

**Skagit County Planning Commission
Continued Deliberations: Proposed Shoreline Master Program Update
July 19, 2016**

Commissioners: **Josh Axthelm, Chair**
 Annie Lohman, Vice Chair
 Kathy Mitchell
 Martha Rose
 Hollie Del Vecchio
 Tim Raschko
 Amy Hughes
 Tammy Candler (absent)
 Kathi Jett (absent)

Staff: **Dale Pernula, Planning Director**
 Ryan Walters, Assistant Planning Director
 Betsy Stevenson, Senior Planner

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

Chair Josh Axthelm: Okay, it's Tuesday, July 19th. Welcome to our Planning Commission meeting. I call – is there any changes to the agenda?

(silence)

Chair Axthelm: Okay, so seeing none, I call this meeting to order (gavel). Let's see, the first item on the agenda is – or the second item, I guess – is Continued Deliberations. I thought we were going to have Public Comment.

Ryan Walters: You can if you want.

Dale Pernula: You certainly can. Just add it to it.

Chair Axthelm: Because we haven't had it for a long time.

Kathy Mitchell: It's fine with me.

Chair Axthelm: Okay. So let's go ahead and add Public Comment onto the agenda. I guess I should have seen that first off. Okay. And then we'll do –

Carol Ehlers: _____ there was going to be Public Comment, you'd have brought something!

Chair Axthelm: Well, just in case. Is there anybody in the public that would like to comment? Okay, so go ahead and approach the microphone.

Ellen Bynum: Good evening, Commissioners. Ellen Bynum, Friends of Skagit County, 110 North First, Mount Vernon. I just wanted to bring to your attention that there is a comment period

– public comment period – for the U.S. Army Corps of Engineers suite of projects that they are doing to restore shorelines. This is a part of their Nearshore Restoration – Puget Sound Nearshore Restoration Project – and one of those projects is in Skagit County, one or more of them. The one that I read but I didn't completely read and don't know all the details about is to convert another 260-something acres of farmland to nearshore habitat and restore that back to what the Corps believes will help achieve the Puget Sound Partnership's goal, which they have a series of – Puget Sound Partnership set a series of goals for shoreline restoration.

My concern about this – and the comments are due by August 15th, but you can go on the U.S. Army Corps in Seattle and look at these documents. I'll try and get a link for it to the Commissioners. My concern is that they're asking for new projects and they're also asking for changes in activities that might actually affect the way that we write our – and complete writing – the Shoreline Master Program. So although my comments are not directed about the program, I think that it's something that maybe you need to take a look at and see. You may find that it's not going to affect anything that you're amending or you're doing, but I just thought that I would bring that to your attention because, as you know, we have lost 50% of all the farmland that we originally had in the valley and we continue to get more farmland lost from conversion to other uses like wetlands mitigation banks or road widening or fish and wildlife habitat. And no one has done an economic assessment of what that's going to do to the agricultural economy in the valley, and we think that's pretty important to do before we say okay to a lot of different things that are coming up.

So here's the Army Corps coming up with another project and we are going to do some research with some support from a WSU intern to update our 2008 count where we found there was 3000 acres that had been converted in one year. So hopefully we'll have that for you about December. And we just think somebody needs to be looking at the economic cost of conversion and long-term, say 50 to 100 years, rather than just looking at the cost of doing a project because somebody has the money. Thanks very much.

Ms. Ehlers: Carol Ehlers. Since Ellen gave me the flyer, it's at the north fork of the Skagit delta. Now years and years ago when they were educating the Planning Commission before decisions had to be made, there was a lengthy Saturday trip all throughout the deltas in terms of drainage. And one of the places they took us was to the north fork of the Skagit River outside the levee between the farmland that was inside the levee and the river – several hundred acres of publicly-owned land that hadn't been touched. And they didn't intend to do anything with it, they told us, because we don't do anything with government land. And a number of us had a fit and by the end of that day they decided that maybe they *would* do something with government land and not just take farmland.

Now from this description here, some of that land that's under discussion may be that public land, because they kept telling us in the Planning Commission we've got to have more habitat for that species of salmon that's like a lot of human beings. It has a hard time making the transition between being a child and being grownup. In the case of the salmon, it has trouble dealing between – of the difference between freshwater and saltwater. And one of the species in the Skagit is particularly vulnerable to that. And this area near the North Skagit, which is not farmland – it looks like it might be. I don't know what it's zoned. But some of this could be – finally, after several decades of fussing – an effort to do something with land that's just sitting there doing nothing – not helping fish in any way, not being productive in any way, owned by the government so it's not taxable. Maybe they're doing something that at least part of it's right. We might take a chance.

And if you've got time next Saturday, go on the Puget Power tour to Baker Lake. It's a fabulously beautiful trip and you'll learn more *real* information about fish than you will listening to – we did listening to meeting after meeting. They will explain to you what the sockeye really have to have, and it's completely different from all the others. Because the sockeye have to *have* a lake to spawn, *have* to have a lake to live in for a year. It *has* to be a lake that's properly cold. I mean, there's all kinds of things that are different from the usual you-need-streams-for-spawning and so on. And finally I understood why Campbell Lake on Fidalgo is completely unacceptable. It's six feet deep and much too warm.

Annie Lohman: Time, Carol.

Chair Axthelm: Thank you, Carol. Okay, so with that we'll go on to the Continued Deliberations on the Shoreline Master Program Update. So does the Department have anything they want to start with?

Mr. Pernula: Well, just as a reminder, you held a public hearing in March. In April the comment period was closed. You've deliberated on these twice in April and once the last time, June 7th. You went back to the Comprehensive Plan at that time and now we're back to completing the deliberations on the Shoreline Master Program, and Betsy is back. And do you want to take it from here?

Betsy Stevenson: I think I'm going to let Ryan do it, if that's okay.

Mr. Pernula: Okay.

Ms. Stevenson: He's been working with you on all this stuff and I don't want to disturb the flow! I'll answer questions if you have them when it comes up.

Mr. Walters: So you have a new memo, a fourth Supplemental Staff Report, describing staff responses to comments in a couple of different areas. We did have some agency comments from WDFW. We also followed up with Ecology since your last meeting and we describe all of that in the memo. I assume, as our practice has been, you'd like to go through the memo and go through comment by comment. Comments are labeled with "P" and a number and then recommended changes, where staff recommend changes to the proposal based on comments that we got, are labeled "RC" and then a number.

And as you recall, we have been working on your recorded motion. We're up to two pages so far and we'll keep adding on any additional recommendations you want to include. We anticipate that we might be able to complete your recorded motion by the end of your next meeting.

So looking at the memo, one of the first issues was from WDFW. WDFW indicated that they wanted some changes to the Dredging section. There was another comment also talked about later on in the memo about dredging. We understand that repetitive dredging is problematic. We don't want to do dredging if we can avoid it so we want to avoid situations where repetitive dredging is required, which is why we already have in the proposal a code section that says that new development needs to be sited to avoid the need for repetitive dredging and for new dredging. So we hope that that addresses the dredging concern that WDFW raised.

WDFW's letter also included agency names and phone numbers for various matters, which are clearly not appropriate for inclusion in the plan, and if that was their intent we simply disagree that that kind of stuff should be included either in the policies or in the development regulations.

Similarly their letter suggested references to the hydraulic code or a requirement for an HPA. But the requirements for Hydraulic Project Approval are extrinsic to the plan. The plan does not require Hydraulic Project Approval. State law does, and they may be required all over the place so we don't think that that is an appropriate level of detail for inclusion in the plan either. We do have a catchall, though, that says that required permits from other agencies that you might have to get – and there's a list of them – are required. And we provide advice on that point. Skagit Audubon had one particular comment. We've addressed some of their other comments elsewhere, but this one seemed to fit within the point of this memo, which was to address specific code section recommendations. They wanted shoreline armoring to be prohibited to protect *new* structures. And the code section they highlight already *only* allows shoreline armoring for new structures in a very limited set of circumstances, and that set of circumstances is called out by the WAC so we don't recommend any change there.

Chair Axthelm: Do we want to run through and discuss these as he's doing it as well, or is there any comments to that effect? Martha?

Martha Rose: The only comment I have is on this first item that talks about the dredging. When I read their comments, I don't read it as being associated necessarily with new construction, but your response is based on how you handle new construction. So are you – what is – do you understand what I'm saying? In other words, somebody might come in for repeated dredging or dredging that's not repeated or something completely unrelated to new construction, but you haven't really made a comment about that.

Mr. Walters: Yes, I think that's a good point; however, if dredging is required for some existing use, we're not sure how to address that.

Ms. Rose: So I think what you're saying is that those cases would be handled individually, depending on what they are. At least that's what I would – the assumption I would make, but I don't know if that's –

Ms. Lohman: Maybe it would be helpful, Ryan, if we switched over to the section in the proposed SMP, the Dredging section, where your answer came from.

Chair Axthelm: It sounded like the sheets were short when you came in. Some of the sheets were missing on the staff report. Was that corrected or –

Mr. Walters: I don't think that's a problem.

Ms. Stevenson: I made more copies. Did you guys pick up the ones when you came in?

Ms. Mitchell: We just want to make sure all the audience members have what they need to see what we're doing.

Ms. Stevenson: Yeah, I changed them out on the table, but if you picked one up on your way in it probably is short. You only get every other page.

Mr. Walters: Go ahead, Betsy.

Ms. Stevenson: I was going to say I think really what Wendy was trying to say in her letter was that prior to issuing a permit to allow for dredging, that it would be great if we could figure out a way to have the project move forward without the requirement for dredging and have that discussion before it happens. So I do think she's talking potentially about new projects coming in that would propose dredging of some sort as part of the project, and that maybe we could have that discussion of Hey, is there some way to do this without actually dredging? And okay, if the answer is no, then if you have to dredge, Can we do it in a way that you won't have to come back and do maintenance dredging to continue doing that dredging?

Ms. Rose: I'm not saying I'm opposed to the response and stuff. I just didn't feel like it was that clear. And I see in the Shoreline Plan there is a comment that, you know, acknowledges that there are certain situations that do in fact require maintenance dredging and you can't – you know, for the economic viability of whatever it is, you can't say, now you can't do that anymore. You can't go there. But when I read this thing I just didn't feel like it was that clear. That's all.

Chair Axthelm: Any other comments to that?

(silence)

Chair Axthelm: Okay, go ahead, Ryan. It seems like most of those – the next comment's from Tim Hyatt, right?

Mr. Walters: That's the next grouping. He did identify that the Rural Conservancy-Skagit Floodway designation does not cover some of the Rural Conservancy areas that are east and south of the Skagit's confluence with the Sauk. The Rural Conservancy-Skagit Floodway designation, as you might recall, is basically just Rural Conservancy but it appears differently on the map where it is also Skagit Floodway to give property owners a little heads-up that the Skagit Floodway will be constraining – more so than the Rural Conservancy designation. So we're not sure quite how that happened but we do think that any Rural Conservancy designation that is actually in the floodway should be RC-Skagit Floodway because that's the whole point of that designation.

Ms. Lohman: But I think that the recommendation 2, RC-2, it needs to be a lot more specific than what's written there on the page. That's like a blank check. I think it needs to be exactly where else you want to put that RC-Skagit Floodway designation.

Mr. Walters: Well, the area that we'd identified – that the commenter had identified was south or east of the confluence with the Sauk. But if there's anywhere else that's also Skagit – that is the floodway, we would want to mark it as RC-Skagit Floodway too. Because the constraints in the Shoreline Program are not any different whether you're in RC or RC-SF. It's just a different color to provide some indication that you're in the floodway.

Ms. Lohman: But I think you should say some of those points that you know because I know when I asked Betsy she was – she referenced to the FEMA mapped floodway. So you do have some places where you do have a lot more specificity for where that point was, rather than leaving people somewhat in limbo: Am I in or not?

Mr. Walters: Well, that's the intent of the map – to make it very clear to people whether their property is in or out of the floodway. Do we want to say, Re-map any Rural Conservancy designation that is in FEMA mapped floodway to be RC-Skagit Floodway?

Ms. Lohman: I don't know.

Mr. Walters: The definition of "floodway" says that.

Chair Axthelm: So the Rural Conservancy area, when that was mapped, didn't necessarily contain all the floodway. So if you have a floodway area, it may just be within a certain distance of the river. That's Rural Conservancy.

Mr. Walters: Rural Conservancy, that designation may not contain all of the floodway. There may be other designations that have floodway in it, but those designations are more constraining anyway – like Natural.

Ms. Stevenson: So what we tried to do is if we had just left it as Rural Conservancy and people started going through the Shoreline laws independently of all our other codes, it looks like you can do all kinds of things because there's all kinds of permitted uses. So we wanted to set aside and say Rural Conservancy-slash-Skagit Floodway so that they would also understand that if you're in this area that's actually floodway in addition to being a shoreline designation for Rural Conservancy, that you need to go look at our flood ordinance because there are other restrictions on development in those areas. We've had that happen before. And in trying to make it easier and clearer, maybe we didn't, but that's what it's for. And Tim was just pointing out that there're some areas upriver that are floodway that haven't been mapped that way, so we'll double-check and make sure that we get those included.

Ms. Mitchell: Was there any advantage for saying – you had mentioned the FEMA part. Is there an advantage for inserting that piece?

Ms. Stevenson: No, it's in the definition for "floodway."

Mr. Walters: So actually the designation criteria for Rural Conservancy-Skagit Floodway say that that designation should be assigned to shoreline areas that would receive a Rural Conservancy designation but are located within the floodway from the SR-9 bridge upstream to the confluence of the Skagit and the Sauk River. But why would it stop there? So it is mapped consistent with the designation criteria now, but why would it? Can you think of a reason that it should stop there?

Ms. Stevenson: I'd have to look. I know we talked about it in the Advisory Committee meetings but that was a long time ago. Yeah, I'd just have to look.

Mr. Walters: Well, in any event, we would have to change both the map and the designation criteria to accomplish that because they need to be consistent.

Hollie Del Vecchio: But we don't recall right now why the criteria were set the way that they were? I'm just a little hesitant to be changing designation criteria without understanding why.

Ms. Stevenson: I'd have to go back to the discussion with the Advisory Committee when we came up with that and determine why we set it at the confluence with the Sauk.

Ms. Del Vecchio: Can we reserve this for next round and –

Ms. Lohman: I agree with that.

Ms. Del Vecchio: – get some more information on that?

Ms. Mitchell: Please?

Ms. Lohman: It's just been – I admit I'm kind of rusty on trying to remember it exactly. I just want to make sure we're interpreting it the way we want to.

Mr. Walters: I need to pause for a second to take a good note or we will get lost later. All right, the next one. The next comment refers to the mitigation requirements. In some prior draft – quite some time ago really – we had proposed section 14.26.310 that described mitigation. But we deleted that from the draft because we also have a mitigation section in the critical areas ordinance and we didn't think we should have two sections talking about mitigation that overlap each other. And we currently are using the mitigation section in the critical areas code and a lot of the objective of our process here was to really not change the critical areas code and just use it within the Shoreline Plan. So we deleted that section; however, we didn't correct all the cross-references, which I think we had mentioned before that we haven't done that final check for cross-references. So in any case, the commenter pointed out first of all that there are some incorrect cross-references, but also he would prefer some more in-depth mitigation planning requirements, although I don't believe he provided a lot of detail on what exactly he would like. I think we disagree in general that we need more detailed mitigation requirements, but we agree that we should update the cross-references.

Chair Axthelm: Kathy?

Ms. Mitchell: A question for you: Have there been any challenges to this anywhere for the mitigation?

Mr. Walters: No. Our current critical areas ordinance, which we adopted in 2009, was not challenged, and we had a lot of conversation about it to make sure that it was not challenged, so we feel pretty comfortable with it. Also Ecology didn't comment on this issue.

Ms. Mitchell: Well, I guess what – that question leads to the next thought. If it's not being challenged and we're doing the right thing already except for fixing the cross-references, why do more?

Mr. Walters: That's our position. Unless there's a specific reason, but I'm not aware of one and I don't think the commenter really identified the thing that is missing. And it's possible because the cross-reference was wrong the commenter was not directed to the right location in the critical areas code where this already exists.

Ms. Lohman: But there *is* mitigation sequence. It's just rare.

Mr. Walters: Yes, and it's very standard, too. You avoid the impact, you minimize – you know. It's not anything out of the ordinary, I don't think.

Chair Axthelm: Annie.

Ms. Lohman: Well, I'd like to move that we correct the citations to the mitigation sequence in the critical areas ordinance 14.26.310.

Ms. Mitchell: Second.

Chair Axthelm: So it's been moved and seconded to correct the mitigation – how'd you put that?

Ms. Lohman: The citations to the mitigation sequencing in the critical areas.

Chair Axthelm: Okay. Discussion?

(silence)

Chair Axthelm: Do you have any discussion on it?

(silence)

Chair Axthelm: Okay. So all those in favor of the motion as stated? Would you like to restate it?

Ms. Lohman: That we correct the citations to the mitigation sequencing in the critical areas ordinance, Skagit County Code 14.26.310.

Chair Axthelm: Okay. All those in favor of the correction?

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say "no."

(silence)

Chair Axthelm: Okay, there you go. Thank you.

Mr. Walters: All right, the next suggestion is that in the section on replacement of trees – this is in, I believe, the Vegetation Conservation section – that the code should say that we would require replacement of vegetation, quote, "naturally found at the site" instead of "historically." "Historically" is what we have in the code right now. I don't know if we feel strongly about this, but "historically," we think, provides a little bit more guidance and is less ambiguous than "naturally."

Ms. Del Vecchio: I'm not sure what question I really want to ask here, but is there a way to merge the two? Unless we're – historically you can go back a long ways and I imagine wind up with a completely different natural environment than what we have now. So what does that really mean? I absolutely – I think the intent is good. I like what we're trying to do there. I just don't know that it gets us there. And I would have similar reservations about "naturally" because, I mean, if it's planted in the ground, to me that's pretty natural. So I don't – I'm not quite sure what I want to see there, but neither one of them really makes me happy. Is there – we can't be the first one to deal with this, though.

Mr. Walters: The code section in your question is – it's in Vegetation Retention, or Vegetation Conservation. It's under "Significant tree retention" and it talks about when you have to do replacement trees as part of your tree retention plan, because you need to retain a certain number of trees but you may fail to actually do so during construction. And it says "Replacement trees must replicate the vegetation historically found on the site in species, types, and

densities.” So if you apply a significant level of scrutiny to any part of the plan, you may find problems with it, but we didn’t think this was a particular problem. Native vegetation is typically what people say, but there’s lots of native vegetation that is –

Ms. Lohman: Can it be “domestic”? I don’t know what the word would be. I have a heritage apple tree that’s 100 years old. Is that – would that qualify as a historical tree?

Mr. Walters: Well, it’s not historical tree. The language is “Trees” – “...species, types, and densities historically found on the site.” So not necessarily any tree with any particular historical significance.

Ms. Del Vecchio: That also – so say you have a neighboring property that has a very appropriate, suitable tree but that never existed on *your* property, you can’t plant it because it has to have been historically found on *your* site.

Ms. Mitchell: Exactly.

Mr. Walters: Well –

Ms. Del Vecchio: I am going to pick this one apart, Ryan!

Mr. Walters: Species, types, and densities, it says.

Chair Axthelm: Tim?

Tim Raschko: This is kind of semantics, in my view. One way to get around this is to say “pre-settlement,” rather than “historically,” which I would believe is what they’re trying to get at. No? Then you can talk about indigenous but then something indigenous might not fit the micro-site, like a shoreline plan as opposed to an upland plan.

Ms. Del Vecchio: What about the use of “or”? “Naturally or historically.” And why are we doing one? Why does it have to be one or the other?

Mr. Raschko: What is the intent if it isn’t to be what was there going back a long time?

Mr. Walters: I think the intent is because this is in the Replacement Tree section under Vegetation Conservation, it’s if you identify trees that you are going to retain during your construction and then you fail, the replacement tree would be consistent with those trees that you were going to retain.

Mr. Raschko: Okay, so it could be an old apple tree somebody planted 100 years ago.

Ms. Mitchell: Mm-hmm.

Mr. Walters: That could be one of the significant trees you identify in your vegetation conservation plan. But then you’re not going to replace it with a 100-year-old tree but you would replace it with vegetation historically found on the site in species, types, and densities. Now if you happen to lose an apple tree but the rest of the site is covered in Douglas fir, I kind of assume that you’re going to look at the site as a whole and not the one particular tree that you lost.

Mr. Pernula: To me it seems as though Hollie is on the right track because what we're trying to do is retain what's there. It could be an apple tree that somebody planted. You should have the right to replant that there or something that was naturally there. So why not say "historically or naturally"?

Chair Axthelm: Kathy?

Ms. Mitchell: Well, I'd like to take it one step further. I agree with that and I think that's a good point. I think she's after the right kind of thing too, but let's face it, a deodara might be perfect in that location anyway because it's – you know, the location is right even though the apple tree died. And pushing somebody back to historically or natural may not necessarily be the thing to do to tell people, as well. There's a lot of species that are appropriate and it may – I think you should have a little more leeway for what would work in those locations. There's microcosms all over the place and what might work on your property versus one mini-ecosystem on mine can be very – for instance, we've got some areas that are Mediterranean period, and then the backside is very, very wet. They can be very different for everybody. So I think it's difficult when you put somebody and you pigeonhole this into one or the other, and I'd like to see it expanded just a little bit for something that works well, and I just am looking for some help on the wording.

Chair Axthelm: Martha?

Ms. Rose: Maybe you could go with the either/or but have a third way to approve a tree species by allowing an arborist to recommend a tree that would do well in that circumstance, because –

Ms. Mitchell: Right, because what's historical and natural may not be the best thing either.

Ms. Rose: Well, and I'm not sure why, for example, an Alaska cedar tree wouldn't be a great substitute for a red cedar tree. Or you know what I'm saying? Why draw a hard line and say it has to be a tree that grew there? I don't understand that.

Mr. Walters: What if we said instead of the current language – the current language is "Replacement trees must replicate the vegetation historically found on the site in species, types, and densities" – what if we said "Replacement trees must be appropriate to the site in terms of species, types, and densities"?

Ms. Mitchell: That's a lot better.

Ms. Del Vecchio: I think Betsy would like to insert something here.

Chair Axthelm: Betsy?

Ms. Stevenson: Yeah, I think our intention –

Mr. Walters: Don't screw this up, Betsy!

Ms. Stevenson: I'm sorry. I think I'm going to – but I think our intention here is if somebody needs to replace some of the vegetation on the site and if it's trees, if it's an older, larger tree you can't replace it with a sapling. So it's kind of more about the size. If historically it was a large Doug fir tree, we expect you to plant a larger size Doug fir tree that may actually grow.

Chair Axthelm: I beg to differ. Because you take the floodplain and you take –

Mr. Walters: It doesn't actually say that.

Ms. Stevenson: No, I know but I think that that's what we were –

Chair Axthelm: If you go along the river, there's cottonwoods that fall down and it takes a while for other plants to come back, and they don't come up as full-grown trees by nature. They come up as small saplings.

Ms. Stevenson: Well, I understand but –

Chair Axthelm: So I would beg to differ.

Ms. Stevenson: – you lose a large – if they're planning to cut those down, we're looking for something a little bigger than just a seedling. So that's part of it.

Ms. Del Vecchio: I think we need completely different language to achieve that then.

Mr. Walters: Right. I don't think this language achieves that.

Ms. Stevenson: Okay. I mean, I think – that's only a piece of it – I think what this says is also important, but I think size matters.

Chair Axthelm: Martha?

Ms. Rose: So I – coming from a construction background, this tree conversation has been going on for a long time everywhere, and one of the – my understanding of one of the primary reasons for talking about tree planting has to do with stormwater management. And maybe that never entered the thought process here but typically it has almost everything to do with stormwater management. And so you're right, size matters, but coniferous trees are better at stormwater management than deciduous trees. And at any rate, so I'm in the process right now of planting a bunch of – and I'm not in – I'm in Sedro-Woolley but I'm taking it on myself to get rid of all the stupid cottonwood trees that want to fall on my house and I'm replacing them with cedar – very large Alaska cedar trees, because you can buy big trees around here. But so I think that the – I don't know, you know, what was going on in people's minds when they actually wrote this – whether it had to do with stormwater, but it should have. And so I would argue that if somebody takes out an apple tree – first of all, apple tree – usually fruit trees are excluded from being called significant trees. They're usually not in that pile at all. And so – and usually there's a look at if it's a deciduous tree it's a tree of a certain stature and if it's a deciduous it's of a different stature. At any rate, I don't know what the answer is as far as the wording, but I just think to say that it has to be historical or natural, natural seems real vague and historical seems too restrictive. And I think that you could either get real specific and then get into some fights or you could leave an out that says a certified arborist can make a recommendation.

Ms. Lohman: Some of those trees also have a definite lifespan, like a red alder.

Ms. Rose: Exactly.

Ms. Lohman: I mean, they only really go around 30 years or just a little bit more and then they go south on you. So it's almost a Pandora's Box if you tell people that you can only plant –

Ms. Mitchell: I think these gals are absolutely on the mark, and one of the things I learned from Master Gardener days is it's real easy to plant something somewhere. It's very difficult to get them to grow and to thrive. And let's say that there was that big tree that was near the shore bank or something like that that ended up falling over. Well, maybe it was in clay soils that swelled and fell over, so it's inappropriate to put something back in that location. So these kinds of things are very, very important to know if you're going to restrict people because the soils are different location to location to location and some species thrive, some people don't. There may be a reason that that tree or those trees died or came down, and it may be absolutely wrong to replace them with the same kind of species or something that was historical, quote/unquote natural. There needs to be some leeway for site-specific appropriateness.

Mr. Walters: That's what I suggested a few minutes ago.

Ms. Mitchell: Yeah.

Mr. Walters: Shall we write that out here?

Chair Axthelm: Sure.

Ms. Lohman: Yes.

Ms. Mitchell: Are you guys comfortable with that?

Ms. Del Vecchio: Well, can we restate it? Get it written out and revisit it?

Ms. Mitchell: Wordsmith it, yeah. It's an important concept but it's real easy to say, Plant a big tree x place; very difficult to get the thing to thrive.

Chair Axthelm: And I like the idea of instead of saying a tree it says vegetation, because in a situation where a large trees goes down and you plant – if you plant smaller trees around it that's appropriate because sometimes it takes that to then give the root stock for the large tree again.

Mr. Walters: And it does say that – “Replace tree with vegetation.” So the proposal there is to revise that line to say instead of “historically found on the site” to say “appropriate to the site.”

Ms. Mitchell: You need to fix “side” to “site,” please.

Mr. Walters: Oh.

Ms. Mitchell: Is that better?

Chair Axthelm: Does that fix it for everybody?

Ms. Del Vecchio: I'm going to throw this out there and people can shut me down if you want. But my question is still, okay, How do we determine if something is appropriate to the site? So is it appropriate to the site as – you know, I'm still looking for some of that – some guidance there that it – because it's, you know, historically found on the site, it's native to the site, or determined by an arborist. I don't know that we need all of that, I just – who's determining that it's appropriate maybe?

Ms. Lohman: If I may – if you read further, the next item down, (b), they talk about you can plant trees in another location that's approved by the Administrative Official. So maybe you could use that same means to help you there.

Ms. Mitchell: And for some people you may just take everything out of them if for revegetating for costs for them being able to do that. If you start tacking on other kind of specialists, that might be a problem too. It's not that hard to figure out what's appropriate for a site, but it does need to be something that works well there. I don't quite know how to address that.

Mr. Walters: Yeah, there are going to be a lot of places in the code where it says things like this – you know, "appropriate to the site." And in reality that becomes some negotiation where the property owner suggests something and staff say, No, that's ridiculous. What else you got? And they suggest something else and we say, Yeah, okay, that makes sense. There is an upper limit to how specific we can be. Without saying, Go get an engineer, or go – in this case, Go get an arborist, which we would like to *not* say because those things are expensive.

Ms. Lohman: But you need some leeway for when conditions have changed.

Chair Axthelm: Martha.

Ms. Rose: So I agree that we don't want to make a situation where an arborist always has to be hired, because they are expensive. Is there someone on staff or more than one person on staff that can make those calls, that is trained as an arborist or has some – enough knowledge to be dangerous?

Mr. Pernula: Right. Not right now. We had someone but the person left recently.

Ms. Rose: Right.

Ms. Mitchell: Would our local geologist be good with that?

Mr. Walters: Well, we have critical areas staff that have seen trees before.

(laughter)

Ms. Stevenson: We hug them all the time, yeah!

Mr. Walters: They're not arborists but they know things about trees. I mean, I'm just saying there are limits to what they know, but –

Ms. Mitchell: Well, there's plenty of landowners that know a little bit, too.

Ms. Stevenson: We work with landowners all the time and come up with, you know, a list of plants that are appropriate for their situation. The Conservation District has all kinds of – you know, they'll tell you what plants will grow in certain areas and certain soils. I mean, we can do this ourselves. I hate to have to rely –

Mr. Walters: Yeah.

Ms. Stevenson: You know, we rely a lot on professionals, so in this instance we were just trying to say, Hey, if you have to replace something it needs to be similar to what was already there –

so that's all we're trying to really say – both in size, species, and densities. Because we're assuming that whatever the species that is there has been doing pretty well. But that doesn't mean, like you guys are saying, Hey, there's cottonwoods. We know they're going to fall over. Can we plant something else? We'll say, Yes. Thank goodness. We'd love to see you do that.

Ms. Del Vecchio: And I do prefer “appropriate to the site” over “historically found on the site.” I think that is a big improvement. I certainly would not want people to go out and hire an arborist every time we were looking to replace trees. But the only other thing is comparing what you have – the revision you have on the screen here – to the actual code. We're losing the types and densities language, and I just wanted to make sure that was intentional.

Mr. Walters: I think I was suggesting that we would just be replacing those four words with these four words, so we'd be retaining that “species, types, and densities.”

Ms. Del Vecchio: Okay, got it, got it. Never mind then.

Ms. Mitchell: Is that better?

Chair Axthelm: Does everybody concur with it? Okay.

Ms. Mitchell: Thank you.

Mr. Walters: Good with that one? All right, so then the next one – the next comment is suggesting that we should use a multiplier when compensating for the time it takes planted saplings to replace the functions of larger trees. But we do have a multiplier. There's a citation here: “Removed trees must be replaced at a ratio of three to one.” That's when there's an enforcement matter. Outside of that, the ratio is also three to one – different location in the code. So I think we've already addressed the replacement ratio.

Now the –

Ms. Del Vecchio: Just a point of order. Do we – did we need to vote on that last?

Chair Axthelm: No. _____. Is there any objection to it?

Ms. Del Vecchio: Okay.

Chair Axthelm: Or does everybody agree with it that that takes care of it?

Ms. Del Vecchio: Okay.

Mr. Walters: Unanimous consent.

Chair Axthelm: Yep.

Mr. Walters: The next comment was about significant tree. The definitions in the Ss are out of order, which is why nobody could find the definition of “significant tree.” But it is in there, so we will correct the alphabetizing.

Ms. Mitchell: Thank you.

Mr. Walters: And then another comment about dredging, that dredging should distinguish between four different types of dredging. I don't know that this is a universally recognized typing system for dredging, but we didn't create four different types when writing up this section of the code. But we do already distinguish between various purposes for dredging, especially in the When Allowed section in Dredging. We have some different rules for when you do dredging for different purposes. So we think that we have sufficiently addressed that issue.

Chair Axthelm: Right. So like to do – here you say “ditches” – “for small farm ditches and tributaries,” so would a farmer that needs to drain his field have to go through a special approval process to do that?

Mr. Walters: I don't remember exactly how we addressed that, but I feel pretty confident that Annie would not have allowed us to get very far.

Ms. Lohman: We refer back to the ag chapter.

Ms. Stevenson: Yeah.

Mr. Walters: Yeah. There you go.

Ms. Stevenson: The V-ditches are in that critical areas ordinance under .120.

Chair Axthelm: Dredging can be a pretty dirty word but that's – even though it falls under dredging, it –

Mr. Walters: Yeah. (1)(b)(ii), activities that are exempt from the SMP under 14.26.410, Agricultural activities, don't get this dredging section applied to them.

Chair Axthelm: Okay.

Mr. Walters: The next comment suggests that we should prohibit dredging in all fish, shellfish, and wildlife spawning, nesting, harvesting, and concentration areas. Our current proposed code says “officially designated” areas, spawning areas, are the places where we would prohibit dredging entirely. Now there are very few officially designated spawning areas, but if we simply said you can't dredge in *any* area that is a fish, shellfish, wildlife spawning, nesting, harvesting, or concentration area, that might be everywhere. But we would – these factors would be evaluated during the HPA approval process. If there were a map, that would be great. That would make it easy. But in the absence of such a map, we're not comfortable outright prohibiting dredging everywhere, especially when we don't really know where that would be. It would really need to be site-by-site anyway and we have an HPA for that.

Also suggested, the SMP should require forest practice conversions to comply with all aspects of the Flood Damage Prevention code. Skagit County will eventually assume jurisdiction over forest practice conversions, as is required by state law, but we have not done that yet so we really are not in charge of this. We do not issue permits. We coordinate with DNR but we do not issue permits and we cannot apply the flood code at this point. And the commenter knows this.

Suggests that mining should be prohibited on river shorelines, like it is for marine and lake shorelines. But there are existing sand and gravel extraction operations on some river shorelines and we think they should be allowed to continue appropriately.

There were a couple of commenters that also talked about mining and reclamation plans; however, the reclamation plan is approved by DNR and the reclamation plan does not get a shoreline permit, so we don't think we have jurisdiction over that – at least not the plan. Maybe the work to do the reclamation, but you're getting a plan first so we don't think that we need to address that in the Shoreline Plan.

Appurtenance. We have a proposed definition of "appurtenance" that comes directly from the WAC. The commenter would like "appurtenance" to a residential structure to exclude beach stairs and tramways. Our practice has been to not consider beach stairs to be an appurtenance to a residential structure. So we wouldn't oppose specifically adding an exclusion to the definition because the definition doesn't mention beach stairs. We wouldn't oppose modifying the definition to say "and specifically excluding beach stairs," but we also don't feel very strongly about it because we've already been doing this.

Ms. Lohman: I think we should leave it alone.

Mr. Walters: I like the fact that it's directly from the WAC.

Ms. Mitchell: I do, too.

Mr. Walters: And I'm not aware that it's been a problem or a point of argument in the past. The comment also included a suggestion that restoration projects that are approved by the Salmon Recovery Funding Board and by the Skagit Watershed Council should get an exemption from shoreline substantial development permits. And our sense of that is that the Skagit Watershed Council's approving projects because they are good for fish or habitat. They are not looking at all the things that our shoreline permits do. They are not the same purview. So we don't think that that has an appropriate nexus to expand the exemption.

Chair Axthelm: On P-15, now we're not going to add language to it?

Mr. Walters: I didn't hear that.

Chair Axthelm: The appurtenance issue? So we're not adding any language? It's staying the same as what it is already. Is that correct?

Mr. Walters: We didn't include it as a recommended change because we don't feel strongly about it. We thought that if you did you would mention it and you would put it in your recorded motion.

Chair Axthelm: Okay. I didn't see the RC on there. I just wanted to make sure if it wasn't changing.

Mr. Walters: Right.

Chair Axthelm: It wasn't.

Mr. Walters: P-17. As you may recall, there're a couple of different types of shoreline stabilization. One of them is structural. Structural is divided into hard and soft. Soft shoreline stabilization is supposed to be stuff that isn't bulkheads and that kind of thing. Our definition, I think, includes the word "boulders." Now if you had a string of boulders, that would not be soft

shoreline stabilization. That would clearly be hard shoreline stabilization. But we think if you have occasional boulders that there's nothing particularly wrong with that.

Ms. Lohman: What if you didn't do anything at all to the language? Because now you're going to have to decide what – how many is occasional.

Mr. Walters: That's true; however, if it is interpreted to mean boulders and a large string of boulders are soft shoreline stabilization, that is not going to pass muster if anyone looks carefully at that.

Ms. Lohman: But isn't that going to be very specific to the circumstance that you are talking about anyway? So it's not like the project is just allowed to just continue just whatever the person wants to do. It's already going to be going through quite a bit of scrutiny.

Mr. Walters: Well, it would get through our shoreline process if our definition says boulders are part of soft shoreline stabilization.

Ms. Lohman: But it doesn't. It doesn't say that.

Mr. Walters: Our definition now in 14.26.480 –

Chair Axthelm: Martha?

Ms. Rose: I'm reading that the definition does include boulders for soft shoreline and I think it should, and I don't think it should just mean scattered here and there. I think that a rock wall does exactly what a soft shoreline stabilization is meant to do, which is it diffuses the wave action so that you don't get erosion. And some good examples of that are where they have rockeries holding up the shore where the railroad trains are right on the shoreline, and those work beautifully. Those do exactly what the goal of a soft shoreline stabilization is meant to do. So I would argue that whoever submitted this doesn't really understand that whole dynamic, and I think we should leave it alone because the way it's worded in here – it says "soft shoreline stabilization may include the use of gravels, cobbles, boulders, and logs as well as vegetation" – I think that covers it. And certainly you're not going to accept a plan for shoreline stabilization that is put together by somebody who doesn't understand the engineering associated with it. So if the particular site requires more of a substantial rock barrier but made out of rocks or spaces, whether they be smaller or bigger, then you would have good – the ability to approve it without getting into a fight. You know what I'm saying? Like – so I – that's just my observation and from my learning that I've done about this.

Ms. Mitchell: I concur.

Ms. Rose: I think we're okay the way it is in the code.

Chair Axthelm: So do we have a – I guess in this case it would be good to have a motion, so would that be your motion?

Ms. Rose: Well –

Mr. Walters: We don't need a motion to leave it alone.

Ms. Del Vecchio: Not if we don't want to make a change in this.

Chair Axthelm: To leave it the same.

Ms. Rose: I don't think we should change it. I don't think we should adopt RC-4. I think we should just leave it the way it is. I think it's properly worded.

Ms. Mitchell: I agree.

Chair Axthelm: So are we all in agreement with that, or does anybody oppose it?

(silence)

Chair Axthelm: We're all in agreement? Okay, so we'll leave it the same – or not adopt RC-4.

Mr. Walters: The next comment suggests that where underground utility lines cross river corridors, they should be completely buried well below the river scour depth, and we agree. We propose some provision there.

Ms. Lohman: But isn't that already required?

Mr. Walters: It's not in the Shoreline Plan.

Ms. Lohman: No, but if you're doing utility work, isn't that already required?

Mr. Walters: I would think.

Ms. Lohman: I thought that it was.

Mr. Walters: But I don't know.

Ms. Lohman: Because I know my water people – a guy that I kind of know really well, he told me that it's already required that you're well below the bed.

Ms. Mitchell: Right, so maybe we shouldn't get our fingers into it.

Mr. Walters: It certainly seems like it would be a bad idea to not put it below the bed.

Ms. Lohman: So I just feel like it's already covered in the building code and elsewhere.

Mr. Walters: I don't know about the building code. I don't think we should leave it out by *assuming* that it's covered elsewhere.

Ms. Mitchell: Can we table this and have you guys check on that first for next round?

Mr. Walters: Mm-hmm.

Ms. Mitchell: That might be smart. Because it comes back to if we require something that's already being done someplace else by other powers-that-be that are higher than our County, then why do we even say it?

Ms. Del Vecchio: And we do have language. It's not like this is adding a completely new element that's not addressed in these codes at all. I'm just wondering why the recommendation doesn't – are we actually changing language or just adding?

Mr. Walters: It's referring to .490(4)(c), so –

Ms. Del Vecchio: Because (4)(c)(iii) –

Ms. Rose: Oh, it says except where the pipe is affixed to a bridge structure.

Mr. Walters: And (4)(c) is addressing underground utility lines. It says that they have to “enter and emerge inland from fresh and saltwater banks, dikes, beaches, or shorelands...enter or leave water bodies must be returned to pre-construction condition...must be completely buried under the river bed in all river or stream crossings...” So that would be the appropriate place to say “and below the river scour depth.”

Chair Axthelm: Martha?

Ms. Rose: Well, I see. So it states here – it specifies where they're underground lines, and actually under (c)(iii) it states that.

Ms. Mitchell: It already says it.

Ms. Lohman: It says “must be completely buried under the river bed.”

Ms. Rose: So why do we have to change it, I guess?

Mr. Walters: It says under the river bed but this – the comment is that it should be below the river scour depth.

Ms. Mitchell: Well, how are they going to know that?

Mr. Walters: They're going to figure it out because it's a utility line and it needs to work.

Ms. Mitchell: Yeah, but if they're already engineered to do that then the engineers are going to be doing that already, aren't they?

Mr. Walters: Well, hopefully.

Ms. Mitchell: Yeah.

Ms. Stevenson: We'd like to think that of everything.

(laughter)

Ms. Mitchell: We've got to trust somebody sometime.

Ms. Del Vecchio: But the recommended change here is actually – would actually be modifying language in the existing code –

Mr. Walters: Yes.

Ms. Del Vecchio: – rather than just adding an additional provision, which is kind of –

Mr. Walters: It'd be a very small tweak.

Ms. Del Vecchio: Okay.

Mr. Walters: So assumedly it would say instead of “completely buried under the river bed,” it would say “must be buried below the river scour depth.”

Ms. Rose: I'm okay with that. When I read this line it's a tiny bit confusing. It says “Underground” and then in parenthesis “(or water) utility lines.” And I think it should say “Underground” – I don't know why “or water.” It's clumsy.

Mr. Walters: Or under water? Maybe that's what it meant.

Ms. Rose: “Underground water and utility lines” is what it should say probably.

Ms. Del Vecchio: “Underground or under water.”

Mr. Walters: Or maybe just “utility lines,” because you're not burying it beneath the river unless it's going beneath the river, right?

Ms. Lohman: It's still underground. It doesn't matter there's water on top.

Ms. Mitchell: But it doesn't matter what kind of utility line, would it?

Ms. Rose: Oh, I see. I thought – okay, see I misread it as a water line, not under the water. So that's why it needs to be clarified or re – just edited so it's –

Chair Axthelm: Okay. So do we want to add this language or not add the language?

Ms. Mitchell: I don't think we should micromanage the engineers.

Ms. Lohman: I don't think you need it.

Chair Axthelm: Tim?

Mr. Raschko: I don't think the scour depth is going to be consistent over time anyway, so I don't know how you ever would determine it.

Chair Axthelm: Okay. Hollie?

Ms. Del Vecchio: I'm fine either way. I just wanted to make sure I knew what we were doing.

Chair Axthelm: Okay. Amy?

Amy Hughes: No comment.

Ms. Rose: I'm okay either way.

Chair Axthelm: Okay. And I think it covers it with the river depth. I'm not professional on the scour depth issue so it's a hard call.

Mr. Walters: Okay, the next comment congratulated us on requiring shoreline exemptions to be published in the newspaper, which brought to our attention that we didn't mean to do that.

(laughter)

Mr. Walters: We wanted – shoreline exemptions are where you don't actually have to do anything, where you *don't* have to get a shoreline permit. So our code has a couple different levels of permit application. Level 1 is an administrative approval and Level 2 is a Hearing Examiner approval. There is no Level 0, although maybe there should be, because we distinguish between Level 1 applications where we publish a notice of development application, a notice of decision, and solicit comments and all that, and just decisions where we're just issuing a permit and then you're done. We already distinguish that but we distinguish it in a more complicated way than calling it another level number, and that is we back out the requirement for public notice in a different section. So anyway, we would suggest doing that here, too, so that shoreline exemptions – where all we're doing is writing you a letter saying you don't have to get a permit – do not need public notice, which is consistent with what we do now.

Ms. Mitchell: So I move that we adopt RC-6 as written.

Mr. Raschko: Second.

Chair Axthelm: Okay. So it's been moved and seconded to adopt RC-6 as written. All those in – discussion – further?

Ms. Del Vecchio: I have a question. So –

Chair Axthelm: Hollie?

Ms. Del Vecchio: The comment, we're doing the exact opposite of what the commenter said they were thanking us for? Is that –

(laughter)

Mr. Walters: Yes.

Ms. Mitchell: It was a mistake.

Mr. Walters: To expand on that a little bit, they would like to be able to see shoreline exemptions to make sure that we're doing them correctly, and we're hopeful that with our new permit software we would be able to put all those online easily without going through the expense of – and the waiting period and everything – of putting them in the newspaper.

Chair Axthelm: Well, they're still seeing all the exemptions. It's just in this case there's nothing required.

Mr. Walters: Well, right now there is no required notice for shoreline exemptions.

Chair Axthelm: Mm-hmm.

Ms. Mitchell: Does that make it clear?

Ms. Del Vecchio: Well, that's what we were doing. I guess I'm just a little hesitant. So the – I feel like the comment is here for a reason, not just to bring attention to the fact that we didn't – we did something we didn't mean to do. They were –

Mr. Walters: Ordinarily we don't address a lot of comments that say, Good job, County. We leave those out. But in this case, it was a good-job-County and we thought, oh, that's not what we meant to do, so we wanted to include it –

Ms. Del Vecchio: Right, I get that.

Mr. Walters: – to raise the issue.

Ms. Del Vecchio: I was just wondering. Is the point that the comment was making – and I realize it was just an oh-thank-you-this-was-welcome – but is the point of their – how are we addressing that point?

Mr. Walters: We're proposing to not address it in the code.

Ms. Del Vecchio: Mm-hmm. Right, so how else? So mapping? So doing it – we're addressing it through –

Mr. Walters: Not through mapping but Betsy had suggested that we could put the letters of exemption on – or whatever they're called. Letters of exemption? – letters of exemption onto our website instead of publishing them in the newspaper. But we wouldn't put that in the code. We wouldn't put a requirement for that in the code because we don't have a structure for that.

Ms. Del Vecchio: Okay. I – yeah.

Ms. Stevenson: Hollie, just to clarify that, even in his comment letter he does say a full legal notice in the paper of record is not necessary. But they did ask us to post them to our website so they can see them. And a lot of times with the exemptions we do send them out to the tribes and different agencies and people who might be interested to comment. But this way if we – and I agreed to go ahead and do that but I don't think we need to put it in the code necessarily – is that we would just post them where we do our legal notices and stuff so they could see them there, and he was happy with that.

Ms. Del Vecchio: No, and that's helpful – just to make sure we're addressing that _____.

Ms. Stevenson: No, no, I know. It's like wait, you're doing the exact opposite. He pointed something out and you're saying, Oh, never mind. We didn't mean that. So I mean it is in his letter and I have spoken to him about it.

Ms. Del Vecchio: Okay. All right, thank you.

Ms. Stevenson: Yeah, yeah, yeah. No, no, no!

Chair Axthelm: Any further comment?

(silence)

Chair Axthelm: Okay. If there's not, then we'll – all those in favor of RC-6 as written on P-19?

Multiple Commissioners: Aye.

Chair Axthelm: Opposed?

(silence)

Chair Axthelm: Okay, ___.

Mr. Walters: All right, so then the next comment notes that we don't have anywhere in here – anywhere in the proposal – where we say shoreline variance should expire if the project for which you are getting a variance isn't built, and Betsy said that that's not true; yes, we *do* have that in the code. But then we couldn't find it. So, yes, we think that there should be an expiration. We have had a lot of trouble in the past with applications that get approved or get preliminary approval and then languish and nobody builds them, and then they're back 20 years later and say, Ha, ha, we want to build this, and everybody freaks out. So right now we have an expiration provision and the statute requires it, so we definitely want to put that in.

Ms. Stevenson: There is time limitations in there on shoreline substantial development permits, but somehow the variance and conditional use permits got dropped out and I don't know what happened. But they should be in there as well in terms of the time limits. You have two years to start and five years to complete for all of them.

Chair Axthelm: Martha?

Ms. Rose: I think it's a good idea, but I think that it could be helpful to have some sort of exemption or, like, look at the recent meltdown of our – you know, the construction industry that happened for seven years. In some cases people couldn't do anything – you know, do what they thought they were going to be able to do – and it hit them rather suddenly. So I don't know whether that would apply here or not, but maybe you just wait for that type of economic meltdown to happen and then address it as a special exemption to the code during that difficult time period, like they've done with a lot of plats and stuff around the state. I think it's a statewide measure that they passed in Olympia that allowed ex – you know. But at any rate, that's my only concern about it is if something happens where we have another out-of-left-field economic meltdown that might stymie a project unintentionally.

Chair Axthelm: Annie?

Ms. Lohman: Where were you thinking of putting this language?

Ms. Stevenson: The time limits is 14.26.710(3), but all it says is shoreline substantial developments need to follow the time limits that are outlined in the RCWs and WACs. It doesn't include variances and conditional use permits. So that's already in the law, and administratively we can grant a one-year extension.

Mr. Walters: That's .715 – .715(3).

Ms. Stevenson: Is it?

Mr. Walters: Yeah.

Ms. Stevenson: Okay, I wrote down the wrong number.

Ms. Mitchell: Well, one of the things that Martha's indicating is that there are valid times where there's a hardship situation and they've paid their fees for – they do pay fees for this kind of stuff, right?

Ms. Rose: Right.

Ms. Mitchell: So is there something where they could come in and register with you – let's say there is a downturn – and say, Can this be put on hold? Is that not a good idea?

Mr. Walters: There is a statute that addresses this that allows local government to authorize a single extension for a period not to exceed one year, based on reasonable factors, if a request for extension has been filed before the expiration date and notice is given to parties of record on the substantial development permit. So that may not apply to variances.

Chair Axthelm: Okay. So, Ryan, you have – my concern is that you situations like you have a development permit and then you have building permits when they don't coincide. So you might have a development permit before and then you have your building permits that come through afterwards. But the project isn't going to be complete until later on, until maybe a couple of years down the road. Is that two years allowing enough time?

Ms. Mitchell: Two years goes fast.

Ms. Stevenson: That's to start – complete within five.

Chair Axthelm: With a lot of the environmental stuff, starts well before you get permits.

Mr. Walters: It looks like the one-year extension is available for variances, too. There's just a different paragraph.

Mr. Pernula: So that would give you three years to start, then the –

Ms. Stevenson: Two years.

Chair Axthelm: Well, but that's with an extension. So it only gives you two years to start and then you have to ask for the extension.

Ms. Mitchell: Can we recommend changing from two years to three years?

Ms. Stevenson: It's in the state law. I don't know that we can do that.

Chair Axthelm: Oh, it is? Okay. Okay.

Ms. Stevenson: That's all I'm saying.

Ms. Mitchell: Oh, okay.

Mr. Walters: However, Betsy, do we have a provision – because I'm not seeing it – for the extension?

Chair Axthelm: Or statement of when that period starts?

Ms. Stevenson: No, we just reference back to the WAC for the time requirements.

Mr. Walters: Oh, yeah. Well, maybe that covers that. I don't see a lot of leeway here because the statute says what the time limits are and that we allow one extension, one one-year extension. In the past, for instance, in the situation Commissioner Rose described, the state has stepped in and said, Yeah, we'll extend the time period, and then we've come through and done that.

Ms. Mitchell: For just the one year or have they done it beyond that?

Mr. Walters: I think there was a substantial extension for subdivisions.

Ms. Rose: I think it was seven years.

Ms. Mitchell: So what did it take to trigger that?

Mr. Walters: That was the Great Recession. That's when they did that most recently.

Ms. Mitchell: Okay.

Chair Axthelm: Okay. Tim?

Mr. Raschko: So if the permit expires in that amount of time, you can reapply, correct?

Mr. Walters: Yes.

Mr. Raschko: Could there be a provision that if you reapply and the proposal is substantially unchanged from the original approved one, you could waive the fees?

Ms. Stevenson: Can we waive fees?

Mr. Walters: Oh, yeah, yeah. *You* cannot waive fees, but the code can waive fees. So, yes.

Ms. Stevenson: Yes and no. I mean, they would still have to pay whatever the costs of – I mean, the advertising and everything else. We still have to go through the process again and have a public hearing if it's a variance or conditional use permit.

Ms. Mitchell: But they wouldn't be hit with the full cost.

Mr. Pernula: Well, they might if it still has to go somewhere – Hearing Examiner or something – if _____ costs.

Chair Axthelm: The County would still incur fees.

Mr. Walters: Fees are set by the Board by resolution and one of the reasons for that is they affect the County's budget. But that would certainly be an option for the Board at the time that

there was some economic downturn. The Board could subsidize the costs of reapplication in that instance.

Ms. Mitchell: So you hear our concern, Commissioner!

Ms. Del Vecchio: Can I just add? If we're going to make this change, I would just add shoreline variances to the – what is it? We have .715(3) – rather than not reference a two-year limitation period and just say that it's governed by the time limitations of the RCW and WAC? Just because if we change – well, number one, be consistent with how we reference it for the substantial development permit and, number two, if the legislature ever changes the RCW to provide for three years we're not, you know, stuck with two, and – anyway...

Mr. Walters: Yes.

Ms. Del Vecchio: Thank you.

Mr. Walters: Shall I write that up?

Ms. Mitchell: Please. Let's see if he got what you said!

Chair Axthelm: So this is instead of RC-7?

Ms. Mitchell: Right. Is that what you intended to say?

Ms. Del Vecchio: Oh, yeah. ___ me? Yeah, he got it.

Ms. Mitchell: Do we need to move to vote on that?

Chair Axthelm: We can move to vote, or does anybody object to this statement, to replacing RC-7 with –

Ms. Del Vecchio: But we didn't vote on the underlying one. I guess I'm wondering why we're voting on some and not others.

Mr. Walters: Unanimous consent if –

Chair Axthelm: If somebody makes a motion – that's why. If somebody makes a motion then we can do that. If not, then –

Ms. Mitchell: Some we passed on.

Ms. Del Vecchio: If we don't move to approve something, then we just –

Chair Axthelm: Then I'll just ask if anybody's ____. If everybody agrees with it or if there's any objection to it.

Ms. Del Vecchio: So you'd prefer that we don't move then?

Chair Axthelm: No, you can do either way.

Ms. Del Vecchio: Okay.

Ms. Mitchell: Mostly I want to make sure the language is what you were looking for.

Chair Axthelm: Okay. So do you want to make a motion or do you want – I can –

Ms. Del Vecchio: No, this seems faster.

Chair Axthelm: Okay. Is there any objection to as stated (in) number 20 onscreen – “Add shoreline variances to the list of permits subject to time limits in Skagit County Code 14.26.715(3).” No? Seeing none, __. Good to go.

Mr. Walters: Okay, so the next comment suggested that the concept of no net loss that is written into 14.26.305 – this is the general provisions about no net loss – should apply to “activities” in addition to “uses and developments.” And we are not real comfortable with that. Uses and development you’re getting a permit for or a letter of exemption. Activities maybe not. It’s a little bit unclear how that would actually work, what the effects of that would be. So I think we’d rather not include that language unless Ecology says we really have to.

Chair Axthelm: Thank you!

Mr. Walters: We’re not aware of a requirement to do something.

All right, so the next one is a little bit more complicated. In the proposed code there is a table of hard surface limits. And as you recall, hard surfaces are basically impervious surfaces. That also includes vegetated roofs and pervious pavement, but just basically think of it as impervious surface.

Chair Axthelm: I can’t see it that way.

Ms. Mitchell: I don’t either.

Chair Axthelm: If you say “impervious surface,” you mean impervious surface. That’s very distinct in a lot of construction now.

Mr. Walters: We used “hard surface” because that’s the newer term that Ecology uses, especially with respect to stormwater management. Almost no one does vegetative roofs. That’s why I say that it’s very similar in effect to impervious surface.

Chair Axthelm: Okay.

Mr. Walters: The comment references the WAC and the WAC requirement to have a 10% limit for hard surfaces in Rural Conservancy and Urban Conservancy, but if you actually go and read the WAC, the WAC conflates lot coverage – which doesn’t have a definition in the WAC, but under our definition means the area occupied by buildings – with all impervious surfaces, which is obviously greater than that because it would include patios and driveways and things like that. Now our current plan – the current old Shoreline Plan – uses a different term, “site coverage,” which has been difficult for us as we’ve been evolving our application forms for other things lately because we have to collect a whole bunch of different numbers from you. What is your hard surface? We have to know that for stormwater management. What is your lot coverage? We have to know that for zoning. What is your site coverage, because we have to know that for shoreline. So we have been wanting to condense these terms as much as we can so we’re

collecting fewer different – slightly different – pieces of information. So our proposal in that table is to use hard surface. And the way we would like to address this comment is to in Part II of the regulations where we included space for regulations that affect specific areas, add a 10% impervious surface limit only for the creation of new lots, which is something the WAC allows us to do. It means we don't have to have such a low limit for all development within those areas. Instead we could just have that limit – and this would use impervious surface because that's what it says in the WAC – for new lots and only in those two designations. So that's how we propose we address this comment.

Ms. Lohman: But you said, though, the WAC allows you to go larger than 10% – in the memo.

Mr. Walters: The WAC allows for existing lots to exceed the 10. That's why we don't want to put it in the table, because that table applies to all new construction and development. Instead we would just like to put it in the SMP Part II just about new lots.

Chair Axthelm: Any comments on that?

Ms. Rose: I sort of do.

Chair Axthelm: Martha?

Ms. Rose: Along the same lines of what Josh brought up, well, it really depends on the purpose of the 10%, and I think I heard you say it had to do with stormwater again. Did it?

Mr. Walters: It's definitely a concept used in stormwater management. In the context of the Shoreline Plan, I don't know that it exclusively has to do with stormwater management. It probably also has to do with vegetation and, well, all the other aspects of development that the shoreline seeks to manage.

Ms. Rose: Aesthetics and – yeah, that's – yeah, because I don't think a lot of times when things like this are written it's real clear what the intent is. Is it aesthetic? Is it storm? Is it a little bit of this and that? Because you can – if it's storm, you can manage stormwater in so many ways that to simply say we're going to limit our pervious surface – *impervious* surface – as a way to manage stormwater, that's not very flexible. But if it's aesthetic – you know, if there's other things rolled into it. And I think that these lots are probably big enough where 10%'s okay, but I don't know.

Mr. Walters: Well –

Ms. Stevenson: It's just for new lots.

Mr. Walters: – we don't think that existing lots would have a very easy time of achieving the 10% limit. We think existing lots would have a very difficult time achieving the 10% limit.

Ms. Rose: So what are the odds of new lots being created that would – does that put them in a box that they shouldn't be put in because of the 10%? You know, that's –

Mr. Walters: Well, you have a lot more flexibility when you're creating lots from scratch, I guess is the idea.

Chair Axthelm: Kathy?

Ms. Mitchell: Ryan, if you could explain what you mean by –

Ms. Rose: I don't know if it's appropriate for every situation because that's an unknown. We don't know what these things are going to be. But 10% is very minimal, and you can – like I said, if the idea is to manage stormwater, whether the driveway – it could be pervious concrete. It could be hard concrete with an infiltration basin under it. In other words, if the goal – if the primary goal is managing stormwater – but that's not clear here. You're saying it's not the primary goal, or it might not be.

Mr. Walters: No, it says protection of ecological functions.

Ms. Rose: Which usually means stormwater, but okay.

Mr. Walters: That's one of them.

Ms. Mitchell: Can you explain what you meant? You lost me a few sentences back when you were saying some places would have the difficulty achieving the 10%. I don't know what you mean.

Mr. Walters: Most shoreline lots in Skagit County first of all are probably already divided, but that's not 100% true. But most shoreline lots are going to be narrow because your objective in dividing your lots is to pack as many houses as you can onto the shoreline usually, and you can do that by making the lots as they face the shoreline narrow so that you meet the minimum lot size – and most of these lots were divided a long time before the current minimum lot size that we have – you meet the minimum lot size by stretching the lot out.

Ms. Mitchell: Spaghetti lots, yeah.

Mr. Walters: So say you've got a lot like that. Now you may need a long driveway to get to where you want to put the house on the shoreline. That counts as impervious surface. Plus it's a small lot to begin with – smaller than our minimum lot size – and you might want a decent sized house on the shoreline because you spent a bunch of money for your shoreline lot. See how it quickly ends up in a situation where it's very difficult to achieve a 10% – a maximum 10% impervious surface?

Ms. Mitchell: Is that right, Martha?

Ms. Rose: And so the current – so if this applies only to new, the new ones are – what would be the minimum lot size required for a new lot today?

Mr. Walters: Well, a lot of shoreline is going to be Rural Intermediate, right?

Ms. Stevenson: I don't know in terms of the zoning. I don't pay that much attention to the zoning. I just look at the shoreline designation.

Mr. Walters: Well, most of the time, I think, Rural Intermediate is probably going to be the zoning in shoreline areas. But Rural Intermediate is also going to be the zoning where the lots are already divided. I mean, there may be some larger ones within that zoning, but you can't have Rural Intermediate zoning unless it's a limited area of more intense rural development or

there's a logical outer boundary and preexisting development. So I guess it's somewhat hard to say exactly what the zoning would be. But if it's not 2½ acres, it's probably going to be bigger.

Ms. Rose: I see. So 2½ would likely be the smallest size and then 10% seems somewhat reasonable. That was my point, is you're saying 2½ acres would be the smallest size lot that would be created today.

Mr. Walters: For a new lot.

Ms. Rose: What? So that 10% *is* more – is somewhat reasonable. You can do it – because that's a big lot.

Ms. Mitchell: But I've got a question, though.

Chair Axthelm: Kathy.

Ms. Mitchell: I think where I'm stumbling across is the 10% number. I don't know if that really – what that means and what it should be or shouldn't be. You can vision all kinds of different circumstances. Let's say you do have a short lot or it may be narrow but it's 60 feet to – whatever it is – let's say for the driveway. What about those folks that have the rolling hill? That rolling hill driveway would be a larger number for pavement. If it's all flat and even that's one thing, but you don't know again from site to site what's going to be. So I don't know if the 10% is a good number or an arbitrary number, a valid number, or anything like that, and I don't know other than asking the question if anybody can help out with – if that's reasonable.

Mr. Walters: Well, for a new lot that is 2½ acres – at least 2½ acres – we would be talking 11,000 square feet that 10% would work out to. So that's a pretty good size house plus a pretty lengthy driveway plus garage probably.

Mr. Raschko: I was figuring here on 2½ acres you could have a driveway 14 feet wide, 635 feet long, and a 2000-square-foot house.

Ms. Mitchell: I guess, so, can you translate? Is that reasonable? I don't know.

Ms. Del Vecchio: You're wondering does the 10% have some sort of a scientific basis –

Ms. Mitchell: Thank you.

Ms. Del Vecchio: – or do we just throw a number on it that seems like it would be sufficient to accommodate what we just described?

Ms. Mitchell: Exactly. Exactly, because it is a limit and I don't know if it's artificial or if it's appropriate. I don't know.

Mr. Walters: Well, it's from the WAC.

Ms. Stevenson: It's a state limit.

Mr. Walters: That's where we got the number.

Ms. Del Vecchio: Which doesn't really tell us the answer to that question either, but at least it's coming from somewhere. We're not just making it up. A related question: Is this an area where it makes sense to distinguish between critical areas and non-critical areas? Or are these lots all going to be within the critical area?

Ms. Stevenson: If they're under shoreline jurisdiction, they will be in critical areas as well.

Mr. Walters: At least part of them.

Ms. Del Vecchio: Okay. I'm pretty sure we've had this issue come up before. All of the shoreline – just because you're in shoreline jurisdiction does not mean that you are critical area.

Mr. Walters: Correct.

Ms. Stevenson: Yes, it does.

Mr. Walters: Well –

Ms. Stevenson: Fish and Wildlife habitat conservation area is a shoreline by definition.

Mr. Walters: No, but I think she said the reverse.

Ms. Rose: I would like to –

Mr. Walters: If you're in shoreline jurisdiction, up at the front you're in a critical area. At the back, if you're far enough back you may not be in a critical area buffer.

Ms. Stevenson: That's not exactly what she said, but...

Mr. Walters: Well –

Ms. Stevenson: That's not what I heard.

Ms. Del Vecchio: So that is – I'm pretty sure that Ryan – maybe I didn't say it exactly right, but Ryan caught the gist of what I was trying to say. Just because we are shoreline jurisdiction – there is a difference. There is shoreline jurisdiction land that falls outside the critical area. It's going to probably be that you're going to have a combination on ___.

Mr. Walters: You might have a lot that is wholly within the critical area and its buffer.

Ms. Del Vecchio: Sure. And you might have a lot that is partially within the critical areas and partially outside.

Ms. Lohman: What about a dike? You're within shoreline but you're not in a critical area. Right?

Ms. Del Vecchio: Okay. So I was just wondering if it makes sense to apply the 10% to the portion of your property that is within critical areas, because I think a lot of those WACs tie back to the achieving ecological function on the critical areas, or –

Mr. Walters: Well, that was one of Ecology's comments on the table that has the limits in it. And they said – I think they said calculate the 10% based on the area outside of the buffer. But we

didn't want to do that because that would – if you take 10% of the area outside the buffer, that makes a much smaller area that you get to develop. So we wanted to use the entire lot to calculate the 10%.

Ms. Del Vecchio: Well, not if you're – if you're adding on to the – I'm not quite sure how you're doing the map there.

Mr. Pernula: The one that would be outside of that area where you're restricted to 10%. So you could have a much higher number if you're not including it, the way I would calculate it. But still if you have a new lot – and most of them are Rural Intermediate – the impervious – the area that you could have would be about almost 11,000 square feet. It's quite a bit.

Ms. Del Vecchio: And I'm not arguing that it should be higher – that it should be more. I'm just tying it to the comments that say, Okay, where did this come from? It seems like the 10% is linked more to the critical areas. And so if we're trying to rationalize the 10% limit, that to me was one way of –

Mr. Walters: Well, the 10% is, according to the WAC, about protecting ecological functions but not specifically within the critical area or its buffer. Because you're not supposed to be in the critical areas buffer.

Ms. Del Vecchio: No, I know, but all of the language if you look at it in totality. I mean, those when you're looking at restoring ecological functions, it comes back to the critical areas. I know we're treating the critical areas as a separate ordinance that we're just kind of adding in –

Mr. Walters: Well –

Ms. Del Vecchio: – but really the idea is that these are all integrated. And we've had this discussion before. I don't mean to be – if it doesn't make sense to distinguish between critical areas and non-critical areas for the purpose of this, we don't need to rehash this conversation. I was just throwing that out there as a way of potentially addressing the – you know, why we have 10%, where that number comes from.

Chair Axthelm: Okay, Martha?

Ms. Rose: I'd like to make a motion that we actually adopt the recommendation number 8 because the way it's worded here, it says "add 10% impervious surface limit to Rural Conservancy." And that opens the door for some – the use of some pervious surfaces that are hard. By getting rid of the language of hard surface and changing it to the impervious surface, as you've recommended, that means if somebody is really – has an unusual situation where they have a long driveway and they want the out building and the 2000-square foot house, they can make their driveway pervious and that would not be counted in this 10%. And so I think that gives the out. And, you know, pervious – a properly constructed pervious driveway restores ecological function. It doesn't take away from it. So there's no conflict here, and I – so, at any rate, if you agree with what I said, I think that I would like to move that we adopt RC-8 because I think that by using the word "impervious," it solves the problem.

Chair Axthelm: So we have a motion by Martha. Do we have a second?

Ms. Del Vecchio: Second.

Chair Axthelm: Okay. So now discussion.

Ms. Mitchell: I'd like to – Martha asked a good question with that. Is her assumption correct? So if we put this language in, would somebody be able to do pervious surfaces elsewhere and not be penalized?

Mr. Walters: Yes, because pervious surfaces are contained within hard surface but not contained within the word “impervious” surface. And the reason in this instance we thought it was okay to use impervious surface is because it's a more relaxed standard and we don't get that many subdivisions. I mean, building permits are coming in every day. Subdivisions are not. So it's fine to ask for a bunch of information from subdivision applicants, make it a little more difficult, because they have to provide a whole bunch of information anyway. Building permits, we want it to be simpler.

Chair Axthelm: Annie.

Ms. Lohman: But just a point to clarify: When you're measuring that, you're measuring the footprint of the house, not the living space square footage, so when we say the 2000-square-foot house that's really not correct because you're actually measuring the footprint that that house is on.

Mr. Walters: If it's two stories, which it may very well be in shoreline jurisdiction, then maybe that's 4000 square feet of living space.

Ms. Lohman: Right. So I just wanted to make sure that we weren't talking – we were talking the same thing. And you're also – for a point of clarity – you're talking about newly created lots. You are not talking about already-established lots that just happen to be vacant right now –

Mr. Walters: Correct.

Ms. Lohman: – that are in or amongst already-established lots. Okay.

Chair Axthelm: Any other discussion?

(silence)

Chair Axthelm: Okay. All those in favor of RC-8 or 21 as stated onscreen, say “aye.”

Multiple Commissioners: Aye.

Ms. Mitchell: Nay.

Chair Axthelm: All those opposed, say “nay.” So one nay.

Mr. Walters: All right. The next one, the commenters suggest that we – also for new lots, but this time only in Rural Conservancy and Natural shoreline environments – create a minimum of 300 feet as the lot width. And the purpose is to avoid cutting wildlife in upland areas off from the water and vice-versa. So if we did that, we recommend that that makes sense for the Natural environment. We don't really recommend that for the Rural Conservancy environment and it's not a requirement in the WAC that we're aware of. So we would recommend adding that for

Natural, and it would also go into SMP Part II and only apply to new lots created after the adoption of this plan.

Chair Axthelm: Okay, Kathy first.

Ms. Mitchell: Okay. I'm going to be simple tonight. I don't understand how wildlife could be cut off unless there's a fence.

Mr. Walters: There could be a fence.

Ms. Mitchell: Right.

Mr. Walters: But there also could be a fence regardless of the lot width. If you have narrow lots, you may not end up with very much space between houses.

Ms. Mitchell: No.

Ms. Lohman: But you're not going to do it in the Natural environment.

Mr. Walters: What's that?

Ms. Lohman: But you're talking about the Natural environment. I'm just thinking no because it's not required in the WAC and it doesn't really make a lot of sense.

Ms. Mitchell: I concur.

Chair Axthelm: Kathy – or Martha. Martha?

Ms. Rose: I was going to ask what you would do if it was a pie-shaped lot and it might be 600 feet on one end and much smaller than 300 on the other end. If you adopt a minimum width, how would you handle that?

Ms. Stevenson: They'd be creating the lots. This is just for newly created lots.

Ms. Rose: Say that again.

Ms. Stevenson: This would just be for newly created lots.

Ms. Rose: I know, so you might have a –

Ms. Stevenson: So if you propose one that doesn't meet that standard, they'd have to redesign it.

Ms. Mitchell: Well, the thing – even if there were a fence somewhere, let's face it. Deer even can clear seven feet if they want to. Raccoons go under the fence. We know. We've got neighbors and they help with their garden, and they can go and do an awful lot of things. In other words, I understand the spirit of what is being said here, but I think it's not realistic.

Mr. Raschko: What is the source of the 300 feet as a standard? Or is it arbitrary?

Mr. Walters: I don't know.

Ms. Stevenson: Yeah, that's what I was looking for.

Ms. Mitchell: And to say that an animal can be cut off from water, that's a pretty far stretch. Animals will go to water almost any way they possibly can, and for something like this to go in categorically and just say that's going to cut them off regardless and put this in I don't think is valid.

Ms. Del Vecchio: If we're – so we're talking minimum lot size still of 2½ acres? Is that – what is our minimum lot size?

Mr. Walters: Minimum lot size is at least 2½ acres it's going to be. In Rural Conservancy, you're probably going to be Rural Intermediate: however, what we're proposing here is for the Natural environment which may not be Rural Intermediate. It may be larger – maybe Rural Reserve, which is a 10-acre minimum.

Ms. Del Vecchio: If you are building a home in this area –

Ms. Lohman: Wait. I have got a point of order here. 40-acre minimum if some of it is Ag-NRL, so you've got a lot of different designations going on all at once.

Mr. Walters: Well, there's a whole slew of zoning designations –

Ms. Lohman: Correct.

Mr. Walters: – but I don't think Ag/NRL –

Ms. Lohman: I think you can't just arbitrarily just say in the Rural Conservancy that the minimum lot is going to be 2½ acres. That's not true. It could be 40 acres.

Ms. Del Vecchio: I just meant, What's the smallest size we're going to see? That's what I meant by – you know, what's the smallest lot size we are potentially going to see in this –

Mr. Walters: Right, and in this case we're not talking about Rural Conservancy. We're talking about Natural. At least we don't recommend imposition of the 300-foot minimum width for Rural Conservancy.

Ms. Del Vecchio: I'm just asking about the Natural. What you propose here, Natural, we're not going to get under a 2½-acre lot. Is that correct?

Mr. Walters: Not for a new lot.

Ms. Del Vecchio: Not for a new – right. So then what would fall under this? I just don't see – if that's where you are buying property and building you want some space around you. You're not going to be designing your lot –

Mr. Walters: Okay, so – sorry to interrupt. You could do a CaRD and with a CaRD you could have a smaller minimum lot size – at least an acre but potentially smaller than that. You've got to always remember CaRDs. They are a wild card.

Ms. Del Vecchio: I'm pretty sure the animals will go around the CaRDs.

Ms. Mitchell: Yeah!

Ms. Del Vecchio: I wasn't allowed to finish my – can I just finish what I was saying?

Chair Axthelm: You can finish and then Amy next.

Ms. Del Vecchio: Thank you.

Chair Axthelm: Yeah.

Ms. Del Vecchio: My thought is if you are trying – of you are building this, whether it's with a CaRD or not, you're not going to be intentionally designing your lot so that you are right up next to your neighbor in such a way, I think, that would be cutting off – that would take a pretty good row of houses to be actually cutting off the wildlife. I just don't see it happening. I don't know that it's necessary. I mean, I do – I value the wildlife being able to get to the rivers and wouldn't want to have that cut off, especially in a Natural area, but I think we're creating situations like Martha was talking about where, Well, now what do we do with this lot size? So I don't think it's really – I don't see it being an issue.

Chair Axthelm: Okay, Amy?

Ms. Hughes: My simple question to this is, Why is not the structure counted in this? You have a 300-foot lot size but then you're not talking about what you're building on that and if that then impedes what's going on. I don't understand why we're just kind of working on just the lot size.

Mr. Walters: Well, it wasn't our suggestion.

Ms. Hughes: Yeah.

Mr. Walters: But, yeah, there's a lot of factors that could go into it. I think the idea is you are unlikely to have a 300-foot wide house, and if you have a 300-foot wide lot even the largest house would allow for a significant spacing between houses with lots next to each other.

Ms. Hughes: And so again then it goes to the 300 feet. How much does wildlife need?

Mr. Walters: To feel comfortable evidently.

Ms. Hughes: Yes, to feel comfortable to do their movement.

Mr. Walters: Because it's not like they are going to be physically – there's not going to be a complete physical barrier like a Jurassic Park-style fence keeping them away from the shoreline.

Ms. Mitchell: Well, my raccoons use the deck.

Chair Axthelm: Kathy?

Ms. Mitchell: Just to finish, I think what a lot of other people are saying, whatever this is after and the red herring on why to use it is ridiculous. So I think we should just do a pass on this.

Chair Axthelm: Let's get a motion on this one. I think it _____.

Ms. Mitchell: I move that we disregard RC-9.

Mr. Raschko: Second.

Chair Axthelm: Okay, it's been moved and seconded to disregard RC-9 as the County ____. Any other discussion on that? Martha?

Ms. Rose: The only part of this recommendation that seems valid and leaves some room for some judgment is the part that says "provide for wildlife passage through" the "residential areas." Now the wildlife will wander through a housing development – no problem. You know, so then it becomes – there's some judgment involved, but there's no hard rules about it.

Ms. Mitchell: And who's going to tell the deer where they're going to walk?

Ms. Rose: So if we did anything at all or if we wanted to add any language at all, I would say it would just be that phrase.

Ms. Del Vecchio: I was thinking along the lines of the dredging language we had earlier where – you know, when creating a new lot, when you're developing a new lot, provide to the extent possible for – basically, keep this in mind – provide for this wildlife passage through residential areas.

Ms. Lohman: I think it's already happening. I think it's moot. I don't think you have to have a rule about it.

Chair Axthelm: Any other discussion?

Ms. Rose: I agree. It's happening anyway.

Ms. Del Vecchio: Yeah. Yeah, I don't disagree with that.

Chair Axthelm: Okay. So all those in favor of the motion to scratch RC-9, say "aye."

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say "no."

(silence)

Chair Axthelm: Ayes have it.

Mr. Walters: All right, the next comment suggests that we should add areas that are within 200 feet of a site that is ranked on the Washington State Department of Ecology and Historic Preservation's archaeological predictive model to the list of areas in the code that require site inspection by an archaeologist. We really have not had high profile problems with this in Skagit County but they have elsewhere, and if you run across some archaeological things during construction it can stop your whole project. It's not a good deal. So we are supportive of a change that would add "survey recommended moderate risk," "highly advised high risk," and

“highly advised very high risk” predicted by the model to the list of places that would require a site inspection.

Ms. Mitchell: Aren't the federal and state laws pretty restrictive already on something like this?

Mr. Walters: Well, I think that's the idea if you come across some archaeological materials.

Ms. Mitchell: Right, you stop and report it.

Mr. Walters: Right. But it would be much better if you knew about them in advance.

Ms. Mitchell: Say that again.

Mr. Walters: It'd be much better if you knew about them in advance.

Ms. Mitchell: I think this is micromanaging again.

Chair Axthelm: Mm-hmm. We ought to take it as a motion this time again. We probably should do that out front.

Ms. Mitchell: I move that we pass on RC-10.

Chair Axthelm: Do we have a second?

Ms. Rose: Second

Ms. Stevenson: What did she say?

Mr. Raschko: Pass on.

Ms. Mitchell: Pass.

Mr. Pernula: You mean deny it.

Ms. Mitchell: Deny it. Thank you.

Chair Axthelm: And, Martha, did you second it?

Ms. Rose: I seconded.

Chair Axthelm: Okay, it's been moved and seconded to pass on RC-10 under –

Mr. Pernula: Which means deny it.

Ms. Mitchell: Deny it. That's much clearer. Thank you.

Mr. Walters: We really don't need a motion on it at all because you're not doing anything.

Chair Axthelm: Well, I just wanted – yeah, because it kind of seems like a little high profile, I want to – I'd rather have us discuss it the right way. Okay? So any discussion?

(silence)

Chair Axthelm: No more discussion then. Okay, so all those in favor of denying RC-10, say “aye.”

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say “no.”

Ms. Del Vecchio: No.

Mr. Walters: All right, the next suggestion is that we require mines to locate outside the channel migration zone, and we agree.

Chair Axthelm: Okay.

Mr. Raschko: How extensive is the channel migration zone of the Skagit River?

Mr. Walters: We’ll be talking about that in the second half of the year, which – ooh, we’re already in the second half of the year – later this year.

Mr. Raschko: It could end up being wall-to-wall in the valley.

Ms. Lohman: Yeah.

Mr. Walters: No. No. It’s not going to be that.

Mr. Raschko: How do you know?

Mr. Walters: Because we’re going to map it and we’ll be bringing it forward to you.

Ms. Stevenson: Part of the definition –

Mr. Raschko: It seems with –

Ms. Stevenson: Sorry.

Mr. Raschko: It just seems without that knowledge this is a difficult one to contemplate because there’s a lot of gravel on the valley bottom a long ways from the river.

Mr. Walters: Well, the impact of the channel migration zone is – this is – I think this might be the only place in the Shoreline Plan that mentions the channel migration zone. The channel migration zone doesn’t really have a lot of effect for shoreline regulations, but the channel migration zone will have a significant effect for flood regulations because as part of the BiOp – the National Marine Fisheries Services BiOp for FEMA. As part of the Flood Insurance Program, we need to regulate the channel migration zone to a fairly significant extent. We haven’t done that yet and that’s why we’re not in compliance with Door 2 of the Biological Opinion for FEMA’s Flood Insurance Program. So that’s a whole different, complicated subject that will come later on this year, but –

Ms. Stevenson: Tim, part of the discussion of channel migration zone does allow you to protect roads and infrastructure, and if there are dikes or levees or that sort of stuff it doesn't go beyond that. If, you know, the local jurisdiction or whoever, or it might be the state DOT in our case along the river in places. We're going to protect that so we're not going to let the channel migrate that far. So there are some manmade limitations on it. We're not going to let it go wherever it wants to go, which would be kind of valley floor – you know, wall-to-wall. If that helps.

Ms. Del Vecchio: I move that we adopt RC-11 requiring mines to locate outside the channel migration zone.

Ms. Mitchell: I'm a little confused. Didn't we say that some of the mines were on the rivers already?

Ms. Stevenson: This would be for new, I'm guessing.

Ms. Mitchell: Because some – let me put it this way. Some of those places for mining the gravel and when they do it responsibly, which they're required to do, this would limit them, too, and that seems again a limiting thing when there's already so many other things in place on where they can and can't be.

Mr. Walters: Yes, we said there are existing sand and gravel extraction operations on river shorelines. But this would require mining operations to locate outside the channel migration zone. They may still be within shoreline jurisdiction, but outside the CMZ.

Ms. Hughes: Can we act on this until we know what the channel migration zone is? Can we make this rule now, or do we have to do it post what we're going to discuss in a few months?

Mr. Walters: We are required as part of the Shoreline Update to adopt a channel migration zone map, but it has no regulatory effect with the Shoreline Plan and we're not done with it yet. So that's why we haven't brought it forward to you yet. But we'll have to have that done before we can do final adoption of the complete Shoreline Plan.

Chair Axthelm: Okay, so do we want to include this in here or not?

Ms. Del Vecchio: I moved, nobody seconded, so either somebody needs to –

Chair Axthelm: I'm sorry. I must have missed that one. Go ahead. So you moved –

Ms. Del Vecchio: I moved to approve but nobody seconded, so either we need another motion or somebody needs to second or do something.

Chair Axthelm: I think she was saying something in my ear and I didn't catch your whole thing. Okay, so if you did move and second it –

Ms. Lohman: No. No second.

Chair Axthelm: No second. Okay.

Ms. Lohman: So it dies.

Chair Axthelm: Okay. So do we have anything else? Martha?

Ms. Rose: Since the river is always moving somewhat, if not a lot, even if the mine is outside of the current migration zone, eventually the river could move towards the mining operation. If it's on the other side the situation improves. But it seems like if the policy is to say it's okay to mine next to a river, then maybe different wording that just sort of talks about how the – because they restore after they mine. They restore it to how it was or close to how it was or something. Right? They take the – at least this is – I'm not intimately knowledgeable about mining, but the impression I got is they dig this area and it's all done and then they move over here. Then they take the spoils and they restore the grades to what they used to be with their new mining operation that's just next door. Is that how it goes?

Ms. Stevenson: You have to prepare a reclamation plan. Some of those do allow the holes to remain in place and they turn them into –

Ms. Rose: Right. So –

Ms. Stevenson: i– you know, something else – manmade lakes and –

Ms. Rose: So saying that the mines have to be located outside the channel migration zone seems too vague to really accomplish the goal. That maybe it's better to talk about a buffer between the edge of the current river and – but I think earlier somebody pointed out we sort of okayed the existing mines to operate right up to a river's edge. So I don't know. This doesn't make any –

Mr. Walters: Well –

Ms. Rose: It doesn't seem well thought out.

Mr. Walters: To be clear, we didn't – what we suggested that you reject is a prohibition on mines within shoreline jurisdiction. We didn't explicitly okay them right up to the river's edge.

Ms. Rose: So we rejected a restriction on mines within shoreline jurisdiction, which now we're asking those same mines to be outside of the channel migration that hasn't been defined, and it could be outside of it today but maybe in five years it's not.

Mr. Walters: Well, the channel migration zone is supposed to be an estimate of where it could go.

Ms. Rose: So it's a fixed – it's a fixed thing.

Chair Axthelm: Okay. Tim?

Mr. Raschko: I'd like to point out that the commenter gave the reason for his recommendation being so that they do not increase the rate of channel migration.

Mr. Walters: Right.

Mr. Raschko: And I don't know that there's anything to be said that a mine currently is increasing the rate of channel migration, particularly as considered in the reclamation plan.

Ms. Mitchell: And that's a good point. This is – the assumption – the reason for this, however well they were intended, is again misplaced. So I move that we pass on RC-11.

Ms. Del Vecchio: Deny. Move that we deny.

Ms. Mitchell: Thank you so much – deny.

Mr. Raschko: I second it.

Chair Axthelm: Okay, it's been moved and seconded to deny RC-11. Any discussion further?

Mr. Walters: I don't think that this is going to matter too much because I think that there are going to be other constraints with the flood ordinance. But it might. But I would point out that the comment includes references to scientific literature on this topic with a significant excerpt, too.

Ms. Mitchell: Should we have discussion?

Chair Axthelm: Discussion? Any other discussion?

(silence)

Chair Axthelm: I guess that's it. Okay, so all those in favor to deny RC-11, requiring mines to locate outside the channel migration zone, say "aye."

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say "no."

Two Commissioners: No.

Chair Axthelm: So two nos.

Mr. Walters: So the comment went on to say that mines should be not deeper than the bottom of nearby streams and rivers so that if the river moves into the mine, the impacts will be reduced. Our proposal was to just require mines to locate outside the channel migration zone. If that were the case, then you wouldn't need this constraint on depth of the mine. But if we're not requiring that, then maybe we should consider a constraint on depth.

Chair Axthelm: Kathy?

Ms. Mitchell: I've got a comment on that one. If – we're doing a lot of ifs again and we're micromanaging what the mine operations and engineers are already required by all kinds of laws, so I think this is misplaced, however well intended.

Ms. Del Vecchio: I don't know that the existing laws would prevent this. I can't reference exactly that it wouldn't but my experience with mining is this could very well be a problem. And reclamation plans, yeah, they – the reclamation plans are required but they don't necessarily bring it back to previous conditions, no matter what they say.

Ms. Mitchell: One of the things I would like to point out, not to contradict but to add on to what she just said: There are three legs to what the state holds dear and one of those is the mining

for one of the resources. So they do encourage that. I'm not saying whether I'm for it or against it in any place. I'm going back to what the state says that they want and can do, and also what the engineers are required to do or to not do, and it's already heavily restricted. And it's just like with knowing where the channel migration zone's going to go, you don't know. You don't know how deep something's going to go on any given event either. We don't have the crystal ball for that. So just keep that in mind when you think about that.

Chair Axthelm: Okay. All right.

Mr. Walters: So moving on, we also followed up with Ecology's comments.

Chair Axthelm: Remember as we go through these, that we – if you have any findings of fact and reason for actions that we set those aside so we can put them on later.

Ms. Lohman: But you're going to bring to the Commissioners probably something where you *want* a restriction. Is that correct?

Mr. Walters: On mines?

Ms. Lohman: Yeah.

Mr. Walters: I don't know. I don't know if we feel strongly about it.

Ms. Stevenson: Some of "we" might.

Chair Axthelm: Okay. And that would be appropriate for us. If you have a reason for denying that, although that's not – it's not in the proposal. But anything for reason for actions or comments. All right. Go ahead, Ryan.

Mr. Walters: So Ecology had a number of comments. We went through them at the last meeting and that review of Ecology's comments generated some questions, so we followed up with Ecology and we were fairly pleased with that conversation. And we have some notes here on what Ecology said. So first of all, as I mentioned earlier tonight, Ecology had suggested that we add a limit on that impervious surface table that said that impervious surface amounts – hard surface, actually – should be based on the area outside the buffer. And Ecology was okay with us not implementing that change.

They also had wanted in one particular place in the text that we note that there are allowances for mixed use developments. In the zoning world, mixed use usually means commercial and residential, which is what we thought they were saying, but no. Actually they were saying water-dependent, water-related, and water enjoyment uses. Their definition of "mixed" has to do with water-dependent, -related, and water enjoyment in the same structure. So then, yes, obviously we need to implement that change which is simply a reference to say that that's allowed where allowed in other places in the plan.

Ms. Lohman: But you're not going to use that word "mixed use."

Mr. Walters: No. No.

Ms. Mitchell: Thank you.

Mr. Walters: We would say “water-dependent, water” – a mix of those.

(laughter)

Ms. Lohman: Combination?

Mr. Walters: Yeah. FB-25 – these are comments labeled in his comment document – Ecology’s, Bob Fritzen’s. We didn’t want to change the outline format – I think this is in the ag section – and Ecology is okay with us not implementing this change. They had suggested we delete the language about allowing for new construction of ag facilities, and we explained what we meant by that was replacement of existing ag facilities with new construction. And they’re okay with that concept but we’ll need to reword it to make it very clear.

Their comment about forest practices had a bunch of text about forest practices and how forest practices are subject to shorelines. And we talked about that quite a bit and the outcome of that discussion is we think we should not specify that all other forest practices are regulated by the forest practice rules. We should be more quiet about that. And we should note that cutting of trees itself does not constitute development; therefore, it doesn’t require a substantial development permit in the first place. And we think that that – we think that that resolves our apparent differences there.

One of his comments on this hard shoreline stabilization stuff was that hard shoreline stabilization should only be allowed to protect a primary structure. And I think the Planning Commission had wanted to allow it for other things too. Ecology holds on to that one. They would only allow hard shoreline stabilization to protect the primary structure, and I think we concur. And as Ecology pointed out, they have had circumstances where people have wanted new hard shoreline stabilization to protect shacks and other things. Picnic areas, I think Fritzen pointed out. And we sort of doubt that we’re going to get anywhere on that or that that’s legitimate.

Ms. Mitchell: I’ve got a question.

Chair Axthelm: Kathy.

Ms. Mitchell: I’ve got a question for you on that. This is what Ecology says they want. Is there a state law that says what is and isn’t? I do know that – I can’t remember exactly what they were. There have been some lawsuits in the last ten years about this kind of thing. Is there an RCW or a WAC that says that you cannot protect other structures?

Mr. Walters: There might be. Yeah, he does cite a WAC and a statute.

Ms. Lohman: It’s 173-26-231.

Ms. Mitchell: Say it again, please.

Ms. Lohman: 173-26-231.

Ms. Mitchell: Thank you.

Ms. Lohman: And I brought this up last time because in the General Principles, number – it’s (2) – it says “allow shoreline modifications only where they are demonstrated to be necessary to

support or protect an allowed primary structure or a legally existing shoreline use ____.” And then later on in Applicability, which is under (3), which is Provisions for specific shoreline modifications, and (a) is Shoreline stabilization. It says “erosion impacts to property and dwellings, businesses, or structures.”

Ms. Mitchell: That’s pretty clear then, isn’t it?

Chair Axthelm: Martha?

Ms. Rose: I don’t really see a problem with this – with their restriction – because they’re specifically targeting *hard* shoreline stabilization to protect, and it’s been shown over the years, at least from what I’ve learned, that hard shoreline stabilization doesn’t protect as well as soft shoreline stabilization. So if somebody really wants to protect their house or their use or their anything, they won’t use this technique. They’ll use one of the soft shoreline stabilization techniques which is not restricted at all.

Chair Axthelm: Betsy?

Ms. Stevenson: That’s okay. They’re actually making a differentiation – you’re close – between structural and non-structural. So in the first one that you read, Annie, under General Provisions, they’re talking about structural shoreline stabilization. And in the second one you read they’re saying shoreline stabilization, and non-structural methods would include building setbacks, relocation of the structure, groundwater management, all that sort of thing. So that’s what the difference is here.

Mr. Walters: I think the provision on point is on the screen now. New structural stabilization measures – and here it’s saying structural.

Ms. Mitchell: Which number or letter, please?

Mr. Walters: Starting with (B) near the top.

Ms. Mitchell: Thank you.

Mr. Walters: New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner: (l) To protect existing primary structures – and then it describes how to demonstrate that.

Ms. Lohman: But I cited the same WAC and the same things they said. That’s the WAC he cited.

Mr. Walters: Yes, this is also the same WAC. It’s just ____.

Ms. Lohman: I think he’s – my argument is that you stopped short because it also says or legally existing shoreline use.

Mr. Walters: Under General principles.

Ms. Lohman: Right.

Mr. Walters: Yes.

Ms. Lohman: And then on Applicability – then what is “businesses”? Because the next word is “or structures.”

Mr. Walters: Where are you reading now?

Ms. Lohman: I’m on (3), (3)(a).

Ms. Mitchell: Is that the Provisions part, Annie?

Ms. Stevenson: But the differentiation still is structural and non-structural. It doesn’t say structural shoreline stabilization there.

Mr. Walters: Well, it’s also just applicability.

Ms. Lohman: But it goes on to say – but further on it says “these actions include structural and non-structural.”

Mr. Walters: Yeah, but that paragraph doesn’t give you the rule. It only tells you what this section applies to.

Ms. Lohman: Where’s the rule? Which paragraph gives us the rule then?

Mr. Walters: I think the rule is contained further on in under Standards – (iii) here. (A) talks about new development but (B) is new structural stabilization measures, and that’s what we’re talking about in our proposed code, except that we’re talking not just about structural but *hard* structural shoreline stabilization. So this is a little broader than that.

Ms. Mitchell: I guess I’m a little puzzled on why the state is going to prevent somebody from protecting their property.

Ms. Lohman: Can you –

Mr. Walters: Well, the reason is is that there is a definite preference against hard shoreline stabilization. And I think as Commissioner Rose pointed out, that doesn’t prevent structural shoreline stabilization. What it prevents is the *hard* shoreline stabilization, which is like the bulkheads and that kind of thing.

Ms. Lohman: But – okay, on (B) you saw the primary structures. Well, then (II) right below that is in support of new nonwater-dependent development, *including* single-family residences, when all the conditions apply.

Mr. Walters: Yes, remembering that the entirety of (B) is about hard *and* soft shoreline stabilization. So I think that we have not yet found the provision that has a specific constraint against *hard* shoreline stabilization.

Ms. Lohman: I think – and I couldn’t find it either, and so I’m suggesting that we don’t have to go that hard.

Ms. Mitchell: Meaning what’s already written by the state can stand alone, rather than us having to say something?

Ms. Lohman: I'm asking that question. I don't think that we have to go as hard as Ecology is saying we do – that it should be *only* for the primary structure. I'm saying that I'm not so sure that's what it says.

Ms. Mitchell: If only we had a lawyer.

Mr. Walters: As a general matter, hard armoring solutions should not be authorized except when a report confirms there's significant possibility that such a structure – it raises the question, What structure? – will be damaged within three years as a result of shoreline erosion. And that is what we have in here about the exception and where the language came from in our existing code proposal. But here I don't see where it says – where it includes a restriction on the structure being the *primary* structure.

Ms. Mitchell: No. So I think if that's true, Ryan, then they're taking a step further than what this says. Unless somebody can find something else.

Ms. Lohman: Well, specifically the WAC cites that he called out in his comment don't limit it just to the primary structures.

Ms. Mitchell: What Annie was just saying was it's WAC 173-26-231. While they're looking, I'm just going to fill in the time for us to understand what she said. It says, just to reiterate, under (2)(a) General principles applicable to all shoreline modifications. (a) says "Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes."

Chair Axthelm: Do we want to table this one and catch it next time?

Ms. Lohman: We can.

Chair Axthelm: Because it sounds like there're some things that are at loose ends, or if we can solve it in the next few minutes then we can keep going.

Ms. Mitchell: I don't think anybody's pointed out except for the Ecology replies that it has to be primary structure only. Hollie, have you found anything?

Mr. Walters: There is in (3) here on your screen "in support of water-dependent development when all of the conditions below apply," and one of those is the need to protect the primary structures from damage due to erosion.

Ms. Lohman: But it doesn't say that on the one above it for new, nonwater-dependent development.

Mr. Walters: No.

Chair Axthelm: Martha?

Mr. Walters: But it says –

Ms. Rose: If what Ecology is referring to by hard shoreline stabilization as a solid structural wall, then I think we should accept that – their proposal, or their modification because it's a false security blanket to put up a hard bulkhead. It actually makes the situation worse. And so they're actually doing people a favor by restricting the use of hard surface, or hard shoreline stabilization measures.

Ms. Mitchell: But if what you're – well, to carry on with what you're saying, so if what you're saying is true and an engineer – you were going to do something and an engineer advised you to do x, y, or z, you would probably go with what the engineer recommended.

Ms. Lohman: But you guys aren't reading it. I'm not saying that we can just categorically put in hard shoreline stabilization just *because*, because the controlling word is – they're prohibited except when an analysis, it's the last – it's your last resort. In my argument, that is, it isn't just a primary structure that you are protecting.

Ms. Rose: Right.

Ms. Lohman: It's also –

Mr. Walters: But look at what I highlighted on the screen.

Ms. Rose: But I guess what I'm saying is there are enough other ways to protect the shoreline that don't have the negative impacts of a hard wall. Just because that's the way it was always done doesn't mean that's the best way to do it, because the sciences prove that that's actually the worst way to do it.

Mr. Walters: And remembering (B) is about new structural stabilization in general. We have written this constraint on *hard* structural stabilization, but the WAC is actually written maybe broader than that by saying that all structural stabilization – new – is prohibited except... And then the exceptions are to protect the existing primary structures. That's this one here, so that's got primary structure in it. Or in support of new, nonwater-dependent development, it can be single-family residences but the need to protect primary structures is demonstrated through the geotech report. And then in support of water-dependent development, again the need to protect primary structures from damage due to erosion is demonstrated through the geotech report. So I don't think we're getting away from this one. It's there.

Chair Axthelm: Now when you look at it, it says in support of new water-dependent development including single-family residences, but "single-family residences" doesn't necessarily mean that's strictly the primary structure. So you could have single-family residences and outbuildings.

Mr. Walters: Yes, and you can use the hard shoreline stabilization to protect the outbuildings, but only where the primary structure is at risk.

Chair Axthelm: Okay. Yeah.

Ms. Rose: I'd like to make a motion that we adopt RC-12 – integrate all of their edits.

Ms. Lohman: My house might be fine but my barn might not be, so I disagree.

Chair Axthelm: Okay, so Martha moved that we adopt –

Ms. Del Vecchio: Second.

Chair Axthelm: Moved and seconded to adopt RC – sorry. Do we have an RC-12?

Ms. Mitchell: No. We haven't gone through FB-41 or FB-48 yet.

Chair Axthelm: Okay. No, no, no. This is just on this portion. So it's been moved and seconded to integrate Ecology's edits as expressed in all of it – you're talking the whole thing, though?

Ms. Mitchell: Yeah, she is.

Ms. Rose: Well, I am because they're basically agreeing with us on the rest. We've already hashed them out, I think.

Ms. Mitchell: No, we've not covered the last two sections yet.

Mr. Walters: Well, you have a motion and a second so I put it on the screen. I can go through the others now, if you want.

Ms. Lohman: I think we jumped it prematurely.

Ms. Rose: The reason why I skipped over them was simply because they're agreeing with us. I didn't think we needed –

Ms. Lohman: I think we should because we had quite a bit of discussion about FB-36 that we should keep it separate and then have a bulk motion for the remainder.

Chair Axthelm: Okay. So this is taking the – so the process we've gone through already, we've gone through and discussed every one of them. I think it would be premature for us to make the motion until we've gone through at least the last three there.

Ms. Mitchell: But technically we have to address the motion.

Chair Axthelm: Technically we're supposed to address the motion.

Ms. Del Vecchio: So can we address the last three with a discussion?

Chair Axthelm: Yes, we could. Okay.

Mr. Walters: So the next one is about woody vegetation monitoring. As you recall, I think that we had a timeline of – similar for woody vegetation as other things – of three or five years, or something like that.

Ms. Lohman: Wait. Wait, wait, please. Point of order. What are we doing on FB-36?

Mr. Walters: I think you should leave it the way Ecology's proposed for primary structure.

Ms. Lohman: We didn't – but we didn't – we didn't vote on that.

Mr. Walters: No. There was a motion to the contrary to accept it.

Chair Axthelm: So now you can discuss that. So evidently we're not –

Ms. Lohman: I'm asking, Where's the motion for that?

Chair Axthelm: So before we move on to FB-37, we're still –

Mr. Pernula: Wait a minute. The motion was for – would incorporate FB-36, 37, 41, and 48. There's been a discussion of 36 and somebody asked to have a discussion of 37, 41, and 48. Then you can get back to addressing the motion that covers all four of those issues.

Ms. Lohman: Well, in the discussion I would – I would like to amend the motion to separate out FB-36 from the remainder of the motion.

Ms. Mitchell: I'd like to see that as well.

Chair Axthelm: Okay.

Ms. Lohman: I need a second.

Mr. Raschko: You just made a motion?

Ms. Lohman: Mm-hmm.

Mr. Raschko: (unintelligible)

Chair Axthelm: Yeah, but we already have a motion on the table.

Ms. Lohman: Yes, that's what I'm saying. I made a motion to amend.

Chair Axthelm: Okay. Okay. So _____ been seconded.

Ms. Rose: I'm willing to second that amendment or that – if we want to just change it.

Ms. Mitchell: Could you repeat, please?

Mr. Walters: So the amendment on the floor is to accept FB-36 from the rest of the motion. You need a vote or unanimous consent to accept that amendment.

Chair Axthelm: Is there anybody opposed to adding that statement to it?

Ms. Mitchell: Wait a minute. What do you mean by "accept"?

Mr. Walters: There's been a motion to amend the motion. You need to vote on that.

Chair Axthelm: So we're voting on everything else except FB-36.

Mr. Walters: No. The motion on the table is to add those words that are highlighted to the rest of the motion.

Chair Axthelm: Yes.

Ms. Lohman: So in other words we would have 36 by itself.

Chair Axthelm: Mm-hmm. Yes. Is everybody okay with that? Or any objection, I should say.

(silence)

Chair Axthelm: Okay, no objection so – at least for adding that statement.

Mr. Walters: So now the motion is as on the screen there.

Chair Axthelm: Okay, so now we can move to FB-37.

Mr. Walters: All right, so their comment FB-37 was about monitoring of woody vegetation. They had suggested, I think, a longer timeline on woody vegetation.

Ms. Stevenson: Well, actually we had five years and they said, I think –

Mr. Walters: Ten.

Ms. Stevenson: Okay. And they said you shouldn't have that a range because sometimes it should be less or sometimes it should be more. Right?

Mr. Walters: Yeah, they changed their minds.

Ms. Mitchell: So would they be recommending – or would you be recommending a range, Betsy?

Ms. Stevenson: I think they were just asking for flexibility to leave it more open. Yes?

Mr. Walters: They just suggested discretion for the Administrative Official to reduce or extend the monitoring period for cause.

Chair Axthelm: So hold it. That would be a change then. So it would be a change to reduce or extend because that's not currently in there.

Mr. Walters: Yes. Correct.

Chair Axthelm: Okay. It's not clear there, so I –

Mr. Walters: The next comment was that choice that existed in the code between what would be allowed for an expansion of a pre-existing use – a single-family residential use – in the buffer, and Ecology was okay with what the Planning Commission chose at its last meeting.

And then FB-48 was an edit that they had included to change – to make a separate definition out of "agricultural products." We hadn't made it a separate definition. We included it in the definition of "agricultural activities" because it's used in that definition and nowhere else. And Ecology was okay with us not implementing that change.

Chair Axthelm: So, Annie, you had a concern there with FB-37.

Ms. Lohman: FB-37. Ecology wanted ten years and we had five. So we want to go back to leaving it at five?

Mr. Walters: Yes. What we said here was Ecology suggested adding discretion for the Administrative Official to reduce or extend the monitoring period for cause, and we concur.

Mr. Pernula: I guess the question is, Is that leaving it at five years or going to ten with a modification?

Ms. Lohman: Where are you reading from?

Mr. Walters: We would leave it at five.

Chair Axthelm: Okay, and Annie's asking for the code location.

Ms. Lohman: Oh, in your discussion with them –

Ms. Stevenson: Right.

Ms. Lohman: – on the phone but not their written.

Ms. Stevenson: Right.

Mr. Walters: Right. That's all of these notes.

Chair Axthelm: Okay.

Ms. Lohman: So you're going to put in "five- to ten-year then?"

Mr. Walters: No. No. We're just – we're not doing their suggestion of ten years.

Ms. Lohman: But you wrote "Staff concurs," and that's what's throwing me off, okay?

Mr. Walters: We concur with their suggestion to add discretion to reduce or extend the monitoring period for cause.

Chair Axthelm: So that would be a change. So right now it's not clear that way but on the other areas you have an RC-10 or RC, so this should actually be an RC, right? To add discretion for Administrative Official to reduce –

Mr. Walters: Well, maybe/maybe not. I mean, we also didn't do that with FB-34. We also didn't do that with FB-15. We were trying to not get into writing down every single one of these in the memo, in the other memo, and in the recorded motion.

Chair Axthelm: Okay. I guess I wasn't clear on the other ones. So we can either vote and accept this as it is or we can __ something else.

Ms. Del Vecchio: We should probably vote on it either way, though.

Ms. Rose: Yeah, call for the vote.

Chair Axthelm: Okay.

Ms. Mitchell: I'm sorry. I couldn't hear.

Ms. Del Vecchio: I said we should probably vote on it either way, though.

Chair Axthelm: Yeah, _____. Yep. Any other discussion on this then?

(silence)

Chair Axthelm: Okay. So where is it? Can you go back to the motion? Okay, so all those in favor to integrate Ecology's edits that's expressed in their April 4th, 2016, comment letter with the edits noted in Supplemental Staff Report number 3 and 4 except FB-36. All those in favor, say "aye."

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say "no."

(silence)

Chair Axthelm: Okay. I guess that answers it, Ryan.

Mr. Walters: So now what do you want to do with FB-36, if anything?

Ms. Mitchell: Well, I think the comment that Commissioner Lohman had said – there're a lot of buildings besides the primary structure, especially if you're talking about the ag community or elsewhere. Those buildings and property that are involved are extremely valuable.

Ms. Lohman: I flipped over to the Definitions and I don't see "primary structure." What is – what's the "primary structure" definition?

Mr. Walters: I don't think there is one, which may be an opening.

Ms. Mitchell: Meaning?

Mr. Walters: Do you want to define "primary structure"?

Ms. Lohman: Is it a Pandora's Box?

Mr. Walters: Well, you'll probably want to look to see what the other effects of defining "primary structure" are.

Ms. Lohman: Right.

Mr. Walters: But –

Ms. Lohman: I'm thinking of – you could have a –

Ms. Mitchell: I've got a good example.

Ms. Lohman: – you could have an already-established something that's made up of a collection of different structures –

Ms. Mitchell: I've got a real good –

Ms. Lohman: – that are all integral.

Ms. Mitchell: Yeah. I've got a good example. Do you remember one of the meetings beforehand, it was either the Parks or the DNR or somebody was asking for us to consider, for instance, their situations? And their primary structure might be the office building but they've got other buildings that are there – one that houses the bulldozer and everything else that are also very valuable that would need to be protected or could be protected. Just one example among a gazillion examples. So there are a lot of places where beyond primary structure, depending on what the situation can be. It's not just like a gazebo. They could be pretty valuable things. And I realize it may sound like it's splitting hairs, but it's not when you look at the language.

Mr. Walters: Well, they *could* be, but if they are valuable you can still protect them because you can still do shoreline stabilization, including structural shoreline stabilization. You just wouldn't be able to do *hard* shoreline stabilization. Also I think it somewhat less likely that you put your garage closer to the shoreline than your primary structure.

Ms. Lohman: But it is a talking – you're talking about existing. It might be a barn.

Mr. Walters: Well, do you think?

Ms. Mitchell: It could be.

Chair Axthelm: So in that case, when you have a residence and you have a barn, like in a farm situation, could you have multiple primary structures?

Ms. Mitchell: And actually you could, if you go look at different sites.

Mr. Pernula: You could.

Mr. Walters: If we define it.

Mr. Pernula: If you're trying to –

Mr. Walters: We could put that in right here and only here.

Ms. Lohman: Well, and that's where I went back to the “or legally existing use.” Because –

Mr. Walters: Well, the WAC says “primary structure,” so I think if we want to define something we should try to define the term they used.

Chair Axthelm: What does the WAC define “primary structures” as?

Mr. Walters: I sort of doubt that it does.

Ms. Mitchell: Dale had something to add.

Mr. Pernula: The only point I was going to make is if you're trying to preserve valuable structures, put in a monetary value for a primary structure.

Ms. Del Vecchio: So it makes me a little nervous to be going into defining a term that is used throughout the WACs that where potentially then down the road be inconsistent with – if they added a definition now.

Mr. Walters: Well, we would define it only here.

Ms. Del Vecchio: Right *now* we find it only here.

Mr. Walters: No, I mean *define* it only here – like in parentheses after the word “primary structure” rather than in the Definitions chapter.

Ms. Del Vecchio: It makes me nervous and I'll say _____. It just makes me nervous. But if you look in the WAC that does that we've been looking at, 173-26-231, they use “primary structures” – plural – in numerous places. It does say, you know, “and existing primary structure” and then they refer to multiple primary structures. I don't get the sense here that you can only have a primary structure on a lot.

Mr. Walters: And our code says *an* existing primary structure –

Ms. Del Vecchio: Yeah.

Mr. Walters: – which also implies maybe there's more than one.

Ms. Mitchell: Can we make it clear that there could be then? If that's what's –

Ms. Lohman: Maybe put an “s” after “structures” in parentheses?

Mr. Walters: Yes. Is that *all* you want to do?

Ms. Mitchell: I don't know.

Female Commissioner: Is that – can we do more?

Mr. Walters: I'm suggesting that if we put in parentheses – and the code provision that we're looking at is – that says there's “a significant possibility that an existing primary structure will be damaged,” maybe we say an existing primary structure, parentheses, e.g., a house, a barn, whatever – whatever our list is or whatever our definition is. We put that right there. It doesn't affect any other use of “primary structure” anywhere else in the Shoreline Program.

Ms. Mitchell: Would that allow for enough guidance for what we're after then?

Mr. Walters: Well, depending on what we put in that parenthetical, but I think what it does is it's not inconsistent with the WAC then. It's an extension of the WAC rather than an attempt to run at it head-on.

Ms. Lohman: But in addition, I think, to what Hollie said, it uses the plural as well.

Mr. Walters: Mm-hmm.

Ms. Lohman: So if we could do both maybe?

Mr. Walters: Right.

Ms. Lohman: Can we see what that looks like? It's on page 9.

Mr. Walters: Except – so “confirms that there is a significant possibility that one or more existing primary structures” or –

Ms. Lohman: How about “the,” the word “the” instead of “an”?

Ms. Del Vecchio: That implies you've only got one. I think that's where the comments in FB-36, where it says Ecology would only allow hard shoreline stabilization to protect *the* primary structure. I think that's where we get into –

Ms. Lohman: But yet we saw, like you pointed out, plural.

Ms. Del Vecchio: Yeah. I'm saying I think that the – so I think we want to avoid the use of the word “the” and use “an” or plural, that those – I think that if what Ecology is saying is that it has to be to protect – or can only be to protect *the* primary structure, I think then that is inconsistent with the WACs.

Ms. Lohman: Well, what if we struck “an” and just said that “existing primary structure” with “s”?

Mr. Walters: “Existing primary structure,” parenthetical “s”?

Ms. Lohman: Yes.

Ms. Mitchell: Would that do it?

Ms. Lohman: And then you put in your other parenthetical your examples. But do we have to put those examples? Do you need them?

Mr. Walters: Not necessarily.

Ms. Lohman: Because it isn't limited to – the thing is not limited to residential.

Ms. Mitchell: You could say “such as,” if you wanted to. “Such as warehouse, barn...”

Ms. Del Vecchio: My concern would be, okay, well, then what if we've now put in the parenthetical “such as a barn,” and, you know, on this particular property that is *not* a primary structure. That is a –

Ms. Lohman: See, I don't want to limit it to a barn.

Ms. Del Vecchio: Right, so I think that – but if we at least make it clear that, okay, there can be multiple primary structures –

Ms. Lohman: Maybe just leave it like that.

Ms. Del Vecchio: – on a property. Just leave it plural, take out the “the,” and then we’re not restricting it.

Ms. Lohman: Yeah, there you go. Thank you for writing it. It helps way better to see what we’re trying to do. So thank you for doing that, Ryan.

Mr. Walters: So how’s that?

Ms. Mitchell: That sure is a lot better. Dale?

Chair Axthelm: So that’s where the finding of fact or reasons for actions that we could state – that there’s a potential of having multiple primary structures onsite. Martha?

Ms. Rose: If I understood what Ryan pointed out, was that Ecology is actually restricting structures whether they’re soft or hard, and – is that right? Did I understand that right?

Mr. Walters: That’s what I read in the WAC.

Ms. Rose: That’s what I understood, too. So by this, simply limiting these hard structures – these solid hard structures – is already by de fact (sic) allowing other types of structures to protect all of these buildings, and we should not be building these hard structures because they actually do more to damage and undermine the shoreline than a pervious or porous, softer structure. So I’m not really sure why we’re pushing to expand the number of buildings that can be protected or expanding the use of these hard edges that do a lot of damage and actually cause more undermining to take place than if they’re not there, or if it’s a soft structure.

Ms. Lohman: But I disagree with what you’re suggesting because in the last line on there if you refer back to the section –

Ms. Mitchell: Can we put that back up there, please?

Ms. Lohman: So look at the last two lines.

Ms. Rose: So hard shoreline stabilization structures don’t dissipate the energy from the erosion. They actually aggravate it. And what’ll happen is underneath of those hard structures it’ll erode underneath of them and then get behind them and it’ll cause more collapse of the bank than if you have –

Ms. Lohman: But I think – but, Martha, I think we can agree to disagree, because I’m not feeling that – what you’re suggesting in this language, because it says except when an analysis confirms that – basically that there’s nothing else you can do.

Ms. Rose: No, there – so I’m –

Ms. Lohman: It doesn’t preclude you from doing those options.

Ms. Mitchell: And most likely if an engineer were to suggest _____.

Ms. Rose: No, what I’m saying is you can get there by not doing a hard shoreline stabilization more successfully. So to try to expand the use of hard shoreline stabilization is counterproductive, in my opinion.

Ms. Mitchell: I don't see this as expanding it. Maybe I'm not understanding.

Ms. Lohman: I don't see it as an expansion.

Ms. Rose: And that's okay. I mean, we don't – I'm just –

Ms. Mitchell: I'm hoping you can explain. I don't understand.

Ms. Rose: Well, maybe it's a semantics issue. If the definition of hard shoreline stabilization structure is something that's solid and meant to – like a concrete bulkhead, that type of thing, versus, say, a rockery. If a rockery does not fall under the – and I don't think it does. I think it's considered a soft shoreline stabilization measure because the water can go through it, the water dissipates the action of the water and the energy, and it actually preserves the shoreline better than a hard bulkhead. So I think that the way this was worded was kind of like there's only a rare exception when you should be using like a hard concrete. Let's use – just use it as an example: a concrete bulkhead. And I don't even know why you'd want to unless you had no room to install a rockery, because a rockery does take up about three feet of depth versus, you know, six to 12 inches of depth – or thickness. Excuse me. So at any rate, that's my only reason why I was shaking my head, is because I don't see any purpose or I don't see anything gained by expanding the amount of times you can use that hard concrete bulkhead. To me, you should be not using that ever unless an extreme emergency.

Chair Axthelm: I don't think we're debating this. It's not the debate on what – on the method itself. It's a debate on what is considered a primary structure. So it already allows it for primary structures, but what is considered a primary structure?

Ms. Rose: Right. But in Ecology's language, it doesn't allow *either* the hard one or the soft one.

Ms. Lohman: I didn't – no, that's not –

Mr. Walters: In Ecology's and in the WAC, the constraint is against both but it does allow it to protect a primary structure with certain other criteria.

Ms. Rose: But in this, you're not restricting the shoreline stabilization for anything with a soft structure. You're allowing it *carte blanche* for everywhere.

Ms. Lohman: No, no. No, we're not!

Chair Axthelm: We're not talking about soft structures. We're talking about hard – we're talking about primary structures.

Ms. Lohman: This is an excerpt. You're looking at an excerpt because you're looking at Ecology's comments, and this is an excerpt of the Shoreline Stabilization's chapter. So there's other things in that chapter. You're just looking at (a).

Ms. Mitchell: A small piece of it.

Mr. Walters: There is another provision in the plan for both – for shoreline stabilization structures generally, not just hard. And actually it already says "to protect an existing primary structure."

Chair Axthelm: So I don't think it's up – well, it's not really up for debate whether we are –

Ms. Lohman: Prohibiting.

Chair Axthelm: Well, which one was more effective or which one's not effective. It's about the primary structure.

Mr. Walters: Yes, and –

Ms. Del Vecchio: Well, it ties back though, too. I mean, I'd hate to say that they're both – they're completely unrelated to each other is a little disingenuous. Certainly they're connected issues here. I think, you know, at the end of the day it doesn't look like the hard – the bulkheads, or whatever is last-ditch. Hopefully the engineer would not rely on that as being the last-ditch effort you would get to something else. But I think what was being said is, Well, what if that hard surface stabilization is needed – and maybe it's because you don't have the three feet – there are limitations. And your barn that is instrumental to your practice, is it threatened that there should be something there? But, yeah, it really – it seems like everything else should be used before you get to that point, and if everything else is used maybe you don't get to that point. But at the end of the day I think we're relying on the engineers to be able to step forward and say, Okay, that is not the best. And maybe that's what would happen anyway, from what Martha's saying.

Ms. Rose: I'm okay with this modification. I think it's a good compromise.

Mr. Walters: So I added to your one other reference, and that's (2)(c)(i) where there's another place where it says existing primary structure – so that we would change that to structures as well. And then there're a couple other places where it says that but it already says structures plural.

Ms. Mitchell: Great.

Chair Axthelm: Okay.

Ms. Mitchell: Thank you.

Ms. Lohman: You added it to what?

Mr. Walters: (2)(c)(i) on the screen there.

Ms. Mitchell: On the red – red language/optional language.

Ms. Lohman: Okay.

Ms. Mitchell: Shall we call for the vote?

Chair Axthelm: Any other comments?

(silence)

Chair Axthelm: Okay, so all those in favor of adding the language to modify Skagit County Code 14.26.480(2)(a) and (2)(c)(i) to replace an existing “structure” with existing primary “structures,” plural, say “aye.”

Multiple Commissioners: Aye.

Chair Axthelm: All those opposed, say “no.”

(silence)

Ms. Lohman: Ryan, it said “existing *primary* structure.”

Chair Axthelm: Yeah, and that’s what he’s – he’s changing it to “structures.”

Mr. Walters: What’s that?

Ms. Lohman: Well, you got the gist of it.

Ms. Mitchell: You’re saying in the begin – the first and existing structure should say an existing *primary* structure ____.

Chair Axthelm: No. We’re replacing “existing primary structure” with “existing primary structures.”

Ms. Mitchell: Thank you.

Ms. Del Vecchio: That’s not – that’s not what the –

Ms. Lohman: That’s not exactly what it said.

Ms. Del Vecchio: That’s not what it says.

Mr. Walters: What’s a – what?

Ms. Del Vecchio: We need to replace an “existing primary structure” with “existing primary structures.”

Ms. Mitchell: Exactly.

Ms. Del Vecchio: You’re just missing a word and you’re –

Ms. Lohman: You’re missing “primary.”

Mr. Walters: Yep, but we’re going to figure it out.

Ms. Lohman: Okay.

Mr. Walters: Because in (2)(a) it doesn’t say “primary structure.” It only says “existing structure.” I can make it much longer and much more exact or we can just –

Ms. Del Vecchio: I would just say, Why would we be adding “primary” if it doesn’t say “primary” already?

Mr. Walters: Because Ecology told us to and we just went through this whole discussion about that.

Ms. Del Vecchio: And it’s all to make it consistent?

Mr. Walters: To make it consistent with all the other places where it already says that, but to make it consistent with the WAC where it says that we have to use “primary.”

Ms. Del Vecchio: I wasn’t sure if it was (2)(a) or (2)(c)(i) that had just “existing structure.”

Mr. Walters: (2)(c)(i) already has “primary,” but it doesn’t say “structures,” plural.

Ms. Del Vecchio: Right.

Mr. Walters: (2)(a) doesn’t have “primary” and doesn’t have the plural.

Ms. Del Vecchio: Got it. Yeah.

Mr. Walters: Yeah. And then there are two other sections that do say “existing primary structures,” plural, but the “s” isn’t in parentheses. But we are going to make it all the same.

Ms. Mitchell: Thank you.

Chair Axthelm: So that takes us to a summary.

Ms. Lohman: I’m not playing Pokemon, either, on my phone. Just so you know.

(laughter)

Ms. Lohman: Well, it is nine o’clock and I –

Chair Axthelm: So do we have anything else?

Ms. Hughes: Department Update, please.

Chair Axthelm: I think that takes care of everything we had for tonight anyway.

Mr. Walters: That’s all we have left in this memo.

Chair Axthelm: Now we had some things to discuss next time, right?

Mr. Walters: Docks and Lake Cavanaugh we think is what’s left.

Chair Axthelm: No, no, no. I mean we had something we wanted to table for next time.

Mr. Pernula: The floodway east of the confluence of the Sauk River and the Skagit River.

Chair Axthelm: Okay, I have a question on that. I was looking at the map. So on the map you have Rural Conservancy. So all around Mount Vernon, it's just RC – it's Rural Conservancy.

Mr. Walters: Yes, because –

Chair Axthelm: But the way *this* reads, is we agree that everywhere RC is in a floodway it should be mapped RC-SF.

Ms. Lohman: Yep.

Ms. Stevenson: That's the mapped floodway – Mount Vernon. You know.

Ms. Mitchell: Repeat, please.

Ms. Stevenson: Downstream here is not a mapped FEMA floodway.

Chair Axthelm: Okay. All right. Anything else?

Ms. Lohman: Can we talk about our meeting next time?

(Skip a long discussion about availability for a final SMP meeting in August or late July. Resume with Planning Commissioner Comments and Announcements.)

Chair Axthelm: Are there any other Planning Commissioner Comments and Announcements?

Ms. Hughes: I would like to just readdress that for this next meeting I'd like the materials enough ahead of time so if I need to talk to staff I can.

Ms. Mitchell: Same here.

Mr. Pernula: Okay.

Ms. Mitchell: I'd like at least a week if I can get it.

Chair Axthelm: As soon as possible.

Ms. Mitchell: The Fridays are not working very well.

Mr. Walters: Well, we should have plenty of time this time.

Ms. Hughes: Okay, thank you.

Chair Axthelm: Okay. Do we have a motion?

Ms. Lohman: Motion to adjourn.

Several Commissioners: Second.

Chair Axthelm: Okay (gavel). Adjourned.