

Skagit County Planning Commission
Public Hearing: Proposed Code Amendments
Regarding Wetland Mitigation Banks
May 5, 2009

Planning

Commissioners:

Bill Stiles, Chairman
Jerry Jewett
Carol Ehlers
Jason Easton
Annie Lohman
Dave Hughes
Kristen Ohlson-Kiehn
Matt Mahaffie
Mary McGoffin (absent)

Staff:

Gary Christensen, Planning Director
Betsy Stevenson, Senior Planner

Public

Commentors:

Allen Rozema, Skagitonians to Preserve Farmland
Mary Heinrich, Ag Prospects
Andrea Xaver
Randy Good, Skagit County Cattlemen
Ellen Bynum, Friends of Skagit County
Diane Freethy, Skagit Citizens Alliance for Rural Preservation

Chairman Bill Stiles: Welcome, everybody, to our regular monthly meeting of the Skagit County Planning Commission, and I call this meeting to order (gavel). Tonight we have a fairly limited agenda, the main being a public hearing on the proposed code amendments related to wetland mitigation banks. And I'll read an opening statement provided by – or to me by the staff. And it says:

The purpose of this public hearing is to receive testimony and written correspondence regarding the non-project legislative action to amend Skagit County development regulations, more specifically Chapters 14.04, Definitions, and 14.16.400, Zoning, Agricultural-Natural Resource Lands of the Skagit County Code.

Please limit your comments to a five-minute period so that everyone will have a chance to speak. Special interest groups, associations and those

representing others are encouraged to designate a spokesperson for your group to allow greater participation and cross-representation.

Before you testify, please clearly state your name, spelling your last name, and your address. A recording system will record your comments. The proceedings are also being televised, which is a first for us, so this should be interesting.

Written comments are also being accepted this evening. Staff will give a brief presentation about the proposal before we begin taking public comments.

And thank you all for taking time to participate, and I'll now turn it over to our staff.

Betsy Stevenson: I'm briefly going to summarize what I put into my memorandum to you dated April 28th just real quickly to go over why we're here.

Gary Christensen: Introduce yourself.

Ms. Stevenson: I'm sorry – I'm Betsy Stevenson from the Skagit County Planning and Development Services Department.

So I'm briefly going to go through and summarize some of the things that you found in my memo that I sent to you, and then tonight is the night to take public testimony, so maybe we could get right into it.

We are proposing to amend the development regulations, more specifically Chapter 14.04, Definitions, and Chapter 14.16.400, Zoning, under the Ag-Natural Resource Lands of the Skagit County Code. The proposed amendments were anticipated with an interim ordinance adopted by the Skagit County Board of Commissioners on February 9, 2009, declaring that a moratorium on the acceptance of new special use permit applications for wetland mitigation banks on Ag-NRL lands.

The Board of County Commissioners held a public hearing on the interim ordinance on March 17, 2009, and accepted comments until the close of business on March 20, 2009. The moratorium is effective for six months and will therefore expire on August 8th without additional action to renew it or to adopt a permanent ordinance.

So we are here tonight to look through what the existing code says and then what the proposed code amendment changes are being proposed to reflect the interim ordinance that the Commissioners put into place. I don't know if you want me to go through those, if you've had a chance to look at them – what's your pleasure?

Chairman Stiles: We've had them; what's the pleasure?

Jerry Jewett: I've read them.

Chairman Stiles: Yeah, I think we've read them all.

Mr. Christensen: Also for those who are in attendance, we do have copies on the back table of the proposal for their review, should they have not had a chance to look at it or prior to them making any public comments, should they desire.

Carol Ehlers: I want to thank Betsy for sending us the entire packet in the mail so that we may have it in front of us today, should there be any questions.

Ms. Stevenson: Sure.

Jason Easton: These comments – what you just described – is available on the website also?

Ms. Stevenson: Yes. Oh, and speaking of comments, I received no written correspondence during the open comment time, so we haven't received anything more.

Mr. Easton: And the documents that we just referenced are available on the website?

Ms. Stevenson: Yes.

Mr. Easton: Great.

Mr. Christensen: One other comment is I'd like to say that tonight is just a public hearing, that the Planning Commission will not be conducting any deliberations, that those deliberations on the proposal are scheduled for two weeks from this evening – I believe that's May 19th – in this room starting at 6 p.m.

Chairman Stiles: Okay. (If there's) nothing further from the staff, I will open the – to receive public testimony, I have a sign-up sheet here and we'll go down the list. There's not a lot. Allen Rozema. Please speak into the mic and give your name and address.

Allen Rozema: Good evening, Commissioners. Thank you, Chairman Stiles and Planning Commission members. My name's Allen Rozema, R-o-z-e-m-a. I'm the Executive Director of Skagitonians to Preserve Farmland. Our mailing address is P.O. Box 2405, Mount Vernon, Washington. If you want my personal address also? No, okay.

Well, I just want to encourage you to support the proposed code amendments to prohibit wetland mitigation banks on prime agricultural lands. As you know, SPF has been championing this cause, so to speak. Our agricultural lands are of utmost importance to the agricultural industry and we feel that wetland mitigation banking poses a pretty big risk through the conversion of those farmlands.

And then specifically tonight I'd like to just briefly address some of the proposed code amendments. We don't – SPF does not feel there's a distinction between private and public wetland mitigation banks and we urge the Planning Commission to consider a code change that would address the outright prohibition of any wetland mitigation bank, regardless of whether it's private or public, on ag lands.

I've submitted a comment letter to the Planning Commission and to the staff. We've submitted a proposed amendment ourselves. I understand that it needs to be worked with the rest of the code, but it should give you an intent of what SPF and the agricultural community is looking for. Thank you.

Chairman Stiles: Thank you. Next on the list is Mary Heinrich. Did I pronounce that right?

Mary Heinrich: Yes. I can't pronounce it the way it's spelled, so... I have copies because I have a proposal – a counter-proposal. My name is Mary Heinrich, H-e-i-n-r-i-c-h-t. I'm principal of Ag Prospects, which is an agricultural policy company, and our address is 426 Lockwood Drive, Camano Island 98282.

Mr. Chairman and Honorable Commissioners, Skagit County has been pretty much victimized by the current wetland mitigation banking program. I think the Commissioners made their discomfort known when they approved the Nookachamps bank permit. The local diking district said they felt they had been pressured into supporting the project. And at hearings on the proposed rule for the new program the State admitted that they did not have any way to reject an application under their draft rule.

The proposed final rule is worse. It includes things that would allow credits to be sold before the bank starts construction, even though they've been selling this program saying that the value of it is that a bank is established and the wetlands are growing before somebody destroys a wetland. They have a clause in there that would allow the easement over the bank to be vacated, which means that the assurances that the new wetlands would be protected forever and exist into perpetuity doesn't exist; and they neglected to develop either construction or siting standards; and they will still allow banks on private agricultural soils and in rivers and floodways. So it is obvious that localities need to develop their own program to defend themselves against the state rule.

This moratorium was supposed to be – at least we thought that – opportunity. A year and a half ago nine local organizations asked the County to go through the unclassified use process to insert the use – the term – you know, the use “mitigation banks” into the Comp Plan and into the code to consider what they are, how they affect the watershed they’re located in. These are major construction projects. One of the banks up here is going to displace 700,000 cubic yards of soil. They’re going to remove it permanently from a site. The other bank is being constructed in the floodway of the Skagit River, where it potentially affects the whole way that river will be formatted for years to come. So just inserting a definition of private banks into our code does nothing to direct our staff on how to consider these proposals. It doesn’t protect us from the sloppy job that the state and the feds did the first go-around.

Also you should be aware that the state – the Department of Ecology – over the last year brought together a group called “Mitigation That Works,” and this is superseding wetland banks. It is a new group looking at multi-use habitat banking, carbon credit banking. They are proposing a fee in lieu of mitigation programs, so somebody when they destroy something would just pay a fee and then some large bank would be built somewhere. And they are proposing a Puget Sound program, and if you’ve read a lot of the advertising and the stuff on Puget Sound, you know they are targeting Skagit County for the bulk of the mitigation and restoration within Puget Sound.

So I think it’s really important that rather than just minimizing this and looking only at private wetland mitigation banks, that we think about the potential for these bigger programs and how they may disrupt Skagit County. We know that these projects affect hydrology. They’ve affected other sites. We know they have a potential to affect catastrophic flooding. So we need to think about this. And we know that they’ve been targeting agricultural land because that’s cheaper than other land. And if now we’re talking about region-wide mitigation that targets Skagit County, we can’t continue to have that kind of a loss of ag land. And what is a private bank? Is that a bank that just sells credits to private individuals? We were told the Nookachamps bank – the pressure was on the Commissioners because DOT needed the bank. So there’s private operators selling credits to a public entity. Now is that a private bank or is it a public bank? I don’t think we’ve considered this enough. It seems to me that with six months and then a potential, you know, extension of that if we really need it, that we should go through the unclassified use process, consider all the iterations of these facilities, and figure out how to do it here.

I also have – on the back of what I’ve given you – have made a proposal that I think is more consistent with the values of Skagit County. Let’s create a transfer of development rights program that if a developer has a site with a wetland on it he can take that development right and transfer it to a different site, and we could even give him a bonus. We’re told that these are needed because of urban

development. We want to put all our development in urban areas. So let's figure out a way to encourage that.

It would also help you with another dilemma you've been facing recently, which is retaining open space within urban areas. This would be a way that we could solve both those problems and save the County money. I'm under the impression that the Clear Valley property has paid under \$5,000 in permit fees. Now the County has spent tens – if not hundreds – of thousands of dollars processing that application, reviewing it and defending in appeals. So we've lost money on it, we're losing environmental quality, we have no control over the process and it's just a lose, lose, lose. Here we can control our own destiny.

So I hope you'll consider my proposal and will think about the bigger picture here. Thank you.

Chairman Stiles: Thank you.

Annie Lohman: Can we ask a question, Mr. Chair?

Chairman Stiles: Excuse me. We have a question, if you don't mind.

Ms. Heinricht: Yes?

Ms. Lohman: Mary, you said something about banks – you said something about perpetuity and I – it went by so quick I went blank.

Ms. Heinricht: Okay. A wetland bank – the federal law and the state law requires you to put an easement or some sort of assurance that that bank will remain there forever. But when you read the proposed rule that the state wrote, they have an out for that that says they can apply to vacate the easement, which basically then says Somebody ruined a wetland over here; oh, we've changed our mind. And now we have nothing. So we actually would end up with less than we started with. So we would lose the wetland, we would lose the new fake wetland, and we would lose the prime agricultural soils. But they'd have sold credits.

Chairman Stiles: Any other questions? Thank you.

Ms. Heinricht: Thank you.

Chairman Stiles: Oh, wait. Excuse me.

Ms. Ehlers: Yes, I have. Most of the references that I have read seem to think that wetland mitigation is habitat. Do you have any comments on the rule of hydrology in wetland mitigation banking?

Ms. Heinrich: A wetland requires three parameters for federal and state designation. You must have wetland hydrology, which is enough water to support wetland-type of plants during the growing season, and there are certain numbers of days, depending where you are in the world; the growing season changes.

It must have what you call hydrophytic plants, which are those that are adapted the majority of the time to live in wetlands, and it must have hydric soils, which are soils which have characteristics where they have been developed in hydric and aerobic conditions. Other than a beach, which actually is a wetland, but that's not hydric soil anyway; that's – but that has hydrology for, you know, twenty-four hours a day.

The way the state has been approving these – and Ms. Driscoll, who testified at the rule hearing, or hosted it, said she's never seen a bank that didn't include excavation. And so what they are doing is they are approving banks by allowing a construction technique that just does mining or digs down until they are in the water table. So they are not taking advantage of what would have been on a site before or would not have been on a site before and restoring hydrology from the site. They're not just – say, on a site that was a farm and it was ditched to make it drier. If one wanted to make that a wetland again you could simply plug the ditches. They're not doing that. They're going in and they're excavating all the soil down to what would be the level of the bottom of the ditches. So they're actually *removing* the hydric soil element of this and all they're getting, really, is water and they're going to plant plants and hope they live.

I have – you know, so you understand this – I've been working on this topic for over thirty years, and I used to live in Virginia where I sat on a state wetland mitigation banking Governor's advisory board and all these sorts of things. Banks fail over 50% of the time. In Washington, they're failing closer to 80% because of these construction techniques. They're not just habitat. They *are* part of the hydrology. Wetlands serve to clean polluted water, they serve to hold water during dry periods, they serve to absorb water during flooding. And they *are* habitat. I mean, there's no question about that, but the whole face of the earth is habitat for one thing or another. And that's part of, I think, what has been some of the controversy here – is that they have these blinders on that say, It's habitat; therefore, it's good. And they don't look at the excessive, dramatic construction techniques that they're approving to accomplish only one element out of the three required elements.

Does that help at all or did I give you too much information?

Ms. Ehlers: It helps me a lot. Thank you.

Ms. Heinrich: Thank you.

Chairman Stiles: I guess that's all this time. Thank you.

Ms. Heinrich: Thank you.

Chairman Stiles: The next person on the list is Andrea Xaver.

Andrea Xaver: My name is Andrea Xaver, spelled X-a-v-e-r. I reside at 19814 State Route 9, Mount Vernon, Washington 98274.

I have some concerns about wetland mitigation banks in general and I don't see anything in the code or any kind of language that would address these concerns. Number one, we need an inventory of natural functioning wetlands that we have in Skagit County, how much can be destroyed, and why should they be destroyed. When I asked this question of the Department of Ecology I asked if there were any inventories of such lands in Skagit County and "no" was the answer.

Wetland mitigation banks for development on agricultural lands – or any other lands, for that matter – could not be viewed as restoration, in my opinion, because if something has to keep these – as Mary was answering your questions – if something has to keep these natural wetlands – or created wetlands, rather – wet in order to keep them functioning, I wonder then, for an example, why the Department of Ecology – who seems not to know their left hand from their right hand in some instances – why the Department of Ecology granted a \$250,000 grant to the Skagit County to study the feasibility of dumping Big Lake's partially treated sewer effluent into Nookachamps Creek. If, for example, the Clear Valley wetland mitigation bank goes in, this water would potentially – partially treated – flow into the wetland mitigation bank there. I can't imagine that partially treated effluent, which would not remove pharmaceuticals, for example, how that could be helpful for fish or any other living organism. And if this goes on day after day, hour after hour, what's the point of it all and how would a wetland mitigation be helpful? And certainly it would be harmed by any kind of actions such as what the Department of Ecology is proposing.

Government could be seen as setting up a monopoly for private gain. How many wetland mitigation banks do we need? We have one fellow, let's say, who comes in and establishes a huge wetland mitigation bank and stands to profit from it at the expense of the county and the critters that are living in it, and then how many others do we need? Is the County going to foster, then, private gain for just one individual who likely doesn't even live in the county?

According to the Department of Ecology and the Army Corps of Engineers, wetland mitigation banks have a high failure rate. What would be done about that?

Who and how quickly will someone come out to my place and take care of any flooding, should a wetland mitigation bank be established further downstream from me? How many years would I have to wait? How many court actions would I have to enact in order to get help for any flooding or any kind of disaster that occurs on my place because of a wetland mitigation bank?

So I would like to know what language and codes cover the concerns I just mentioned. Thank you.

Chairman Stiles: Thank you. Next on the list: Randy Good.

Randy Good: Randy Good, 25512 Minkler Road, Sedro-Woolley. I guess I have one main real issue here and that is a memo that's from Ryan Walters to the Planning Commission here. We have an interim ordinance dated February 9, 2009, declaring an emergency and adopting a moratorium on the acceptance of applications for wetland mitigation banks on lands zoned Ag-NRL, a moratorium on all new special use permit applications on all Ag-NRL lands. Now there's this memo, April 7th, from County attorney Ryan Walters proposing to amend the moratorium on wetlands banks. The County Commissioners were unanimous in declaring a moratorium on all wetland banks on Ag-NRL lands, including both private and government agency banks, to protect our vital ag land. True science proves manmade wetland banks function at mediocrity at the best and are not needed. In fact, as DOE has claimed, land and soil disturbances can release fecal coliform bacterias into the creeks and streams. Manmade wetlands cannot be a surrogate for good, steady and documented knowledge about the form and function of wetland processes.

Lately we have seen planners determining private property rights. We have seen County attorneys judging clean water and County attorneys ignoring or changing planning determinations, and now County attorneys arbitrarily proposing to change the County Commissioners' original intent of this moratorium.

We hope next we don't experience building inspectors fabricating rules against the common culture and practices of this area. We recommend the Planning Commission follow the original intent of this moratorium, which was approved unanimously by the County Commissioners; dismiss the proposed amendment; and support the original ordinance moratorium on all applications.

And I'm submitting this on behalf of myself and the Skagit County Cattlemen's. Thank you.

Chairman Stiles: Thank you, Mr. Good. That's the extent of our list. If there's anyone else who would like to make public comment, now is the time.

Mr. Christensen: Randy, are you providing a copy of the letter? Okay.

Chairman Stiles: Please state your name and –

Ellen Bynum: Yes, Ellen Bynum, Director of Friends of Skagit County. We had reviewed the original proposed moratorium and urged the County Commissioners to not only enact a moratorium on all banks but also to revisit their application – the other applications of the two proposed banks. And I had not – I didn't know if the Planning Commission had any information about that, so I wanted to go over that request.

It has to do – our request comes from looking at the rule-making authority for draft rules under the Administrative Procedures Act, which is RCW 34.05.322. I won't go into all details about this but I will say that the rule-making authority requires that an agency may not rely solely upon the section of the law stating a statute's intent or purpose to enact it. In other words, they can't just say this is a good idea and then go do it.

The second part of it in Section (1)(d) it states that an agency must determine that the probable benefits of the rule are greater than its probable costs. We have no estimate as to who will pick up the tabs for the costs of the failure of either of the two proposed banks or for any future banks.

The answer at the public hearing that DOE held when they were asked about private insurance was that it appeared that it was not going to be required of the proponents, which is ludicrous because it means that if the bank fails you end up – you and I – end up paying for it.

So the third section that's of import is Section (1)(f). It says it must require – it must determine – the agency must determine that the rule does not require those to whom it applies take an action that violates requirements of another federal or state law. And, to me, if you're required – as the Planning Commission, as the Board of County Commissioners – to comply with the Growth Management Act and to comply with your own Comprehensive Plan and your local development codes, a draft rule that makes you violate those standing laws would be in violation of the Administrative Procedures Act.

So I have presented this to the County Commissioners. It was sent on April 23rd. I also copied Department of Ecology on it and I copied the attorneys involved. The thing that's also important in this discussion is that it doesn't matter whether or not Ecology thinks that the banks are a good idea. If they're not following the draft rule laws in doing this, you, as a local entity, can say, That's it. We don't want banks, we don't want the current banks, we don't want future banks – whatever. I think it's strong enough to – and you probably will want to get legal counsel on this and maybe not from the regular counsel. It just seemed very clear to me that the draft rule can't allow you to pass recommendations or any actions that would be in violation of the GMA and the Comprehensive Plan.

So there's also another section in here on public participation and requirements before filing an adopted rule with the code revising agency to prepare a concise explanatory statement of the rule. And there're some details in there that they – we don't think that DOE has done.

We've asked the Commissioners to revisit their vote on the Nookachamps bank. Because that is allowed, it must be proposed by or brought forward by the affirming voters in that vote. That is possible. We have not had a response as of yet.

The other thing that I wanted to put into the record for you, and I don't think I have enough copies for – well, I may have enough copies for all of you – this is a piece that was done when you asked previously how many acres we really are losing and no one can give you a figure. This piece was done September 23, 2008, and I know there are additional acreages on this list. And some of you have already seen it, but I wanted to enter it into the record because the total estimate for 2008 – this was proposed conversion of agricultural land – was 13,559 acres. And that includes the two proposed wetlands mitigation banks and also at that point included the 1500 acres of Riverbend.

So I also think the other thing that we need to look at besides just saying that we'd like a moratorium on what's going on now is we've got to do some proactive looking through either Departmental action or getting a consultant onboard to identify how much land we actually have lost, how much – and that's in terms of the resource lands, and that's farm land *and* forest lands and mineral lands for that purpose actually. And then also to take a look at what the number of acres of wetlands that we've got within that watershed that could possibly be involved in the bank. You may not need either bank if you started with demand first.

And the other point that I want to make is that the state agencies appear to be using a 1992 or 1993 figure for the total number of agricultural acreage in Skagit. When we got back the report, which we asked for on how much ag land was lost by the widening of Highway 20, the figures that they used on their report to tell the total number of acres said that there were 243,000 acres of ag land, and that hasn't been the case since GMA's been in place. So perhaps you would like to make a request to the agencies to see if there's actually any kind of standards that these people are using. Are they using what you say, as a county, is your zoning for resource lands, or are they using something that's ten or fifteen years old to justify removal of the acreage from the resource base? And nobody's looking at this, by the way. So take your pick. Question? No?

Ms. Ehlers: Yes. Would you repeat that RCW again?

Ms. Bynum: Yes.

Ms. Ehlers: Slowly enough to write it.

Ms. Bynum: Sure! It's 34.05.322. It's the Scope of Rule Making Authority and it's under the section of the Administrative Procedures Act.

I guess as a postscript I'd also like to say that the state agencies – a number of state agencies – have been proposing that the farm land that's being contemplated for conversion to commercial wetland banks in Skagit is not prime ag soils, and we are writing to those agencies asking them where that information came from because it's my understanding that they could not have been zoned Ag-NRL if they weren't prime ag soils. And if this is a way to justify state agencies deciding that Skagit is the place that they're going to do their mitigation for all kinds of stuff at the expense of the farming community and the economy of the county, we don't think that's appropriate.

So here's copies of the – and this is just a list that we prepared. It's got the references of the list. I didn't copy the references. If you need those, let me know and I'll get you a copy of them. It's quite thick.

Chairman Stiles: Okay, thank you.

Ms. Ehlers: Ellen, Ellen, references are crucial.

Ms. Bynum: Oh, well, I'll go get them and turn them in. I mean, they're cited on this.

Chairman Stiles: Anyone else wishing to give public testimony on this matter, please step forward. Please speak into the mic and state your name and address, please.

Diane Freethy: Good evening, Commissioners. It's nice to see some new faces on the Commission. Welcome. My name is Diane Freethy. I'm the President of Skagit Citizens Alliance for Rural Preservation. I live in Sedro-Woolley. My comments will be brief because you've heard from the experts this evening and there's – I can just say ditto, ditto, ditto, ditto. What they say is true.

I'll speak directly to the moratorium itself. The proposed moratorium is a classic case of closing the barn door after the cows have escaped. The large majority of Skagit County citizens are opposed to wetland mitigation banking and have filed their objections many times over the last three or four years. The Board of County Commissioners has had ample opportunity to put a moratorium in place long before now. So what is the emergency now? Moreover, the Board's ill-advised approval of the Mitzel/Wildlands mitigation banking instrument without benefit of public process has already set a precedent for permitting this type of commercial enterprise in Skagit County. Legal challenges to this proposed moratorium could become a problem in the future.

The County code's reference to wetland mitigation banking includes the code's reliance on Washington Administrative Code 173.500, an *unapproved* draft rule which received an almost unanimous thumbs-down from local citizens at last month's Department of Ecology hearing in Mount Vernon. Whether the County's missteps in handling wetland mitigation permits along the way have been deliberate or not, there surely is an air of conspiracy that needs to be addressed.

Before you make a recommendation to the Board, we ask that you take a long, hard look at this proposal and attempt to understand the motives behind it. Thank you.

Chairman Stiles: Questions? Excuse me, ma'am? We have a question here.

Ms. Lohman: Can you repeat what the code was that you cited? You said 173-something?

Ms. Freethy: Yes, actually that's a draft rule. It's 173.500.

Chairman Stiles: Jason?

Mr. Easton: Yeah, I'm not sure which of our distinguished folks who testified can answer this question, but has the draft rule been opposed to the level where testimony about the Growth Management Act – violating the Growth Management Act – has anyone tested that up to the Hearings Board?

Ms. Freethy: To my knowledge – there's been lots of comments made to the Department of Ecology about that direction. SCARP has sent several comment letters on that issue.

Mr. Easton: Maybe Mary can clarify my question.

Ms. Heinrich: Two – I want to say two years ago Senator Haugen asked for an opinion from the Attorney General's office –

Mr. Easton: Okay.

Ms. Heinrich: And he said that the Growth Management Act does not direct the Department of Ecology to follow the Growth Management Act, that it directs localities to follow the Growth Management Act. Now that was one of those – you know, it didn't go through a process. It's, you know, a letter or opinion.

Mr. Easton: It's the informal opinion of the Attorney General's office?

Ms. Heinrich: It was in writing but it's not one which –

Mr. Easton: Okay.

Ms. Heinrich: Some other attorneys affiliated with the legislature thought it might be an error – let's put it that way! – but that was the ruling from the AG's office.

Mr. Easton: Okay, thank you.

Chairman Stiles: Thank you. Anyone else wishing to give public –

Ms. Bynum: I just wanted to add that Friends of Skagit County will be looking at the option of taking what you're talking about to the Hearings Board. But, as you know, if we do that it has to be done with exhausting your administrative remedies before you do it. So we haven't done that because we're still waiting for our July 15th hearing.

Mr. Easton: Sure, sure. Thank you.

Ms. Bynum: Yeah.

Ms. Heinrich: Just to let you know the timeline: The law creating wetland mitigation banks was adopted in '98. They started a – they put up a proposed draft – you know, a draft rule; they ran out of funding in 2004 – or 2002; they suspended the program for two years; so they're still operating under the rule they wrote in '98, '99. They have put out three requests for proposals, so they have put through about twenty-one banks through at least the review process that they have no authority to say no to under their own draft rule because of mistakes in it. And we're not even sure they're going to need more banks. Two banks in Skagit are within a mile of each other. Two banks in Snohomish are within three miles of each other. Every bank that I'm aware of is doing major mining. One of the banks in Snohomish, the guy tried for twelve years to get a permit to excavate gravel, was turned down, but – wham bang – the minute he got his permit to be a mitigation bank he had to extract all the gravel to get the hydrology. So it's a very odd program.

Chairman Stiles: Anyone else wishing to give public testimony? Any questions of – Jason?

Mr. Easton: Just one miscellaneous thing. When Mary handed in her letter, I just want to make sure there are copies – did you guys get a copy? Because I don't know if there's a copy for –

Mr. Christensen: We do, yes.

Mr. Easton: So that we get a copy to the Commissioner who is not here tonight.

Mr. Christensen: Yes. Thank you for checking.

Chairman Stiles: Carol?

Ms. Ehlers: I have a question to ask whichever of you might happen to know the answer. If a wetland – if you're constructing in Valley A and there's a wetland there that has a function – which they all do or they wouldn't be there – how is it that you can mitigate in Valley B? That applies also, you see, between County A and County B, but let's take it into something that's clear – that water flows downhill and if you build houses in a wetland you're likely to have a drainage problem in the houses. So since I try always to be practical how is this supposed to work in a practical fashion?

Ms. Heinrich: This was not a program that was developed ecologically. The Clean Water Act said you must have a – you must mitigate/compensate when you destroy wetlands. So originally when you destroyed a wetland you had to replace it on the same property. The trouble with that was if you're building a hotel on the waterfront, obviously you're not – you're going to build in the wetland and you're going to dig a hole in the back of your parking lot to replace it. And they weren't healthy.

Then they allowed them to do it pretty much on adjacent properties. And when this started in the early '80s, you saw base consolidation on both coasts of the United States. You had – remember when the first round of that? And these were the big Navy bases and like that so you were looking at huge amounts of construction that had to be done immediately. And the Corps of Engineers and the regulatory agencies just could not keep up with this and it wasn't feasible for them to do all these investigations. So they came up with a program to allow a single site to be constructed so it gave them one place to inspect for maybe a hundred projects.

Then the Departments of Transportation in the states said, Well, wait a minute. This is a good idea. And that made sense because they were kind of the same. They had long term, you know, projects that they knew what they were going to do. You knew you were going to make a road wider, you knew which way it was going. So they started doing that. And then the commercial community said, Well, wait a minute. If it's good enough for those two, can we do it?

There are a number of scholarly papers – and I know Friends has sent copies a number of times – that talk about relocating environmental amenities out of urban areas to rural areas. And that's what happens. Because rural land is cheaper, the banks end up in rural areas, and the development is in urban areas so you're losing all of those ecosystem services. And you don't replace it. I used to explain to people that I'm going to cut off your right thumb and I'm going to lay it down on the table and trace it in cardboard and cut that out, and I'm going to staple it to your other hand. And that's wetland mitigation banking.

Ms. Lohman: Other people can talk, too. Mary, I have a question. Several people have said – they used the – or you just said the military thought it would be easier to inspect one spot. So that immediately makes me think, well, is anybody inspecting these banks after they're constructed for function to make sure that they work? Are they really going to be a wetland or are they just going to be Trust us; we're going to build it, we're going to do all this and we're going to spend this money and then automatically – presto-facto – it *will* work because we spent this much?

Ms. Heinrich: Well, the Environmental Law Institute in D.C. has done – they did an analysis of this and found that still a majority of them didn't meet the requirements. Washington did not inspect any of them until – it was either two or three years ago, when they got a grant from EPA to actually do inspection. So they're just taking the word of the guys who build them that they're actually functioning. And the thing is, you're talking about something that's taken tens of thousands of years to develop. Our landscape in western Washington is 13,000 years old – since the last glacier receded. So everything that's here started forming in 13,000 years. It takes 100 to 200 years to build an inch of soil from – how it erodes from rock and then moves downhill. So when you're excavating eighteen inches, thirty-six inches of – you know, eighteen inches is 3,500 years of ecological development. So you're not even going to be able to tell if something's functioning the same way till we're all long gone. I mean, and that's part of the problem here and that's why it's important to ask whether or not it's worth it here.

I mean, you think about Skagit: Everything we do here, we talk about salmon habitat, water quality. All of our decisions revolve around that. And here's a program coming from the Army Corps of Engineers. And keep in mind: U.S. Army – their original role was to make sure that troops could get on beaches in wars. And then they were told to take these permits and basically to make sure that the military bases could be accommodated in an orderly manner. And they're making decisions based on expediency. If we look at their track record on the Mississippi and on dams and things like that, you know, you kind of have to say, This is the same group thinking *this* idea up and what are the chances, and are our values different here?

The inspections are showing that they fail. I mean, and that's what – here, again, for those that were at the hearing with Ecology on the new rule, they finally said, Well, we *hope* these will work better. We have no figures that say they're better than onsite mitigation.

And I think Ellen said at one hearing: You wouldn't build a bridge with that kind of record, would you? If you had 51% failure, would you build a bridge with that percentage of possibility of failure?

Chairman Stiles: Thank you. Anyone else have any questions of commentors or staff?

Ms. Ehlers: I know something I would like from staff: A copy of the section in the RCW on rule making and these DOE interim regs that we heard about. Because whatever it is we're going to vote on, the more context we have of that sort the clearer our recommendations would be.

Mr. Christensen: Okay. We will gather that information and bring it forward to you in advance of our deliberations scheduled on May 19th.

Chairman Stiles: Okay.

Ms. Ehlers: And if it's – this is the first time this is being videotaped, and there was some discussion about using the videotape as the record of this, of whatever hearing we were using. A hearing of this sort that has so much specific information in it that it was not really realistic for us to take detailed notes – I don't want to have to listen or watch the tape again. I would like to have a transcript.

Mr. Christensen: We can request that of the Prosecuting Attorney's office and if they have the resources to make that available then we'd be pleased to offer that to you.

Ms. Ehlers: Thank you.

Chairman Stiles: Okay. Any other comments, questions? Hearing none, I'll close this public hearing (gavel). Deliberations on this matter are scheduled for May the 19th at 6 p.m. in this room. And I assume we'll have a package of the written comments and stuff for us before then?

Mr. Christensen: We will.

Chairman Stiles: Okay. Thank you very much. We have another – here we go. The next item on our agenda is Miscellaneous Items. Anyone have any miscellaneous business? Jason.

Mr. Easton: Can we get an update on the – how our bylaws update is moving forward?

Ms. Lohman: Mr. Chair, may I? I have been largely on a tractor so I have been the hold-up and I apologize.

Mr. Easton: That's all I needed to know – no problem. Thank you.

Chairman Stiles: Okay. Any other business?

Mr. Christensen: I have two Miscellaneous items, one of which I just wanted to discuss with you your May 19th agenda. So in addition to your deliberations on the proposal which was before you this evening, we also have two other agenda items, and let me just briefly discuss those with you. They are – you will be receiving an NPDES briefing. That is a – NPDES is the National Pollution Discharge Elimination System – and that is a – you’ll notice that that is on our legislative work program and we are required by August of this year to have some development regulations in place. That is a project that is being managed by the Public Works Department and those that are involved with that would like to appear before you on the 19th and give you an update as to the status of that project and what will be coming forward to you in the weeks or months to come.

Ms. Ehlers: Whatever materials they could provide us – I don’t mean a lot, but the basic information that’s necessary to understand their presentation – would make their presentation go more smoothly.

Mr. Christensen: Okay, we will pass that along. And then the third item is a presentation on Skagit County’s Community Wildfire Protection Plan, so the CWPP. That is a plan that is prepared for – or *by*, I should say – the Skagit Conservation District and they have been working with Kendra Smith, who is the County Natural Resource Policy Coordinator. And there are a couple of these countywide. There is one that I think is – well, this one is in draft form. And they wanted to appear before you and give you an update about what that program is. It focuses on Firewise techniques and things like that – how communities in rural areas can protect themselves from the risks associated with wild land fires. And I think we have some policy directives in our Comp Plan, and so this is actually an implementation program that the Conservation District is involved with and they want to talk to you about some plans that have been adopted and some that are in the making and others that have yet to start but are identified for future planning efforts. So there’ll be a presentation on that program for you on May 19th as well.

Chairman Stiles: Okay.

Mr. Christensen: And the other Miscellaneous item that I had is that you’ve received a memorandum from me to you regarding our 2009 legislative work program, which added timelines to our projects. You at a previous meeting had requested some information about when things are coming before you, so that matrix which was attached to the memo provides you with some not specific dates but targets, so you can think further out about what will be coming before you and approximately when.

There is a bit of a caveat to that work program, which the Board of County Commissioners adopted in March. We have recently learned that there will need to be deeper budget cuts in the Department which will be resulting in additional staff layoffs, as well as a reduction in professional services, so that will have a

cause and effect on our work program. So we'll be talking to the Board about that.

But one of the things that I've discussed with one or more County Commissioners and in response to some of the e-mails from you regarding this, what I'd like to do in June for one of our meetings is have a work session where we talk about our work program. As you may know, previously there were fifty-five work programs identified with twenty-four trailing issues. We can revisit those and talk about others that are of importance to you, and what we'd like to do is have your feedback and your suggestions and thoughts about things that you believe the County should be working on, and we want to be able to bring those forward and advise the Commissioners about those things that are of importance to you, as well.

So we'll probably be taking that matter up in June, after some of the dust settles and we kind of know a little bit more about who's left and what resources we have.

Ms. Ehlers: Are these cuts to be mid-year?

Mr. Christensen: They'll be effective June 1st, so the end of this month. There'll probably be an announcement. The County Commissioners are meeting with elected officials and department heads tomorrow. So elected officials and department heads at the request of the Commissioners' office and Budget and Finance over the last couple of weeks have been submitting proposals to deal with what was then a projected 2.9-million-dollar budget deficit in the general fund, which over the last weeks has worsened. So cuts are going to be much more severe than what was proposed, which certainly are going to be affecting departments' level of services, programs and the like. So it's going to be far-reaching and there'll be more information regarding that probably in the coming weeks, and to become effective June 1st. The Board, I think, is scheduled for a public hearing to do budget amendments on June 2nd, so it will be in effect the 1st of June through the end of the year.

Ms. Ehlers: Gary, one of the things which would help the public understand the difficulties that the County's under – and perhaps this is already on the Internet – but how much of a shortfall is there in general categories – for example, in sales tax? In property tax? The big items, because the more the public understands where the money isn't coming from the easier it will be to understand the service problems that might come as a result.

Mr. Christensen: Yeah. Those are good questions and those matters have been discussed by the Budget and Finance Director, and the Commissioners' office will probably be getting some updated information, but as you can expect, with the economy such that it is, the retail sales tax base has been less than expected; property taxes are down; also the investments that the County has

made have – the return on investments has been less than projected; due to less construction, there's been fewer trees cut so timber revenues are also down. So all of those things that the County has relied on in the past in terms of revenues for the general fund have diminished or not met predictions or forecasts. And so as a result of that and with our wanting to maintain a certain reserve in the general fund to meet daily, if not quarterly, operating expenses, the County is having to make some difficult choices by reducing expenditures. And that means not just necessarily buying new replacement vehicles for deputy sheriffs but probably will mean some difficult choices in which there will be some staff layoffs, perhaps some transfers to other departments, as well as some programs that may just be eliminated.

Chairman Stiles: Okay. Anyone else have any questions, comments? I did have a question about the status of our deliberations on the open space plan. Have we got a date or time?

Mr. Christensen: Yeah, and because of all that we've been dealing with, we've not yet set another date. And what I'd like to do is – we're going to talk about that and the other work program items in June. So we're going to have to re-prioritize and look at what's been started, whether we can finish it, and whether some that haven't started will even be able to be started, but we'll have that conversation in June.

Chairman Stiles: Okay. Any other comments or questions? If not, I declare this meeting closed (gavel).