some neighborhood workshops – four of them – that are going to be scheduled in various parts of the county coming up. I don't know that all of you have to attend but, you know, perhaps those from the districts where they're held could attend those meetings. We've got a lot coming up on the Shoreline Master Program. As I think I mentioned last time, Betsy's had an issue with her eyes and she hasn't been at work for a while but we're going to be getting back to that probably pretty heavy at the staff level during the month of August and then bringing stuff back to you in September. So there's a lot of things to be worked on.

Chair Axthelm: Is there anything we need to have a special meeting for that we really –

Mr. Pernula: If we need it, I'll poll you and see if we can meet during sometime maybe late in the month of August, but we'll see.

Mr. Greenwood: Yeah, I'd like to see us address those things that have already come before us and get those out of the way so that when new ones come up we can still handle those without kicking them down the road too far. I know the folks from the Forest Advisory Board were pretty interested in having the Rural Forestry Initiative come up, even if it's in an introductory level. And there were parts I thought that were helpful in their contribution to Gary and Dale.

Ms. Lohman: Is there written material on that? Is there written material for us so that we're not just –

Mr. Pernula: There will be. It's being drafted. The reason why we didn't send it out yet is that we wanted to go through it in more detail with the Forest Advisory Board before we brought it to the Planning Commission because we didn't want them to be surprised about anything before they've even – we've even discussed it with them. We've talked to them in general terms but we haven't – there's a lot of small issues. You know, the devil's really in the details in some of these things. We should have more in a few weeks.

Mr. Greenwood: And if I remember correctly, that package was sent to us with an exploratory – what do we have as far as input for direction for staff? How should they approach it? And that's where some of these recommendations came from but we only went through 2/3 or half of them so there's still another pile of them to address, at least contribute some – make some contributions to help them with direction. Otherwise you end up with a package and you weren't involved in the process.

Mr. Pernula: We will bring that full package back at the next meeting probably.

Mr. Greenwood: Okay.

Ms. Mitchell: Can I ask a follow-up question?

Mr. Walters: How was your summer vacation?

Ms. Candler: Oh, sure.

Ms. Mitchell: Dale, from what Kirk said, he asked for us all to get back to him. Do you want to offer a timeframe so we can keep that in mind? You said he wants it soon, but what's soon?

Mr. Pernula: Well, I think what he said in his e-mail is he just wanted you to individually report to me tonight if you have any feedback, any changes to what he had drafted. I think he went through a fairly thorough review at the last time it was brought to the Planning Commission. If you didn't like his tweaks, let us know and we'll further tweak it. But he just wants to move on to other elements.

Ms. Lohman: I saw – the one that I – the __ one, I liked what he wrote. I can't remember what it is right now. I didn't bring my stuff on that.

Ms. Mitchell: Do you want that one sentence that he really _I__? There was a sentence that he redid for us and then he also made a recommendation that because the margin of error information was important but there was a lot of different charts and things and things to put in an appendix.

Ms. Lohman: Right. I saw –

Ms. Mitchell: And that was his recommendation was put that information in an appendix, which I think is a good idea. That sentence that we had such difficulty with, this is the change that he made that he wants you to think about: "Every community has low and moderate income households. Since a community benefits from its residents, it makes sense for the community to seek to provide an adequate supply of desirable, affordable housing." That's it. Do you want me to reread it, anyone?

(negative sounds from Commissioners)

Ms. Mitchell: I think that's a lot better than what was there before.

Ms. Lohman: I liked it better. I didn't realize he wanted us to actually get back to him.

Chair Axthelm: Is there any particular week that's better than others? If he does something, maybe late in August?

Ms. Candler: I will not be available but I don't have any objection to you guys meeting if everybody else is.

Mr. Meenaghan: I'm not available in August.

Mr. Pernula: I don't think we're going to get a quorum. It doesn't look good. I get to take a vacation.

Chair Axthelm: Okay.

Mr. Meenaghan: I move we adjourn.

Ms. Lohman: Second.

Chair Axthelm: Okay.

Mr. Dowe: I want to thank you guys for your help with the Stormwater Code, and also for Ellen and Carol for their comments. We got a better product out of the deal.

Ms. Ehlers: And I want to thank you. For 30 years I have wanted someone to recognize the risk to the guy downhill.

Chair Axthelm: Thank you. The meeting's adjourned (gavel).