

Skagit County Planning Commission
Work Session: Ruckelshaus/Critical Areas Ordinance
Deliberations, continued: FEMA/NMFS BiOp
August 23, 2011

Commissioners: Jason Easton, Chair
Mary McGoffin, Vice-Chair
Carol Ehlers
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Ryan Walters, Civil Deputy Prosecuting Attorney
Tim DeVries, Building Official/Floodplain Manager

Speakers: Randy Good
Pete Haase
Ed Stauffer
Kim Mower
Gerald Slind
Bill McCord
Mike Hulbert

Chairman Jason Easton: Good evening. I call the Skagit County Planning Commission (gavel) to order. I'm the Chair, Jason Easton. Tonight's business in front of us is a two-part meeting. The first portion will be a work session on the Ruckelshaus and critical areas ordinance issues that need to come before us. They'll be presented by Betsy Stevenson and Ryan Walters. The second portion of the meeting will be our continued – the continuance of our deliberations on the Flood Damage Prevention, or what's commonly referred to as the "BiOp" opinion.

We also have some general business to come before us at the end. We'll get an update from the Department about the status on our ninth member and we will also – obviously we'll review our schedule, our upcoming schedule. Is there anything that the Commissioners would like to add to the agenda before we move into the work session?

(silence)

Chairman Easton: Seeing nothing, we'll go ahead and start with the work session at this point. Should I turn it over to the Director Christensen?

Gary Christensen: I can maybe offer some initial comments.

Chairman Easton: Sure.

Mr. Christensen: Kind of try to set the stage. Gary Christensen, Director, Skagit County Planning and Development Services, where we help you plan and build better communities. Yes.

As Chairman Easton indicated, we have two agenda items this evening and one of which we are calling a work session, which will be the first agenda item. The second is deliberations, or continuations of deliberations on a matter which is currently before the Planning Commission.

I do want to just share with those in attendance and for the benefit of the Planning Commission and those watching on local cable TV or through the County website that the County Commissioners have asked Planning and Development Services or my department to initiate new protocols and procedures when the County is considering proposed code amendments or changes to Skagit County Code. And these new protocols and procedures more directly affect the Agriculture Advisory Board, as well as the Forest Advisory Board. And it also – these new protocols and procedures are to help the public, as well. And the purpose of these new procedures and protocols is to early on get public involvement and participation in helping define the scope and the concepts of proposed code amendments early on and then continuously through the review process.

We have informally been utilizing these new protocols and procedures for items which have been before the Planning Commission recently, but we're now more formally initiating these. I also want to acknowledge those Forest Advisory Board members who are in attendance, and if you could just raise your hand. Okay. I do know that we have some Agriculture Advisory Board members, and if you would raise your hand I'd appreciate that as well.

Also joining us is Commissioner Wesen in the back of the room – Commissioner – as well as some of my staff and staff from other County departments. Dan Berentson is here representing Public Works and the Natural Resource division, and I also see a number of familiar faces.

So these new protocols and procedures are a way in which to get information out early to the public and the advisory boards and to have you help us shape what those proposals might be or what they might eventually propose, prior to them being released for public review and public hearings before the Planning Commission. So this will help us shape proposals. The Planning Commission will then consider your comments. We

will then issue those proposals for public review, public hearings. The Planning Commission will hold those public hearings and then deliberate on the public testimony and comments and then forward recommendations to the Board of County Commissioners.

So the Planning Commission has been provided a copy of a letter from me to both Chairs of the advisory boards. And I know it's a bit new, but we're going to figure it out as we go, I think. And we certainly hope and feel that this will be more instructive and more informative and helpful as we contemplate and consider changes to Skagit County Code.

So, with that, unless there're some initial questions, we can just, Chairman Easton, turn to the first agenda item.

Chairman Easton: Yeah, so the plan for tonight is a relatively brief presentation from the Department, led by Ryan, followed by some round table-type discussion and conversation, questions. The only challenge that we have in this room with that type of policy is that we are being televised so we are going to have to ask – if I call upon you we're going to ask you to raise your hand so you can be called upon, or, if you'd like, you can put your name on the list in the back, if you want, but we will take comments either way. We're just going to have to ask you to come to the microphone so that we can make sure that we can hear you and so the folks at home can hear you.

And then, you know, that's going to flow back and forth with both Commissioners and with folks in the audience and members of the Ag and the FAB as we try to work our way through this new process.

So at this time we'll turn it over to Mr. Walters to give us, I believe, a history lesson and an understanding of where we're at.

Ryan Walters: Good evening, Commissioners. My name is Ryan Walters. I represent the Prosecutor's office. I am here to give you a history lesson, some background information on where it is we are today with respect to this issue. It's been a very long process. I certainly wasn't here for all of it. But it's been litigious. The County's spent a lot of money on this issue and we are positioned to end up spending a lot more money, depending on what happens. So it's very important.

I'm going to give you the 10,000-foot view, the simplified view. I don't want you to take away from this presentation, though, some sense that it is a simple issue. Behind each of the bullet points you'll see on the screen is a lot of complexity, but I want to boil it down so that you get the gist.

So let's start at the beginning. The Growth Management Act, passed in 1990 by the state legislature, requires a lot of different things of cities and counties, and it has thirteen goals – lucky thirteen. One of the first goals is to protect the environment and

to protect fish and wildlife habitat. That is one of the goals of the Growth Management Act.

Another goal, however, is to protect productive agricultural lands from conversion to other uses. And here is where we almost immediately got into trouble because sometimes these goals conflict, and it's our job as the County, as the land use authority, to balance these goals and respect all of them, but come to some balance that is in the interest of Skagit County. Counties under the Growth Management Act – and cities, as well – are allowed to make their own development regulations because the state understands that individual circumstances are different and local governments have different conditions under which they are trying to operate. So we have these two goals that are the underpinning of this entire controversy.

Now streamside habitat is basically what we're talking about. We call it "critical areas" and critical areas encompass a lot of things, but it pretty much boils down to streamside habitat. So why do we care about that? Well, first of all fish live in streams and there's special instruction in GMA to protect fish. But, moreover, the habitat alongside of streams has value, and one of the reasons it has value is because it helps moderate the temperature in the streams. It helps filter pollutants. It helps filter sediment from getting into the streams. Stuff falls out of the trees, enters the streams, provides nutrients and food for things that live in the streams.

It helps – stabilizes the bank. The bank, if it sloughs off, can contribute sediment. Trees and shrubs and streamside vegetation help stabilize that bank. It helps control erosion, obviously closely related. It provides shade, which is closely related to number 1. And there's this concept of large woody debris. If you have trees that grow up alongside of streams, eventually trees fall over; they land in streams and rivers; they create pools; fish need pools and shade and shelter and that kind of thing.

These seven items are drawn directly from our current standard critical areas ordinance that applies to everybody except for agriculture. And it's important to keep in mind this is the background on why we care.

Now typically we would protect streams through buffers, and we do. We protect streams through buffers across the county, but we don't apply those requirements to agriculture the same way that we apply them to residences, industry, commercial operations other than agriculture. And there's a reason for that. Agriculture, if – we did a study some long time ago and if we impose 75-foot buffers – 25-foot buffers on smaller streams – on ongoing agricultural lands, we would take something like 3,000 acres out of production and it would cost the industry six to twelve million dollars. It's a significant burden on agriculture to impose buffers and we're not – in Skagit we have a long history of trying to assist agriculture, protect agriculture, and so early on that was a decision that the County made – that we highly value agriculture and we don't want to impose this burden on them if we don't have to.

So we made several attempts to not impose that burden and we have had a long history of a lot of different ordinances that we have passed. This is really a lengthy debate. You'll see them on the screen. I'm not going to go through them all, but it's just a glimpse at the lengthy process that we have gone through to try to get to just where we are today.

So where are we today? Our current CAO, which you dealt with recently, treats agriculture differently.

Chairman Easton: Critical areas ordinance.

Mr. Walters: Right. The CAO is the critical areas ordinance.

So agriculture is treated differently. And it's treated basically – high level, 10,000-foot view – like this: Don't harm streams. Comply with a list of rules that we have in our ordinance to avoid harming streams. That is basically what our ordinance says now. That has been appealed. There were several different litigants that ended us up before the Growth Board. Now we are mainly dealing with the Swinomish Tribe. The Growth Board has made several decisions. Those decisions have been appealed to the Supreme Court. The Supreme Court has made a decision, and the Supreme Court's decision almost, I would just say simply, upheld the Growth Board's decision.

So you could characterize both the Growth Board and the Supreme Court as saying the following: Great. Don't harm streams, great. That's good. Two, make sure you enforce those rules that you have. And three, how are you making sure that you're not causing harm? And this is where we are today. We are not compliant with the Growth Management Act. We have an outstanding case before the Growth Management Hearings Board. We've been to the Supreme Court. The Supreme Court has upheld the position of the Growth Management Hearings Board and they want to know how are we going to make sure that we're not causing harm.

They are okay with the principle that you don't have to put back buffer that has been taken away. They are okay with the principle of just don't do further harm. But they're not sure how we are making sure that we are not causing further harm, and that is the crux of where we are.

In 2007 the legislature imposed a timeout. They said, Hold it. Statewide, stop making changes to your critical areas ordinances regarding agriculture. Everybody. We're going to send this issue to the Ruckelshaus Center. And the Ruckelshaus Center is a U-Dub/WSU joint program led by Bill Ruckelshaus, two-time head of the EPA, big salmon guy here, old – he's been around quite some time. He's very familiar with the landscape. They sent this to the Ruckelshaus Center. Ruckelshaus Center has spent four years working on this issue. Members of the ag community have been there, members of the environmental community have been there. The tribes participated for

the first three years. The moratorium was originally a three-year deal. We didn't get it all done in three years so they extend – the legislature extended it to a fourth year.

Chairman Easton: And then the tribes –

Mr. Walters: And the tribes did not participate in – during the fourth year. And the counties were there, and I was the representative of Skagit County to this process. The result of that lengthy four-year debate and consensus-building activity was this bill, ESHB 1886. This bill passed the legislature this year. It is the product of the Ruckelshaus Center process. It is a recommendation to create something called the “Voluntary Stewardship Program.” The Voluntary Stewardship Program is created by the state; it's endorsed by the legislature; it is part of GMA; it is part of the Growth Management Act today. It's an alternative approach. The Growth Management Act says you have to protect critical areas and you have to do it by creating development regulations. And now it says as an alternative to that, you can do this Voluntary Stewardship Program. That is a directive to the County. The County has the responsibility to create development regulations to protect critical areas, and now the County has an alternative and that alternative is to enroll in this program. This program is called the Voluntary Stewardship Program because it is a program that creates voluntary stewardship opportunities for landowners. But I think the important distinction here is that the *County* would need to enroll in this program. The County would need to choose between these two pathways.

So where do we go from here? There is our first option of enrolling, and there are deadlines and details associated with enrolling. But what do we get if we enroll? First of all, there's essentially no downside. We get GMA compliance; we get a safe harbor from litigation because we become GMA-compliant when we enroll. And we'll have to ensure no harm in an administrative process, not a litigation framework, over the next couple of years with a voluntary program that builds on something like the Clean Samish Initiative model. That's what we get if we enroll in this program.

Now the alternative is don't enroll. We won't be GMA-compliant. We'll still be before the Growth Board in a litigation setting. We'll have to figure out *now* how to not ensure harm, which is not a simple process. And we'll have to do it all by December 28th because that's what our compliance deadline is before the Growth Board.

Chairman Easton: I assume that's December 28th of this year?

Mr. Walters: That's right. So we have – we've brought now to you in this work session the question of how do we go about enrolling, because the County Commissioners have approved a resolution that directs the Planning Department and the Planning Commission to hold a public hearing, hold this work session, do several things to develop an ordinance to enroll in the program.

So here we are today in the work session. We've invited the Ag Advisory Board and the Forestry Advisory Board and the public to participate. The next step after the work session is to draft an ordinance that would, once final approval is given to it, enroll the County and integrate the Voluntary Stewardship Program into our current code. When we write that ordinance, the Department is instructed to incorporate feedback that it receives from you at this session into the formal proposal, and include options. You don't have to make decisions here tonight; you have to give feedback here tonight. So you don't have to decide whether we do this or that. You just need to give feedback. The Department will write it into the proposal as optional, bracketed provisions. The Department is supposed to include a substantive summary of the proposal in public notices and an abbreviated version in the legal notices, then there will be a public comment period and a public hearing and the Department will publish responses to comments. So that's what we're talking about in terms of public participation related to this project.

Now for the work session, I've just provided you the background. I'm next going to give you an outline of the current ordinance that we have, the proposed changes, and then you'll have an opportunity to interact with the public or have the public make comment.

Carol Ehlers: I have a question on procedure.

Chairman Easton: Sure. Go ahead, Carol.

Ms. Ehlers: You have a draft that you've created from composing various people's ideas.

Mr. Walters: We don't currently; we will.

Ms. Ehlers: No, but you will have one. And then there's a hearing. And then it comes to us. As you know, we frequently like to tinker with the language. Is that included in this process?

Mr. Walters: Yep.

Ms. Ehlers: So that if we tinker with the language on the basis of what people say, what they like and what they don't like, and how we see the nuances from – some of us – many years of dealing with – trying to deal with this, that then it's not a just one shot, that's it?

Mr. Walters: Right. The – some of the basis for this process is to ensure that everything is within the scope of what we had talked about before. So everything gets environmental review; nothing's outside the scope of public comment because it's all there in the base document. But tinkering with the language won't be a problem.

Chairman Easton: But for clarification, you're right, as my understanding of the memos and meetings that we've had as we've tried to talk about how we're going to go in this direction, so I think I'm glad Carol asked but I think that's the case. What wasn't discussed was we didn't have a practical example in front of us of how we were going to do our first one. And what's unique is – if you could scroll back to the Don't enroll/Enroll screen for a second – because of the resolution that the Commissioners passed, we aren't having a public hearing to even discuss the idea of not enrolling.

Mr. Walters: That's right.

Chairman Easton: So the public then on this issue is not – their opinion about not enrolling is not being sought?

Mr. Walters: I don't think that there's any question that they can express that opinion, but the point of the ordinance is to consider an ordinance that *would* enroll us.

Chairman Easton: And I think that's an important clarification for the Planning Commission –

Mr. Walters: Right.

Chairman Easton: – and members of the public and the boards to understand. Some of the path on this decision is already being laid out in front of us.

Mr. Walters: I would say so. The Board has – the Board of County Commissioners has adopted a resolution directing staff to consider enrollment, and I think that our –

Chairman Easton: And the Planning Commission.

Mr. Walters: Right. And I think the presentation was clear: We don't have sufficient time, resources or staff time to do both options right now. Not enrolling doesn't require an ordinance. We are not enrolled today and we won't be enrolled unless we adopt something; however, not enrollment does not get us to GMA compliance.

Chairman Easton: Well, I understand that but I also understand that this body has the responsibility to represent the people of the county as a vetting instrument for the County Commissioners. And we have in the past made recommendations that are counter to staff or counter to the product that's sent in front of us. At the end of the process, I just to remind everyone that it's still within the – my understanding, as the Chairman of this Commission, that we could choose to not enroll. Our recommendation could be – you could work your way, as a staff, all the way to the point of hearing from all of us and we could still make the choice of a recommendation to the Commission that – to the Board of Commissioners – this is what was presented to us. We still believe the best option for Skagit County could be to not enroll.

Mr. Walters: I think that's theoretically true, notwithstanding the Board's instruction to *consider* enrollment.

Chairman Easton: Well, we will consider – as Chair, I'm committed to considering enrollment as long as considering enrollment does not preclude at the beginning – it doesn't include an assumption that we will enroll. I'm not going to host a public meeting or direct a public discussion based on an assumption that we are going to enroll. And I'm firm on that.

Mr. Walters: The Board's resolution instructs the *Department* to develop a draft ordinance for consideration by the Planning Commission and the Board of County Commissioners that would comply with the new legislation and integrate the Voluntary Stewardship Program into the critical areas ordinance.

Chairman Easton: I understand that.

Mr. Walters: And then you are to hold a work session and then a public hearing on that proposal.

Chairman Easton: I understand. I understand. Carol?

Ms. Ehlers: I think, Ryan, that in this page you're supposed to be creating an information website that has pros and cons and information and definitions and things like that on it. Am I correct that that's –

Mr. Walters: That's right. That's in the resolution as well.

Ms. Ehlers: All right. There are two things which the majority of people in this Planning Commission and many that I see in the audience do not understand necessarily. The first is what it means to not be GMA-compliant. What that means financially, what that means legally, what that means in the context – general context – of things. We have – the County has spent much of its life being declared non-GMA-compliant, and so we have very strange things that have had to be done. When the law – for example – when the law mandated every county have a natural resource hazard mitigation plan, Skagit County couldn't apply for the grant money because it wasn't compliant. Dike District 12 in Burlington had to apply for it. That was a problem that was solved, but there've been numerous problems we have lived with in which non-compliance has cost us a fortune, and I think we all need to understand the dimensions of non-compliance before we say, I really don't want to or I do want to.

Chairman Easton: There'll be plenty of time to discuss whether we want to or not, but I would –

Ms. Ehlers: I intend to do that.

Chairman Easton: I'm sure we will.

Ms. Ehlers: But I'm just trying to make sure people understand that those three words – “not GMA-compliant” – have all sorts of implications that you don't know if you're just reading –

Chairman Easton: Well, and they don't have just negative implications if you look at being non-GMA-compliant in light of King County being GMA-compliant and the fact that Kent County doesn't exist anymore as an agricultural base. Maybe being non-compliant isn't such a bad idea in relationship to some of the goals we have as a community. And so I think these are some conversations and some discussions that we need to have, as long as it's clear to the – from the Planning Commission's point of view, the resolution is not requiring us to do this. It's requiring us to draft something for us to consider.

Mr. Walters: The resolution requires the Planning *Department* to draft something.

Chairman Easton: But there's no requirement on the Planning Commission to approve that.

Mr. Walters: No, there's never a requirement –

Chairman Easton: I just want to be clear. It's unusual for us to be sent something in the way that this was packaged. It's new, from my experience, and so I just want to make sure that we're clear on that. Why don't you go ahead and continue with your presentation?

Mr. Walters: Under County Code, the Planning Commission has three options for each project that –

Chairman Easton: Correct.

Mr. Walters: – comes before it: to approve it, to not approve it, or to approve it with modified recommendations.

Chairman Easton: Okay.

Mr. Walters: And to clarify, that's a *recommendation* to the Board, not an approval in and of itself.

Chairman Easton: Of course.

Mr. Walters: And it's also, I think, a point that's well taken that GMA compliance costs money; it also costs money to not be GMA-compliant. And there're a lot of especially grants that ask the question: Are you GMA-compliant? And in the last four years, we've said, No, but please don't hold that against us because we can't change our critical

areas ordinance because of the statewide timeout. But now we are no longer under the timeout. The timeout has expired and we do have the option of becoming GMA-compliant.

So next up is an outline of our current ordinance, a list of the changes the Department is considering, and then public comment.

So the current ordinance is found largely in Skagit County Code 14.24.120. That's Title 14, which is the planning code; 24, which is the chapter having to do with critical areas; and 120 is the special provision for agriculture.

First there's a section that's labeled "Purpose and intent," and it's exactly what that says. It's the purpose and intent statement.

Then there's "Applicability." It defines what the ordinance applies to. You know, under what circumstances agriculture qualifies for this special provision.

Then it lays out the "No Harm or Degradation Standard." And the No Harm or Degradation Standard is well-defined in the ordinance, and it involves meeting these four requirements:

1. Meeting the state water quality standards;
2. Meeting Ecology's TMDL requirements;
3. Meeting the Watercourse Protection Measures, which are the bright line rules that we mentioned before and we'll talk about in a second; and
4. Not degrading existing fish habitat from baseline inventory characteristics. And there are some tweaks. This requires simply for how you can work through it to implement it.

Then there is the list of Required Watercourse Protection Measures, and on the website there is a brochure that the Department has created on what those Watercourse Protection Measures are. And they're required and they are this list:

1. There's stuff for livestock and dairy management;
2. There are things that you need to do for nutrient and farm chemical management;
3. There are instructions for soil erosion and sediment control; and
4. There are instructions for management of agricultural drainage infrastructure.

And all of those are detailed in that brochure and they're detailed in the ordinance.

And then there's another provision that provides recognition for Dairy Nutrient Management Plans.

So what the Department would like to do is first of all enroll all the watersheds in the program. The legislation would allow us to enroll watershed by watershed. The Department suggests we just enroll all the watersheds in the program. The legislation also allows us to nominate priority watersheds. If you have – if you nominate a priority watershed and you are accepted into the program as a priority watershed, supposedly we would get increased funding, although we don't know how much. There would also be an enhanced, accelerated compliance schedule, but we don't know quite what that looks like. We're hoping to find out before we have to write this down.

2, we would adjust the purpose statement to reflect that we are enrolling in the Voluntary Stewardship Program and make that mesh.

3, we would delete the reference to the already-repealed resolution R20030210, which is regarding the County's monitoring program.

And we would clarify any of the existing Watercourse Protection Measures, because not all of them are particularly clear.

And then we would adjust any of the rest of the text for clarity, but we wouldn't be looking for big, substantive changes.

Now here's the timeline. Today is the work session before the Planning Commission. And the resolution suggests that on or about October 1 we should release the draft ordinance for a formal public comment. Then there would be a public hearing before the Planning Commission on or about November 1. And all of these dates in the future are subject to change. We have to figure out schedules, week-days, week-ends, times.

Chairman Easton: With the exception of the December 28th date.

Mr. Walters: December 28th is not subject to change. That is the date that the Growth Management Hearings Board has given us for compliance. So what we are looking for at this point is to enroll in the program – adopt the ordinance and enroll in the program – I and then send the Growth Board a letter indicating we have enrolled in the program; we are now compliant under the new legislation.

We've provided a bunch of information on this project page at the web address there. Also agcao without a hyphen works. And we'll continue to update this page with everything that we can as we go along. There's a lot of background information here. There's links to all the Growth Board rulings. There's links to the Supreme Court decision. There's links to the Ruckelshaus website and the Ruckelshaus summaries of their program, this staff report, the postcard that we sent out. We really tried to make this the one-stop shop for information about the program.

There's also links to our monitoring program, our Water Quality Monitoring Program, and our Salmon Recovery website. All that information is here and there's also an e-

mail address which is just agcao@co.skagit.wa.us that people can e-mail and provide additional comments and feedback, because we're looking for comments and feedback tonight, but everything is very general at this point because we don't have a draft yet. So people can send in comments after tonight, they can comment tonight, we can provide – we can answer questions tonight, we can provide additional feedback tonight. But we hope to have a draft out by October 1.

So that concludes this presentation. I have lots more slides to cover other things if you have questions.

Chairman Easton: A couple clarifications on the website. If you go to – for those at home who didn't write that down as it scrolled across their screen really quickly – if you just go to skagitcounty.net, can you navigate yourself easily to the agcao?

Mr. Walters: There's also a news item at the top of the page.

Chairman Easton: Okay. And then also that e-mail address that you referenced.

Mr. Walters: Is on this page.

Chairman Easton: Is on that page. So if you're at home and all you can remember or your pen's not handy, it's skagitcounty.net. From there you should be able to find this section. Thanks.

You were saying there's other slides? I'm sorry I cut you off.

Mr. Walters: I have lots more material to cover any other questions that you have.

Chairman Easton: I'm sure we'll have comments and questions later.

Mr. Walters: But this concludes the abbreviated presentation.

Chairman Easton: Thank you. I appreciate that.

Ms. Ehlers: I have a question on the abbreviated.

Chairman Easton: Okay, Carol?

Ms. Ehlers: All watersheds or all watersheds in the Ag zone?

Mr. Walters: All watersheds. The legislation suggests that the program applies to all agricultural activities, not necessarily on – various counties have designated resource lands differently. They don't all call it "Ag-NRL." So we would just suggest enrolling all the watersheds, and that would apply to ongoing ag, as we've defined it in the ordinance, across all the watersheds. Then there's no question that we are opting into

this program as an alternative to the requirement to protect ag – or to protect critical areas through development regulations. That's why we advocate for just enrolling all watersheds across the board.

Chairman Easton: So why don't we take you and move you across the room so we can free those mics up? And let's take some comments from – let's start with the committee members that are here, if they'd like to comment, and then – if you could – I'm not – I'm kind of working this out as we go. If you could just kind of line – begin to sort of stand next to those tables if you know you plan to speak. We'll just kind of go through it quickly. I'm not going to – at this point, we still are scheduled for about another hour of meeting. I'm going to let you sort of – we're not going to set a time limit, but let's try to be respectful of the fact that there may be a lot of us that want to speak so we'll try to balance it out. At the end of the hour, if myself and the rest of the Commission feel like we need to extend this meeting we have already previously discussed that with staff and we will do that. So I don't want anybody to feel rushed, but I want to make sure everybody kind of gets – let's everybody get their first time through the lunch line before everybody comes up for their seconds, too. So let's do that.

All right, Randy? And could you just at least state your name? We don't need your address, but just so we all know who's speaking. So I take better notes that way, Randy.

Randy Good: Randy Good from Sedro-Woolley. First I'm a – I have some real concerns on the presentation Mr. Walters just gave. It sounds like the Commissioners have already set their goal to move forward with this Ruckelshaus critical areas. It's a little bit disingenuous here, I think. A question: Does the County need to be in compliance with the existing critical areas ordinance before even considering the Ruckelshaus process? That's a question for the attorneys.

Chairman Easton: Ryan?

Mr. Walters: No.

Mr. Good: No? Okay. Another question: Would this Ruckelshaus process be in an addendum to the present critical areas ordinance?

Mr. Walters: Yes, that's what we're suggesting – that you add an enrollment section to the existing critical areas ordinance.

Mr. Good: So it's sort of being an overlay? You have our present critical areas so it'd be a sort of overlaying onto that then, or an addendum. That's okay. And I think real concerns on the – you know, the present critical areas ordinance, there was two issues that the state Supreme Court and the Hearings Board had concerns with. And one of them was that the County hadn't – I'll give you a – this is the Skagit County's Monitoring Program's annual report and all it is is data, which is good. Mr. Haley's done a really

good job of getting data. But there's no analysis of this data, so what the courts are saying and the Hearings Board is that the County needs to do an analysis of the data and come up with the – so you have these measurements, and then in order to know what your measurements mean you have to have an analysis, then they know – you can figure out how to work that into your adaptive management plan and then you have to have all of that in order to do enforcement. So really, for the County to get in compliance with what the courts and the Hearings Board are saying is actually pretty simple.

And so I can – you know, and what I would like to see is both options come forward to, like, our Ag Advisory Board. You know, what would it take for the – what's the process for the Ruckelshaus deal and also what's the process would require for the County to become into compliance, and bring that forward to us to consider. And I think it'd be good for the Planning Commission to hear that, too.

Chairman Easton: So that we're clear, under the current policy that the Director explained tonight, that won't occur.

Mr. Good: I follow that, but, like I said in my first part of the – a little bit disingenuous here why we even having the process here.

Mary McGoffin: So, Mr. Good, what is the name of that document?

Mr. Good: It's Skagit County Monitoring – every year Public Works puts out an annual report for the Skagit County Monitoring Program.

Ms. McGoffin: Okay.

Mr. Good: Okay, so I – and, you know, the courts – the Supreme Court and the Hearings Board both talked about triggers. You know, the County lacks triggers. Well, you know, that's what I was getting to with the measurements. You know, the County can – it's pretty simple to become in compliance, you know. And then too, I think, you know, here in a couple of weeks or so maybe we'll know the results from the DNA testing that's been going on at OSU and maybe we'll have a little more clarity on what routes we need to go. But anyway, that's –

Chairman Easton: DNA testing of?

Mr. Good: Of, like, the creeks and the river – you know, like the Samish River. They're doing DNA testing and we will know the results here within a – they probably already know, but within a week or two we should – they should be able to announce what those results are.

Ms. Ehlers: DNA of what?

Mr. Good: To determine the exact bacteria that's causing the – and this is dealing with the fecal problem out in the Samish River.

Ms. Ehlers: Is it DNA associated with a certain kind of animal's production that ___?

Mr. Good: Yeah, the DNA will distinguish for us and identify what bacteria is actually causing that problem, the fecal counts – the high counts out there.

Unidentified male voice: ___ source – the exact source.

Chairman Easton: Okay.

Same unidentified male voice: After examination.

Mr. Good: Okay, that's it for right now.

Chairman Easton: Thank you, Randy. Everyone's welcome to come and jump in the line now.

Annie Lohman: May – may I ask –

Chairman Easton: And any Commissioner is welcome to speak. I mean, just let me recognize you so we stay a little bit short of chaos, but everything else is acceptable. Annie, go ahead.

Ms. Lohman: Ryan, if the County were to basically take our current Ag-CAO and enroll it in this program, it would be basically with some tweaks and working on the monitoring program a bit, it would be pretty much litigation-free, correct?

Mr. Walters: That's the idea.

Ms. Lohman: And that's the peril of not enrolling – is litigation.

Mr. Walters: That's right. Yeah, the idea is that the Ruckelshaus group worked on this legislation on this proposal over the last four years and the point of that work was to come up with an alternative to the litigation, where we spent millions of dollars on Seattle attorneys and we didn't spend millions of dollars on farmland preservation and we didn't spend millions of dollars on fish/salmon recovery. But we did create a lot of hard feelings and we didn't advance the ball toward the goals _____.

Ms. Lohman: But within this program, the County could do what Randy suggested: work on our monitoring plans analysis. We could tighten up some of those things that we were out of compliance but we would be basically in a different environment of accomplishing that.

Mr. Walters: Yes.

Ms. Lohman: We wouldn't basically be reinventing the wheel and writing something entirely new. We would be taking what has already been upheld and found to be good, adding the things that were lacking, and enrolling it, correct?

Mr. Walters: Yes. And when we do each of those steps we won't have to go to the Growth Board and defend it with an attorney in a litigation context against an opponent.

Chairman Easton: Does that protect us from – with the tribes pulling out of the nego – or the Ruckelshaus situation in year four, is there some – is there any – there's no agreement then, obviously, with – is there an agreement there with the tribes that the tribes won't object to this? I mean, you're saying we're protected from – I'm kind of confused. So the legislature passed a law that said if we jump into this new voluntary program nobody can sue us?

Mr. Walters: The legislature passed a law that says we have to protect critical areas – 1990, right?

Chairman Easton: No, I'm talking about the last one.

Mr. Walters: I know, I know. I'm just setting the stage here.

Chairman Easton: Okay.

Mr. Walters: So we have a law that says you have to protect critical areas through development regulations and that's what we've been working on and that's what people have been saying we haven't done effectively. And now the law says *or* you can enroll in this program.

Chairman Easton: Yeah, but – hang on. I'll come right back to you. So why do you keep saying that this is going to protect us from lawsuits then, if it's not going to stop – at least one of the parties to the lawsuit in the past –

Mr. Walters: Lawsuits have to have –

Chairman Easton: – didn't finish the Ruckelshaus process. You actually referenced them earlier tonight as being someone we're still – what did you say? – negotiating with or working with.

Mr. Walters: I don't recall.

Chairman Easton: What's our relationship – what's the tribe's relationship – what are the tribes' in general relationship to the current CAO? Is there anything legally pending between us and any of the tribes in Skagit County?

Mr. Walters: Yes. We are currently in litigation with the Swinomish Tribe over the Ag-CAO.

Chairman Easton: And this option changes – would not change any – or would change – would it or would it not change anything to do with that lawsuit?

Mr. Walters: Yes, it would.

Chairman Easton: It would. By state requirement.

Mr. Walters: By – yes. The basis for the lawsuit is the state law and the state law has now changed. That is why –

Chairman Easton: And if we follow that state law, take the door number 2, that would – then that lawsuit's prospects change quite a bit – directly.

Mr. Christensen: Yeah. I think it was a good question that Mr. Good asked. What's really the process under either path that you might choose. What if we just go argue for the Growth Hearings Board, try to do what we can by December 28th, or take more time and follow the Voluntary Stewardship Program? There's a real distinction between the two paths, and let me explain that. It puts us in a different venue in terms of who's reviewing what we do and who ultimately is approving it. If we choose path A, which I'll say is GMA compliance and arguing before the Hearings Board, we are making our case before a governor-appointed board whom we've been before and we've had some success and some not so successful cases and arguments. If we choose to go under the Voluntary Stewardship Program, we have some more time in which to do the things that we believe are right in terms of documenting and providing the facts and making the case for our program, but that's going to be reviewed by the Washington State Conservation Commission, which is different than the Hearings Board. And that's a venue that we've yet to go before.

Chairman Easton: Okay. Let me go to the gentleman here at the podium.

Pete Haase: Thanks. My name's Pete Haase and I live on the Joe Leary Slough. I have a piece of property on the Joe Leary Slough, bordered on one side a bunch of Sakuma's berry farming and the other side by a bunch of the Peth family cow – cattle grazing lands. And some of you know I've been up to my boots in fecal coliform and water pollution issues in the Samish and in the Joe Leary and in the Padilla Bay watersheds for quite a while now. And I'm not too sure – first of all, I'd like to thank Ryan and Betsy and Gary for getting public input to something like this and giving you a chance to consider a number of sides besides what's being recommended. That hasn't always happened in the past.

And I'm not particularly in favor one way or the other of how this situation goes, but I would like to see, whether it's through CAO updates or this voluntary program, that it be some form of requirement that any kind of livestock operations – private hobby farms, individuals, large operations – are required to keep their livestock well back from our rivers and our streams and our ditches and our sloughs. Because if they're not, which is the way it operates now, large amounts of manure during the rains – and we know how often it rains – flow into those ditches and rivers and streams and sloughs and into the Puget Sound and that's the issue certainly being fought out in the Samish River. It's been three years since the Clean Samish Initiative started – almost three years today. There have been study groups for all of our watersheds for many, many years. In fact, there are committees active now for all our watersheds that have action plans and assignments and jobs to do to clean up water pollution. It's not really progressing very far and I don't think there's any meetings held and so on. Which brings me to a question for Ryan. When you say "enroll all watersheds," is the thinking that that would be as one single watershed or Samish, Padilla Bay, Nookachamps?

Mr. Walters: The legislation instructs that the County can enroll on a watershed by watershed basis. If we're simply enrolling the whole county, we don't have to make a distinction as to what constitutes which watershed.

Mr. Haase: So in that case there would be one big watershed committee formed, one set of rules and regulations and ideas and incentives and approaches and management of all of our watersheds as a single entity, as opposed to today where we're divided up into a lot of watersheds and each one has its own plan and its own approach. In addition, the Department of Ecology has study plans called TMDLs on the Nookachamps, on the Samish, and on the Skagit that are active also for trying to clean things up.

I've – I would encourage you on that website there, if you can, to go to the link that puts you to the little webinar – it takes about an hour to watch – that was hosted between the Conservation Commission and the counties. It's very well done. It in an hour explains quite succinctly what would happen if you enroll – what you have to do, what'll happen, what all the unknowns are and how it's going to work. If you don't do that and you don't use that knowledge you're just not going to be able to make a very good decision here, I could guarantee you that.

It strikes me that what the voluntary program is reminds me of the old joke of a camel is a horse designed by a committee. We all know the Ruckelshaus Committee worked for three years, forty people, every different entity you can imagine trying to reach a compromise, and you know what happens then. You get what everybody will agree to and you don't get much of anything. They didn't get anything done in three years and they had to get the fourth year added on, and what you got is exactly the same thing that we're trying to do in the Clean Samish Initiative. You've got committees, meeting, meeting, meeting. You've got sampling, sampling, sampling. You've got promises, promises. You've got reports, reports. And if anything's getting done it's because

people who aren't in this room and will never benefit from the dollars that are doing that – doing something – and that's the state Department of Ecology, where the enforcers are out finding the problems and correcting them.

I worry that what this program is is just another great big example of the Clean Samish Initiative. It won't do anything for three years because the first three years and all the money you get is spent organizing, meeting, planning, writing up things. No one'll go out in the field and find a problem and fix it. None of the incentives that you'll be able to give to the people who might need to change their behaviors, none of those incentives are new. They're all things we already have. They're CREP program, the NRCS program, the County enrollment programs – there's no *new* incentive.

And, lastly, there's no new hammer. In order to get fecal coliform out of our streams and avoid pollution, which is against the federal law and the state law – you cannot pollute streams – we again and continue, we'll have to go to the County Health Department for septic issues, which we do and it works. And we'll have to go to the state Department of Ecology because they're responsible for upholding the clean water law for the state of Washington and the United States. If they can't do it and won't do it, then it's to the federal EPA and that's what's happening in the Samish right now.

So I'm really concerned that what we're going to do is set up another three years of down the river goes the poop. Shellfish beds are closed. I sit there and watch it. I watch it every day. Nobody does anything about it except meet, spend money and talk and yakkety-yak. And I'm pretty tired of it, as some of you know, and there are things we can do and we will do them. So I hope that you at least look at it and study it and take Jason's words to heart – is you don't have to approve this thing. It may be a horrible road to not approve it, but I think you could do it. So thanks.

Chairman Easton: Anyone else in the audience? I'm sure there're some Commissioners that want to make some comments, but let's see – prefer the audience here for a minute. All right. Mr. Stauffer?

Ed Stauffer: Good evening, Commissioners. Best available science or politics? What do you want to do? I hear the new effort to involve the public in these deliberations – once again they've waited until after the fact to give a chance to make a brief statement. There's no public involvement in developing any of this stuff. They've left it to you to develop it. That's not fair.

Best available science. Many times I've testified about the County Commissioners hiring scientific experts to evaluate our Water Quality Monitoring Program in Skagit County. The first report we published, I believe, was in 2002. That report quoted the finding, "The contributions to the fecal coliform levels in Samish Bay are not due to the septic systems because of the analysis of the data." In 2008 the Skagit County Commissioners hired the Water Quality Department of Washington State University to do a review of our water sampling program. That's the Barber and Cicholz, C-i-c-h-o-l-

z, study. They said that although our program was adequate in identifying trends of pollution – and I’m talking about from all sources, not just fecal coliform but also they addressed fish habitat, and they’re mutually exclusive in some areas. But they’re looking at water temperature, streamside setbacks, other things that affect fish habitat as well as shellfish health. And their finding was that our program could not establish the cause without DNA testing. Now it’s been over three years and we still have not established the cause scientifically.

I heard years ago when I was studying that particular issue that as far as the ag areas and critical areas ordinances were concerned that one – before applying standards to agricultural practices – one must rule out the contribution of natural background. That has not been done in any watershed in Skagit County. Until we can establish the contribution of the natural background, we cannot form policy to control pollution. Maybe when they finally get the DNA studies from Oregon State University we *will* be able to target. If you want more information on this, I recommend that you read the Barber Study.

All watersheds in the county. New legislation, new ordinance, new controls over ag, over *all* property in the watersheds? Is this another disguised attempt to control my private property rights just because I live in a watershed? These are kinds of things that I don’t like to talk about because I think they’re underhanded. And I’m tired of seeing it brought to you guys in this kind of a format to try to resolve these developed over years, behind close door things to have implications that none of us really understand. I think it’s time for some heads to roll. Thank you.

(applause)

Kim Mower: Hi, I’m Kim Mower. And I’m with the Ag Advisory Board but my comments here tonight are not reflecting actually the Ag Advisory Board but my own personal concerns.

Chairman Easton: Sure.

Ms. Mower: And I have before me a document here that has some bullet points on the Voluntary Stewardship Program and I’ve been trying to analyze this. I’ve been trying to keep up with the Ruckelshaus process as much as reasonably possible. It was a long, drawn out affair and one tends to kind of shelve it, but now that it’s coming to the forefront I’m trying to get these points up. And taking into consideration many of the points it has to offer there’s one thing that keeps raising the hair on the back of my neck. And on this we have – in one of these little boxes – we have “Opting into the program: In identifying priority watersheds a county must consider” and one of the first bullet points is “the role of farming within the watershed, including the number of acreage, economic value and risk of conversion to farmland.” Now it’s the economic value part that concerns me. What kind of intrusion into my personal business is that going to mean? How much information am I going to have to put forth about my personal

business to determine whether that farm is a reasonable farm to consider as a farm, or should it be converted? This is the sort of information that I think is a little dicey, a little bit intrusive, and I would like to have more information on how that's handled before I can make a decision on whether to make a recommendation as to opt in and to opt out. Thank you.

(applause)

Mr. Walters: I can address that question.

Chairman Easton: Ryan, are you available – I mean, prepared to address that?

Mr. Walters: Yeah. The legislation lays out a number of things that the County is supposed to consider as part of deciding whether to enroll, and one of those things is – and also for nomination of priority watersheds – and one of those things is, What's the value of the agricultural industry in that watershed? We're not asking farmers to give any information specifically.

Chairman Easton: How's that going to – how are you going to do that?

Mr. Walters: We have numbers. You know, WSU has numbers.

Chairman Easton: Yeah, Carol?

Mr. Walters: The value of the agricultural industry –

Unidentified male voice from audience: How do you get the numbers?

Mr. Walters: The value of the agricultural industry –

Chairman Easton: Sir, I'm going to ask you one more time. You're a repeat offender. The microphone's right there and there's no line so you can wait. Carol?

Ms. Ehlers: If you go to WSU or any meeting on agricultural, one of the things you learn early on is that it isn't necessarily the value or the acreage of an *individual* farm. It's the rotation value for the entire valley. There's a very sophisticated rotational crop program in this county which says that it's not just whether this farm in this valley has this value or might not. It's does it contribute in the rotation process to the production of something that is essential for the total economic viability of that particular aspect of the county. Is it a rotation for a seed crop, is the thing that's most considered, but there are others – the tulips – and there's a whole string of these rotation issues. You cannot talk in agriculture simply about the value of a piece of property by itself or even just in a watershed when the watersheds are interrelated in these programs.

Mr. Walters: And we're not going to be talking about the value of a piece of property. We're going to be talking about the value of the agricultural industry in a watershed, and we're not going to talk about the value down to the penny.

Ms. Ehlers: I'm not even talking about that. But if there are five farms and all five of them are crucial in the production of this series of rotation crops that are produced, then it's not a monetary value so much as it is a total value of that particular aspect of the agricultural industry. Go talk to the people at WSU. They can give a much better spiel on it than I can. But they're very convincing.

Chairman Easton: Elinor?

Elinor Nakis: You know what Bev read to us didn't sound like that it had anything to do with crop growing but more of raising cattle and the possibility that if it was found that those cattles (sic) contribute too much to the fecal coliform levels of the waterways then they could be removed? I mean, that land could be converted from ag to something else and be developed? Is that – I mean –

Mr. Walters: I'm not sure I follow you.

Ms. Nakis: Okay. When you – what you read was the value of the land and whether it could be converted or whether it would be –

Ms. Mower: The economic value of the farm.

Ms. Nakis: Right, and its conversion –

Ms. Mower: Yeah, is it going to stay a farm or _____.

Chairman Easton: Kim? Kim, go – it's okay for you to walk back over there, too.

Ms. Mower: (inaudible)

Chairman Easton: No, we want to help Elinor answer the questions and we want everybody to hear you.

Ms. Mower: My concern was how the evaluation of the economic value of the farm is going to be determined; what kind of intrusion into my personal business that means; as well as once that determination is made, is the decision to value the farm as a farm or basically throw it under the bus and allow it to be converted. And who's making these decisions? These are still all very gray areas and what kind of numbers the County is going to use to determine these economic values and where they're going to get them from I'd like to know about. And, to me, this is really, really a very big issue. Although it's very tiny words in a little, small box, this to me is a very, very big issue. So I want to

see that fleshed out before I can decide to make a recommendation personally, and perhaps maybe through the Ag Advisory Board, for or against opting in.

Does that help?

Ms. Nakis: Yes, it does. I mean, but I feel the same way – is that to me that looks like an open – possibly a door opening so that folks could come in and say, This property is no longer acceptable to raise cattle on because it's causing problems with the river that's right next to it, and so we're going to say you can no longer raise cattle on this. And economically it's really good because to convert that into some sort of development property and build houses on it and –

Ms. Mower: If we're talking about Ag-NRL, that's not an option. Ag-NRL does not allow for development.

Mr. Walters: Mr. Chairman?

Chairman Easton: Just a second, Ryan.

Ms. Nakis: But how – when they talk about conversion, what does that mean?

Ms. Mower: Conversion to habitat sort of things.

Chairman Easton: Let's see if Ryan can clarify this for us. Ryan?

Ms. Mower: Okay.

Mr. Walters: I appreciate the bullet points in the PowerPoint, but the legislation has the complete sentences that we need to follow. So the legislation says, "In identifying watersheds to participate in the program, the county must consider" and then it lists a number of things that the county must consider. The first bullet is "The role of farming within the watershed, including the number and acreage of farms, the economic value of crops and livestock, and the risk of the conversion of farmland; The overall likelihood of completing a successful program in" that "watershed; and (c) Existing watershed programs, including those of other jurisdictions in which the watershed has territory."

The legislation provides guidance to the county as to which watersheds to enroll. We're not talking about converting individual parcels. We're not talking about identifying which ones to convert. This is enrollment in a voluntary stewardship program.

Chairman Easton: Okay.

Ms. Lohman: But it's all in the context of ongoing agriculture. This whole program is about ongoing agriculture. It isn't just opening up the CAO and revisiting every activity.

Mr. Walters: Right.

Ms. Lohman: It's agriculture – it's the Ag-CAO.

Mr. Walters: Right.

Chairman Easton: And you said in your presentation that it was the County's intentions for us to consider the idea that you'd like to go down the path of not doing them one at a time, but to do them all – to do all the watersheds.

Mr. Walters: And we can't do them one at a time because we only have this one opportunity to enroll, but we could enroll different watersheds separately. We wouldn't have to enroll the entire county.

Chairman Easton: This might be as good a time as any for me to declare I've been a strong critic of the Department and of the – on occasion – about following through on timelines. And this particular painful timeline is not to follow the Department, in my opinion. And I want to be clear about that. That lies at the feet of the legislature by putting the December 28th deadline and, you know – am I clear? Is that clear?

Mr. Walters: The legislature actually gave us a January 22nd deadline. We have a December 28th deadline because of the compliance requirements before the Growth Board.

Chairman Easton: So the combination – okay, well, an additional 24 days would have – or 23 days – wouldn't have really impressed me. So oftentimes we have ended up, as a commission – and I've been vocal about my displeasure for it – of us being three months from a deadline, a proposal in front of us, and the sense that we couldn't reach in and work with what the public's comments were and what our own concerns were about it because we were under time pressure. I just want to be clear in this situation that is not the fault of the Planning Department or the County Commissioners, from a scheduling point of view. That may not always be the case for me, but I want to be clear about that.

Kim, thank you – unless you want to add something else.

Ms. Mower: Any other points? Any other questions?

Chairman Easton: No, I think we'll go ahead and step to the next one.

Gerald Slind: My name is Gerald Slind and I live in Edison. My wife is on the dike commission out there. That's the reason we got a written invitation. And I sit here and listen to this stuff. Now I want to ask one question over there. You're piling this individual self-monitoring thing on top of every other rule you have?

Mr. Walters: Well, I think, as we've indicated, it would be a *voluntary* stewardship program so –

Mr. Slind: Okay, but you're keeping the old –

Mr. Walters: – we wouldn't be adding – we would not be adding additional requirements.

Mr. Slind: But you're still keeping the old requirements.

Mr. Walters: Yeah, that's the proposal.

Mr. Slind: Sure, let's pile some more on.

Mr. Walters: Well, it wouldn't be more because we're not adding more requirements. So I'm not –

Mr. Slind: Okay.

Mr. Walters: I'm going to be clear on that.

Mr. Slind: Okay, but I've never seen anything come out of this office that didn't add more. Okay? Whether it was good, bad or indifferent. Now let's get with this watershed stuff, and this lady's talking about her farm next to water and whether she can raise cattle on it, and I think it's her God-given right in the Constitution of the United States if she wants to go broke raising cattle along the river she could do it.

(applause)

Mr. Slind: And nobody has any business to tell her. And no one has the business to come out and ask me what my property's worth because it's – the Assessor does a good enough job in my house, not someone else's.

Mr. Walters: Nobody's going to come out there.

Mr. Slind: They haven't found out in the Samish River exactly where the bacteria's coming from. I don't know how many millions they spent, but they're competing with you guys on this thing pretty close and they don't know where they are. And until you do that you can't tell me I've got to keep my cows back 50 feet from the water because you don't know if they're doing anything. So there's a lot of ground work. You guys are out here on a tightrope and someone's shaking it. And as far as I'm concerned, you don't have to know what my property's worth or what I have on it. And that's all I've got to say and I'm leaving. Thank you very much.

Chairman Easton: Sir?

Bill McCord: Good evening. My name's Bill McCord. I live in Mount Vernon. I do not own property. I'm not a landowner. I'm not a farmer. So, what the heck. I do have a background in science and I just want to raise a few questions that I think the Commission should consider.

And that is we seem to be working at two levels at the same time. It makes it kind of difficult. And that is there're some legal decisions that have been made which compel the County to comply with. And it's possible that this voluntary program might work as an alternative to being beat over the head, you know, with a club. In other words, it's like an alternative strategy, an opportunity for the County to sidestep litigation and go on with a program designed right here in the county instead of in Washington, D.C. or in Olympia.

Then the other part of the problem is trying to make sure that the citizens of the County become more aware of some of the environmental problems that we have. And I have a fair amount of experience in that regard, having done a fish tank in the classroom for eight years with the original introducing salmon into a stream in Everett. It's called Pigeon Creek. And it does take a long time, but it seems like if the County adopted programs like that, showing that it had like a progressive, positive approach to dealing with an environmental problem, that it might be persuasive, you know, before the Board or, you know, the legislators. You know, it's a public relations and education program. And the best part about it is that we here in the county don't feel like we're in a police state. In other words, we have an option of participating in accordance with our own economic situation, whatever our pursuits are.

I also think it would lessen the cost involved. You mentioned a lot about litigation and the cost of lawyers. Just think of if we were to put all that money into actually, you know, participating in raising or making it possible to raise salmon and feed them into the streams instead of paying lawyers to represent us back and forth, you know, arguing. All due respect to any lawyers in the room!

One of the things that troubles me from a science point of view is that I'm fully aware of the coliform issue. I've been following it for several years. The legal situation is that we're supposed to protect salmon. They're the endangered species. It's been tried in court and the courts ordered that something be done accordingly. What's missing is the connection between coliform and salmon. Is there anybody in this room that can point out that coliform is lethal to salmon? I'll talk to you in a minute if you have the answer.

Chairman Easton: I'm assuming that was rhetorical?

Mr. McCord: Rhetorical and challenging both. I understand where it comes into play, you know, for the oyster beds or the shell. But the oyster beds or the shellfish have not been declared an endangered species, and that's an important distinction from a legal point of view. It's dangerous to us as human beings, but it's not as critical as being

faced with a federal or a court decision that's ordering the County to act in a certain way.

I'd like to conclude with a statement – very short. Factors – I'd like to suggest that factors other than spawning capacity limit population size and that recovery efforts for Skagit River Chinook salmon need not focus on spawning habitat restoration. That's a statement from the *Canadian Journal of Fisheries and Aquatic Sciences*, 2006. What do they know that we don't know? Thank you.

Chairman Easton: Thank you.

(applause)

Mike Hulbert: Mike Hulbert. I'm on (the) Ag Advisory Board also. This was brought up at our last Ag Advisory Board meeting and we had a subcommittee meeting and we tried to get as much information put together. There again we were kind of thinking that, hey, there were two lines were going to go: One, the voluntary program in or, since we collected all this data, maybe just get the data together and take it on ourself with the County. I wish the Ag Advisory Board had a direction to advise the Commission on, Hey, this is the way ag looks at it; this is the way we've got to go. Or what ag chooses to go. We're not there yet. We've asked some other people from the state to come up – we'll have the meeting on September 12th – to help bring us up to speed. Because on an issue this big, meaning this important, we think – to the county – we need to get as many people and as much advice to give as many views as we can on these bullet points.

I guess I'd just like to say I don't have – I wish I did have a direction or an answer to give you some advice on the best direction which would be the most – would be the best for everybody in Skagit County – the farmers in Skagit Valley. The Ad Advisory Board, we're still going to look at educating ourselves on this project, on which way to go: to opt in or to opt out. And we have to look at, you know, all the different aspects of that. And we'd hoped to have a white paper late this month. It'd be after our next meeting. But that's kind of where – it's a big issue. I hope to get all the ag leaders together, not only the Ag Advisory Board but all the players in the county, and, you know, just say, The best direction and the best advice we could give you guys.

Chairman Easton: Thanks, Mike. Anybody else? I will let Kim go one more time and then I'm going to leave it – the last few minutes are going to be left to the Commission members.

Ms. Mower: Thank you for allowing me to make one more point. And I wanted to make this one particular distinction point that I haven't really heard – a little bit different perspective. A number of you people in here know my son Tarn. And he has been all over the world. He's been in Africa in the Peace Corps and has just recently returned from Siberia studying conservation, or lack of thereof. And the point I wanted to make

was that although we are reviewing tonight the idea of opting into this Ruckelshaus Voluntary Stewardship Program, I wanted to bring to the forefront the fact that this county has a remarkable ability to produce a tremendous amount of food on our agricultural lands. And also I haven't seen any bringing to the forefront the tremendous amount of habitat restoration projects that we *have* done and *are* doing and the improvements that we *have* made. Thank you.

Chairman Easton: Thank you, Kim. Commission members, there's no requirement to share anything right now. You can. Like the public, you can send e-mails in, too, if you want to chew on this some more, or you can comment right now. Is there anyone who wishes to add anything for the staff's benefit, or the public? Carol?

Ms. Ehlers: Well, I have several but let me start with "all watersheds." I think there's one farm with cattle on Fidalgo, and most of the watersheds don't have any domestic animals other than dogs. Someone mentioned the natural conditions. I remember when the Nookachamps watershed was first studied back in 1992. He gave a report and he analyzed the amount of E.coli here, there and somewhere else, and there wasn't any. Then he found a creek that had never been involved in domestic activities in its entire history. No homestead, no nothing. No domestic animals. It was loaded with E.coli. The room gasped. He looked around and he said, Do you mean to tell me that most of you think only domesticated creatures produce this stuff? And it turned out that most of the room did believe that. So the natural environment might be part of it, but I don't know how much benefit, financial or other, is going to be done from investigating some of the really totally non-resource watersheds that I can think of in Fidalgo and some other places. So please give that a thought while you're thinking.

The – I was talking to Betsy about this this afternoon. We're talking about Ruckelshaus right now. We're going to be talking about FEMA in an hour. There's the Puget Sound Partnership out there, also with ideas as to what we have or have not done. And if you read the basic documents for much of this, you find that they really don't think we've done much in Skagit County to protect the environment. A couple of years ago we did a so-called "Urban Growth Area Open Space Plan." It was sponsored by the Skagit Council of Governments. It's a state law. They started with the open space between the cities, as they were supposed to have, and then the consultant got imaginative and he created an Appendix B. And I realized that at some point we were going to have to demonstrate to people that Skagit County didn't start trying to protect fish just yesterday, that this is a long history. And in this county I know we can go back to the national park in the '60s because I helped do that one.

So in Appendix B we put together category after category of protected land use, some from the Trust, some from Open Space zoning, some by public ownership, some put in by the fisheries. Quite a collection of it. And at the very end we made a composite map that showed all of it, which demonstrated that for all the talk about what hadn't been done, an awful lot of what folks said needed to be done already was. That final map that puts it all together was not published in the document, so you can't see it if I tell you

to go look at it. But I would like now to request that the Department and the Commissioner present have GIS put together the map we put together, the map that was created for Appendix A of the Open Space Plan, Appendix B of the Open Space Plan and in the first part of it, because they decided to put the national park in the recreation area in the first part because that was the first protective device when we stopped the clear-cutting of the high Cascades so that the river would remain free of silt. If that hadn't been done, all this discussion would be moot because it would be like Jackman Creek all over and you wouldn't have what we have.

So if you put that map together, then you will also have a physical illustration of the so-called "natural environment" and the context. You can easily then see what hasn't been done and what has been done. And it gives you another way of presenting whichever way we decide to go and for the reasons we decide to go. It gives you a better context for it. Now the Governor gave that an award without that map so I think she should probably admire it even more with it.

But the actions of this county – Puget Sound Partnership got me angry, patronizing about the fact that we had never done anything, and I got to thinking about the nuclear power plants that we got rid of – well, you couldn't have had fish with that nice, hot water – and I got to thinking of the aluminum smelter that we stopped – you wouldn't have anything over the Samish. And if you put together a number of these things, which most people have no concept of were ever proposed, much less don't exist, you might have a slightly different picture to add to the kind of analysis which clearly has to be done and which hasn't been done. We said it should be done about eight years ago but it clearly has never been implemented.

Chairman Easton: Any other Commissioners that'd like to comment?

Mr. Walters: Mr. Chairman? So there is some information on the webpage that you see up there on the screen. There's a link to our Salmon Recovery webpage, which includes the 2007 Salmon Action Report that lists a lot of recovery projects that the County has undertaken, and that's due to be updated this year. And there's also – also on this page there's a link to the GIS Riparian Mapping Analysis, which we did in 2008, which identifies how much buffer already exists on varying streams throughout Skagit County. And some of those slides are actually in this presentation that I could show you, if you wanted. Or you can look at the full report that is available on the website there.

Chairman Easton: Great. So on the website, which brings me to a couple questions: One, I'm requesting that this issue stay on the front page of the news section of skagitcounty.net from now through to – infinitely – until December 28th – might not be the end date. But my concern is –

Mr. Walters: That should be possible ____.

Chairman Easton: My concern is that in the past some of our issues are harder to find when you come to the front page of the website, so I'd like IT to take that up.

The other question – I have some other comments, but I think Mary had something. Did you want to add something?

Ms. McGoffin: No, go ahead.

Chairman Easton: All right. There's a – here're some thoughts from me and then we're going to close this hearing and move on to our deliberations. The lack of testimony from anyone here to describe, defend or represent salmon is concerning to me – striking. Surprising. I expected to hear – this issue has been promoted since I became involved with the Commission five years ago and all the way back to – you look back in the record – as a salmon-ag issue. And it's very interesting how little conversation we've heard from many folks on the salmon side. Sort of an interesting observation also is the continued lack of the presence of any of the tribes at this public hearing, which I'm sure they were notified to just as well – hopefully as well as – the folks that are here.

Those raise concerns for me that I can't answer because I can't ask them whether this voluntary program is going to satisfy some of those groups' passion for lawsuits. I hear about endangered species but I find more endangered farmers in my room. People – you know, I recognize that fish don't walk into County Planning Commission meetings often. It did happen once. If somebody will remember, a lady did show up in a fish costume once. But she's not with us tonight. And I don't want to make light of salmon. I think it's extremely important that we continue to protect the rivers and those things that are involved. But the County Commissioners and the County Planning Commission called for and have been involved in this process for years and have spent millions of dollars defending ourselves from lawsuits concerning what we have done an amazing job of protecting. We have done an amazing job protecting our ag industry. We could be better. And I don't want to get anywhere near making that more difficult for people.

And in – and I'll – you know, call this a challenge – whatever. You know, we're on TV. I'm calling out the ag folks that are here, but I'm calling out the salmon folks and I'm calling out the tribes. If you want to get involved in the comments on this and not be our – not sue us down the road again, be here. Help us understand what it is we're missing. You know, I don't know which camera – I'll look in that camera. Come on out! It's an open meeting. We're going to keep doing this. The e-mail's posted on the website. We need to hear from them. I want to hear from Larry Wasserman and the Swinomish. I want to hear from the Upper Skagits. I need to have a better understanding of what isn't working that's caused a number of those entities and others to sue us over the last few decades.

I'm afraid that compliance is a financially safe move for the Commissioners in a very difficult financial setting. But I need to be as passionate about knowing that it's still the

right move. You know, I can buy my – this is what I’m concerned about, and I’ll wind up. I know I’m on a soapbox a little bit. I’ve got to go buy Isaac tennis shoes; school’s about to start. And I can buy him the pair that’ll last him three months or I can buy him the pair that’s going to last him a year, assuming he doesn’t grow too fast. I worry that we’re trading our financial security in avoiding lawsuits for a plan that we may have to defend anyway in the future. And some of these very, you know, concerns can’t be answered – I don’t even want you to *try* to answer them because you can’t – you’re the attorney for the County, you’re the Director for this County. I can’t ask those people those questions if they don’t come and they’re not a part. Just as troubling to me is the fact that the deal got done when the tribes left the table. Let’s call a spade a spade. Is that why the deal got done in the fourth year? You know, these are the questions that kind of linger over me.

Now you’re all going to take our comments, the Ag Board’s going to keep working on this, you’re going to take some of our – and you’re going to actually produce a proposal. Just so people understand where the timeline’s at. And Ryan had a timeline slide up there earlier and I think you said approximately October 1st is the goal for a proposal to go out. And the public will get another chance and all these Commissioners up here will all get another chance to comment on and to work with and then we’ll even – after the public hearing side of this – we’ll even do more of that during deliberations. So we’re – although we’re on a short timeline, we still have a lot more opportunities for people to give input. So I appreciate you guys’ attendance here tonight. We are going to take a five-minute recess to – before we move to our next item of business. So thank you for your time. We now stand adjourned (gavel) – five minutes. We’ll be back at 7:40.

(recess)

Chairman Easton: (gavel) I call this session of the Skagit County Planning Commission back to order. The next item on our agenda tonight is the deliberations on the Flood Damage Prevention, commonly referred to as the “BiOp” opinion dealing with FEMA and NMFS, with Tim DeVries. He’s promised me a three-minute reset, just so those folks at home know what it is what we’re discussing, and then we will move into our deliberations. All right, Tim.

Tim DeVries: Thank you, Mr. Chairman. We are here, as you indicated, to continue deliberations on changes to Skagit County Flood Damage Prevention Ordinance. This is coming on the heels of a decision wherein FEMA, through its National Flood Insurance Program, needed to ensure that salmon and salmon habitat for endangered species was adequately being taken care of through whatever area they had jurisdiction, such as the Special Flood Hazard Area. The National Marine Fisheries Service wrote a Biological Opinion to assist them in that regard and so we are here to listen to deliberations on changes to that ordinance to comply with those requirements.

Chairman Easton: Excellent. Our illustrious assistant who will be helping us see where we were at in our deliberations has not joined us yet, so if he’s in the lobby, paging

Ryan Walters. Ryan Walters, please. Commissioners, we will pick up where we – try to pick up where we left off, but I want to give room for – after some – you’ve had some time between the time we obviously deliberated – began our deliberations – and now, if you have some general comments that you want to make before we actually start working line by line we can. You also have – thank you, Annie – you also have two memos in front of – or an e-mail and a memo. These were distributed to us. Tim ran basically – Tim, why don’t you explain these really quick? I think basically you ran a couple of our proposed changes we had voted on at the beginning of our deliberations by FEMA, and this is their opinion. Do you want to explain?

Mr. DeVries: Yes, correct. Any changes that we made to our ordinances in order to comply need to be approved by FEMA, and so in the previous deliberations there were a couple of items that were moved and supported by a vote. And so in an effort to make sure that we stayed on track with the interpretation of FEMA, I gave him – I gave Mr. Graves at FEMA both of those motions that were voted on, and his response was provided in an e-mail which I transmitted to the Commission members when I received it, and I’ve also provided a copy this evening for your use.

Included in one of those items was wanting to amend the exemption for utilities and one of his comments was perhaps, but there are some considerations that should be made. And so after consulting with him I provided some language that would be acceptable to FEMA if you chose to consider that.

Ms. Ehlers: And that’s your August 23rd memo?

Mr. DeVries: That’s correct.

Chairman Easton: Mr. Walters? Anyone want to – let’s see our original language before we make any – that might be helpful to see the contrast here. Ryan, if you could pull up the beginning of this process for us, I’m particularly interested in looking at the motion that concerns utilities. I believe that’s the –

Mr. Walters: Do you want me to bring up the language on the screen, too?

Chairman Easton: Yeah, that would be helpful. Thank you. So what you’re pulling up now is the proposed language as it was proposed and the page you had before was our amendments – or our – I should say –

Mr. Walters: This page here is your – the motions that you made at your last deliberation session. And you’re suggesting 14.34.100(2)(d), so we’ll scroll to that. Floodplain development permits, exemptions, normal maintenance of above-ground utilities.

Chairman Easton: So, Commissioners, you have what –

Mr. Walters: Do you want those side by side?

Chairman Easton: Yeah, that'd be fine. In the memorandum, you have a suggestion from staff concerning – I guess the best way to put it is Tim's interpretation of what Mr. Graves would tolerate. I know I'm probably using all the publicly – I mean all the un-PC words there, but that's sort of my interpretation.

Ms. McGoffin: I have a comment.

Chairman Easton: Yeah, go ahead.

Ms. McGoffin: I have a comment, Tim, on your language here. The only thing I would change is I would just say "...provided that all native vegetation disturbed by the maintenance activity is restored." I wouldn't say "replaced in kind and with like amounts," because what if it's a three-foot alder or a – you know, I mean, that's an unnecessary burden.

Mr. DeVries: That seems reasonable.

Ms. McGoffin: Just say "restored."

Chairman Easton: So striking the words –

Ms. McGoffin: Just say "...disturbed by the maintenance activity is restored."

Chairman Easton: Do you have a copy of that memo, Ryan?

Mr. Walters: No.

Chairman Easton: Do you want us to – you could –

Ms. McGoffin: Do you know where I'm talking about?

Chairman Easton: We're going to live-edit this. We might need to get Ryan a copy.

Mr. Walters: No, I have a copy.

Chairman Easton: Oh.

Mr. Walters: I don't have an electronic copy.

Chairman Easton: Gotcha.

Mr. Walters: But I will in a moment.

Ms. McGoffin: I'm just saying strike "in kind and with like amounts."

Chairman Easton: So we're in a – from a discussion point of view, we're just considering the thoughts of FEMA at this point. This is not – we haven't revoked our motions that previously dealt with these two lines or have we –

Ms. Ehlers: We haven't done that yet. We're still discussing.

Chairman Easton: No, we're still discussing. So is there anyone who has any suggestions or would like to put some input into this discussion? Matt?

Matt Mahaffie: I have a concern. I don't have a suggestion. For the normal maintenance, what if it includes the removal of vegetation purposely, as in power line right-of-ways?

Chairman Easton: Tim?

Mr. DeVries: The – I don't believe I have a good answer to that because what FEMA relayed to me was the removal of vegetation was the concern, that replacing the vegetation was the element critical to them in allowing underground work to be done absent of a development permit that could have an assessment attached to it.

Chairman Easton: Annie?

Ms. Lohman: I have a question for you, Tim. If it's a – say it's an underground waterline in the shoulder of the road, there is no native vegetation so this whole thing would be basically moot, correct? For the utility.

Mr. DeVries: That would be my understanding, yes.

Ms. Lohman: Okay.

Mr. DeVries: Yeah.

Ms. Ehlers: Unless, of course –

Chairman Easton: Carol?

Ms. Ehlers: – somebody decided to plant vegetation over the waterline, as I have seen, in which case you have to remove the vegetation in order to repair that waterline, and you have no business whatsoever in replacing the vegetation because you're only creating a problem ten years down the road.

Chairman Easton: Mary?

Ms. McGoffin: Okay, I think both Matt and Carol's concern is taken care of just by saying "normal maintenance of utilities." That covers taking care of your plants – just "normal maintenance of utilities" is going to cover both of those concerns. They're talking –

Ms. Ehlers: (inaudible)

Chairman Easton: Hang on, Carol.

Ms. McGoffin: – about whether you have to rip out plants to get to the ground.

Chairman Easton: I'll come back to you.

Ms. McGoffin: And what are you going to do to the ground afterwards?

Chairman Easton: Right.

Mr. DeVries: Right.

Chairman Easton: Carol?

Ms. Ehlers: I like Mary's suggestions.

Chairman Easton: Okay. So – yeah, we're going to need a couple motions but did Mary's suggestions actually make it into what Ryan put on the screen? Because I think what Ryan put on the screen is what he typed from Tim's memo. So there was some – why don't you make a motion – first have Ryan rewrite it and then we'll make a motion and second it and we'll deal with that.

Ms. McGoffin: So I make a motion that we delete "in kind and with like amounts."

Chairman Easton: From the August 23, 2002, memo?

Mr. Walters: Well –

Chairman Easton: Do you want to make this easier? Please help.

Ms. Ehlers: You delete and restore – put in the word "restore."

Chairman Easton: Let him help first. Let's see what he does. What have you got in mind?

Mr. Walters: How about a motion to use this text, which I'll put on the screen, for 14.34.100(2)(d), but I'll delete "in kind and with like amounts."

Ms. McGoffin: Great.

Chairman Easton: It's been moved to accept the language – to use the language as suggested on the memorandum from the PDS Department on – dated August 23rd. Is there a second?

Ms. Ehlers: I'll second it.

Chairman Easton: For clarification purposes –

Mr. Walters: I'm deleting that.

Chairman Easton: – you're deleting that and you're adding the word "restore."

Ms. McGoffin: Yeah, take out "replaced"; "is restored." That's my motion.

Chairman Easton: What you see on the screen, Commissioners, is what's been moved. Is there a second?

Ms. Nakis: I'll second it.

Chairman Easton: It's been moved by Mary and seconded by Elinor to accept the motion, or to accept this amendment for 14.34.100(2)(d) as follows. Any discussion? Annie?

Ms. Lohman: Can I direct my question to Mr. DeVries again?

Chairman Easton: Sure.

Ms. Lohman: When the Health Department requires a utility to upgrade their pipe to a certain diameter, is that considered expansion?

Mr. DeVries: Yes, it is.

Ms. Ehlers: Well –

Ms. Lohman: Or is there a –

Chairman Easton: Carol.

Ms. Lohman: When does it become expansion?

Chairman Easton: Just a second.

Ms. Lohman: Is there a range? You're not doing it necessarily to put more connections. You're doing it because of –

Mr. DeVries: Repairing the line that's there would be maintenance. Increasing the line – an eight-inch waterline to a twelve-inch waterline – to accommodate further development would be an expansion of the service and an expansion of the utility. And while you certainly can still do it, it wouldn't be exempt from obtaining a floodplain development permit.

Ms. Lohman: Okay.

Ms. Ehlers: But –

Chairman Easton: Carol?

Ms. Ehlers: – are you talking about an eight to a twelve, or are you talking about a two or four to a six or an eight?

Ms. Lohman: I'm thinking a two or a four – a substandard-size line that's been inadequate and finally is being addressed.

Ms. Ehlers: We dealt with that last summer, a couple of months ago.

Ms. Lohman: Where you're going to a six or an eight, but you're not doing it because you're going to be expanding the utility. You're doing it because of other reasons.

Mr. DeVries: There may be a precedent for what is exempt from being considered an expansion.

Mr. Christensen: Well, we – you're right. We did address this as part of our code amendments where we allowed a water utility purveyor to be able to repair or replace a line up to an eight-inch diameter, and that would be considered maintenance.

Ms. Ehlers: That's right.

Mr. Christensen: And wouldn't, therefore, need to obtain a special use permit. They still may need to get fill and grade permits and other types of permits, but we just decided that they would not have to go through and get either a Hearing Examiner or an administrative special use permit.

Ms. Ehlers: Because otherwise –

Mr. Christensen: There's a difference between getting a permit for construction and allowing somebody to be exempt from a land use approval.

Ms. Ehlers: There's also a difference between putting in a brand new waterline or putting in a waterline that is above the eight-inch which is for a whole different category of development in the Coordinated Water System Plan and the six to – six- or eight-inch, which is encouraged, has criteria, is set out, already delineated for small water systems. It's not something you're supposed to have to have great discussions over. It provides for fire flow and that may be a significant improvement in an area that has a high fire risk. So it was decided –

Chairman Easton: We're going to call the question.

Ms. Ehlers: It was last summer we decided that was nothing we needed to discuss.

Chairman Easton: Carol – or Annie, it – we're really – we're kind of –

Ms. Lohman: I wanted to make sure that we have continuity.

Chairman Easton: Okay. Well, in addition to making sure that we have continuity, I'd like to have a friendly amendment to the motion that we would also strike our previous motions to amend 14.34.10.

Ms. Ehlers: Huh?

Chairman Easton: We would still need – wouldn't we still need to deal with – are we double-tracking?

Ms. McGoffin: Yes, we are.

Chairman Easton: Yeah, so motions to amend where we struck the word "public" and where we added the words above – we struck the words "above ground" – would be redundant.

Ms. McGoffin: Yes.

Chairman Easton: How would you like me to dispatch of those?

Mr. Walters: We could leave them or you could – or we could delete them from the list here.

Ms. McGoffin: Well, I move that we delete them from the list.

Mr. Walters: For clarity?

Chairman Easton: As a – she's making that as a friendly amendment to her motion. Does the seconder agree? Elinor?

Ms. Nakis: Yes.

Chairman Easton: The seconder agrees that those would be – that those would then be struck as this same language replaces and supersedes all that. Is that clear to the Commissioners?

(several sounds of assent)

Chairman Easton: All those in favor of the motion, signify by saying aye. Aye.

Ms. Nakis, Ms. Ehlers, Dave Hughes, Ms. Lohman, Mr. Mahaffie, Ms. McGoffin and Josh Axthelm: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Motion carries, eight-zero.

Ms. Ehlers: And to the public that is still watching, this is what deliberations is.

Chairman Easton: That's right. It's fun. Here we go. All right, sort of the end of the guided portion of the tour. At this point, where would you all like to go next? Annie?

Ms. Lohman: I would like to backtrack a little bit. If we could go to page 3, line 10, 14.34.055, Protected review areas.

Mr. Christensen: Which code? Which page?

Ms. Lohman: 14.34.055, page 3.

Chairman Easton: That's tough. You guys, we have it in front of us but you guys have to flip to it. Sorry.

Ms. Lohman: And this goes back to the discussion about the drainage infrastructure. I would like to – I have it written out. Should I just give it to Ryan? I could give it to Ryan in advance then we can move on, and then when he gets it on –

Chairman Easton: Why don't you just give it to Ryan and have Ryan put it on the overhead and we just deal with this while we're at it?

Ms. Lohman: Oh.

Chairman Easton: So the suggestions are in red that you would – are what you're suggesting be modified?

Ms. Lohman: Yes. And it goes back to the discussion about – centered around the DFI and the TFI and all of the work that was done, and those are already –

Chairman Easton: Remind the people at home what a TFI is and a DFI.

Ms. Lohman: Tidegate Fish Initiative and the Drainage Fish Initiative.

Chairman Easton: Thank you.

Ms. Lohman: And they've already been through consultation. And I believe that this is a very big part of our infrastructure and it goes hand in glove with our flood control and our dike and levee system. And I urge your support.

Ms. Ehlers: You guys have been fighting for this for years, haven't you?

Chairman Easton: Which plan there?

Ms. Lohman: Respect, yeah.

Chairman Easton: Any further discussion before we move to a motion on this? Yes, go ahead – question, Mary.

Ms. McGoffin: So, Annie, is “modified natu-” – are these terms identified somewhere? “Modified natural watercourse”: Is that defined somewhere?

Mr. Walters: There's a definition.

Chairman Easton: There *is* a definition.

Ms. McGoffin: Okay, so somebody could find out what that meant?

Ms. Lohman: Yeah.

Ms. McGoffin: All right.

Chairman Easton: I'm not familiar with an “artificial watercourse.” Could someone explain that phrase to me?

Ms. Lohman: It's in the Definitions.

Chairman Easton: I apologize. I didn't read all the definitions.

Mr. Walters: It's a definition that is already in Skagit County Code 14.04. It's essentially what's on the screen. I'll read you what's in 14.04 and you compare to what –

Chairman Easton: No, that's okay. I just wanted somebody to tell me what an artificial watercourse is.

Mr. Walters: It's not –

Ms. Lohman: I have it.

Chairman Easton: Awesome. Annie can tell me then. Annie?

Ms. Lohman: The definition is: "Artificial watercourses are ditches and other water conveyance systems not constructed from natural watercourses, which are artificially constructed and actively maintained for irrigation and drainage. Artificial watercourses include lateral field ditches used to drain farmland where the ditch did not replace a natural watercourse."

Chairman Easton: Thank you. For some reason I had – I had putt-putt golf courses sort of in my head. That'll explain a lot of why I was in the sun too much this week. All right, so would you like to make this in the form of a motion?

Ms. Lohman: I will make the motion that we accept the language on the screen in red.

Mr. Hughes: Second.

Chairman Easton: It's been moved and seconded to accept the language as presented on the screen. Ryan, from a documentation point of view do I need a little bit more beef to my motion? Do I need to be making a reference to code?

Ms. Lohman: Well, you would be referring to the code.

Mr. Walters: Yeah, I would want to put it on the screen here; however, I would recommend that we not use this language. If this is what you want to do, I would suggest that you just say "artificial watercourses" because that *is* the definition. Otherwise you'll have it defined twice.

Ms. Lohman: Right. Okay, that works for me.

Chairman Easton: All right. So then the "natural" and "modified natural," would that change and line 1 would stay the same?

Ms. Ehlers: Wouldn't it just end with the word "watercourse"?

Chairman Easton: Are you on the word "Exception" – under "Exceptions," Carol?

Ms. Ehlers: Would it not correctly read then, “Exception” period. “The RHZ does not apply to artificial watercourses” period.

Ms. McGoffin: Yeah.

Chairman Easton: Is that acceptable, Annie?

Ms. Lohman: I think we want to just make extra sure that it doesn’t refer to our ditches.

Chairman Easton: But if artificial watercourses are defined – if you just read me the definition in code, isn’t that – that’s *your* motion, so you don’t have to accept this conversation.

Ms. Ehlers: Arne Denny’s been telling us not to repeat, but I often wish we could.

Ms. Lohman: Well, there is some advantages to repeating.

Ms. Ehlers: Mm-hmm.

Ms. Lohman: Because we just saw it. We didn’t know what the definition was.

Chairman Easton: I agree. I definitely demonstrated my lack of understanding what an artificial watercourse was.

Ms. McGoffin: I mean, you could make a reference to where it’s defined, but I wouldn’t write it all out again. Annie?

Ms. Lohman: I guess I could accept that.

Ms. Nakis: Oh, yeah. Right.

Chairman Easton: Does the seconder of the motion – Mr. Hughes, do you –

Mr. Hughes: I’m easy.

Ms. Nakis: “Does not apply to *defined* artificial watercourses.”

Chairman Easton: Yeah, I’m not going to repeat that.

Mr. Walters: If we could switch to the computer, I have something that might capture what you want to do.

Chairman Easton: Thank you.

Mr. Walters: In very few words. “Riparian habitat zone includes streams” – new word – “natural watercourses” et cetera “but not artificial watercourses.”

Chairman Easton: Annie? Give her a minute. I’m not trying to rush you.

Ms. Lohman: I just want to make sure that it captures what we’re trying to _____.

Chairman Easton: I think we’re all trying to –

Mr. Walters: That definition of “artificial watercourse” from the code as existing there.

Ms. Nakis: You want to use the word “defined” in that, but not “defined artificial watercourses” so that –

(several people talking at once)

Mr. Walters: I wouldn’t recommend that –

Chairman Easton: Okay, okay, if we’re going to do this, do one meeting at a time here. So, Elinor? It’s okay. I was doing a meeting over here, too. We had, like, three of them going. It was crazy. Okay. So Elinor had a question.

Ms. Nakis: It was – I just wanted to know if we should add “defined” artificial watercourse.

Chairman Easton: And, Ryan, your response is?

Mr. Walters: No.

Chairman Easton: All right. Annie? Annie, is the motion to amend 14.34.055(1), as it reads on the screen now, is that agreeable to you as the motion-maker, because it was a friendly amendment from Mary?

Ms. Lohman: Yes.

Chairman Easton: All right. And does the seconder agree to the friendly amendment?

Mr. Hughes: Mm-hmm.

Chairman Easton: All right, so the seconder was Dave. Any further discussion? Seeing none, all those in favor, signify by saying aye.

Mr. Walters: I think it might be helpful to hear from someone – Tim, Betsy or somebody on ___ the subject of this. I’d recommend that.

Chairman Easton: Well, now that – now that’s an interesting recommendation. You’re going to have to jump in here tonight if you want a piece of this because I’m on a path here.

Mr. DeVries: That’s fine.

Chairman Easton: You guys got a lot of time on this earlier so ____.

Mr. DeVries: I had a discussion with FEMA about this. They are generally supportive of it, but there may be a couple of minor tweaks to it that will come out when they finish talking with each other about it that will affect this language.

Chairman Easton: I’ve got to be honest with you. I’m really spooked by this tone about how – then again, maybe it’s just my redneckness; I don’t know. I just do not like the idea that every time we talk about wanting to change something we’re sending to them for their review that we’re already talking about how they’re going to review it and how we have to get their approval. I mean, I get that ultimately we’re probably going to have to get there in some ways, but it’s really getting – it’s really frustrating to me. So if – let me put it this way. If the only comment you can add to the things we’re about to modify is that FEMA’s going to review it and they might tweak it, don’t bother. Because I expect that they’re going to send back things they don’t like about this. If they don’t, I’d be surprised and disappointed. All right.

Ms. Ehlers: But, Ryan, this is a good point to bring up.

Chairman Easton: Ryan?

Ms. Ehlers: No, you – Jason.

Chairman Easton: Okay.

Ms. Ehlers: Door 3 is looking less and less viable in any way I can think of. If every single time we have to talk about basic things that anyone on earth takes for granted and you’re going to have a discussion that goes on back in FEMA if we *don’t* have an ordinance, I’m getting more and more in favor of door 2.

Chairman Easton: So remind everybody at home: We’re in door 3 right now, right?

Ms. Ehlers: No, door 3 was when you were going to let everybody have to go to FEMA and negotiate it all themselves.

Chairman Easton: Okay. All right, I’m going to call for the question. Is there – Josh?

Mr. Axthelm: No, not what she was just talking about. I’m not going to _____.

Chairman Easton: Back to the – we're here. We're right here. What you see on your screen: Motion to amend 14.34.055, as amended on the screen, all those in favor, signify by saying aye. Aye.

Mr. Axthelm, Ms. Ehlers, Ms. Nakis, Mr. Hughes, Ms. McGoffin, Ms. Lohman and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Motion carries eight-zero. Oh, if you're going to end up staying tonight, make sure you speak up because we're – we're moving. Josh?

Mr. Axthelm: All right, I had a question and this is something I came up with with her. We discussed before what the 250-foot.

Chairman Easton: Right.

Mr. Axthelm: And I have a question on that one. Is that like the current streams might be 50 feet? Let's say I don't know exactly what a current – what a small stream might be. Is it 50-foot and we have a 250-foot area? We have a 250-foot review area now, right?

Mr. DeVries: I think that you could be correct but we're talking about the critical areas ordinance versus the flood ordinance. The critical areas ordinance may have buffers that have certain requirements. This is in the flood damage prevention ordinance where there's one review area but not a buffer.

Chairman Easton: Okay.

Mr. Axthelm: Okay.

Chairman Easton: Does that clarify?

Mr. Axthelm: Because what I would suggest in that is not the 250-foot. It's taken to what the actual control on that creek would be. So if the creek has 50-foot, use the 50-foot, okay give it an additional 15 feet off of that, not the 250-foot. Does that – how do I put that in words? Because I think the 250-foot on everything as blanket is excessive. _____ to use the setback or the existing – what'd you call it? – well, the existing buffer and go an additional 15 feet off of that, not a blanket 250 feet for everything.

Ms. McGoffin: Where is that in the –

Mr. Axthelm: Well, you've got your 250-foot there, but there – where was it?

Chairman Easton: So you want to take out the phrase “250 feet” and replace it with what?

Mr. Axthelm: With the buffer plus, let’s say 15 feet. Give it a little bit extra so you’re covering that. Does that make sense?

Chairman Easton: So the width of the RHZ shall consist of the existing buffer plus 15 feet?

Mr. Axthelm: Yes.

(several people talking at the same time)

Chairman Easton: Whoa, whoa, whoa – five at a time here.

Ms. McGoffin: Betsy wants to talk.

Chairman Easton: Betsy, you should probably hang out by Ryan so you have a microphone.

Ms. Stevenson: Well, I just – sorry.

Chairman Easton: Help us, Betsy.

Ms. Stevenson: I don’t want to ____ but I just want to point out a couple things. What you just did and what you’re proposing to do now, we require – it’s not in the buffer area. We do a review within 200 feet anyway, so the only difference would be an additional 50 feet here.

Mr. Axthelm: Okay. What I would want –

Chairman Easton: So you’re thinking a 250-foot review _____ ?

Ms. Stevenson: But if you went down to the buffer width –

Mr. Axthelm: Yes.

Ms. Stevenson: – we do beyond the actual buffer in our review, so if you change this here it’s totally different than how we do our critical areas review.

Mr. Axthelm: Okay. So what I would suggest then, if you already have 200-foot on the critical area to do, let’s pull it back down to what the critical areas review shows currently. Why the extra 50 feet?

Chairman Easton: Why are we going up to 50 feet in this?

Mr. Axthelm: Why go in another 50 feet? It just keeps getting bigger and bigger and bigger.

Ms. Stevenson: Yeah. This is what we came up with after a lot of discussion and a lot of soul-searching within our group to come up with something that we thought, It's not as far as the model ordinance was asking but it was something that we felt was reasonable. Some of the areas do require 250 feet as far as the fish and wildlife habitat areas, in terms of the errata sheets and some of the stuff that you guys were looking at before out of the Opinion.

Mr. Axthelm: Yes.

Ms. Stevenson: So we were looking at that. Some of them are smaller, as you noted, so we can do that if that's what you'd rather do.

Mr. Axthelm: Yes.

Ms. Stevenson: But please don't go below what's already existing in our critical areas ordinance, is what I'm asking.

Chairman Easton: So in the existing critical areas ordinance right now, it's 200 feet?

Ms. Stevenson: So it's – it'd be 200 feet for that review area.

Chairman Easton: So suffice it to say that the reason –

Ms. Stevenson: It's not necessarily what the buffer's going to be, but that is the area that we would review.

Chairman Easton: Is it true that then you chose the 250 as a group because it wasn't as far as the model ordinance but it also showed them that we did some modification?

Ms. Stevenson: But 250 feet would have been the largest area that we had to take a look at, based on the – from the riparian buffer standards that are in the errata sheet, I think, from Fish and Wildlife in the Biological Opinion. And I haven't looked at this stuff for a while so I'm shooting from the hip and that's why I was looking at Oscar. So 250 feet was the biggest, so rather than having people have to determine what type of stream they had and do all of that work, we thought it might simplify the process and make it easier up front to just put the largest – the 250 feet – as the review area for everybody. Otherwise, before they even know what kind of a review they're going to have to do they're going to have to know what stream type – all that sort of information that an average landowner may not have when they first start the process. Does that make sense?

Chairman Easton: Josh – yeah, that makes sense.

Mr. DeVries: There was one other thing that we considered. In the Biological Opinion checklist in the model ordinance and the minimum criteria, they have different RHZs for the different types of streams ranging from 100 or 150 up to 250. One of the reasons that we did this 250-foot overlay was because the individual RHZs were extremely restrictive on what you could do at all, with or without an assessment, and what the assessment had to look like. And so this was a trade-off between the much more restrictive and something that was going to soften. It was going to be an area of stronger review but didn't bring with it the restrictive nature that the model ordinance had. So while this looks like one size fits all, it's actually a lot softer than what the model ordinance and minimum –

Chairman Easton: Okay, okay. Staff's made a compelling case that the one Commissioner's suggestion is not what you all put in the plan in the first place and I get that. But – and we have this tension between the fact that we're going to make suggestions that obviously counter what you have on paper and we need to – there'll be times when we need to know why. But I only have one Commissioner's interest in this at this point, so I've got to kind of figure out how to move this forward.

Josh, after hearing from the staff, do you want to leave it like it is or do you want to make an attempted motion at that? Do you want to take a run at this or not?

Mr. Axthelm: No, I've got to try the motion to see if anybody else is interested in it.

Chairman Easton: All right, then you'd better make your motion so we can see it.

Mr. Axthelm: No, and I wasn't going against what Betsy Stevenson was saying with the – I'd like to keep it to what is currently set up in the critical areas.

Chairman Easton: Okay, so why don't –

Mr. Axthelm: Not to expand it to 250 feet.

Chairman Easton: And that would be – then that would mean to take it to 200 then.

Mr. Axthelm: Well, 200 feet in some cases, but then some cases would be different than that.

Chairman Easton: Okay, well, then you need to make your motion in a way that we can understand what you're moving.

Mr. Axthelm: Well, then I'd appeal to Ryan. How do you put that to match the critical areas ordinance?

Mr. Walters: Okay, so tell me again what you want. You want critical areas ordinance buffer plus 50 feet?

Mr. Axthelm: It just seems excessive to me to have – to get – to have it get bigger and bigger and bigger for this review area. And so how do we put it that it would match the critical areas ordinance? If the critical areas always has 200 feet in some cases, 50-foot in some cases, with the mapping that we have right now it seems a lot of the streams are already mapped. Some of them already have 50-foot, some of – whatever they happen to be – in the critical areas ordinance. Not making sense?

Mr. Walters: So –

Ms. Ehlers: We don't have 14.24.500 in front of us.

Mr. Walters: The critical – as you heard from Betsy, the critical area shoreline review is 200 feet to begin with. You add 50 feet and you're back to 250 feet.

Mr. Axthelm: But this is 250 feet *plus* an additional 15 feet, which is 265 feet.

Ms. Ehlers: Where does the 15 come?

Mr. Axthelm: It's right – right there. It had 250-foot plus additional 15 feet. This is on the comments that was given – there was a –

Ms. Ehlers: That's not what the text says.

Mr. Axthelm: No, there were a couple of issues in there that we reviewed it last time.

Chairman Easton: Betsy, is there any way we could have you maybe – I know you've got a lot of paperwork with you, but I'm the public and I need your help more than once tonight. Is there – Josh is making a comment on a comment letter that references the fact that on multiple occasions that 15 feet is added on additionally. Can you clarify that for me, Tim or Betsy?

Mr. DeVries: The 15 feet is a requirement of FEMA that whatever this is it's plus 15 feet. Buildings need to be set back from that 15 feet from whatever that RHZ is.

Chairman Easton: Josh, I don't mean to be roughing you – rushing you – but I need some sort of motion so I can figure out if you even have a second and then I can even get us to the place where we're actually discussing it.

Ms. Ehlers: Well, at that point we're talking 265 feet!

Chairman Easton: ___ what Josh –

Mr. Axthelm: My motion is to have what the critical areas ordinance already has instead of a blanket 250 feet.

Chairman Easton: Then – if I can help – the width of the – what you’re proposing then would be that – your motion would be that the width of the RHZ shall be the – consistent with the –

Mr. Axthelm: Critical areas ordinance.

Chairman Easton: – critical areas ordinance.

Mr. Axthelm: Yes.

Chairman Easton: For all waters of the state of Washington

Ms. Ehlers: Gee, you actually remembered it.

Ms. McGoffin: Is it the buffer? Because the review seems like –

Mr. Walters: Is that what we’re looking for?

Chairman Easton: No, because we’re not talking about a buffer. We’re talking about a review.

Mr. Axthelm: Review area.

Mr. Hughes: They’re two different things, aren’t they?

Chairman Easton: Betsy? He’s using the critical areas buffer reference to keep the number the same so it’s not – it doesn’t grow. Is that –

Mr. Axthelm: Yep.

Chairman Easton: Is there a –

Ms. Ehlers: He used the term _____.

Chairman Easton: I need to find a second for this. Is there a second?

Mr. Hughes: I want to see what we’re going to second first.

Chairman Easton: Oh. Are we – is – are we settled on the language, Mr. Motion-maker? Is that what you want to propose?

Mr. Axthelm: Yeah.

Chairman Easton: Betsy, do you want to add anything?

Ms. Stevenson: (sighs)

Chairman Easton: Oscar? Betsy? Somebody? Anybody?

(silence)

Chairman Easton: All right, I'm moving on. So –

Ms. Ehlers: It isn't called a "critical areas review area."

Ms. Stevenson: No.

Ms. Ehlers: It's a "critical areas assessment area."

Mr. Axthelm: Okay.

Chairman Easton: Thank you. So Josh accepts that friendly amendment. Is there a second to this motion?

Ms. Nakis: I'll make a second.

Chairman Easton: Elinor seconds it. Any discussion? All right, Matt?

Mr. Mahaffie: I'd just like to say I understand what staff is going for and I tend to agree.

Chairman Easton: You're speaking against the motion?

Mr. Mahaffie: I'm speaking against the motion.

Chairman Easton: Anybody wish – anybody else wish to speak against the motion? Dave? Or for it?

Mr. Hughes: I don't know.

Chairman Easton: Your second came from Elinor. Dave? You don't have to say anything. Anyone else?

Ms. Ehlers: Well, I have a question.

Chairman Easton: Okay.

Ms. Ehlers: When I look at 14.34.055 I know what this protected review area is supposed to be comprised of. I have no idea of what it is.

Mr. DeVries: It is an area subject to closer review than the rest of the special flood hazard area.

Chairman Easton: Which sort of gets to the core of what Josh is saying – is he's saying you shouldn't have to do that in a bigger area, any more than what the critical areas ordinance calls for.

Mr. Axthelm: Yes.

Ms. Ehlers: You ought to have within our own code the ability to use one set of language to arrive at a series of questions that must be answered on an issue.

Chairman Easton: Commissioner?

Ms. Ehlers: If it's a critical areas assessment, that's clear what you're supposed to be doing in that area. A protected area review that has no verbal description of it is a non-understandable concept.

Chairman Easton: Will you be speaking for or against the motion? Can we try to limit our conversation to that sort of discussion?

Ms. Ehlers: Well, in this case, since I have said what I did it means I would be in favor because the new one –

Chairman Easton: I apologize that I didn't pick that up.

Ms. Ehlers: – _____ an assessment area.

Chairman Easton: Okay. I'm sorry I didn't pick that up.

Ms. Ehlers: Sometimes it takes me a while to get there.

Chairman Easton: I – um – Matt?

Mr. Mahaffie: It does specify it in 14.34.150 and it defines the impact assessment process.

Chairman Easton: So I'm assuming you're speaking against it again? Anyone else?

Mr. Mahaffie: Yes, I'm just trying to clarify.

Chairman Easton: And clarify it – all right. I’m going to call the question. All those in favor of the motion as amended for 14.34.055(1), as seen on the screen, please signify by saying aye.

Mr. Hughes, Ms. Ehlers, Mr. Axthelm and Ms. Nakis: Aye.

Chairman Easton: All those opposed?

Mr. Mahaffie, Chairman Easton, Ms. McGoffin and Ms. Lohman: Aye.

Chairman Easton: All right, hands. Those for it? Hands, please. One, two, three, four. And four against. So what you have there is a finding.

Mr. Walters: Well, not necessarily.

Chairman Easton: Well, yes, it is.

Mr. Walters: (inaudible)

Chairman Easton: That’s – no, I’m – let me make it this way. My suggestion to you all is when we can’t get to five we make it a noted finding and send it to a findings page with the fact that it went four-four. Because five is a recommendation or five is a denial, and in this case you kissed your sister. You don’t have a denial and you don’t have an approval.

Ms. Ehlers: I don’t like accepting a –

Chairman Easton: So Josh’s stuff could be sent in as a finding, but it doesn’t – it’s not – the Board of Commissioners could review it but they don’t have to consider it a recommendation. Is there anyone who objects to that being the rule of the Chair on this situation?

Ms. Ehlers: It will –

Chairman Easton: Hearing no objections, that’s so ordered.

Ms. Ehlers: Now back to this question.

Chairman Easton: I will get back to you in just a second. Copy and paste that on to a new page and put on the top of that page “Findings,” please. Thank you. And note that it was a four-four vote and you can – they can check the tape if they need to know the names.

Ms. Ehlers: Now –

Chairman Easton: Carol.

Ms. Ehlers: That supposedly answered a question I have looked up at here. I don't find it. The protected review area is supposedly a something or another that is described later in this ordinance. Where?

Mr. Axthelm: 14.34.150(1) refers you to 14.34.220.

Ms. Ehlers: Wait, wait, wait. You're going too fast. 14.34.151?

Mr. Christensen: 150. Page 7, __ paper copy.

Mr. Axthelm: Refers you to 14.34.220, which is page 13. And if you flip it to 14, subsection (a), it spells it out really clearly.

Chairman Easton: Commissioners, I want to remind you that our schedule has us out of this meeting in thirty-five minutes and our regularly scheduled overtime hour included would take us another hour and thirty-five minutes. And so we need to keep moving forward. Is there anyone who has another area they'd like to visit in the code?

Ms. Lohman: Yes.

Ms. Ehlers: I would disagree –

Chairman Easton: Annie.

Ms. Ehlers: – but I do object, Jason, to the fact that if you can't find something when you're told where it is and it's buried so deep in jargon that you can't find it, it is not a well-written ordinance.

Chairman Easton: I would always welcome your encouragement for us to stop, rewrite or point out how we may be able to improve people's ability to read the code, however short or onerous it might be in front of us at the time. Annie?

Ms. Lohman: Last time we met on this topic – well, back in June – there was a handout where you had some examples of a protected review area and you happened to have Drainage District 19 and those artificial waterways that we were just talking about. So are you going to be then updating the DNR map to include Type X waterways, which are colored yellow in all of our drainage irrigation agreements?

Mr. DeVries: Like that?

Ms. Lohman: I'm getting old and I can't see!

Mr. DeVries: I was given a map that has an awful lot of yellow lines on it –

Ms. Lohman: Yes.

Mr. DeVries: – that I understood is for the drainage – or the artificial watercourses.

Ms. Lohman: Correct, designated Type X.

Mr. DeVries: Yes. So we will need to work with mapping to produce a map consistent with that.

Ms. Lohman: Okay.

Chairman Easton: So that's a commitment that the Department work with GIS to make that happen?

Mr. DeVries: Yes.

Chairman Easton: Excellent.

Ms. Lohman: Okay, thank you. Sorry to belabor that.

Chairman Easton: No, that's fine. Carol.

Mr. Hughes: Now you need to follow up on our question to – anyway.

Chairman Easton: All right. Who would like to get the piece now? Dave.

Mr. Hughes: I would like – I guess the last time I had a – we kind of ended on page 4, line 9, 14.34.100(1)(b), and I'm just – believe me, I read this a dozen times at home and I thought I had something and then I thought I had something earlier tonight and then I changed my mind. I just want to know your interpretation: dumping or storage of toxic or hazardous waste materials. Now I guess my – I just want to make sure. If it's storage of hazardous waste materials, does that mean storage of hazardous waste materials or – what's the difference between "toxic" and "hazardous"? Or what – should there be "waste" behind "toxic"? I guess I could maybe live –

Mr. DeVries: "Toxic" and "hazardous" both are referring to waste materials.

Mr. Hughes: I just want to make sure the "toxic" is not a can of Drano in your cupboard.

Mr. DeVries: That's correct.

Mr. Hughes: If it had "waste" behind it, then I can probably –

Mr. DeVries: The intent is storage of toxic waste materials or storage of hazardous waste materials.

Chairman Easton: Then let's add the word "waste" behind the word "toxic."

Mr. Hughes: Well, it could be interpreted that way but, you know, Carol taught me a long time ago that, you know, what you read could be interpreted nine different ways if we had nine, plus how many people are sitting there. So that's a concern. I was really concerned a week ago, or two weeks ago, and if "waste" was behind all the stuff before then at least it's halfway defined because, sure, there could be toxic materials that people store that are useful.

Mr. DeVries: Yes.

Chairman Easton: Josh?

Mr. Walters: To address that –

Chairman Easton: Ryan?

Mr. Walters: – there is a defined term already in the code called "hazardous waste," so we could just change it to read "hazardous waste."

Ms. Ehlers: Mm-hmm.

Mr. Walters: And here is the definition of "hazardous waste."

Mr. Hughes: Well, then you have to go to RCW 70.105.010.

Mr. Walters: Where there may be a picture of Drano.

Chairman Easton: Sometimes Ryan reminds us that he is the lawyer. This might be one of those examples. Josh?

Mr. Axthelm: Does this link to the building code where the building code specifies different quantities? Like when you go to the state code, does that cover it there? So like if you have a can of Drano it's not a big deal, but if you have it in large quantities that makes a difference.

Mr. DeVries: Not necessarily, because the building and fire codes deal with hazardous materials. This is specific to hazardous waste.

Mr. Hughes: This is waste.

Mr. DeVries: That's what it is.

Mr. Hughes: My chemical room on our farm would not – I mean, I guess that’s –

Mr. DeVries: An approved storage facility or storage cabinet that has materials stored in it consistent with this listing is not what this is talking about.

Chairman Easton: I’m sorry but the definition on the screen of “hazardous waste” is hilarious. “Hazardous waste means and includes all dangerous and extremely hazardous waste...” –

(laughter)

Chairman Easton: – “...including substances composed of both radioactive and hazardous components.” I mean, the first part of –

Mr. Walters: There is then the definition of “extremely hazardous waste.”

Chairman Easton: I know. I’m just – sorry. Sorry. Far be it from me to find humor in this.

Mr. Hughes: Well, just so it’s talking about waste, and I think I can _____.

Chairman Easton: Does anybody want to make a motion about waste?

Mr. Hughes: No, it’s –

Chairman Easton: Okay. Well, then we’re going to – we’re good.

Mr. Hughes: If it’s –

Ms. Ehlers: I’d like to raise the question again about this protected review area because it isn’t on page 7. What is on page 7 is the 15 feet additional –

Chairman Easton: Okay, let me – hang on, Carol – let me make sure I’ve dealt with the waste thing first, and then if you want to go back I guess we’ll –

Mr. Hughes: Ryan, do you maybe have a –

Mr. Walters: If you’re concerned about that, then you could just shorten it to “hazardous waste” instead of “toxic or hazardous waste materials.” Tim, do you think that would raise any eyebrows?

Mr. DeVries: No, I think that’s pretty minor.

Mr. Walters: Then it uses a term that's already defined, rather than introducing new or slightly different language.

Mr. Hughes: So moved.

Chairman Easton: Dave moves. Dave moves then to amend it so that it ends at "hazardous waste." Second?

Mr. Axthelm: Second.

Chairman Easton: Seconded by Josh, moved by Dave – motion to amend 14.34.100(1)(b) to read "Dumping or storage of hazardous waste materials." Period.

Ms. Ehlers: Yes, that's good.

Chairman Easton: Live editing. Let the typist catch up with the motion.

Mr. Christensen: A period after "materials"?

Chairman Easton: Period after "materials." Dave, are you agreeable with what you see on the screen? Dumping or storage of hazardous waste or waste materials: What? Do you care?

Mr. Hughes: Whatever the legal jargon is, that's – "hazardous waste" or "hazardous waste materials" is the same thing.

Chairman Easton: All right. The second agrees with what you see on the screen, Josh?

Mr. Axthelm: Yeah.

Chairman Easton: All those in favor of the motion, say aye. Aye.

Mr. Axthelm, Ms. Lohman, Ms. Ehlers, Mr. Hughes, Ms. McGoffin and Mr. Mahaffie: Aye.

Chairman Easton: And opposed?

Ms. Nakis: Nay.

Chairman Easton: Motion carries seven-one.

Mr. Walters: That was Josh who seconded?

Chairman Easton: Yes. And Elinor, for the record, dissented. I should say that so that the transcript reflects that. All right. Now, Carol, we're –

Ms. Ehlers: I would like Tim to draft a one-sentence statement to put at the top of 14.34.055 as to what is supposed to go on in a protected review area. Something very simple.

Chairman Easton: Okay, well, while Tim works on that we'll go ahead and move to – do you understand what she's requesting?

Mr. DeVries: Well, no. I'm not sure it's something I can –

Chairman Easton: Do?

Mr. DeVries: – can do.

Chairman Easton: Okay. Carol, do you want to try to rephrase that maybe?

Ms. Ehlers: Well, since I have no idea what goes on under protected review, I can't –

Chairman Easton: How about what's on your screen now? Does that help?

Ms. McGoffin: It's the definition.

Chairman Easton: The definition of a protected review area.

Ms. Ehlers: No, that tells you what the area is that something is going to be done in it, but it doesn't say anything about what you do.

Mr. Mahaffie: Mr. Chair?

Chairman Easton: Yes, Matt? Matt might be able to clarify that.

Mr. Mahaffie: Can I answer that?

Chairman Easton: Yes.

Mr. Mahaffie: Under 14.34.220(1)(a), page 14: "If the proposed development is within the protected review area" –

Ms. Ehlers: What line?

Mr. Walters: The first line.

Mr. Mahaffie: – “as defined in Skagit County Code 14.34.055, a fish and wildlife habitat conservation area site assessment will be required, pursuant to 14.24.520.” Critical areas ordinance. It’s a roundabout way of getting there.

Ms. Ehlers: It sure is.

Mr. Mahaffie: But it gets there.

Chairman Easton: We’re there. All righty then!

Ms. Ehlers: Is there some way that one could add a reference in 14.34.055 to 14.34.220? So somebody doesn’t have to spend fourteen pages of trying to figure out what on earth it might turn out to be?

Mr. DeVries: Well, 14.34.055 is intended to be a definition and it’s a little hard to refer to one section that it’s involved with without referring to all other sections _____.

Chairman Easton: Ryan?

Mr. Walters: There are a couple other instances where it appears.

Chairman Easton: Okay. We’re going to move on. Annie.

Ms. Lohman: I would like to make a motion that we add on page 4, 14.34.100(2) a new subsection (h) and it would start out and basically mimic section (f) except that it would be “normal maintenance of drainage infrastructure prescribed in the Operations and Maintenance Plan for the drainage facility,” or some similar language to that.

Chairman Easton: So cut and paste (f) onto –

Ms. Lohman: (h).

Chairman Easton: I know, but to help him start with the language.

Mr. Walters: There’s a similar exemption in the critical areas ordinance, 14.24 – Betsy, feel free to chime in.

Ms. Stevenson: (inaudible)

Mr. Walters: The language is –

Ms. Lohman: I want to add –

Chairman Easton: Yeah, I know what you want to do. He's saying that he – I think what you're trying to say is that the Commissioner doesn't need to add this because you believe it already exists somewhere else.

Ms. Lohman: But it *doesn't* exist.

Mr. Walters: No, no, no – I suggested that we just refer to it.

Chairman Easton: That's not acceptable. Go ahead. Go ahead and make your motion.

Ms. Lohman: I did.

Chairman Easton: We need to get it on writing. She's not agreeable to that so we need to –

Ms. Lohman: Well, wait.

Chairman Easton: Maybe you are.

Mr. Walters: I think this is the exemption here. Right, Betsy? What are you doing in the back of the room?

Ms. Lohman: This one is not up-to-date.

Chairman Easton: ___ that. It'd be cool if these guys had ___, too.

Ms. Lohman: We don't have these flood control zones anymore.

Ms. Stevenson: (inaudible)

Chairman Easton: You know the TV guys are not happy with you right now. So, Annie, what would you like to do?

Ms. Lohman: Betsy, am I understanding then you're saying that we *can't* have it in?

Ms. Stevenson: (inaudible)

Ms. Lohman: Okay.

Chairman Easton: Commissioner Wesen's going to help – and ___ are going to help Betsy move her materials to this table because I've got an hour-and-a-half left of this testimony and I need Betsy on a microphone. Please.

Ms. Stevenson: After you mentioned this before, we thought it was a really good idea to go back and do that and include "normal maintenance of the drainage infrastructure."

Ms. Lohman: Then let's be consistent and use this.

Ms. Stevenson: So I would like to use the same language because –

Ms. Lohman: But up-to-date.

Ms. Stevenson: It went back and was challenged and we can take some of that out and update it.

Chairman Easton: Are we going to use the language or are we going to reference the language, Annie? Do you want to reference that point or –

Ms. Lohman: I'm looking at the rest of the section to see if that's what they've consistently done. I think you can mention it in the generic and then reference.

Ms. Stevenson: Since it's in a different section of code, I don't know. I'm just throwing it out there in terms of since it's in 14.34 instead of 14.24 –

Ms. Lohman: Let's just cut and paste it.

Ms. Stevenson: – you might just want to put it in there.

Mr. DeVries: This was about the drainage facilities?

Ms. Lohman: Correct.

Mr. DeVries: That we just exempted under artificial watercourses?

Ms. Stevenson: That's what I was wondering, too.

Chairman Easton: Annie?

Ms. Lohman: But you didn't. You did but you didn't, because you mentioned flood control multiple times in this.

Mr. DeVries: Flood control?

Ms. Lohman: Flood control facilities.

Mr. DeVries: Where are you talking about?

Ms. Lohman: I want to make sure that routine maintenance of drainage – that was for the review area. Now we're talking about floodplain development permits. So it *is* a different topic. Right, Gary?

Mr. Christensen: I understand your logic.

Mr. DeVries: Yeah, I understand what you're getting at.

Chairman Easton: I just want to remind staff that you have every opportunity after we make our – after, assuming we approve this motion – the overall motion – that you're going to have ample opportunity to study it before it's presented to the County Commissioners and then an opportunity to tell them why our recommendations aren't good. So let's try to keep that in mind in our comments.

Ms. Lohman: But – but I need a second, basically, so we can have a discussion.

Chairman Easton: Yeah, I need a motion. I need something for them to look at, I think.

Ms. Ehlers: Give us a motion and I'll second that.

Chairman Easton: Ryan, can you pull up the motion?

Ms. Lohman: Well, my motion is that we would exempt routine maintenance activities of our drainage infrastructure, and it would be similar language to what is written here for levee and other flood control facilities. And then whatever language you're cutting and pasting that would do that.

Ms. Ehlers: The Drainage Utility would need the same thing.

Chairman Easton: Is the motion on the screen acceptable to you as what you're – is that your intention?

Ms. Lohman: Yes.

Chairman Easton: Is there a second?

(silence)

Chairman Easton: Is there a second?

Mr. Hughes: Yeah. I thought Carol wanted to.

Chairman Easton: Okay, so they were fighting over who was going to second it – quietly. Great.

Ms. Ehlers: When it gets to the diking districts, I think you should do it.

Chairman Easton: Okay! It's been moved and seconded. Any discussion? Annie, you're the maker of the motion. You can speak to it first.

Ms. Lohman: I think that it goes back to we have already gone through the consultation process so you have a referencing document that you could show FEMA that we have done our due diligence.

Chairman Easton: Does the seconder want to speak to the motion?

Mr. Hughes: There's districts out there that are responding to a lot more – a lot more stuff than the public really realizes.

Chairman Easton: Does anyone want to speak against the motion?

(silence)

Chairman Easton: Does staff want to add any other input?

Ms. Ehlers: I'll add one more thing to the motion; that is, anytime there's any kind of a flood you really have to be able to maintain – to drain the flood out of wherever it is.

Chairman Easton: All those in – I'm going to call the question. All those in favor of the motion, signify by saying aye.

Mr. Hughes, Ms. Nakis, Ms. Lohman, Ms. Ehlers, Mr. Axthelm, Ms. McGoffin, Chairman Easton and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Motion passes eight-zero. Anyone else? Is the pleasure of the Commission any further amendments?

(silence)

Chairman Easton: I will assume by your silence that you are satisfied with your amended code. Then we could have an overall motion and discussion on the overall motion. Is there anyone – last call for anyone who wants to amend. You make your move now, Betsy. We're almost done! I didn't see it coming. Sorry.

Ms. Ehlers: Well, she has another ____.

Chairman Easton: Oh, Matt. Matt? Go ahead.

Mr. Mahaffie: I think we're going to have to strike my first motion regarding the Samish River.

Chairman Easton: Oh, yeah – based on the e-mail from FEMA? We're just going to discuss this because he hasn't made that in the form of a motion. I've got to tell you: I'd rather him send us a letter and tell us that we have to strike it than strike it. Because I don't like it. I'll be honest. I don't like his language and I don't like his tone. I don't. So – but that's just my opinion. Anyone else want to speak to Matt's conversation about motion number 1? He hasn't actually made it as a motion. He just brought it up. Carol?

Ms. Ehlers: I understand why Matt suggested it, but I also agree with your comment about his attitude. If he were being extremely specific about exactly which areas are to be in and you leave something like the Samish out, then what else are they going to decide later that was listed or included that they didn't bother including in writing in the first place?

Secondly, the Samish, for all the talk about it as a fish river, is essentially a hatchery river for Chinook, which is a lake-based salmon. And in the times we've spent talking about fishing – especially the fish-ag, which was the subject of the first part of this evening – I remember learning that they only allowed 500 fish, wild fish, to go up and use the entire Samish River for spawning. And so one night we had two fish experts in front of us and we asked. And the young one said, Oh, no; we always have more than that. And the older one said, Yes, you're correct. We usually allow only 500, but last year I got 900. So you have this 70-mile long river that's being kept for the spawning grounds for 600, 900 fish when it used to have a million in it. And this is not the same kind of protection in any way, shape or form that the Skagit gets.

Chairman Easton: Matt, do you want to make this in the form of a motion? Or not?

Mr. Mahaffie: You know, I think we should, but I agree with you.

Chairman Easton: Well, if you think we should then why wouldn't you do it? You confused me!

Mr. Mahaffie: You've confused me.

Chairman Easton: Okay, well, it's just my opinion and you can expect that I probably won't be your seconder, and I most likely won't vote for your motion!

Mr. Mahaffie: My brain – my brain thinks we should and my heart's with you, Jason.

Chairman Easton: Okay, so which one's going to speak next, your brain or your heart?

Mr. Mahaffie: My mouth is shutting.

Chairman Easton: All right. Well, there's no motion. Take it off the screen. Anyone else want to make an amendment to the motions that are – an amendment to the plan at this point?

(silence)

Chairman Easton: All right. From a technical point of view, we actually started this whole deliberations two weeks ago, or however long it was, with a motion to approve and then we began amendments. And so at this time the Chair will take and ask that we – do you remember – do we have it documented who made the original motion and can they read it back? Apparently we don't. Would you like –

Mr. Walters: We'll document it later.

Chairman Easton: Would you like me to re-create that for you now, or do you want us to go back to the tape?

Ms. Ehlers: I think I moved it so that we could get going –

Chairman Easton: Right.

Ms. Ehlers: – because it was very clear that we had to have something.

Chairman Easton: That's fine, but Ryan can track that down later. We all – we're all in –

Mr. Christensen: I think Carol did move and there was a second by Mary.

Chairman Easton: Okay, so it's been moved and seconded – moved by Carol and seconded by Mary – to approve the code as amended.

Ms. Ehlers: But we'd have to say that but I would so amend.

Chairman Easton: Okay, so and you'll – and Mary has agreed with that second. So the code as – and I'm – I'm not trying – if you guys still have something else you want to amend, I'm just – do you have a question? All right. Question?

Ms. Lohman: Could we have a clarification?

Chairman Easton: Sure. We'll try.

Ms. Lohman: Tim, if you could flip to page 7, 14.34.150, line 17, item (4) – it talks about floodplain storage and then it has exemptions. When you're saying "not hydraulically connected," what does that mean then?

Mr. DeVries: It means that the area under consideration does not have – is not in direct contact with the source of the flooding – in this case, for instance, the Skagit River. So if there is a direct connection to it – let's say, Nookachamps flows into the Skagit, (then) there's a hydraulic connection. Whereas out in here in the flats there are – you know, there are vast areas that are not physically connected to the source of flooding and therefore the flood waters will not get there just through a connection. They might get there by overtopping, but they won't get there through a direct connection.

Ms. Lohman: What does that turn out to mean?

Mr. Hughes: Yeah.

Ms. Lohman: I guess I need a picture.

Mr. DeVries: Well, here – what the Biological Opinion is concerned about, what NMFS is concerned about is they're saying that the floodplain – all of the floodplain – is habitat for salmon. And the fact that it may flood only once every hundred years doesn't change the fact that it's habitat. Frequency is not a consideration. So to say, Well, okay, but we've got levees here and except for the high flood that overtops, the occasional floods that rise up are not going to fill that floodplain area and improve or create habitat.

Mr. Hughes: So that – and I think – I mean, I think I asked this the last time we were in this and I made the comment, So anything that's protected by a dike is exempt?

Mr. DeVries: Protected by *certain* dikes. There are some dikes that –

Mr. Hughes: Well, the Corps of – excuse me –

Mr. DeVries: Correct.

Mr. Hughes: A Corps of Engineer-inspected dike – excuse me. So, for example – I'm just going to say Fir Island, for example, because that's – you can get a picture of that. It's – they're all – and all the river dikes are inspected.

Mr. DeVries: That's right.

Mr. Hughes: So that – from this stretch of flood hazard area – so that would be exempt?

Mr. DeVries: Yes.

Mr. Hughes: So and then on the other side of the river, you know, west of Mount Vernon, anything that's protected by the – obviously the dike also is exempted. Now

where – I can see where areas that don't have dikes – for example, like the Nookachamps basin or Bow –

Mr. DeVries: Or further east.

Mr. Hughes: – further east would fall under this.

Mr. DeVries: That's right. Originally that exemption was not there. That was something that we added for the benefit of farmers and other people who live in areas behind the dikes.

Mr. Hughes: Yeah. And that flew?

Mr. DeVries: So far.

Chairman Easton: Any other questions?

Ms. McGoffin: Matt.

Chairman Easton: Matt?

Mr. Mahaffie: I had one more concern. I remembered it. 14.34.220, section (2), subsection (b). It'd be lines 26 through 28 on page 14. A question and a possible motion: Why was this – I know it came from FEMA, the 10% – but why not be consistent with the critical areas ordinance and 200 square feet? Is there a reason for that?

Mr. DeVries: I don't –

Mr. Mahaffie: I like consistency.

Mr. DeVries: – know. It was something directed at 122 floodplain communities and they had no knowledge of our critical areas ordinance.

Mr. Mahaffie: No, but why? Is there a reason to stick with that versus being consistent with our own critical areas ordinance?

Chairman Easton: Did you ever broach this topic with FEMA?

Mr. Mahaffie: My concern – it could be drastically unfair. If you had a 40,000 square foot ag building, adding 10%'s quite a bit compared to somebody with a 500 square-foot cabin. It's not really fair – or logical, when you think about it.

Mr. DeVries: 200 square feet could result in a substantial improvement, too.

Mr. Mahaffie: Mm-hmm. So could 10%.

Mr. DeVries: It could.

Chairman Easton: We're just a recommendation body, you know. So you could see if you have five votes here. Or you could leave it like it is.

Mr. Hughes: You're talking (b).

Chairman Easton: It depends on if his heart's talking or his head, I guess.

Mr. Mahaffie: I'd like to move to replace 10% with 200 square feet on 14.34.220, section (2), subsection (b), in an effort to be consistent with the critical areas ordinance as this is dealing with site assessment requirements.

Ms. Ehlers: Isn't that going to limit severely anybody who –

Chairman Easton: Let's wait until we have a second. Can we wait for a second, please, and then you can ask the question?

Mr. Walters: Replace 10% with what?

Mr. Mahaffie: 200 square feet.

Chairman Easton: 200 square feet. But we don't need to add the phrase – do we – don't need the justification for that.

Mr. Mahaffie: That was just a comment. Sorry.

Chairman Easton: That's fine. Is there a second to the motion?

(silence)

Chairman Easton: Is there a second to the motion?

Ms. Nakis? Can we have a little bit more discussion here?

Chairman Easton: I –

Mr. Walters: No. You need a second.

Ms. Lohman: You have to have a second first.

Chairman Easton: Yeah, you need a second.

Ms. Nakis: Oh. Oh, I see.

Chairman Easton: So if you want more discussion, the way to do that would be to make a second!

Ms. Nakis: Okay, I'll second.

Chairman Easton: It's been moved and seconded – moved by Matt and seconded by Elinor. Discussion. First the motion-maker. Do you have anything you want to add?

Mr. Mahaffie: It was just an issue of fairness, in my opinion.

Chairman Easton: Elinor?

Ms. Nakis: So I totally understand that.

Chairman Easton: I'll be coming to you, Carol. I promise.

Ms. Nakis: But I'm looking at when I –

Mr. Mahaffie: And consistency.

Ms. Nakis: When I look at that I see “substantial improvement” – where it says “substantial improvement.”

Chairman Easton: I'm sorry. Go ahead.

Ms. Nakis: And the definition of “substantial improvement” is in regard to the value of the property.

Chairman Easton: She's building ____?

Ms. Nakis: Or the value of the improvements.

Chairman Easton: Here's Tim now changing his hats. Here's Tim now. He's changing his hats. He's now the Chief Building Official.

Mr. DeVries: “Substantial improvement” is repairs, additions to an existing structure that – the value of the work exceeds 50% of the structure as it sits without any site improvements or site value.

Chairman Easton: Carol had a question?

Ms. Nakis: Right.

Chairman Easton: Oh, sorry.

Ms. Nakis: And so wouldn't that – when it said 10% – let's see – where it talks about 10%, wouldn't it make sense when it talks about "substantial" and then also "10%" that if it was a humongous building and that 10% of the footprint of the building was, you know, 2,000 square feet that the cost of that would be considered substantial so then one would negate the other? No?

Mr. DeVries: Generally adding 10% onto a building does not approach the 50% of substantial improvement.

Chairman Easton: Yeah, okay. Carol?

Ms. Ehlers: Well, not only that. If you're going to have really substantial buildings, you have to get into the Rural Reserve where you can have a 35,000 square foot building. You can't do that in the Ag zone.

It seems to be that there's a –

Chairman Easton: Commissioner, are you speaking for or against the motion?

Ms. Ehlers: I'm answering Elinor and then I'm going to speak against the motion.

Chairman Easton: Okay.

Ms. Ehlers: There's a substantial difference, as I understand it, between a critical area and the floodplain. The floodplain is a large geographical piece of territory described by the County on the map as the majority of the Skagit River basin, whereas the critical areas is usually a much narrower piece of territory right on the edge of a cliff or right on the edge of a stream. And so it seems to me that you do not wish to keep your agricultural people who might need a better built or better designed barn from building one that's bigger.

Chairman Easton: Anyone else wish to –

Ms. Ehlers: 200 feet isn't very much in a barn.

Mr. Mahaffie: Can I –

Chairman Easton: To the maker of the motion, yes.

Mr. Mahaffie: Carol, all I'm – it's under the site assessment requirements. It's not for the entire floodplain. It's only for exemptions from the site assessment requirements – the same *virtually* as the critical areas site assessment requirements.

Chairman Easton: Anyone –

Mr. Mahaffie: In fact, it *is* exactly the same.

Chairman Easton: Anyone else want to speak to –

Ms. Ehlers: Then that does change the context substantially.

Chairman Easton: Anyone want to speak for or against the motion? Elinor? Hearing – so, Matt, I’m a little confused. Let me see if I can get this straight. If I had a 40,000 square-foot building and I was in – I wasn’t in the zone and I’m not exempt, then I’d be under this rule – and I had a 40,000 square-foot building, and you want to replace 10% with 200 square feet?

Mr. Mahaffie: Mm-hmm.

Chairman Easton: So that means that – I mean that’s like a closet in a 40,000 square-foot building.

Mr. Mahaffie: It’s consistency. What about the guy with a 200 square-foot cabin that wants to add a 5 by 5 porch? Now he’s all of a sudden –

Chairman Easton: I’m all for consistency, but I’m a little worried about what it does to ag in the –

Mr. Hughes: So add 200 feet or 10%, whatever is greater.

Mr. Mahaffie: All it does is remove – it removes the exemption and makes you do an assessment that’s already required. You’re already going to have to do the assessment.

(several people talking at the same time)

Chairman Easton: ____ six at a time. Tim, of course, then we’ll come back to Dave. Go ahead. I understand you have something excellent to tell us.

Mr. DeVries: I think it’s important to keep in mind the last sentence: “This measurement is counted cumulatively from the effective date of this ordinance.” In other words, if you add on 150 square feet, your next one is 50 square feet and you’re done. Under the critical areas ordinance, you might be able to add 200 every so often. Under this, it’s a one-time to be exempt from the assessment. And so that 200-square foot could be limiting, whereas the 10% may allow you to build 200 now and 200 three years from now before you reach the 10%.

Chairman Easton: Dave?

Mr. Hughes: I'll comment on Tim first: Well, why couldn't you put "200 square feet or 10%, whichever is greater"?

Mr. DeVries: You could.

Chairman Easton: Are you making that in the form of a friendly amendment?

Mr. Hughes: Just a suggestion, and if it works it works.

Chairman Easton: That would be the form of a friendly amendment then. Matt, are you agreeable to that amendment?

Mr. Mahaffie: I like that.

Chairman Easton: I'm sorry?

Mr. Mahaffie: I like that, yes.

Chairman Easton: Yes. Is the seconder?

Ms. Nakis: Yes.

Chairman Easton: Okay, so it's been moved and seconded. Is there any other – now with this change to the amendment, anyone else want to add something they haven't already said?

(silence)

Chairman Easton: Okay. So, motion to – that's been moved and seconded to amend section 14.34.220(2)(b) to replace 10% with 200 square feet or 10%, whichever is greater. All those in favor of the motion, signify by saying aye.

Mr. Mahaffie, Ms. Nakis, Chairman Easton, Mr. Hughes, Ms. Ehlers, Mr. Axthelm and Ms. Lohman: Aye.

Chairman Easton: All those opposed?

Ms. McGoffin: Aye.

Chairman Easton: It passes seven-one. Mary dissented. At this time we'll take up the whole motion, unless there is another amendment?

(silence)

Chairman Easton: It's been moved by Carol and seconded by Mary, probably –

Mr. Christensen: We'll confirm.

Chairman Easton: We'll confirm. Pending confirmation, it's been moved by Carol and seconded by Mary to approve 14.34 as presented to us by staff, plus the amendments that we have approved. That doesn't sound right. Let me try it again.

Mr. Hughes: The amended motion.

Chairman Easton: Yeah. It's been moved to approve 14.35 (sic), including those previously approved amendments. Discussion on the overall – this should be fun – on the overall BiOp. You each get to go once and you each can only go up to three minutes at a time. And I'm asking for a fifteen-minute extension of our regular meeting time. By consensus? So moved. So done. Ryan?

Mr. Walters: So after you finish with this, there is the small matter of 14.24.

Chairman Easton: Yeah. Yeah, which means I might have to go longer than fifteen minutes.

Mr. Walters: All right.

Chairman Easton: We'll start with fifteen minutes. Okay, anybody want to speak to 14.34, for or against? Annie?

Ms. Lohman: I would just like to say that it seems like FEMA has been softening some of their stands and, if they do I, would like us to be pro-active and respond. Because this is going to be pretty onerous, but you guys have laid out to us that the individual site or individual permit plan could be extremely onerous to the individual, so I would like us to be mindful that we could back away from some of this if FEMA allows us to at a future date.

Mr. Hughes: Is that possible?

Chairman Easton: Yeah. How would we – how would we – how can that be more than just Annie's opinion? I mean, a guy – because I thought you were saying –

Ms. Lohman: Well, because I read the comments.

Chairman Easton: No, I'm saying you're right. I'm not sure how we can actually instruct staff that way. Go ahead.

Mr. Christensen: We can always modify our code. Go through the legislative hearing process and go through a code amendment.

Chairman Easton: Like we do a regular – like we do code amendments twice a year?

Mr. Christensen: Yes. And just as we may decide after some period of time that we don't like door 2 and maybe we *would* want the model ordinance, or project-by-project.

Chairman Easton: Okay. Great. Other comments? Those speaking – actually, Carol gets to speak first because she made the motion.

Ms. Ehlers: Carol was –

Chairman Easton: Your three minutes have started.

Ms. Ehlers: Carol was undecided about door 2 or 3, and Carol was going to see to it – whatever she could – to make sure that these ordinances work and then punt it off to the County Commissioners to decide. I still think that's part of what's going to end up being done. But the more I've watched what this was – this response has been to the questions we have raised, which are very simple – simple, straightforward, ordinary kinds of things like repairing a waterline – the clearer it is that whatever it might be for someone like Anacortes with a simple question to just go through door 2, a county like us that has been under the gun and under the attack by everybody I can think of as long as I've had anything to do with this process is much safer if it's protected by a code. And I don't see any really practical alternative. The model ordinance is unacceptable, and so that leaves us with what best we can here, recognizing that some of the things which they want are going to be affected by the Ruckelshaus process; some of the things are going to be affected by the Puget Sound Partnership when they come wandering up with their latest set of demands. And so much of this is going to be under discussion and negotiation for as long as any of us are around.

So I don't see this as the end of anything. I see it as a reasonably clear-cut beginning, done at least based on two ordinances which we wrote, we argued about at length in this Commission over years, and which a citizens advisory worked on everything else but what's new in here in blue, and I think it's the best deal we're likely to get.

Chairman Easton: Okay. Thank you. Mary.

Ms. McGoffin: No, go ahead.

Chairman Easton: You're the next one I get to choose, since you seconded it – probably.

Ms. McGoffin: I have no further comments. I'm pleased with our work.

Chairman Easton: Okay, any other Commissioner? Matt?

Mr. Mahaffie: During our work session, Tim, you said this was very pointed at us, at Skagit County. And I'll feel a little of Carol's hand in here: I went for a drive this last week-end through the Puyallup River Valley. I don't see how that assumption can be made when you see the size of the Puyallup River and it's just solid development in the floodplain and floodway. No riparian zone whatsoever. I think it's commendable what Skagit County has preserved and I take it as kind of an offense that we have to deal with this. I think we've done a pretty good job, you know, on our own.

Chairman Easton: Other Commissioners that would like to comment? Dave?

Mr. Hughes: Yeah, I'm going to make a comment. Just, you know, I feel like, well, if I want to cut my left arm off I'll vote yes, and if I want to disapprove of it I cut my right arm off. Just a bunch of – well, I'm done. Thank you.

Chairman Easton: You stole my analogy. That's awesome. That was exactly how I feel. Does anybody else want to speak to it? Annie? Elinor? Josh?

Mr. Hughes: And it's nothing against the County on this. Believe me. Tim, I think I truly believe that you've tried to make this as least painful on who it might affect, but I think Matt hit it right on the head. Puyallup, Kent Valley versus Skagit Valley.

Mr. Mahaffie: Yep.

Chairman Easton: I'm in that same league.

Mr. Hughes: Put the gates on the both ends of the county and keep them out.

Chairman Easton: Josh?

Mr. Axthelm: No, I think they've said it.

Chairman Easton: Annie? Elinor?

(silence)

Chairman Easton: Yeah, I came really, really close to voting no on this. I – because I just can't wrap my head around the idea that twenty years from now I wanted to vote – that I would be proud of the fact that I voted yes for this. But I can't find – as much as I've dug through this and looked at it – I can't find a better – I mean, I like our amendments. I really hope you don't tear us apart and I really hope FEMA doesn't tear us apart in front of the Commissioners on these amendments. I really would really like to see these amendments make it through. I recognize we'll all get an e-mail. We'll all know when the Commissioners are considering it. And I assume that we will all hear, "Please forward to us FEMA's lovely response letter to our suggestions."

But, with that, I am as reluctant a yes as I've ever been on this Commission. So I'll call the question. All those in favor, signify by saying aye.

Ms. Ehlers, Mr. Mahaffie, Ms. McGoffin, Mr. Hughes, Mr. Axthelm, Chairman Easton, Ms. Lohman and Ms. Nakis: Aye.

Chairman Easton: All those opposed.

(silence)

Chairman Easton: The most painful eight-oh vote ever. Maybe not. Okay, eight-zero it's been approved. Let's move to 14.24. One quick issue on 14.34. Other than the split vote that I forwarded as a finding with your blessing, is there any other additional findings that you would like to transmit to the Commissioners?

Mr. Walters: This is all one project so you could save those for the end.

Chairman Easton: Oh, all right. Great. All right, let's go to the – it didn't look like we have many findings. To begin the deliberations, the Chair would like to hear a motion to approve – or actually I shouldn't say that. The Chair needs a motion to move into the next section of business.

Ms. Ehlers: Well, I have a new way of making a motion that I created.

Chairman Easton: Excellent.

Ms. Ehlers: So I'll have at it.

Chairman Easton: Really?

Ms. Ehlers: I move that the Planning Commission consider 14.24, the critical areas ordinance, as modified – period. And we can decide whether we wish to adopt later. But, you see, if you move to consider then we've got a motion on the floor. It means – "consider" means to discuss and to deliberate and to go through the same kinds of motions we have been going through.

Chairman Easton: Yeah?

Ms. Ehlers: And it does not predetermine the decision. It took me a lot of effort to find that motion.

Chairman Easton: Is there a –

Ms. Ehlers: I hope you guys like it.

Chairman Easton: Is there a second to the motion to consider 14.24?

Ms. McGoffin: Consider what?

Chairman Easton: Hearing no second, the motion dies for the lack of a second. Is there another motion?

Ms. McGoffin: Why can't we just –

Chairman Easton: Somebody has actually got to do it, so if you want to move to approve or move to disapprove. Clearly you didn't want to move to consider, so...

Ms. Ehlers: Well, then I'll make a motion to move to approve.

Chairman Easton: It's been moved to approve section 14.24. Is there a second?

Mr. Mahaffie: Second.

Chairman Easton: It's been moved by Carol, seconded by Matt. At this time the Chair will entertain amendments. Annie?

Ms. Lohman: I have a question – I'm not picking on you, Tim! – on page 5. I believe that we are specifically talking about salmon and Orca, and yet on line 13 it opens it up to any possibility. And I – I'm not sure that we want to be that super-broad.

Chairman Easton: I'm sure he has an answer.

Ms. Lohman: So I have a note I wrote in the margin. It says, "Which critters are we specifically referring to?"

Mr. DeVries: I don't think that 14.34 specifically identified them either.

Ms. Lohman: But it did in the errata that you were basing it on.

Ms. Ehlers: Mm-hmm.

Chairman Easton: Isn't FEMA looking for the ____ here?

Ms. Lohman: It was specifically.

Chairman Easton: Or the – isn't the flexibility that when additional species are added to the Endangered Species Act then this wouldn't have to be amended around the country?

Mr. Walters: Also this is the Variance section.

Ms. Ehlers: I think it's spooky.

Chairman Easton: So, Annie, you're thinking that instead of Endangered Species Act you'd rather see a list of the things that are endangered today?

Ms. Lohman: No, no, no. No.

Chairman Easton: Okay, well, I –

Mr. DeVries: The Variance section of 14.34 has the same language, "Adverse effects to species protected under the Endangered Species Act." And so this – most of the changes that you'll see in 14.24 were necessary to – so that we didn't create conflicts between the flood damage prevention ordinance and the critical areas ordinance. So this is a section regarding a variance procedure, not a regulation.

Ms. Lohman: Okay.

Chairman Easton: Anything else, Annie? I mean, on *that* topic.

Ms. Lohman: I just wanted to make sure we weren't – I mean, a super-moving target.

Chairman Easton: Yeah. That's part of the reason my "yes" was reluctant.

Ms. Ehlers: New topic?

Chairman Easton: Yeah, Carol.

Ms. Ehlers: Page 3, line 7. Okay, it's written –

Mr. DeVries: Page 3.

Chairman Easton: Page 3, line 7, where it starts with "Normal"?

Ms. Ehlers: It has to do with maintenance again.

Mr. DeVries: There are no changes in that section.

Ms. Ehlers: Okay, then we can leave that.

Chairman Easton: Okay. Anyone else? Dave?

Mr. Hughes: Yeah, I'm – just because it's going to come up later, what's the difference between – and it goes back to what Annie was talking (about) – "adversely affect" versus –

Chairman Easton: Back to page 5, line 12, 13.

Mr. Hughes: But it's a couple – you know, it's a used term. “Adversely affect” species versus – how strong is “adversely”? Versus affect?

Mr. Christensen: I would respond by saying that that term probably comes from NEPA and SEPA, but is derived out of the National Environmental Protection Act. And that's a term that's defined under that federal legislation.

Ms. Ehlers: I raised a question the other day and Betsy pointed out that I was raising it in the Variance section. And I want to make sure that in the work we're doing here we do not pre-decide issues in the Shoreline Master Program. The coastal people are jumpy because of a bill that Senator Ranker passed up through the legislature with the implication that if somebody's house burned and they were on a shoreline within a certain distance, that somebody could declare that they adversely impacted some fish off in the distance and therefore the house might not be rebuilt, because of that “adverse” condition.

Chairman Easton: The Chair's going to consider these comments to be best suited for our future conversations about the Shoreline Master Plan, and we're going to move on.

Ms. Ehlers: I don't want what we do here to adversely affect –

Chairman Easton: Do you have some sort of proposed way to prevent that? And, if you don't, then I've got to move on.

Ms. Ehlers: You can move on, but sometimes you have to raise an issue when it's timely.

Chairman Easton: I – no problem. Josh?

Mr. Axthelm: Yeah, I had a question. On this statement here you say “the applicant must demonstrate that the proposal is not likely to adversely affect species...” So the word “demonstrate”: It's not like “prove,” it's “demonstrate. So you don't have to come up with some proof. You could say, Okay, this is – does that make sense? You're just making a statement that it is not going to affect –

Mr. DeVries: I think that the word “demonstrate” is a way of saying to prove. I mean, you can demonstrate it by an assessment meeting the – FEMA's requirements. You can do it by providing a document from NMFS that this project's already gone through consultation and it's been proved. You can demonstrate that it's not likely to adversely affect in a number of different ways. But the point is the onus is on you to show the County that there is – the activity is not likely to adversely affect.

Chairman Easton: Betsy would like to add something.

Ms. Stevenson: I think you hit the nail right on the head with that one. That was our intention that they address it and they talk about it in their application to us and whether or not they felt it would – to demonstrate rather than to try to prove something. So that's what we were looking for – just to address the issue.

Chairman Easton: Betsy –

Mr. Axthelm: I like that. Thank you.

Chairman Easton: Betsy, do you believe – on another topic – do you believe that this – do you believe that there will be a time during the Shoreline Master Plan where you're saying to us, Well, you guys, we have to recommend – staff's recommending this change to the Shoreline Master Plan because of what you approved on the BiOp? Do you see that conflict coming ahead?

Ms. Stevenson: Just specifically to this statement or the whole thing that we've done?

Chairman Easton: No, in general.

Ms. Stevenson: I haven't even thought about it that way yet. I have no idea what's going to come out of the Shoreline Update process at this point. Those are state laws subject to federal stuff necessarily, so –

Chairman Easton: Right.

Ms. Stevenson: It's all going to overlap at some point, yes, but will what we're doing tonight affect that? You can't even consider that, I don't think.

Chairman Easton: Well, see, in the past when we were doing Comp Plans or trails plans or Comp Plan updates, we knew – staff made comments to the effect, you know, When we do our next critical areas ordinance update we are going to have to – what you just approved here is not consistent with that, but we're going to come back over here and fix that. You don't – do you or the Director see any of those kinds of conflicts setting up right now? Gary?

Mr. Christensen: I'm sorry. I was doing some research.

Chairman Easton: Do you see – you know, in the past like when we did the trails plan, which would affect the critical areas ordinance to some degree – as an example – you would say to us, Yes, it's not as – you know, There's a lack of consistency here. When the critical areas ordinance updates come back up in 2015 or whatever, we'll have to address that, or we'll do it in a code amendment. Do you see in what we're dealing with, particularly in 14.34, are we dealing with those kinds of things that are going to

affect the Shoreline Master Plan, where you know ahead of time that you're going to have to adjust the Shoreline Plan to fit the BiOp?

Mr. Christensen: Yeah, I think it goes both ways. You can be prospective and think about changes you're making today and how that may affect plans in the future, but you may not know until you get to the future. And then when you're talking about those changes to the Shorelines Master Plan –

Chairman Easton: Yeah, I know: known knowns and known unknowns.

Ms. Stevenson: Yeah.

Mr. Christensen: Yeah, then you can – I think the important thing to keep in mind, though, is that when we do take legislative action we want to make sure that those documents – either policies, plans or regulations – are internally consistent. So if we're developing policies or regulations that are in conflict, that's a problem. So we want to avoid that.

Ms. Stevenson: I don't see anything right yet.

Chairman Easton: That's all I needed to hear.

Ms. Stevenson: At this point in our process.

Chairman Easton: Okay, thanks. Other potential amendments or questions about 14.34? 24 – excuse me. 14.24? Seeing none, the Chair will – seeing Annie's hand, the Chair will call on Annie.

Ms. Lohman: I'm sorry.

Chairman Easton: That's okay.

Ms. Lohman: I was looking for it and it was too big. You're going to update the DNR stream typing in this section as well?

Mr. DeVries: What we're – we're going to work with GIS to produce a new map from the current DNR map.

Chairman Easton: Does that address your concern?

Ms. Lohman: Okay. I just wanted to make sure that we did it in both.

Chairman Easton: Both sections? It will be done in both sections, then?

Mr. DeVries: Well, we're going to –

Chairman Easton: I hear you saying one thing and Annie saying something else.

Mr. DeVries: We're going to produce the map and we have amended 14.34, but – and I'm going to let Betsy speak to what that map will or won't do to the critical areas ordinance.

Ms. Stevenson: I have a question that I'd like to clarify with Annie when you're asking that. We didn't propose any changes, nor were we making any changes to the section of the critical areas ordinance that the changes that you made to the floodplain ordinance are now in kind of conflict. So is that what you're saying? That you want this to reflect that?

Ms. Lohman: Yeah.

Ms. Stevenson: Because those aren't things that we exempt under the critical areas ordinance.

Ms. Lohman: Oh.

Ms. Stevenson: That's what I brought up at the last meeting.

Ms. Lohman: Right.

Ms. Stevenson: And you went beyond just talking about normal maintenance, which is what we had talked about before. Now you've actually exempted it out of the review area.

Chairman Easton: So to be consistent, Annie, my thought would be that we need to exempt it out of 14.34 also and then the staff can decide to support or object to our recommendation.

Ms. Lohman: Well, it does – but it *does* refer to it in the ongoing ag section, and I guess what I'm asking is can we update it to reflect the current DFI and PFI in the current – you wrote “no change” in ongoing ag –

Ms. Stevenson: We were not proposing any changes to the ongoing ag section when we started this process. We still aren't proposing any. But what you just did is now in conflict with that.

Chairman Easton: So we need to either know that we're sending this there with their – they're not going to recommend a conflict, so we can assume that staff will not recommend to the Commissioners to approve a conflict. I think that's a safe assumption. Or we can change 14.24 to be consistent to the changes we made to 14.34 –

Ms. Stevenson: You can suggest we –

Chairman Easton: – but staff will still have the ability to recommend or to –

Ms. Lohman: I think we need to make the changes so that it reflects the current PFI and DFIs that are – already been reviewed.

Chairman Easton: Which you believe is what we did in 14.34?

Ms. Lohman: Correct.

Ms. Stevenson: Can I ask –

Chairman Easton: And you'll need to make that in the form of a motion in just a moment. Yeah, go ahead but, you know, we're right on that kind of thing where –

Ms. Stevenson: I just want to offer –

Chairman Easton: – we're going in a direction, so what do you want?

Ms. Stevenson: I just want to offer a suggestion and something to consider.

Chairman Easton: Yeah, that'd be great.

Ms. Stevenson: Changing 120 is a scary proposition, and part of our discussion earlier was that we were going to try to go through this other process. Could this be rolled into the other processes as far as the consideration of those things? I don't know. I'm just asking.

Chairman Easton: Well, the problem –

Ms. Stevenson: Rather than opening it now and changing it when it was something that we proposed not to change.? I – I don't know.

Chairman Easton: Are we outside of our scope of legal notice? Is that your – is that what you're implying?

Ms. Stevenson: It's not something that we proposed to change. It was sent out like this.

Chairman Easton: Yeah, and we have had legal covering to change things you don't propose to change, as long as they relate to the topic.

Ms. Stevenson: Okay. Okay.

Chairman Easton: In a general sense.

Ms. Stevenson: Okay.

Chairman Easton: We must have because we've done it for – I mean, we've done it for years so what am I missing, Ryan? Am I –

Ms. Ehlers: He's lost on the ___, I think. I certainly am.

Mr. Walters: I'm not – I'm not ready to offer any opinion on what it is we did before to 14.34.

Chairman Easton: Right. I understand that.

Mr. Walters: So I'm not sure what we're proposing to do to 14.24 or how that would be consistent or not consistent. 14.34 sets up the Special Flood Hazard Area. It can be inconsistent with 14.24. It *is* because it has introduced a whole new term, so it can be inconsistent. I don't know. It hasn't – I don't think we've thought about that specifically because –

Chairman Easton: You'd have had to have anticipated what we were going to do and you hadn't done it yet. I respect that. I understand that. Annie?

Ms. Lohman: Well, I don't want to get the County in trouble, but, at the same time, when we have a new – I mean, you guys were kind of frozen with your timeout. You kind of couldn't do anything. You were handcuffed. But we weren't _____. And they were able to get the task done. And I guess what I'm saying is the ordinance is lagging but how do we fix it without getting ourselves into trouble?

Mr. Walters: Well, there's also, I think, a distinction between the critical areas ordinance and the flood damage prevention ordinance and the DFI and the PFI. And I haven't looked at the DFI and the PFI. I've Googled them before and *not found them*, so I don't know exactly what happened there or what the result was, so I can't provide a lot of advice on how to tweak these things to be consistent with that. If we're talking about changes to 14.24, and especially if we're talking about changes to 14.24.120, we can totally investigate that in the Ag-CAO process because we'll have time to do that. But –

Ms. Lohman: Maybe we should just hold it for then.

Mr. Walters: Yeah, I –

Chairman Easton: Why don't we?

Mr. Walters: – don't have a – I can't provide a lot of advice _____.

Ms. Lohman: Well, this Commissioner won't forget, so _____.

Chairman Easton: Well, let's formalize it a little bit more than that, though. My suggestion would be to make it a finding that – that your – you know, you can make this in the form of a finding and ask that it – request that it be added as a trailing issue to be addressed in the Ag-CAO. Is that – would that work?

Ms. Stevenson: That sounds great.

Ms. Lohman: That's a good idea.

Ms. Stevenson: Yeah, that sounds great.

Chairman Easton: Gary?

Mr. Christensen: Yes, sounds good. I concur.

Chairman Easton: All right. So the Commissioner – by consensus, it would appear, the Commission has made a find – is it a consensus? Okay. The Commission makes a finding that we are concerned that the changes to 14.34 and 14.24 be consistent and that those issues be further dealt with during the ag-critical areas ordinance update, and we ask that this be added as a – to the ongoing trailing issues list. Does that language work for everyone? Well, we should probably wait till he actually puts the language down.

Mr. Walters: Does that capture everything? It's a little more than what you just said.

Ms. Lohman: Yes. It is the drainage _____.

Chairman Easton: Okay. Matt?

Mr. Mahaffie: All right, just a comment and maybe a suggestion for staff. There's been more than a few Commissioners that have had questions on stream typing, and perhaps a memo drafted from the GIS Department on where the stream type mapping comes from – it is a convoluted mess, as far as DNR is concerned – and, you know, how it's come from, arrived at, is unable to be changed in most cases in the processes. Perhaps some of my fellow Commissioners might find that of use. Something like that.

Chairman Easton: Do you want that in the form of a finding?

Ms. Ehlers: Mm-hmm.

Chairman Easton: All right. There's two of you. The Commission, by consensus – by consensus, the Commission asks that GIS issue a memo to the Planning Commission explaining – clarifying –

Mr. Mahaffie: – clarifying the processes of stream typing –

Chairman Easton: – clarifying the processes of stream processing – typing –

Mr. Mahaffie: – how they come about. There are some issues with the state at the DNR level. How it comes about – it's really rigid and inflexible. The County's kind of stuck with, you know, a lot of times very erroneous, data sets. And I believe the one I spoke with was Josh Greenberg in GIS (and he) was the one handling it. I don't know if he still is.

Chairman Easton: If Josh has questions about what kind of memo he'd like to see, have Josh call him, please. Anything else before we take up the motion to approve 14.24?

(silence)

Chairman Easton: Seeing none, the Chair calls for discussion on the overall motion.

(silence)

Chairman Easton: Hearing no desire for discussion on the overall motion, I call the question. All those in favor of moving to approve 14.24, with the additional findings as listed below, please signify by saying aye.

Ms. Lohman, Ms. Nakis, Ms. Ehlers, Chairman Easton, Mr. Hughes, Ms. McGoffin, Mr. Axthelm and Mr. Mahaffie: Aye.

Chairman Easton: All those opposed?

(silence)

Chairman Easton: Motion approved eight-zero. So you've got two findings here plus the finding we did earlier. Is there any additional findings the Commission would like to present to the Commissioners, the Board of Commissioners?

(silence)

Chairman Easton: All right. This topic has been dispatched with.

Mr. Walters: So –

Chairman Easton: Yes?

Mr. Walters: _____ for reasons for action, and then I'd like you to take a vote on the whole thing that's on the screen, and then we'll record –

Chairman Easton: Oh, you want us to vote on 14.24 and 34 together?

Mr. Walters: Call the role.

Chairman Easton: Oh, and call the role.

Mr. Walters: Yeah, because it's one document.

Chairman Easton: Any additional findings? Any reasons of fact that you'd like to get on the record? Not reasons of fact – I'm sorry. Reasons of –

Mr. Walters: Reasons for action.

Chairman Easton: Reasons for action. All right, hearing none, the Chair needs a motion to approve the overall.

Ms. Ehlers: Well, since I moved the others –

Chairman Easton: Sure – why not?

Ms. Ehlers: I move the overall program as amended by the Planning Commission be recommended.

Chairman Easton: Is there a second?

Ms. Nakis: I'll second that motion.

Chairman Easton: Moved by Carol, seconded by Elinor. Any discussion?

(silence)

Chairman Easton: Hearing none, all those in favor, signify by saying aye. Aye.

Ms. Ehlers, Ms. Nakis, Mr. Hughes, Mr. Mahaffie, Ms. McGoffin, Mr. Axthelm and Ms. Lohman: Aye.

Chairman Easton: Opposed?

Mr. Walters: (inaudible)

Chairman Easton: Okay, we'll call the role. Elinor?

Ms. Nakis: Aye.

Chairman Easton: Carol?

Ms. Ehlers: Aye.

Chairman Easton: Annie?

Ms. Lohman: It's a very difficult aye.

Chairman Easton: David?

Mr. Hughes: Aye.

Chairman Easton: Aye. The Chair votes aye. Mary?

Ms. McGoffin: Aye.

Chairman Easton: Josh?

Mr. Axthelm: A reluctant aye.

Chairman Easton: He said "aye."

Mr. Axthelm: Aye.

Chairman Easton: And Matt?

Mr. Mahaffie: Aye.

Chairman Easton: Any enthusiastic aye? Anyone want to – anyone want to be – anybody want to come in when I have to sign it and sign for me instead? That would be perfect.

Ms. Ehlers: I have a comment that's rather generic.

Chairman Easton: Briefly.

Ms. Ehlers: The next time we get something like this, I hope it's based on science.

Chairman Easton: All right. And, with that, we will move to our quick general items. Here they are. Number 1, I need a thirty-second update on where number nine is.

Mr. Christensen: We recently received –

Chairman Easton: Number nine, the ninth Commissioner who hasn't joined us yet.

Mr. Christensen: – information from two interested – let me say – candidates. So there's been some recent interest and we're looking into that and pursuing it.

Chairman Easton: So if people are still interested – if they're watching at home –

Mr. Christensen: Yes, it's still open. Yes, we –

Chairman Easton: It's still open. So if you live in the second district, Commissioner Dahlstedt's district, you can apply and they can find information on how to do that on the County website?

Mr. Christensen: Yes. Yes, there's a press release, although the date will be passed. We're past the due date. Let me just say that if there's anybody who resides or works in district number 2 – and those boundaries can be found and determined by going to skagitcounty.net – and is interested in serving as a Planning Commission member, they can send a letter of interest and a statement of qualification to the Clerk of the Board.

Chairman Easton: If you have any questions about that you can call the Department during regular business hours.

Mr. Christensen: Yes.

Chairman Easton: They will help you there. And then the second issue under General Business: It's come to my attention through my own experiences and at least one other Commissioner that we have a significant problem with our new County e-mail system. We can't send e-mails, we can't write new e-mails, we can't forward e-mails and we *can* reply to e-mails.

Mr. Walters: What happens when you send a new e-mail?

Chairman Easton: It won't let you do it. It won't – and when I tried to forward an e-mail today – because I received an e-mail I wanted to forward to the rest of the Commission – it wouldn't let me add anyone's name. So if you could –

Mr. Walters: Come on – come on over here after the meeting and we'll try it out real quick.

Chairman Easton: Yeah, we'll show you what's not working.

Ms. Lohman: What about printing?

Chairman Easton: Printing?

Mr. Walters: You should be able to press “print.”

Ms. Lohman: It’s weird. I’ll try again.

Chairman Easton: Okay. Anything else to come before us? And then our next meeting is on the – I’m sorry; I don’t have that in front of me.

Mr. Hughes: 13th.

Chairman Easton: 13th?

Mr. Christensen: Yes, September.

Chairman Easton: September 13th and the agenda that evening will be the – Carly’s – we’ll be deliberating on the 2011 Code Amendments – I’m sorry. We’ll have a public hearing *and* deliberations on the Code Amendments and a work session on the NPDES Land Clearing Regulations. Excellent.

All right, thank you for your attendance. We are adjourned (gavel).