

Skagit County Planning Commission
Work Session: 2012 – 2017 Capital Facilities Plan
Work Session: Ruckelshaus Voluntary Stewardship Program/CAO
October 4, 2011

Commissioners: **Jason Easton, Chair**
 Mary McGoffin, Vice-Chair
 Dave Hughes
 Carol Ehlers
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 Ryan Walters, Civil Deputy Prosecuting Attorney
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Others: **Ron Schultz, Conservation Commission Policy Director**
 Nels Lagerlund, Ag Advisory Board Chairman
 Carolyn Kelly, Skagit Conservation District

Chairman Jason Easton: Ladies and gentlemen, I call this meeting of the Skagit (gavel) County Planning Commission to order. My name is Jason Easton. I'm the Chair of the Commission. Tonight's agenda is in front of you. Commissioners, please review the agenda that you have. Are there any additions or deletions to the agenda?

(silence)

Chairman Easton: Hearing and seeing none, then by consensus are you all comfortable with the agenda? We'll move forward with the agenda as it's written.

At this time we are going to work on the work session for 2012 through 2017 Capital Facilities Plan, and we'll turn it over to Ms. Ruacho. Carly?

Carly Ruacho: Thank you. I was just going to get up and go see if Brian can make the page on the screen come on the screen without me wiggling the mouse. No such luck.

Chairman Easton: Oh, I just want to remind everyone. For the reasons of trying to facilitate an easier roundtable discussion we have lost the quality of the normal microphones that we have, so we would appreciate that – I'll speak softer, because I can tend to be extremely loud, and if the rest of you will speak louder, then hopefully those people at home can hear us better. So I may stop and remind you to speak up.

Dave Hughes: Let's not speak at all.

Chairman Easton: Mr. Hughes. Carly, go ahead.

Ms. Ruacho: Thank you. I apologize if this goes off the screen. I think it works better if I stay down here, but we might lose that throughout. It's nothing imperative. But what's on the screen is the Table of Contents of the current Capital Facilities Plan, which was adopted in December of last year. As you'll maybe fondly remember, we did process two Capital Facilities Plans last year. So this year we are only doing it one time so that is good.

So what we've got is the currently Plan from December. And just a quick background for you – I don't remember if all of you were here when we did all the Capital Facilities Plans or not – and for those watching. But the Growth Management Act – specifically, RCW 36.70A – requires jurisdictions to include a capital facilities element in our comprehensive plans, and the capital facilities element is to assess the capacity to accommodate the existing growth and the projected growth that we plan for in our Land Use element of the Comprehensive Plan.

So as such, the Capital Facilities element is meant to serve as a check on the practicality of accepting that growth and building those capital facilities necessary for that growth, as outlined in the Land Use element. And as such, the jurisdictions that are required to plan under the Growth Management Act are required to plan on both a twenty-year horizon, which we do in the Comprehensive Plan, and also for capital facilities specifically on a six-year planning horizon. So that's why each time you see a capital facilities plan you see that for the next six years. So this would be the 2012-2017 six-year planning horizon that we're undertaking an update for in the next coming month or so.

The GMA establishes five requirements for capital facilities plans including, first, an inventory of your capital facilities; second, a forecast for future needs to support the comprehensive plan; third, an identification of the location and capacity or expanded capacity for new facilities or existing facilities; and the financing plan for six years; and then a requirement to evaluate the Land Use element if you find that the financing is going to fall short of your six-year needs.

So what we've got this year, as I'm sure you reviewed the link I sent you, is the plan includes General Government, which includes general administration and, in general, the buildings that the County owns. It includes a section called "Community" that includes our Parks and Recreation capital facilities there; Senior Services and

Community Services. We've got a chapter entitled "Justice System," and that includes things like our court system, our Sheriff infrastructure, and Youth and Family Services. Our Public Works chapter, which is probably our largest County chapter, includes their administration and their operations; solid waste; transportation, which includes roads and ferry; and surface water. And then we also have to include, although they're not County facilities – since we are kind of the umbrella jurisdiction, they fall within our jurisdiction – we have to include non-County entities such as school districts, sewer districts, fire districts, dike and drainage districts, and the like.

So last year, if you'll recall, when we did two updates, the focus of the first one that we did in the first half of the year, we focused on the County – the County-owned infrastructure – and then the second half of the year we focused more on the non-County-owned, so contacting the fire districts, the dike and drainage districts, the school districts to try to really get that information up-to-date.

So with that in mind, kind of keeping on maybe an every-other-year, this goes around the focus is really back to the County-owned. We do have some school districts that are updating their information. It's imperative to them because if they want to adjust their impact fees at all then they need to submit their new capital facilities plan, and we can't enact the new impact fees until we've adopted their capital facilities plans. So I think that's important because I do understand that there's at least one school district out there that may have taken action to amend their own capital facilities plan to adjust their impact fees. But it's important for the public to understand that that fee is not actually reflected as a change until the *County* takes action on their plan. So that's another reason for, you know, keeping up on these capital facilities plans. Albeit a tedious and time-consuming task, it is important to the general citizens because it can change their fees that they pay at the time of permit application.

So the state encourages a review of our capital facilities plan periodically and, at a minimum, it has to be included in our state-mandated GMA update. The recommendation is for at least an every-other-year update, but then we do have situations where specifically school districts change their capital facilities plan and we want to be responsive to that, and so we have been trying to do it at least on an annual basis for the last couple of years and want to continue that. And there is a statute that requires county spending to be consistent with the capital facilities plan, so it is pretty important to keep up on it and keep it up-to-date.

So we are this year, as we did last year with the second capital facilities plan, attempting to adopt it concurrent with the County budget. So it provides its challenges to keep that schedule. Arguably maybe a staggered approach would be preferable but, again, there's a statute that requires that the County only amend its Comprehensive Plan once a year and so we couldn't, say, let the budget be adopted in December, as that statute dictates, and then, say, adopt in January or February to be able to use that information. Instead we're kind of forced to work out all the kinks at the same time, and so we are doing the best that we can to make the two consistent and get them adopted concurrently.

So the schedule we're looking at is an adoption sometime in December, so we've got it on your calendar for an upcoming public hearing. So we'll work diligently to get the draft out to you as soon as possible in front of your public hearing. You'll hold a hearing on this and then the County Commissioners will hopefully take action concurrent with the budget.

We're currently communicating with – as I said, focusing on the County departments, as well as school districts. And we've heard back from some, but it's a busy time with them doing their own budgets, et cetera. So it's always a bit of a rush to get this information in and get it to you.

But what I wanted to talk with you mostly about is those of you who've had a chance to look through it, and this being maybe your second or third or twenty-eighth time to adopt a capital facilities plan – you know, if, as you've looked through –

Chairman Easton: They had roads back then?

Ms. Ruacho: – are there things in the Plan that you don't feel are helpful – are we spending time on areas that maybe aren't as helpful? Is there information that you really thought, Wow, if that was in there that would be, you know, a useful piece of information? Just any – really, any suggestions that you have that we could incorporate either this time, if we're able to, or in the future to make this a more useful document.

Chairman Easton: Mary?

Mary McGoffin: Well, some of the county departments are represented – like justice, Public Works, Parks – but I'm wondering about the other departments. Public Health: Do they see their needs being met in the next five years?

Ms. Ruacho: Well, the Plan – and that might be a downfall of the Plan – but the Plan only reflects capital facilities, so it only reflects departments that own capital facilities. So, for instance, the Planning Department is not in here because the Planning Department does not own anything specifically. So that's where, I think, it comes in to the working cooperatively with the budget team because *all* departments are reflected in the County budget and in getting their needs met, you know, through that process. Then this is just kind of a subset of that for departments that actually own structures or manage, you know, the capital facility infrastructure of the County.

Chairman Easton: Other questions for Carly?

Carol Ehlers: I have a –

Chairman Easton: Carol.

Ms. Ehlers: I have a –

Chairman Easton: Carol, please wait until you're called upon. Carol?

Ms. Ehlers: I have a suggestion. As you know, the public is very dubious about how any money is or might have been spent anywhere in any government, and so I suggest that at the end of the year – perhaps in January – a list be made of what in the capital facilities budget for that year – and for the six-year TIP, too – what was actually done. It's gratifying – if someone's built a building, it's gratifying to know that it's finished. And if you get public monies for it – that is, non-Skagit County monies – stimulus or federal or what have you – I think it's useful to identify that because what we see nationally, as well as locally, is enormous ignorance on how anything is funded and built. And so even if it's something as simple as – because in here it says, "Buy two trucks." If you've bought the two trucks, say so.

Chairman Easton: That's a great suggestion. Other comments or suggestions? Annie?

Annie Lohman: Maybe this would be better if it came up when it was the *non*-County-owned stuff, but some of the drainage districts are drainage and irrigation, and it's just the – it's like changing their name. So that would be the only thing that I saw.

Chairman Easton: So, Carly, so I have a better – are there any other questions? Because I'm going to start talking logistics about how we get from here to approval in time for the Commissioners to review it?

Ms. Ehlers: I would like to raise one.

Chairman Easton: Carol. Carol?

Ms. Ehlers: Speaking of drainage, the last version that I have for the drainage projects – for the inventory of what the drainage utility owns, it only includes that which the drainage utility has paid for since the drainage utility existed. But I know of at least one project that was done prior to the drainage utility, which it is legally responsible for managing, and it would be easier for everyone involved to see that, maybe on a subset of the list – projects that were not done by the drainage utility but which the drainage utility is legally required to maintain.

Chairman Easton: Okay.

Ms. Ruacho: Do you know specifically the general idea of that was?

Chairman Easton: Why don't we work on – answer that question offline? That could be a lengthy answer.

Ms. Ehlers: It's a very short one.

Chairman Easton: Okay.

Ms. Ehlers: The Lake Chiquita Bypass.

Chairman Easton: I was concerned you would go into a list of projects. I know your ability to remember multiple projects at once. Let me – let's talk about timing. I have open in front of me the latest version, the current version of the Planning Commission page that describes our schedule, and currently, Carly, the public hearing for the Capital Facilities Plan – and thank you to the Department, and I want to remind everyone that we do our best to not use acronyms when possible because the public doesn't speak planning. We're all trying to remember that we need to speak planning but we also need to speak in English, too. It's scheduled for November 1st. It's scheduled on the same time as what we're calling the Voluntary Stewardship Program, or Ruckelshaus.

My concern is that Capital Facilities on that evening, it may be crowded out. I'm concerned that I'm going to need – we're going to need – at least two hours to deal with the public testimony, and maybe more when we get to that public hearing. Our October 18th meeting is scheduled to go with Betsy with the Shoreline Master Program Update. When do you think you're going to have – I'm not trying to rush you, but I'm trying to get an understanding – when do you think you're going to have a Plan to go out to the public, and obviously when it goes to the public it's going to come out to us?

Ms. Ruacho: Yeah, the plan was to have it out two weeks prior to the 1st.

Chairman Easton: 1st. Is the 18th – the 18th is just too quick, because that's like literally two weeks from today.

Ms. Ruacho: Right. We have to legally have two weeks' public comment, so I'm not sure – without a calendar in front of me – I'm not sure we could even achieve that legally with the notice requirements.

Chairman Easton: Probably not.

Ms. Ruacho: ___ have the notice today.

Chairman Easton: Yeah, probably not. Okay. So let's leave it on the 1st then, and I – the Chair and the Vice-Chair met with the Director earlier tonight, and just so that the Commission's aware, we have decided as a team that we will not be meeting on December 20th, that our last possible meeting will be on December 13th – just so have that on your calendars. Carly, I think then that we don't have any other questions for you. We await that and – oh, the Prosecutor's office would like to weigh in on the CFP.

Ryan Walters: I was just thinking about schedules.

Chairman Easton: Oh, right, because you're wearing the hat of being the Ruckelshaus guy.

Mr. Walters: Annie had suggested that maybe you might want to have another work session, a meeting, before a public hearing on the VSP. If that's the case, then –

Chairman Easton: You just used an acronym.

Mr. Walters: On the Voluntary Stewardship Program. If that's the case, maybe Betsy doesn't need to present on the 18th. Maybe she could do that on November 1 with Carly on the CFP and bump one of those. I think it's relatively flexible.

Chairman Easton: Well, at the end of tonight's work session on the Voluntary Stewardship plan we will make a decision as a commission about whether we're going to need an additional work session. And we'll probably juggle – we'll juggle the schedule again towards the end of the meeting. But I wanted to honor Carly's needs. Carly doesn't have to stay – doesn't *get* to stay for the rest of the meeting, so I wanted to make sure that we were on the same page about scheduling.

Ms. Ruacho: Yeah, and if it needs – as Ryan indicated – if you need to readjust and if there're some additional meetings or what have you and it would fit better somewhere else, probably as long as we don't go to the middle of November – you know, somewhere around the middle – we could still meet our schedule.

Chairman Easton: Yeah. I believe if we need to add – and I sort of indicated this to the Director, too – I believe if we need to add an additional work session for the Volunteer (sic) Stewardship Program we're going to accomplish that sooner than later. I'm not looking to schedule additional meetings in late November or early December. This Commission worked through the summer, which is not – as it broke our tradition of taking some time off, and I want to try to honor the time that these great volunteers with – and also give you guys some time to finish your business with the Commissioners, which obviously you need some lead time on that. So I think I appreciate both your suggestions, but as we get into later in the evening, we're going to be squeezing this in to fit, probably December 6th, between December 6th and now, or now until December 6th. Thank you, Carly.

Ms. Ruacho: Yeah, there's some flexibility, so just let me know.

Chairman Easton: So this portion of the meeting will – is wrapped up – the Capital Facilities issues –

Ms. Ruacho: I just have a – just a quick handout –

Chairman Easton: Oh, okay.

Ms. Ruacho: – that's just kind of a – maybe just a general description of capital facilities the Department of Commerce puts out that I thought maybe might be helpful to your guys.

Chairman Easton: Excellent.

Ms. Ruacho: I'll just pass that around.

Chairman Easton: And for those of you who have been around for a while, the Department of Commerce was formerly known as the – was referred to as “CTED.” Now it's not an acronym. Now it's Department.

Ms. Ruacho: Yeah, that's just what ____! Okay, well, thank you very much.

Chairman Easton: Thank you, Carly. Do – I see four name tags – or three name tags. Are we waiting? Do we need them before we go forward?

Betsy Stevenson: Nels is sitting out in front.

Chairman Easton: They're outside?

Ms. Stevenson: Nels is.

Chairman Easton: Nels is? Okay.

Mr. Walters: Kirk's going to go get Nels.

Chairman Easton: Do you want to – do we need to adjourn or – when are we expecting Will and –

Mr. Walters: We don't know exactly when we expect Will.

Gary Christensen: Right now!

Chairman Easton: Here's Will now.

Mr. Walters: I think we're ready.

Chairman Easton: All right. We will go ahead and welcome Nels and Will to the table. Thank you for joining us. We're going to transition into our work session on what's referred to as “Ruckelshaus,” but we're also trying to rename it – right? – we're trying to – we're all trying to rebrand it – the Volunteer (sic) Stewardship Program. And we'll get a lot more explanation about what that all means from our illustrious guests and members – and I mean that complimentary – and the members of this group.

We recognize that this is an extremely – we, as the Chair and the Commission recognize that this is an extremely important topic. And we've heard some great things about how the meeting in front of the Ag Board went recently and so I appreciate the

Department scrambling to help – and Commissioner Lohman – for helping to put together this work session on short notice and for Mr. Schultz to – it's Schultz, right?

Ron Schultz: Yes.

Chairman Easton: – Mr. Schultz to join us today. I'm not the best person to facilitate this discussion, so at this point I'm not going to chair the meeting. I've asked Annie to chair the rest of the meeting. We're looking for a discussion-style format. I will warn you: Annie is chairing, but if you go on for five or six minutes Jason's old style of wanting us to keep moving forward and letting other people talk might kick in. But Annie's on the watch, so she gets the – go ahead; you can hit me with it later. So we hand it over to you. There you go.

Ms. Lohman: Okay. We're going to be discussing the Voluntary Stewardship Plan and the enabling legislation, Engrossed House Bill 1886. I'd like to just have, starting with Nels Lagerlund, the Chair of the Ag Advisory, just go around the room and quickly introduce ourselves.

Nels Lagerlund: Okay. Nels Lagerlund, Chairman of the Ag Advisory Board.

Will Honea: Will Honea, Chief Civil Deputy Prosecuting Attorney.

Mr. Schultz: Hi, I'm Ron Schultz, Policy Director with the Washington State Conservation Commission.

Carolyn Kelly: Carolyn Kelly, Skagit Conservation District.

Mr. Christensen: Gary Christensen, Director, Skagit County Planning and Development Services.

Matt Mahaffie: Matt Mahaffie, Planning Commissioner.

Josh Axthelm: Josh Axthelm, Planning Commission.

Ms. McGoffin: Mary McGoffin, Planning Commission.

Chairman Easton: Jason Easton, Planning Commission.

Ms. Lohman: Annie Lohman, Planning Commission.

Mr. Hughes: Dave Hughes, Planning Commission.

Ms. Ehlers: Carol Ehlers, Planning Commission.

Elinor Nakis: Elinor Nakis, Planning Commission.

Kendra Smith: Kendra Smith, the Natural Resource Lands Policy Coordinator.

Ms. Stevenson: Betsy Stevenson, the Planning Department.

Mr. Walters: Ryan Walters, Civil Deputy Prosecutor.

Kirk Johnson: Kirk Johnson, Skagit County Planning Department.

Ms. Lohman: So we'll turn it over to you, Ron.

Mr. Schultz: Sure. And feel free to jump in at any time if you have any questions. Usually as I do this presentation – depending on the audience, sometimes I don't even make it through the first page. So feel free to ask – fire away with questions.

Ms. Ehlers: Who are you?

Mr. Schultz: I'm Ron Schultz. I'm with the Washington State Conservation Commission. And the Conservation Commission – just for a quick background – is an independent state agency consisting of ten members. The Conservation Commission is the second oldest commission in the state, second only to the Apple Commission. It was established in the late 1930s. Nationwide they were established as a result of the Dust Bowl, if you remember that historical event. And the purpose of the Conservation Commission – originally they were titled “Soil and Conservation Commission” and “Soil and Conservation Districts.”

And the Conservation Commission works with the conservation districts. There are forty-seven conservation districts statewide that work with farmers. The main mission is to work with farmers – to help them so that they can continue agricultural practices – while addressing natural resource concerns on their lands, a fundamental mission there for the Commission and the districts.

A little background on what's now known as the “Voluntary Stewardship Program”: The whole process started in 2006. If you remember, there was Initiative 933, which was a statewide initiative that was brought by the agricultural community out of concerns about regulation of agricultural activities and a concern that that regulation was a take of property rights. It was mirrored on Measure 37 that passed in Oregon. The Initiative 933 did not pass in 2006, so in 2007 the parties around that dispute – the agricultural community concern about regulation; the environmental community, who was concerned about protecting resources, particularly critical areas; and counties, who were concerned about repeated appeals around the Growth Management Act. You may have heard something about that.

They took their debate to the legislature in 2007 and the legislature decided to have them resolve this dispute by setting up a process at the Ruckelshaus Center. The Ruckelshaus Center, named for Bill Ruckelshaus, who was the first EPA Administrator under Richard Nixon, lives in Seattle. Bill established the Center as a joint center

between the University of Washington and Washington State University to resolve policy disputes such as this.

So the legislature said, Go to the Ruckelshaus Center and see if you can work it out. So there were four caucuses in the Ruckelshaus Process, as it was known. There were departmental community, agricultural community, counties and tribes. They met for two years. At that time the tribes felt that sufficient progress wasn't being made so they left the process, but the other parties continued to talk. And then in December of this year they reached an agreement that resulted in the legislation creating the Voluntary Stewardship Program.

I should mention, because it's important for the counties, particularly in planning, that at the time the original bill in 2007 passed creating the Ruckelshaus Process, they also imposed a moratorium on counties updating their critical area ordinances with respect to agricultural activities. The effect of the bill, though, was that that moratorium expired July 1st of this year.

Just also for a little background: What were some of the goals of – particularly the counties, since you're here – of interest to the counties? They had a number of goals in the discussions, including things such as they wanted to protect critical areas but they also wanted to do so in a manner that protected the economic viability of agriculture, so balancing that objective.

They also wanted to get out of costly and divisive litigation. They wanted to retain local control and grass roots planning. They also wanted to build on existing plans and processes – they didn't want to reinvent the wheel – and that reduces costs. But they also didn't want another unfunded mandate. So they wanted, if you're going to have a new program, to have the state pay for the program and they also wanted to achieve better environmental outcomes.

Those are similar objectives of the other parties at the table, as you can imagine. One of the objectives of the tribal participants and the environmental community was they wanted what they referred to as a "regulatory backstop," which meant that they were willing to try a voluntary system to address resource impacts on critical areas but they wanted a regulatory backstop, if you will, or consequences, if progress wasn't being made using a voluntary approach.

So what the legislation did was it created this new program, the Voluntary Stewardship Program, and it was created at the Conservation Commission. And so we're engaged now in implementing the program. And what the program is is it's an alternative approach for counties to address critical areas that may be impacted by agricultural activities. It's still within the Growth Management Act, but it's an alternative to the traditional – I'll refer to this as the "traditional" approach – to addressing critical areas through the Growth Management Act. So it's an alternative to that.

In order to take advantage of this alternative, counties must opt in to this program. If counties don't select to opt in to the program, they take the traditional path under the Growth Management Act. Counties have six months from the effective date of the legislation in which to make this decision to opt in. The effective date was July 22nd, so counties have until January 22nd of 2012 to make their decision if they choose to opt in to the Voluntary Stewardship Program. Yeah?

Ms. Lohman: Ryan? But Skagit County, we have – we're actually a month earlier, correct?

Mr. Walters: That's essentially correct, and I can provide some additional background on that.

Ms. Lohman: Can you do that?

Mr. Walters: Do you want that now or do you want that later?

Ms. Lohman: Is it okay?

Chairman Easton: Yeah.

Mr. Walters: Yeah, so –

Chairman Easton: Can you speak up a little bit, Ryan?

Mr. Walters: We are currently in litigation over protection of streams and agricultural areas with the Swinomish Tribe. And that litigation has been before the Growth Board, it has gone all the way to the Supreme Court, and now it has come back to the Growth Board where it has resumed since the July 1 expiration of the moratorium and the July 1 expiration of our stay in the litigation that we've had for the past four years.

We now have a compliance deadline of December 28th, so –

Chairman Easton: Issued by?

Mr. Walters: The Growth Board. So our proposal is that we enroll in the Voluntary Stewardship Program, which would make us compliant, and that we do that by December 28th. We have a state deadline of January 22nd to enroll in the program, but we have a compliance deadline with the Growth Board of December 28th.

Chairman Easton: And for our purposes that would mean we would need to hand off an opt to the Commissioners with a few weeks' lead time before they could – because of the way the calendar works in our case. Okay.

Ms. McGoffin: So, Ryan –

Ms. Lohman: Go ahead.

Ms. McGoffin: So does that dissolve the litigation against the County if you're all of a sudden ____? Does it make it go away?

Mr. Walters: We have already submitted a compliance progress report to the Growth Board indicating that what we intend to do is submit this to the Planning Commission; we assume that the Planning Commission moves it forward and the Board adopts it. If that happens then we would be compliant by the deadline. We sent that to the Growth Board; the Swinomish Tribe did not object to it and neither did WDFW, who's also involved. Neither did the Washington Department of Fish and Wildlife, which is also involved –

Chairman Easton: Can you explain what you mean by “also involved” in the litigation?

Mr. Walters: They're another party.

Chairman Easton: They're a party to the suit against the County?

Mr. Walters: Yes.

Chairman Easton: Okay.

Mr. Walters: So they did not object to that compliance schedule.

Chairman Easton: Okay.

Mr. Honea: I think it's fair to say, though, that Fish and Wildlife for quite a number of years has been a fairly nominal party and the Swinomish Tribe's been the main driver.

Ms. Ehlers: Well, what happens if you don't comply by the 28th of December?

Mr. Walters: If we don't comply by the 28th, then – well, we're already out of GMA compliance. We're not compliant with the GMA. We haven't been, I guess, ever compliant with the GMA. But for the last four years we've been very close because we couldn't do anything about it because there was the moratorium and there was a stay in the litigation. If we don't comply by December 28th then we risk findings of invalidity and ultimately, eventually sanctions.

Ms. Ehlers: Well, we've been there.

Mr. Walters: And inability to get grants for Public Works and Planning.

Ms. Ehlers: I think that's the crucial thing – that you can't – if you're not in compliance – you can't get grants.

Mr. Walters: Well, and for the last several years we have been putting on grant applications No, we're not technically compliant but there's nothing we can do about it. Will you please give us the money?

Chairman Easton: Which is no longer where we're at.

Mr. Walters: Right.

Ms. Ehlers: Because I think it's important for anyone listening to know that – why you're presenting the choice for this process what would happen if we didn't choose it.

Mr. Walters: Right.

Ms. Ehlers: And I think that's the crux of the issue.

Mr. Schultz: And along those lines, if the County chooses ultimately not to opt in to the program then they are subject to all the existing requirements under the Growth Management Act to review and, if necessary, revise your critical areas. The process that you're currently in at the Hearings Board would roll on. And you're subject to other challenges and appeals that may arise from this.

Ms. Ehlers: It would be useful if at some point in the next study session you could illustrate what – I'm trying not to exaggerate – what kind of horror might happen.

Mr. Schultz: Well, I think that Ryan just explained that in a previous life I was advisor to Governor Gary Locke on natural resources, including land use issues, and he described it well that one of the consequences – the Board could make a determination not only of invalidity, but, if it's egregious enough, can recommend sanctions to the governor.

Mr. Walters: The concept of "invalidity": Currently we enjoy a presumption of validity if we pass GMA regulation that we are presumed compliant and the burden is on another party to suggest that we are not, to prove that we're not. Invalidity – we lose that presumption.

Chairman Easton: Let me add that I don't want any Planning Commission members to assume that we're having an additional work session. The goal of tonight's work session is to try and complete our work. If we need to have an additional session or meet here in front of the people, we'll discuss that at the end. But if you have a question, please don't keep it in the back of your mind. Please bring it forward as best you can.

The other thing I wanted to add is that if we – if we're in a position where other people have communicated on behalf of a commission that hasn't made a decision yet that we're working towards making a decision. And I recognize that that's a little – it's a little bit out of the sequence that we're used to being as a commission. I don't believe, in my conversations with both the County Commissioners and the Prosecutor's office, that this

is an assumption that we're going to do certain things. It's about being prepared and you had to make a response – and I'd like to hear from Will on this – you had to respond to the fact that you were out of compliance in July, lay out a work plan, that doesn't prescribe that we've already – this Board, or this Commission's already made some recommendation because we obviously haven't, and neither have the Commissioners made a final decision about opting in. Right? Am I right on that?

Mr. Honea: Yeah, I think it's – I think we – our office – has not been particularly secretive about the fact that we think this is a good idea to pursue this. The back story on it is that Skagit County has been in litigation trying to defend its agriculture critical areas ordinance against challenges by the Swinomish Tribe since 1994. I was still in college then. The County has spent well over – I'm not exactly sure where it is now, but well over five million dollars in that process. The Ruckelshaus process – this statewide negotiation, if you will – in no small measure was as a result of the acrimony here in Skagit County. What happened with the Supreme Court decision was that the Supreme Court decided that the County is not obligated on an across-the-board basis to require farmers to put land back into primordial habitat, essentially. What the Supreme Court also held, though, is that the bench – there were – we lacked appropriate benchmarks and triggers. In other words, we don't have a good picture for what we need to achieve and how we're going to achieve it, and how we're going to make that happen.

So there is a whole bunch of gray left in our existing ordinance. I think there's an impression that we won, but what we won was a battle, not the war. Now could we go back and revamp the benchmarks and triggers, as the Supreme Court said? Sure. But the history has demonstrated that the Swinomish are going – they've challenged everything Skagit County has done for the better part of two decades, and it might be naïve to think that that's just going to stop all of a sudden.

And so this alternative that's been presented with the Voluntary Stewardship Program, it is the alternative to get out of that cycle. I think that's how we view it, at least, and Ron can speak to how the Conservation Commission views it.

Mr. Walters: I also don't want you to feel uneasy about our GMA filing. All of these filings where we file a compliance schedule we indicate, Hey, the Planning Commission is going to receive this document, they're going to take action on it, they're going to move it forward to the Board, the Board's going to adopt it. This sequence is just a little bit different in that we are predicting that you are actually going to enroll in the Voluntary Stewardship Program. It's not a promise because, you know, if we don't do it then we'll just have to do something else.

Chairman Easton: Seeing in our earlier work session some members of the public complained that this was done, and I just want to make sure that people understand – you who are watching at home or who may have testified – that that is, in my opinion and in the opinion of a number of people who are at the table, that doesn't mean it's done. It means that we had to take action and tell people that we were planning on working on it and that's what we're doing.

Ms. Ehlers: Right. I think Will gave us information that's utterly crucial. The lawsuits have gone on since '94. No matter what we do, there's another one. And at some point it doesn't make much sense for it to keep continuing as long as we're alive.

Mr. Honea: Well, and this provides a vehicle for some positive forward progress. The money in this Voluntary Stewardship Program is to be spent on habitat, at least theoretically, as opposed to paying Seattle lawyers, which is what the money's been spent on so far. So in that sense it's not just dead weight loss going – money going out of the community from our property taxes. There's at least the prospect of some money flowing in to protect habitat on a prioritized basis. So, yeah.

Ms. Lohman: Well, Ron, he's going to walk us through some of the pertinent details from the legislation.

Mr. Schultz: Another important piece of information that's consistent with your previous discussion about timelines and so forth: So in order to – again, the January 22nd date, but the process for opting in is that the County must pass an ordinance or resolution saying that they choose to opt in. But the statute requires that before adoption of the ordinance or resolution that the County must confer with tribes, environmental and agricultural interests and provide notice to property owners that may be affected by the decision. So it's important, I think, to keep in mind in terms of your timelines the process.

Ms. Ehlers: Question: You're going to provide – we've had trouble with providing notice to property owners in the county. Does this mean everyone who has – who is in the Agricultural zone, or does it mean everyone who is in agriculture who might be in a non-Agricultural zone, or does it mean individuals who have been recognized as farmers by who? Because if you're going to talk about providing notice, people need to know to whom.

Mr. Schultz: Right, and the statute says provide notice to property owners and other affected individuals, tribes, et cetera, but we leave that process up to the County to determine how they want to provide notice to those folks. And it's similarly with the notion of conferring with the tribes and the environmental and agricultural interests. The term "confer" was intended to allow the County to use your regular processes of communication with those groups to confer with them on the process. So it's not specifically ___.

Chairman Easton: So I would suggest, Commissioner, that – Carol – that we – if you're concerned about that, when we get to the point of deliberations you may, as a recommending body, recommend to the County Commissioners to direct – you know – to direct the Department who you'd like to have communicated with. And if it's up to the County to define that, as a recommending body to the County Commissioners we could make a recommendation about how we would like to see that – some of that communication happen.

Mr. Walters: Although if you have suggestions, earlier is better.

Chairman Easton: Excellent.

Ms. Ehlers: Well, that's why I'm bringing it up now.

Mr. Walters: ___ on an individual basis or ____.

Chairman Easton: Yeah, maybe on an individual basis so we can keep ____.

Mr. Schultz: So the ordinance or resolution, in the ordinance or resolution you must elect to have the County participate in the program and then you identify the watersheds that will participate in the program, and you can nominate watersheds for consideration by the Conservation Commission as a state priority watershed. The purpose of a priority watershed is to help us make determinations on limited funding if we need to target certain watersheds within the state.

In opting in as you look at identifying your priority watershed, you must consider the following elements: the role of farming in the watershed, including the number and acreage, economic value, et cetera; the importance of salmonid resources in the watershed; an evaluation of the biological diversity of wildlife species; the presence of leadership within the watershed that's representative and inclusive of interests; integration of regional watershed strategies, including availability of data and scientific review structure related to all topics of critical areas, types of critical areas; presence of a local watershed group willing to oversee the program; and overall likelihood of completion.

A couple of things about this information: First, you see in there the concepts of balancing: the role of farming within the watershed; the activity of farming; number of acreage; economic value – balancing that with the resource objectives that you have within your watershed.

The other theme that you see in here is reliance, again, on existing watershed entities and structures, as well as existing plans and scientific information that you already have. Now some county staff, as we've shared this information with counties across the state, are concerned about the depth and level of detail in here. These are the things that you must consider, but we're not expecting sort of a detailed planning exercise here, but enough information to help the Commission – when we have multiple priority watersheds – determine among those priorities, you know, which one would rank higher than another, for example. So just – basically it's Tell your story, if you will.

Ms. Lohman: Ron, can you maybe just remind us what is exactly a critical area? It's not necessarily a stream or ____.

Mr. Schultz: Sure. Right. So the term “critical area,” the bill that passed will be worked into the statute under the existing Growth Management Act and so it will rely on the definitions found in the Growth Management Act. So the existing definitions of “critical areas”: There are five critical areas that include riparian and critical species habitats; aquifer recharge zones; frequently flooded areas; geologic hazards; and wetlands. So those are the five critical areas to be addressed. And, again, this addresses the agricultural activities that may take place within or impact those critical areas.

Ms. Ehlers: How does this fish consideration deal with geologically hazardous areas?

Mr. Schultz: Well, you would address that through existing information that you may have on critical salmon habitat within your watersheds and I would assume that in that evaluation they conduct – what’s typically called “Limiting Factors Analysis” – then they would look at if there are any geologic hazards that might create a limiting factor for the fish.

Ms. Ehlers: That doesn’t make a lot of geological sense.

Ms. Schultz: Okay. Opting into the program: It applies – if you opt into the program – it applies to all unincorporated property upon which agricultural activities occur within the participating watershed. For those areas of the county that are not included in the designated priority, then you would implement the existing – you’d use the traditional GMA route. So, basically, if you have multiple watersheds and you opt in for one watershed but not another the watershed that you’ve not opted in for, the County would have to follow the traditional Growth Management process. Most counties that have that situation obviously would prefer to opt in for all the watersheds so that you don’t have landowners confronted with different standards.

Mr. Christensen: One important distinction here is that in the past we’ve dealt with agricultural land that was zoned Agricultural/Natural Resource Lands, as well as Rural Resource. Those were the two NRL categories that had an ag component to a zoning district. You’ll notice here that the reference is to “agricultural activities.” So it could be the areas beyond just those two zoning districts.

Mr. Honea: In a sense, I think – you know, at least from my perspective – this rationalizes it a lot better. It used to be – under the old ordinance – the ag critical areas applied only to Ag/NRL and Rural Resource but not ag activities on other zoning, which doesn’t make sense in a way because the point here is to – you know, ag is being treated differently. It’s the only thing that’s for an ongoing activity being asked to deal with critical areas. Normally under the critical areas ordinance you don’t have to bother with this unless you get a permit or a land division. So it breaks it into an activity-based regulatory scheme, essentially.

Ms. Lohman: I have a question. You said for those areas not in a priority watershed, yet the County could designate the entire county, for example, and then within that designation they could designate the watersheds and then they’d prioritize. So how

does that play out, then? If you *are* in a watershed the County has enrolled everybody, how does that ___ work?

Mr. Schultz: Well, it would be implementing within that watershed for which you're receiving the funding to implement the program.

Ms. Lohman: But if you're on a lesser –

Mr. Schultz: Right.

Ms. Lohman: Maybe you're in a – you're an agricultural activity producer and you are not in a priority watershed, but you are still doing good stewardship, would you have the protections of this program?

Mr. Schultz: I think the County could design it so that you would – yes. And we'll see more about how the work plan would work and how landowners, as they develop individual stewardship plans, how that would play out.

Mr. Honea: A priority watershed is – isn't that just – that's different than participating.

Mr. Schultz: Right.

Mr. Honea: That's just a funding prioritization.

Mr. Schultz: It's a funding prioritization.

Chairman Easton: So it's important to keep the word "priority" separate from "participation"?

Mr. Honea: Yeah, it's defined. _____.

Ms. Lohman: Because there in the definitions they talk about these different things, but I wanted – I saw that earlier at the ag meeting and I've thought about it since.

Mr. Schultz: It *is* confusing.

Ms. Lohman: Because there would be – you could have potentially competing standards for the same agricultural activity just based on where they live.

Mr. Walters: So we are not going to be prioritizing watersheds against each other; we are going to be nominating one or more watersheds to the state for priority funding.

Mr. Schultz: That's right.

Ms. Lohman: Okay.

Chairman Easton: And that would happen then – that would happen – that does not need to happen prior to December 28th, correct?

Mr. Walters: Yes.

Chairman Easton: That's a process that *does* need to happen?

Mr. Schultz: The County's designation of the priority watershed happens when you opt in.

Chairman Easton: You have to have your list of priorities –

Mr. Schultz: Right. But the Commission's decision about statewide prioritization for all counties that have opted in doesn't have to happen until after January 22nd.

Ms. Lohman: Kendra, did you have something?

Ms. Smith: I did. I think ____ because under the Growth Management Act it says "agricultural activities," and agriculture's defined by activities occurring prior to 1996 on the lands, remember? That's part of that. Okay, so given this new law, if somebody in this county were performing an agricultural operation on Rural Reserve lands, ____ 20 acres in Rural Reserve. That's an agricultural activity. We have some that are near Big Lake, some that are occurring. Would this, then, preclude their being subject to the critical area ordinance and then would they now – because it's an agricultural activity – be under this option?

Mr. Honea: Well, I think there's a whole bunch of things that are going to have to be thought through. For example, you know, ongoing agricultural activities – if you convert land, let's say. This just came up at the Ag Advisory Board meeting. You could go into CREP and convert it back to farming when the CREP contract comes up. Are you now subject to the old critical area – the standard buffer with the critical areas ordinance? There's a whole bunch of things at the intersections of these that are going to have to be thought through, and this is the –

Ms. Smith: Okay, but this would be one with the land use and if you're in Ag – okay, let's forget the timeline in when you become an agricultural operation and just basically a zoning designation. You know, does that make a difference or is it an activity that we're looking at?

Mr. Walters: Well, and this is the reason that we're talking about an ordinance enrolling us rather than a resolution, because we need to answer these questions and make it a harmonized portion of our CAO, not just an add-on that we have leftover questions that we won't be able to answer later. So we need those questions but I think we *don't* have the answers yet.

Chairman Easton: But we need to have those answers before –

Mr. Walters: Yes. That's something that you're going to need to work through.

Chairman Easton: So, I mean, in theory, you're going to present at some point – some of these answers are going to be wrapped into what is presented to us as part of the package of opting in. Because it's more than just a yes or no decision – do you opt in or not? There's details that obviously have to be established then –

Mr. Walters: Right.

Chairman Easton: – prior. And these are the kinds of things we need to talk about – harmonization. These are the issues.

Mr. Walters: It's that integration into our existing structure.

Chairman Easton: Into the existing structure of the critical areas ordinance that we updated just a few years ago.

Mr. Walters: Right.

Ms. Ehlers: Yes, but what Kendra was bringing up is the same thing I asked. There are a lot of places in the county where there's a farm on 20 acres and it's Rural Resource lands, and it's – or Rural Reserve, yes. Thanks for correcting me. It's in Rural Reserve. And if you use the term "activities" and you mean it as a farming activity, then it would seem to me that these people would be included in this discussion ___.

Mr. Honea: Yes.

Ms. Smith: Especially if we're talking watershed.

Mr. Schultz: And you'll see how that happens.

Ms. Ehlers: But, you see, this applies to some of the islands, which certainly aren't in the Skagit River watershed per se. But if you're going to declare the whole county to be the watershed, then you have these folks out on two of them at least which perhaps – which will be definitely affected by this, either positive or negative.

Mr. Christensen: You know, I think, in response to Carol's comment and Kendra's question, certainly the exemption under our critical areas ordinance today is provided to those lands which are zoned Ag-NRL or Rural Resource-NRL. But under this program, it talks about – if you look at the definition, it's "agricultural activities, as defined by state statute," so it's not by County zoning district. And so we may have other lands beyond just those which are Ag-NRL and Rural Resource-NRL which this will apply to.

Ms. Ehlers: Good, because I remember hearing about someone who's – at least one who's in Forestry-NRL ____.

Mr. Christensen: Right.

Mr. Honea: Could you pull up 90.58.065 and give a quick synopsis of what that definition is?

(several people talking at the same time)

Ms. Lohman: While he's doing that, in this enabling legislation it says, "The program applies to all unincorporated property upon which agricultural activities occur within the participating watershed." It also says "commercial and non-commercial agricultural operators."

Mr. Schultz: So forestry is not considered an agricultural activity.

Ms. Lohman: Correct.

Ms. Ehlers: No, but there's one farm someplace located in the middle of the Forestry zone and we keep getting a cry from this person, saying, "I need help.

Mr. Schultz: Okay, so as we were looking up the definition __ – so once you have adopted your ordinance or resolution then really nothing happens until funding is made available to the county. And I'll talk more about funding in a moment. But within sixty days of funds being made available to the county, then – to implement the program – then the county must designate a watershed group, an entity to administrate – administer the funds for the watershed.

So you don't designate the watershed group in your ordinance; you do that after you receive funds from the Commission to implement the program. And then the county must confer with tribes and stakeholders before designating that watershed group.

In opting in, we talked a little bit already about the process if you don't opt in and what happens for those areas not participating. There's more information there and details, but, again, if you don't opt in, basically you follow the traditional Growth Management path.

There are opportunities to withdraw from the program. A county that has opted in may withdraw from the program by adopting an ordinance or resolution to that effect. You may withdraw at the end of three years, five years or eight years after receipt of funds, or any time after ten years. But, within eighteen months after withdrawing, then you have to, again, follow traditional Growth Management and review and, if necessary, revise your critical areas as they apply to agricultural activities.

A question has been asked in other counties: If you withdraw do you have to repay the funds paid to you by the Conservation Commission? And the answer is no.

Mr. Walters: So the question was: What is the definition of “agricultural activities” under this legislation? The legislation refers to RCW 90.58.065, and that “agricultural activities” definition, the pre-existing one that it refers to, means, “Agricultural uses and practices, including but not limited to” and away it goes: “Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land uses for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for” and it goes on for five more lines.

So it covers pretty much everything. Our goal, as part of this process, is to clearly put the sidebars on what qualifies and how it integrates into the whole CAO.

Mr. Schultz: So with respect to funding, counties that have opted in are eligible for a share of the funding that are made available to implement the program. And your implementation is subject to that funding being made available to you. So you’re not required to implement the program until adequate funding is provided. Now when the legislation was going through last session, obviously the state not – you may have heard – not in a good budget situation. The governor, when the participants in the Ruckelshaus process went to her and said, Hooray – we have a deal, she said, Congratulations – no state funds. So they said, Okay, we will implement this using federal dollars. At the Conservation Commission, we told the legislature, if this passes and if the governor signs it, we are using our existing agency dollars; we’re just re-prioritizing and we’re making this a priority, since the legislature and governor have made it a priority. So we’re making it a priority with existing funds, rearranging our work to educate counties about this and then move the program forward. But we are actively working with others to try to find the federal dollars. Now, of course, the Ruckelshaus __ back to D.C., said, We hear we have this new program, and they said, Hooray – no money.

So it’s not quite that bad. In meetings that we’ve had with the U.S. Department of Agriculture and with U.S. Environmental Protection Agency, they’re very interested in this program and the reason is they see this as an opportunity to get away from traditional programmatic buckets that don’t always work for farmers – particularly at the U.S.D.A. They have very rigid buckets in their programs, as Carolyn in the District can attest, and particularly in one area where, in order to be eligible for these programs, you have to have at least \$1,000 of agricultural income to be eligible. But, as you know, there are many landowners, particularly horse owners, who don’t have the horses for agricultural purposes so they don’t meet that threshold. So they’re not eligible for those programs. And the idea here is can we use other sources of funding, such as EPA, to help address those resource inputs. So it’s a question of we have fewer dollars, and how can we use this kind of a program to be more effective and efficient with fewer dollars by matching up dollars from different sources to accomplish that resource objective. So that’s the approach that we’re taking with the federal agencies.

Our estimates for counties for developing the program and the administration: For the first year, we estimate 150,000 per county, and that would be to write the plan. And

then it would drop to 100,000 for the next two years, and then go to 120,000 because that would really be the bulk of the implementation.

The implementation dollars we think of as a separate bucket, so that's just to administer the program. Then to actually implement with landowners is a different set of money that we're working in. Again, it would be reconfiguring existing limited resources

Again, I mentioned designation of the watershed group after you receive funds, and you have to confer – again – with the tribes and interested stakeholders before designating the group. In the designation of the watershed group, the group must include a broad representation of key watershed stakeholders, and, at a minimum, representatives of agriculture and environmental groups and tribes that agree to participate. The county should encourage existing lead entities, watershed planning units or other integrating organizations to serve. Again an emphasis on no recreating the wheel if you don't have to. And a county may designate itself, a tribe or another entity to coordinate the watershed group.

Chairman Easton: Ron, I have a question there.

Mr. Schultz: Yeah.

Chairman Easton: We have a history with a particular tribe that has – has and is suing us on a regular basis who's not participating in a number of other committees that are similar to what the watershed group's goals are. And if they choose not to participate, we're not in a position to compel them to participate. We can't go forward if we can't get a tribe – if we find – we'd have to find an alternate tribe? I mean, clearly in one sense – and maybe Will would address this better – ideally, we would like to be in a position where we were talking to the Swinomish while in the watershed situation, instead of through Seattle attorneys, as you said so eloquently earlier. How does that – do you believe this process – do either one of you believe this process puts us in a better position to actually do that?

Mr. Schultz: Well, the spirit of the whole statute – and in this part in particular – is that you are required to confer with tribes. That term's not defined, but it's the – you know, you should reach out to them and confer with them about this. Invite their participation – as you said, you can't compel their participation, but to invite their participation. And if they agree to participate then you would include them, but if they choose not to participate it doesn't stop the process. You can still _____.

Chairman Easton: See here's what concerns me – is that it's a part of the regulatory framework that we confer with them, but we have a history of that in attempting to confer with them we continue to end up in – you know, we end up in these litigation sort of cycles. What about what we're looking at makes that – does it break that process? And it gets more complicated to me with the fact that they left the table *en masse* – correct? All the tribes left the table *en masse* in year two? So what you're presenting to us today are the results of what happened after they left the table.

Mr. Schultz: That's right.

Mr. Honea: The prior context of our critical areas ordinance was the Growth Management Act said, Counties, you have to do this to protect critical areas on ag land, and so the Swinomish Tribe sued us over that. This context of this Voluntary Stewardship Program is the *state* is saying, If you do this, counties, you're good to go. And I'm simplifying it greatly here for the purposes of brevity. So if the Swinomish are unhappy with what we're doing under this Voluntary Stewardship Program, then their grievance is with the state. They could make various claims. I don't want to ___ here.

Chairman Easton: You're not going to help them decide what those –

Mr. Honea: I'm sure they ___ without *me* saying. Secondly, it does say "confer." It doesn't say "reach agreement with."

Chairman Easton: I understand.

Mr. Honea: And I think, third, it's really important to keep in mind, you know, in discussing this within the community, is the Swinomish Tribe are one of four Native American tribes within Skagit County. They're not even the largest tribe in Skagit County by membership; the Upper Skagit are. They spend more money than anybody else on litigation and so we hear from them a lot, but that does not mean that they're the only tribal voice in this county and we shouldn't treat them as such.

Chairman Easton: I want to add – or ask – Ryan, as the lead on this: With four other tribes, three of which are not suing us currently, why or when – actually, when are we inviting them to be here? This is our second work session. We're considering the idea of a third work session. Do – I mean, is it inappropriate? I mean, am I broaching some topic that I shouldn't? Is it inappropriate for me to say, Why are they – because I have said it once before at the public hearing: Why are they not here?

Ms. Stevenson: They were notified.

Mr. Walters: We sent notification.

Chairman Easton: I want that to get on the record. Betsy, I appreciate you saying that.

Mr. Walters: We sent notification to everybody who was on our Ag-Fish list.

Chairman Easton: So did that include the four tribes?

Mr. Walters: Some of which may have died since the last time we sent notification on this. But I don't know exactly who was on the list. Betsy –

Ms. Stevenson: (inaudible)

Mr. Walters: Betsy says all the tribes were on there. Some of the tribes attended the workshop, or at least the Swinomish did, although they didn't say anything.

Chairman Easton: The workshop that we hosted?

Mr. Walters: (inaudible)

Chairman Easton: Oh. Okay, so –

Mr. Walters: We assembled this meeting really quickly because of Ron Schultz's availability, so we don't have very many people here. But we plan to reach out to the tribes directly, staff to staff, before your public hearing.

Chairman Easton: Okay.

Mr. Honea: Well, we'll certainly have the link to this video on the webpage for the critical areas ordinance. It'll be available to the public.

Chairman Easton: Thanks. I appreciate that clarification.

Mr. Schultz: So once you have your watershed group designated, what do they do? Well, the watershed group develops a work plan and in that work plan they are to protect critical areas while maintaining the viability of agriculture in the watershed. The work plan must include goals and benchmarks for the protection and enhancement of critical areas. In developing and implementing the work plan, the work group must review and incorporate applicable water quality, watershed management, farmland protection and species recovery information; seek input from tribes, agencies and stakeholders; develop goals for participation by agricultural operators necessary to meet protection and enhancement benchmarks; ensure outreach and technical assistance is provided to ag operators in the watershed; create measurable benchmarks that, within ten years after receiving funds, are designed to result in the protection and enhancement of critical areas functions and values through voluntary incentive-based measures – hence the name of the program; designate the entity that provides technical assistance; work with the entity providing technical assistance to ensure individual stewardship plans contribute to the goals and benchmarks of the work plan; incorporate into the work plan existing development regulations relied upon to achieve the goals and benchmarks; establish baseline monitoring for participation and implementation of stewardship plans and projects, stewardship activities and the effects on critical areas in agriculture relevant to protection and enhancement benchmarks; conduct periodic evaluations; institute adaptive management; and provide a written report on the status of plans and accomplishments to the Commission within sixty days after the end of each biennium; and assist state agencies in monitoring programs and satisfy, because government programs satisfy reporting requirements.

A couple of themes in here that I'd like to highlight: One is that, again, the mechanism is to develop a work plan and the concept and one tool to do that is the use of individual landowner stewardship plans, very similar to the conservation plans that the conservation districts right now work with with landowners. And that – the work of those individual stewardship plans are the vehicle by which they become eligible for many of the federal programs to implement those activities.

But a couple of things: You've heard goals and benchmarks mentioned. Think of these as really there are two sets of goals and benchmarks. The first I call "programmatic" goals and benchmarks: How many landowners are enrolling in the program and how is the program being implemented? The second is resource goals and benchmarks: How are you doing in the protection and enhancement of critical areas?

So the county and local watershed groups designate – again – an organization to perform the technical assistance with landowners. It may be a conservation district. It may be another entity.

Development of individual stewardship plans are used to protect and, when necessary, restore critical areas, and resources and incentives to landowners to implement farm stewardship plans are made available through the program.

So once you've completed the work plan it's then submitted to the Director of the Conservation Commission for approval, and then the Director submits the work plan to a technical panel for review, and this technical panel has forty-five days to review and assess the plan. The technical panel is to review the work plan and assess whether the plan, in conjunction with other plans and regulations in the county, will protect critical areas while maintaining and enhancing the viability of agriculture. If the technical panel determines that the plan will accomplish the goals, then the Commission Director must approve the plan. If the technical panel determines that it will *not* accomplish the goals, then the Director must advise the watershed group of the reasons and we would work with the watershed group to develop a plan that would reach approval.

So who's on the technical panel? It consists of four state agencies: Fish and Wildlife, State Department of Agriculture, Ecology, and the Conservation Commission. And what we're doing right now at the Commission is we're already working with these agencies, as well as the State Department of Commerce and the Department of Natural Resources – because they have expertise on geologic hazards and steep slopes – and other agencies, to sit down with them right now, because we don't want to wait until a county submits a work plan before we start thinking about how we evaluate it because we only have forty-five days. So what we're doing now is thinking about now how would we evaluate a work plan, what would be some of the issues that the various agencies would want to look for, and talk about that now so that we can get that information out to counties and watershed groups early so that they could see up front what some expectations might be.

Ms. Lohman: Ron, I have some questions on your individual stewardship plans.

Mr. Schultz: Yeah?

Ms. Lohman: You're not making these essentially the same thing as having a mandatory farm plan, are you? Because you've got folks with ___ management plans, you've got – maybe they've already got a conservation plan with Carolyn's – the local county conservation district. And then you've also got people that have already stepped up to the plate and they've voluntarily already done something outside of a government entity.

Mr. Schultz: Yeah, the stewardship plans are voluntary, again, in terms of the landowner implementing the stewardship plan or enrolling in the stewardship plan. And all of those factors that you just described – do they have an existing plan or are they already taking care of their property and not impacting critical areas? – could all be factored into a work plan. Again you're looking not so much at individual landowners and requiring individual landowner actions. The watershed group is looking at the whole system and saying, How are we doing system-wide? And you may have, you know, stream reaches that you have some landowners that say, Yeah, I'll do a stewardship plan. Others already have a conservation plan, and others are just doing the right thing, and the combination of those things means you're reaching your goals to protect critical areas.

Ms. Lohman: So the County could basically inventory.

Mr. Schultz: Yep, exactly.

Ms. Lohman: And then categorize their ____.

Mr. Schultz: Yep.

Ms. Lohman: Okay.

Mr. Schultz: And that's sort of that programmatic measure that I was describing.

So within five years of receiving funds to implement the work plan, the watershed group reports to the Conservation Commission and the County whether they've met the work plan's protection and enhancement goals. If the watershed group determines that the protection goals and benchmarks have been met and the Director of the Commission concurs, then you continue to implement the work plan. The Director, though, of the Commission may *not* concur that progress is being made, and then we would consult with an advisory committee that we're required to establish. I'll talk about the committee in a moment.

If the watershed group determines that the protection goals and benchmarks have not been met, then you have to propose an adaptive management plan that will help you achieve those protection goals. If the watershed group determines the enhancement

goals have not been met, then you would identify what additional voluntary programs would help you reach the enhancement goals, but you only have to implement those if funding becomes available. The reason for that distinction between protection and enhancement is in part due to your case in the Supreme Court, as you're very familiar, where they said the current Growth Management requirements under critical areas are for protection. There is not an affirmative requirement for enhancement, but as part of this agreement that was worked out among the parties that created this program, enhancement does have a role but it's linked to available funding. But you still have to protect, as you would under traditional Growth Management.

Ms. Lohman: So – but if the County, because of funding – because everything is hinging on funding –

Mr. Schultz: Yeah.

Ms. Lohman: – is able to implement maybe the protection part but they can't get to the enhancement part, are they going to be found out of compliance?

Mr. Schultz: No. No. As I described, you would not be required to accomplish your enhancement goals unless funding becomes available. But you still have to –

Ms. Lohman: How do you evaluate then that a county has met their protection and their enhancement goals then?

Mr. Schultz: Just sort of a gross overgeneralization might do this. Let's say you're talking about wetlands within the area, and you've inventoried and you've identified x-number of acres of wetlands within the watershed in the particular area. Your requirement would be to protect those wetlands, you know, the functions and values of that x-acres of wetlands. But you could also enhance those to get x-plus acres of wetlands, but you're not required to do so. You're required to protect those wetlands – do no further harm – but you could also identify – there might be opportunities to enhance wetlands, and I won't talk about wetland mitigation banking here. But there might be other opportunities and methods to do that, but you're not required to do that.

Ms. Lohman: Okay.

Mr. Schultz: So I mentioned a statewide advisory committee. The Director of the Commission is required to appoint and in certain circumstances consult with the statewide advisory committee. The advisory committee consists of two people for each of the following: county governments, agricultural organizations and environmental organizations. And then we – the Commission – in conjunction with the Governor's office are to invite participation by two tribal representatives – statewide representatives. So that's the advisory committee that we're to put together.

So there are consequences built in. If the work plan is not approved by the Director or if the work plan's goals and benchmarks – the goals and benchmarks for protection –

have not been met, or if the Commission determines that any county or state agency does not receive adequate funding to implement the program in a watershed, or the Commission determines the watershed's not received adequate funding to implement the program after three years, then the county must, within eighteen months after that determination, do one of the following: You would either develop, adopt and implement a watershed work plan approved by the State Department of Commerce that meets specified critical area and ag requirements. Commerce has to consult with other agencies before they approve or disapprove that plan. The Commerce decision to approve is appealable to the Growth Board, so that's another theme that Will mentioned here – is appeals shift under this from the county to the state unless you go – unless you're in the traditional Growth Management path.

Another option would be to adopt qualifying development regs previously adopted by another Growth Management jurisdiction. For the purposes of protecting critical areas, those jurisdictions are mentioned in the statute. It includes – I can't remember all of them – Whatcom, King, Clark, Clallam. Did I miss one?

Ms. Lohman: And then it says and anybody else that was found in compliance.

Mr. Schultz: There you go – anybody else found compliant. I talked to Whatcom County staff and they said, Well, what happens? And as I was going through this I said, Well, it looks like you could adopt your old regulations.

Ms. Lohman: Mary has a question.

Ms. McGoffin: Yes, I'm just wondering what if you have a farmer who doesn't want to cooperate, and the County's done everything they can?

Mr. Schultz: So, again, the – one of the shifts in focus under this Voluntary Stewardship concept is you're looking at the whole watershed, not just focusing on specific landowners. If that landowner, though, is a key part – so you've done everything you can and that landowner refuses, there are still enforcement responsibilities and, you know, consequences for enforcing critical areas. Or if that activity – let's say, for example, it's agricultural activity that impedes in the riparian area and it's causing water quality problems, the statute envisions – Ecology retains all of their water quality authorities. So that landowner would still be subject to enforcement under state water quality laws.

And if you don't adopt any of these sort of in-the-can development regs, then you go the traditional Growth Management route.

Mr. Honea: Yes. I mean, to kind of simplify that there's still going to be enforcement power to make people stop doing bad things to water, but no enforcement power to make people put habitat in.

Ms. Lohman: So we –

Chairman Easton: That's an important point.

Ms. Lohman: But we could all find ourselves back to where we began because of funding.

Mr. Schultz: That's right. And the reason for that is the parties were negotiating this was – there was some interest who said, We don't want this just to continue to spin. Counties said, We don't want to have an unfunded mandate. And so they agreed, Okay we'll try to secure state and federal funding to implement the program, and if you don't have funding you don't have to implement the program. But others said, Well, we don't want this state of limbo to exist forever. And so there's the time limit of three years. If we can't secure any funding by 2015, then the program's done and everybody goes into the traditional GMA route.

Ms. Lohman: So then are the counties going to be competing for the pot?

Mr. Schultz: Well, hopefully we'll have enough money that we can, you know, give them the prioritization –

Chairman Easton: Oh, come on, Ron.

Mr. Schultz: ____ to the counties that you can.

Chairman Easton: Okay, so why don't you answer the question when I phrase it differently?

Mr. Schultz: Okay.

Chairman Easton: When there's not enough money for everyone to get money, how will the Conservation Commission make these decisions?

Mr. Schultz: The Commission hasn't decided, but that's why we have the prioritization of watersheds – is to help make that decision.

Chairman Easton: The statewide prioritization of watersheds.

Mr. Schultz: Yes.

Mr. Honea: You could probably say the Samish is going to be high – you think?

Mr. Schultz: I would assume. It's the same concern that we've heard from eastern Washington counties, where they've said, We don't have any salmon so we aren't going to rank high. But there are other factors for consideration, including, you know, if there's a threat to agriculture or if you have a significant problem with critical areas in a

particular area that are not necessarily salmon-related but (there) might be other issues, that county might rank high.

Again, the relationship to Growth Management, as I mentioned, it adds new sections to the GMA statute, so many of the definitions that we talked about would still apply. Again, if you're not achieving goals and benchmarks then you would follow the traditional GMA route.

There is the opportunity in the statute for enhanced enforcement. After approval of a work plan a county or watershed group may request a state or federal agency to focus existing enforcement authority in the watershed, if that action will facilitate progress towards achieving work plan goals or objectives. This part of the Ruckelshaus process was incorporated not just in the environmental community but the agricultural community as well to address specifically the question about what about the one landowner that doesn't want to do anything. Well, that's why this – that was added.

What's the impact to landowners? The work plan may require landowners to develop an individual stewardship plan. It doesn't say "shall" require; it says you *may*. But ag operators who are implementing this individual stewardship plan consistent with the work plan are presumed to be working towards protection and enhancement of critical areas. If the work group determines that additional or different practices are needed to achieve the work plan's goals and benchmarks, you can't require the ag operator to implement additional practices unless they voluntarily choose to do so. So, in other words, if I'm an operator and I am early into the process and I adopt an individual stewardship plan and I'm putting in buffers, for example, as we go down in time the watershed group determines, You know what? The buffers that we have aren't wide enough – let's just over-generalize – they're not wide enough. Then that landowner – you can't come back to me and say, Oh, now you have to do wider buffers. It has – I have to voluntarily say, Yes, I'll volunteer to do that.

Now a landowner can withdraw from the program and is not required to implement the voluntary measures after expiration of an applicable contract. But if the landowner does that they may be subject to applicable enforcement. And what's an example? Let's say a landowner is enrolled in the Conservation Reserve Enhancement Program, or CREP. If they enroll in that program and the term of contract is fifteen years – say they're already enrolled in that and it expires during the life of this program, they can't be compelled to stay in the program. But if they want to go in and, say, clear-cut the riparian area, they may be subject to enforcement.

From the Act, it just simply says that for landowners nothing is construed to interfere or supplant the ability of an ag operator to work cooperatively with the District. So I could continue to work with the Skagit CD. If I'm a landowner, I don't necessarily have to go through the program. If I'm already enrolled in a program, you can't compel me to withdraw from the program. If I want to do a sale or lease for a conservation purpose, you can't prohibit that. Nothing in this grants counties or state agencies additional authority to regulate critical areas on lands used for ag activities, and nothing limits the

authority of state agencies, local governments or landowners to carry out obligations under any other state, federal or local law.

So – and on the last page you have the contact information, if you have other questions. And you also will find our website, which is www.scc.wa.gov, and at that website we have a button on the right-hand side for the Voluntary Stewardship Program and if you go there you'll find this presentation, you'll find a webinar that we did for all the counties in the state, and other information on the program.

Ms. Lohman: Ron, a question that came up at the Ag meeting was about kind of a creep. If somebody does a project, does his area of protection grow over time? Because now he's got this project so does he have to set back from the project when it keeps moving? So, okay, he does the project. Is that a bright line?

Mr. Schultz: I'm not sure I understand that.

Ms. Lohman: Kind of a creep, a buffer creep –

Mr. Schultz: When you said "creep," you were not referring to a landowner as a creep? You're referring to buffer creep.

Ms. Lohman: Right.

Mr. Schultz: Yeah. Usually if there's an individual stewardship plan it'll define the buffer width so that you won't have a buffer – you shouldn't have a buffer creep, not in most circumstances.

Ms. Lohman: Because you don't want to penalize somebody for doing a project and then all of a sudden the project becomes an impediment because they did the project.

Ms. Kelly: What we saw at one of the wetland mitigation banks was adjacent to ag land and the regulatory authority said there had to be a buffer between the wetland mitigation bank and the ag land.

Mr. Schultz: On a neighboring property?

Chairman Easton: So in theory, Carolyn, that's sort of like a buffer on a buffer?

Ms. Kelly: That's right. So I – and it – I think that's maybe what Annie was talking about.

Mr. Schultz: That's an interesting circumstance but, again, since you're addressing agricultural activities in those areas, your work plan should be able to address that particular circumstance.

Ms. Ehlers: What if the state agency doesn't like your way of doing it?

Mr. Schultz: The state agencies still retain existing authority. So one state agency that would be interested in some of these buffers and activities would be Department of Ecology, but their authority would be – also be focused on water quality, so they would be looking at practices to address water quality issues. Ecology is one of the members of the technical panel and, as I mentioned, we're working with Ecology staff right now to talk about the relationship between this program and water quality so that we can kind of work that relationship out up front and define what those expectations are so we don't encounter those kind of conflicts in its implementation.

Ecology would still be doing enforcement – water quality enforcement – within the area of a watershed that's enrolled in this program. My opinion is that a lot of the practices and programs that individual landowners would implement – the buffers and so forth – would achieve water quality objectives.

Ms. Ehlers: In my experience, Ecology has in the last ten years virtually ignored the geologists working in the department. If you're going to talk about the effect of geologic hazards on any of these issues, make sure that there is a geologist involved in the discussion because some of the things that came out in the stormwater management, in which they deliberately ignored very good geologists in their department are non-scientific.

Mr. Schultz: And your concern was actually echoed through the discussions around the program by Department of Commerce, who has the local Growth Management program. And their concern was exactly that – making sure that we have in the technical panel some reference to geologic expertise, which is why we brought in Department of Natural Resources to help with that expertise.

Ms. Ehlers: But you don't have them on this list.

Mr. Schultz: They're not, but what I'm saying is the Commission – we are bringing them in anyway.

Ms. Ehlers: Well, you need to because there's another element involved in this. Since – and it may not be direct because, as I understand, if there's a clear-cutting – and clear-cut which will produce more water downstream from after the clear-cutting – if that clear-cut damages a fish stream it is against the law.

Mr. Schultz: Right.

Ms. Ehlers: If it damages other public property it's against the law. If it damages private property, such as a beach cliff – there's one on the north side of Guemes that I have in mind – it damages the beach cliff and erodes it, which then damages the critical area, there is no legal requirement that the DNR pay attention to the consequence of that drainage. And that's the kind of thing –

Mr. Schultz: No, but I think that landowner might be subject to a –

Mr. Honea: You have a private cause of action.

Mr. Schultz: – private cause of action at that point.

Ms. Lohman: But keep in mind we're talking in the context of agriculture. For the people that haven't spoken, Matt and Josh, do you guys have any questions or comments? Anybody else? Elinor? Ryan?

Mr. Walters: When you're ready, I have some thoughts on what's happened and what will happen next.

Chairman Easton: I have some questions before that – two questions, one for Nels and then one for the group in general. I'll start with the group in general. Ryan, under "Impact to Landowners" in Ron's presentation he says "or a plan may require landowners to develop" – and, obviously, the key word being "may," at this point are you working on a draft that you're eventually going to send out for public comment?

Mr. Schultz: You don't have to get to that point actually –

Chairman Easton: Right.

Mr. Schultz: – until quite a ways out. That would be involved in the work plan itself, so...

Chairman Easton: Yeah. And the reason I asked that clarification – I appreciate that – is that being the Chair of the Planning Commission who at times has had to chair Commission meetings where lots of people come and they're angry, this particular phrase, especially if we end up with the word "require" instead of "may require," concerns me just from the standpoint of how we would – you know, how that would work. So if that's out there past the actual ordinance being dealt with – it's out there during the work plan – so that's not something that would be dealt with here at the level at the next Planning Commission public hearing on this issue.

Mr. Honea: If we could really concisely – I mean, there's a lot of information been thrown out – could we concisely recap what that ordinance will need to include? Are you prepared to do that?

Mr. Schultz: Well, yeah. It's pretty straightforward, the ordinance to opt-in.

Chairman Easton: Can I assume before we do that –

Mr. Schultz: Sure.

Chairman Easton: – that I'm correct in saying that that won't need to be addressed?

Mr. Walters: Yes, that is right. That is correct. All of that gets addressed in the work plan, which is done by the watershed –

Mr. Schultz: The public participation to comment on that approach would be directed to the watershed group who would be developing the work plan. The public would engage to say, What's your vehicle for doing this? Is it an individual stewardship plan or is it something else?

Chairman Easton: So we're creating, in essence then, potentially an ordinance that will leave in place the opportunity for the watershed group to actually put the work plan together, and that's the vehicle where the public would then participate, to deal with the issue of whether these plans should be required or not? Because this is – if you want to drill down, if you want to know what's going to be the most controversial – besides our ongoing lawsuit issues; we'll set those aside for a minute and go to the other thing that will be the most controversial – it's that phrase right there.

Mr. Schultz: That is the place where it would occur, within the watershed group, because when you do your ordinance there's only three things you do: You elect to opt in; you identify the watersheds participating; and you nominate watersheds for consideration as priority watersheds. That's all.

Chairman Easton: So is that what he just described – Ron just described – currently being done by Ryan and Betsy?

Mr. Walters: Yes. We are working on that plus making it all read together.

Chairman Easton: Read together with your critical areas ordinance so that they actually __ cohesion? Harmonize, thank you. Harmonize.

Mr. Walters: Right.

Ms. Smith: But also the Ag Advisory Board is seeking to _____.

Chairman Easton: And that brings me to my second question. Thank you, Kendra. Nels, what's the timeline for when the Ag Advisory Boards wants – let me rephrase this. You don't have a plan to comment on yet because we don't have a plan to comment on yet because we're doing a work session on a plan that doesn't exist yet. Because we've all decided – or other people that aren't in this room and some of us in this room – have decided that it's best for us to work together in work sessions prior to us having a plan to comment on. And there's – it's a new challenge for all of us, as the Planning Commission, the Ag Advisory Board and, in some cases, the FAB to figure out how we do this sort of dance. Because in the past we would hear from you right as we were going into public hearing basically. You were part of the testimony that we would hear from. Am I right? That was kind of how we structured. You would make recommendations to us that we would then incorporate into what we were considering,

and then make recommendations to the Board of Commissioners. How does the Ag Board – now granted, you've already had one meeting styled similar to this, maybe even better than this one – how does the Ag Board plan to go forward in relationship to making recommendations? Are you going to wait until you have a proposal? Or are you going to, you know, reach back out to us before we have a proposal and hear from you? How is that going to work? Do you know?

Mr. Lagerlund: Our next Ag Advisory meeting will be next Wednesday on the 12th, I think, and it's on the agenda that we will discuss the options – whether to opt in or not. And then, depending on what we decide, then we will talk about what watersheds are priorities. So that'll be the next meeting that we have. So I think there's a public hearing coming up for this, right? On November 1st?

Chairman Easton: It's – let's say we're tentatively scheduled for November 1st.

Mr. Lagerlund: I would say tentatively after the next meeting we'll have something for you.

Ms. Lohman: And Ryan –

Mr. Christensen: I'm sorry. You've got some subcommittees, too – a land use subcommittee – so they're all –

Mr. Lagerlund: They're meeting this week.

Mr. Christensen: Yeah.

Chairman Easton: So there's work going on on it right now. I don't mean this to try to rush you, but we need to hear – I believe – we need to hear from you – and Annie and I have talked about this – we believe that we need to hear from you at whatever time in the process you want us to hear from you.

Mr. Lagerlund: Okay.

Chairman Easton: I'm a little concerned about scheduling. And I know that's sort of the direction – where we go to next is sort of the direction that we're going into. So I wanted to find out about how that fits into schedules. Go ahead.

Ms. Lohman: I wanted to make sure that we were done with the substance and then we could talk about next steps. Because we had left on the table the Drainage Fish Initiative and the Tidegate Fish Initiative, and you guys had said you were going to try to figure out a way to incorporate that into the Voluntary Stewardship Plan, *if* the County opted in – how you're going to marry that in. Do you have –

Mr. Walters: Yeah, the idea is to integrate that into the existing provisions that say you have to manage drainage infrastructure in a certain way to instead say unless you're part of the DFI.

Chairman Easton: "DFI" stands for?

Ms. Lohman: Drainage Fish Initiative.

Mr. Walters: Drainage Fish Initiative.

Ms. Lohman: Because while the County had that timeout the drainage districts did not.

Mr. Walters: And really a lot of things happened in that time. There are RCWs reference in there that no longer exist. You know, there are a lot of things – little things – that need to be adjusted.

Ms. Lohman: So Ryan, you said a moment ago before we – that you had more that you wanted to say?

Mr. Walters: Oh, yeah. So I was going to say that so where we are now is we need to release a pre-formal draft of the changes to the Ag CAO.

Chairman Easton: Pre-formal draft?

Mr. Walters: Right. Western Washington Ag, Skagitonians to Preserve Farmland requested, you know, give us a draft ___.

Chairman Easton: I just don't use that phrase.

Mr. Walters: Well, right. We usually don't do this.

Ms. Lohman: That's a draft draft?

Mr. Walters: So give us a draft – right – a draft before you release the formal draft because after you release the formal draft you can't make, you know, changes right away because that's the formal draft. So we'll release a draft and then we'll release the draft that goes out for public comment.

Chairman Easton: So this is the draft before the draft that goes out for public comment?

Mr. Walters: Right. We're trying to integrate really lots of feedback into this process.

Chairman Easton: Awesome. That's great.

Ms. Ehlers: From all the ag groups?

Chairman Easton: Carol asked the clarifying question: From all the ag groups – we can assume that means yes, all the ag groups?

Mr. Walters: Or all the ones we know of, I guess.

Chairman Easton: Yeah.

Mr. Walters: I mean, we talked to the Ag Advisory –

Chairman Easton: No, I don't want you sending this notice to ag groups you don't know that exist.

(laughter)

Mr. Walters: Right.

Chairman Easton: I just want to clarify that.

Ms. Ehlers: I have a question about this watershed group. That list of things that's on page 4, that's an awful lot of work. Very detailed, persnickety work.

Mr. Walters: That's why we're going to make Public Works do it.

Ms. Ehlers: Seriously?

Mr. Walters: No. There is a lot of work to do, but there will be a lot of players involved and –

Mr. Schultz: Then again there's also heavy reliance on existing plans and the existing information.

Mr. Walters: Right.

Mr. Schultz: So it's not anticipated that you would reinvent the wheel.

Mr. Walters: There's also funding anticipated, associated solely with the plan.

Mr. Schultz: That's right.

Ms. Ehlers: And which poor soul – I don't mean individual – is going to be in charge of coordinating all of this? This is a huge management job.

Mr. Schultz: That's up to the County to decide once funding becomes available.

Mr. Walters: We anticipate it would be somebody in Public Works Natural Resources.

Mr. Axthelm: That's where my question comes in. It seems like all of this is based on whether funding at some point becomes available. So my question is, Is the County going to spend a lot of time and a lot of money on this before we even have the funds available?

Mr. Walters: I anticipate that the County will spend *some* time and money, although we are already spending lots of time and money on our original path toward compliance. I think I provided you a presentation at the workshop that had some of the numbers in it. We're spending money on water quality monitoring and salmon habitat monitoring, and the management associated with that.

Mr. Honea: Well, and vast amounts on litigation.

Chairman Easton: That's to say Seattle attorneys.

Mr. Axthelm: But there's no guarantee that that litigation isn't still going to happen.

Mr. Honea: Well –

Chairman Easton: Not against us. He's saying it's going to be against the state.

Mr. Honea: There's no guarantee of *anything* in life, I guess, but it's pretty certain that it's going to go away for a while.

Mr. Axthelm: But you're – so –

Chairman Easton: You know, I mean I know we're at a roundtable so let's try to cut through a little bit more of the hyperbole a little bit. If we opt in, they can't sue us; they've got to sue the state.

Mr. Honea: ___ stop attorneys or anybody for anything.

Chairman Easton: Well, I understand but in theory it makes more sense – a lot more sense – for them to sue the state than it does to sue us.

Mr. Honea: I mean, I don't know. We haven't taken a straw pole over there at the Swinomish Tribe whether they intend to stop suing us over critical areas. It's just – they would not appear to have a viable cause of action against us under the critical areas ordinance if we opt into this. Now they can, for example, say, Well, but our treaty rights aren't being protected by the state of Washington. Now I think that would be awfully difficult for them to make that argument personally, but again, against the state of Washington. So to some extent we do have to look at protecting this county, these taxpayers – you know, this jurisdiction.

You know, I was asked to – kind of backing up a little bit – you know, it kind of has come across that this is all seen as a big adversarial thing with the Swinomish, and I think it's

important to look at it maybe a little differently. You know, before, in early 2007, I got asked to talk at an environmental law seminar at the University of Washington. It was before the Supreme Court decision, before this moratorium and the Ruckelshaus process. And I get there and I'm put up against the Tribe's attorney and I'm supposed to argue with the Swinomish Tribe's attorney. And she gets up there and, in summary, her presentation was: agriculture – bad, bad, bad. And I thought, you know – as I was getting ready to get up there – you know, that's wrong. That's totally the wrong approach. These are both socially desirable, necessary things – fish and farming – and we've got to figure out how to balance them. We've got to figure out how to do it in a way that makes economic sense, for one thing. It's always easy to tell people to do things with their land if it doesn't cost you any money.

And so this is, in my view at least, a step in the right direction because we're going to one more time extend the olive branch to the Swinomish Tribe and say, Let's work on this together. Now if they, you know, if they throw it down in the mud and stomp on it that's their choice, but this is at least a positive path forward.

Chairman Easton: Ron, how many of the counties that you visited are working in the direction of opt in? I mean, I know that's kind of a vague question to ask but you – you're going around to, like, thirty-eight counties, right?

Mr. Schultz: Oh, yeah. The best guess right now is roughly twenty of thirty-nine counties.

Chairman Easton: Because I know that at least one neighboring county is seriously considering not opting in.

Mr. Schultz: Right.

Chairman Easton: In Island County.

Mr. Christensen: And Snohomish.

Chairman Easton: Actually I talked to Snohomish folks, but I talked to the Island County folks that are leaning in that direction, too. And I recognize that these are apples and oranges, the three counties are different, and we are the ones that got to be the poster child at the Supreme Court level. I get all that. I'm just – I need a little context.

Mr. Schultz: Some of the other counties, some of their decisions, some of their thought processes going into their decision – for example, in Snohomish they had just completed a critical areas ordinance shortly before the process started. While the process was going, they started a process they called “The “Snohomish” – or “The Strategic Lands Strategy.” It's the _____. And so they started that process and so they're sort of thinking, Well, we have this covered. Other counties, again, feel like their critical area ordinance is sufficient.

Other counties on the other side are weighing factors such as litigation that has happened. They're weighing other factors such as – you know, especially smaller counties that – I was meeting with their Planning staff – their whole Planning staff, all two of them – and you know, We don't have the resources to do all this and so this gives us some breathing room. So the reasons vary. I think some of the counties that are considering opting in include Thurston is considering; Kittitas; Yakima; Lewis, I hear will opt in; Grays Harbor. So that's, you know –

Chairman Easton: That helps me with context.

Mr. Schultz: Yeah, it's scattered across the state.

Ms. Lohman: But I don't think you can really compare us with our neighbors to the south and to the north because our –

Chairman Easton: Or to the west.

Ms. Lohman: The way that we designate our lands and prioritize our NRLs are entirely different.

Chairman Easton: I agree.

Ms. Lohman: But I think this could be an opportunity for Skagit to put our circumstance in the record, like Ryan referred to at an earlier work session about what GIS has done. Document what we actually have. And that is a good story to tell, and I think we could use this to tell our story maybe for the first time in complete – in a complete way.

Mr. Walters: So to continue the where we're going – going forward here – so we put out a pre-formal draft before the formal draft. At the time that we release the formal draft, we'll release a staff report and then also an analysis of all the factors that are laid out in the legislation.

Chairman Easton: Can you help me understand when you're going to do that? Because I'm looking at our schedule right now and it has here the public hearing on November 1st.

Mr. Walters: Yes, as soon as possible.

Chairman Easton: Okay.

Mr. Walters: Well, I mean, we want to get it right, but we also want to build in extra public participation, and we have built into the schedule initially an extra month so that there was extra time to handle all this.

Chairman Easton: Right, because we have till December 13th. The Planning Commission's schedule –

Mr. Walters: I just think the Planning Commission will be done with it before December 13th.

Chairman Easton: Right. Okay, so you anticipate it being done – you have us currently scheduled to be done by November 15th. Our deliberations are scheduled for November 15th.

Mr. Walters: Right, and you might be – you might slip past that, but you're not going to be December 28th.

Chairman Easton: Well, that wouldn't work in – December 13th is the last time we're going to meet in the year.

Mr. Walters: Right.

Chairman Easton: Okay, this will work. Good. Then the question that I need to take – Annie, do you want to – are you finished? I'm sorry, Ryan.

Mr. Walters: Okay, so the staff report and then the analysis, so that will come out in the complete package so that people will have a, you know, full understanding of what it is we're talking about.

Chairman Easton: Right.

Mr. Walters: How much is this going to cost? Those types of things are going to be in the analysis. How much are we currently spending? They're going to be in the analysis. And it's not – I mean this isn't – that part of it is not just a Planning exercise because Planning doesn't currently incur these costs; it's Public Works.

Chairman Easton: What about the Prosecutor's office's expenses?

Mr. Walters: Classified budget, right?

(laughter)

Mr. Walters: Well, the Prosecutor's office really hasn't had significant expenses in the last four years.

Chairman Easton: Okay. I just know we referenced it earlier.

Mr. Walters: – associated with _____, spending outside counsel dollars in significant amounts.

Mr. Honea: Yeah.

Chairman Easton: Okay.

Mr. Walters: So it's going to include – but it's going to include that type of information, and how the critical areas ordinance currently works and how it will work afterwards. And then it goes to a public hearing, which is your standard format. So you'll have a formalized public comment period, you'll have your public hearing, and then your deliberations, and then it goes to the Board. So after the formal draft release, it kind of enters the slipstreamed standard process you're familiar with.

Chairman Easton: Okay, so here's what I would like to propose. If we need to push the public hearing, then we look at the 22nd of November, and the 15th public hearing and the 22nd of November be the deliberations. So then we – we are done with this – if we have to go back a week, we are done with this by Thanksgiving, which would give – does that seem like a –

Mr. Christensen: But the 22nd's the week of Thanksgiving.

Chairman Easton: Yeah. We can meet on that Tuesday – we have in the past – to try to get ourselves out before Christmas. Is that some – does that sound –

Mr. Christensen: Yeah, –

Chairman Easton: Because I'm about to –

Mr. Christensen: ___ early –

Chairman Easton: I'm about to take a poll of the Commission about whether or not we need another public – another work session. And that's a conversation that we need to have.

Mr. Walters: And if we add another work session that makes things tighter, but we can accommodate.

Chairman Easton: Right. And I'm just – that's what I'm trying to – what comes first, the chicken or the egg. Annie?

Ms. Lohman: When were you going to schedule a time to hear from the Ag Advisory?

Chairman Easton: Well, and that's a question I have for the Ag Advisory Chair. You told us that your meeting's on the 12th. There's two different ways that you could get back to us: One way would be in a work session – a joint work session like this, where your Board is invited with more notice than we gave you today. Thank you for being here on short notice. And we have a conversation about this and if we need to hear from other speakers that may not be a part of the Ag group, we do an additional. The other option is that we hear from you when we go to deliberations – or not deliberations – excuse me – when we go to public hearing. So do you have a preference?

Mr. Lagerlund: I don't have a preference but, you know, I think we'll come up with a recommendation at the next meeting and I can just _____. We're going to prepare a letter and what we recommend, so I don't know that it would do much good to sit around and discuss it more with us.

Chairman Easton: Have another _____. Okay.

Mr. Lagerlund: Unless that is something that you guys wanted to do.

Chairman Easton: And now I want to ask the rest of the Commission, first with Annie, and then to each Commissioner to weigh in on whether you feel like you need an additional work session. Annie?

Ms. Lohman: I personally don't, but I want to make sure that the Ag Advisory feels that they communicated with the Planning Commission.

Chairman Easton: Definitely.

Ms. Lohman: That's my goal: a relationship with them.

Chairman Easton: But you're saying that we don't have to do a work session for you to feel like that's going to happen? Am I hearing you right? Do you feel like you can communicate with us what you're thinking without having another work session?

Mr. Lagerlund: I think so.

Chairman Easton: Okay. Here's what I'm thinking – well, let's hear from the rest of the Commission. Dave?

Mr. Hughes: I don't need another work session but, you know, all this talk about – you guys are going to meet, but unless you have an ordinance or something in front of you, I mean it's – it's – frankly, until I see something that we're going to have a public hearing on it's –

Chairman Easton: It's hard to ____ until you get the information.

Mr. Hughes: Yeah. _____ about the weather and how this and this. Get to the meat and potatoes, right?

Ms. Lohman: But he does have a task.

Mr. Honea: Yeah, it's yes or no; which watersheds participate; which ones are priority. So it's pretty straightforward.

Ms. Lohman: I mean, it's not an easy task for him. I don't want you to think that you got an easy job there.

Chairman Easton: Carolyn?

Ms. Kelly: When did Ryan say he was going to have the draft draft?

Chairman Easton: He said as soon as possible.

Mr. Walters: I deliberately didn't. Just as soon as possible.

Ms. Kelly: Well, wouldn't that be helpful for the Ag Advisory Board to have that?

Mr. Walters: Definitely. And the Ag Advisory Board has the Land Use Subcommittee meeting on Thursday.

Mr. Honea: I'm going to lock him in his office and he's not coming out until he has an ordinance.

Chairman Easton: That's spoken like his boss!

Ms. Lohman: He's got his sleeping bag under his desk.

Chairman Easton: He does.

Ms. Kelly: Well, I think that'll – in my mind – answer some of these questions.

Chairman Easton: Well, and here's an idea – here's a thought. When you meet on the 12th, I would like you to make an additional – in addition to deciding what you've already got on your plate, decide whether you want – ask the Board – your Board – if they want a work session with us.

Mr. Lagerlund: Okay. I can do that.

Chairman Easton: Because I don't to be a part of leading, as the Chair of the Planning Commission. I do not want to be a part of leading us into a decision, of being a part of the leadership of a decision that affects the ag community without absolutely being sure we've heard from the ag community as much as they want to be heard from. And that's the entity that you chair, is the official way in which the ag community communicates with this body, as per the way the County Commissioners have set things up. So if the rest of the Commission is okay with that, I would like to hear their recommendations. If you can get back to us about that on the 12th we can decide – because we have the freedom in our schedule on the 18th or the 1st to play with some – Carly said we can move some things around. Betsy, your presentation on the 18th is the only thing that's currently scheduled. Is that a full meeting?

Ms. Stevenson: No, and it's flexible as well. It's already past a time that – we have information out to the public now that I sent you guys copies of.

Chairman Easton: Right.

Ms. Stevenson: So if it needs to go away for a while, it can go away for a while.

Chairman Easton: So like if it needed to move to January, that would be – not good?

Ms. Stevenson: No, I'd hate to have it go that far, but it could if we have to.

Chairman Easton: You know it might work best later in December, in early December. Okay. So if the Commission is okay with this idea that we consult with the – I know that some of you don't like this idea, so if you want to say you don't like it, go ahead, Mary. I'm going to defer to the Ag Board. I believe that's what's best. Does anyone disagree with me enough that they want to speak up besides Mary?

Ms. Ehlers: No, but –

Chairman Easton: Carol?

Ms. Ehlers: Well, Jason brought up a while ago the impact to landowners. And we're talking about any agricultural activities. A lot of people in that category are not represented, I think, on the Ag Board.

Chairman Easton: But they'll all have a chance to comment at the public hearing. They'll all be noticed like everyone else is for every public hearing that we ever do. Right?

Ms. Ehlers: Not necessarily.

Chairman Easton: Do you have a suggestion?

Ms. Ehlers: No, I don't because I hadn't been given this to think about before I came. I do a lot better if I can think before a meeting.

Mr. Honea: The Ag Board is under our system of promoting these ordinances and bringing them forward, the official advisory body.

Ms. Ehlers: I understand that. I've been part of this from the beginning and I agree with that. I'm saying that you have here – when you're broadening this outside of the Ag zone you have a whole category of people who are not used to thinking of themselves in the same category that the ag people in the Ag zone think of themselves.

Chairman Easton: You're right. The guy living on Rural Reserve with a horse doesn't think of himself as an ag guy, right?

Ms. Ehlers: Well, and even if he's got a small farm –

Chairman Easton: With pygmy goats – I get it.

Ms. Ehlers: – with a couple of cattle or what have you, and it's not a hobby it's just additional money to whatever he earned in a job, which is a realistic thing.

Chairman Easton: But Mr. and Mrs. Hobby Farm Owner, Carol, is going to get notified the same way they got notified about the critical areas ordinance update and the Comp Plan.

Ms. Ehlers: Yes, and that was done by the *Skagit Valley Herald* and something on the Internet and that doesn't work.

Chairman Easton: As Chair, I'm open to suggestions about how we could do – I'm always open to suggestions about we can do a better job encouraging the public to attend and participate in our meetings. Ryan?

Mr. Walters: So notification under the legislation has to be consistent with GMA processes. And, actually, the way we notified people about the GMA update and that critical areas update is more extensive than what we do for other development regulations. So typically for a regular development regulation there's notice in the *Skagit Valley Herald* but there aren't postcards and that kind of notification. Postcards being expensive, we usually get grants to do, you know, Shoreline notifications and that kind of thing.

Chairman Easton: Sure.

Mr. Walters: So my anticipation associated with this is, you know, we did do postcards to people that are already indicating interest in this issue, and we did *Skagit Valley Herald* notifications, we did e-mail listserve notifications. I don't anticipate sending a postcard to anybody that has a horse in Skagit County. Also we don't know who those people are.

Mr. Honea: I think it's a wonderful sentiment, Carol, but it's – you know, you also have to consider that GMA's notice and opportunity to participate provisions are vastly broader than anything else we do and anything else we regulate. For example, noise ordinances. Noise offends a lot more people than this, probably, or putting fluoride in water for health regulations. I know a few people were exercised about that!

So, I mean, I think that, you know, the notice and the opportunity to participate here in any set of circumstances is a lot broader than most of the other stuff the County regulates.

Chairman Easton: Carolyn and then Annie.

Ms. Kelly: Oh, I was just going to say, Carol, that it's been my experience that most of the members of the Ag Advisory Board, if not all of them, are cognizant of the different scales of agriculture in the county and take in – take that into account when they do considerations. It's not all about the huge commercial farms. But I've been, you know, there. And the meetings are open to the public.

Chairman Easton: Annie.

Ms. Ehlers: You have an interesting lead. Those of us who've participated for a long time have a good knowledge of how these things work and how the County works. But there's a ___. It's sort of like teaching first grade how to read: There's always a new group. And you forget. You say, I've taught reading for twenty-five years, but here's another group that needs to know it. And –

Chairman Easton: That's why we don't _____. It's a good reminder.

Ms. Ehlers: Exactly.

Chairman Easton: Annie.

Ms. Lohman: I think – Carol, and I appreciate your suggestion – maybe the County ought to reach out to WSU Extension, because they would – they have a huge connection with the hobby farms and the 4-H and some of the –

Ms. Ehlers: Absolutely. Are you going to?

Ms. Lohman: Well, I'm just saying it out loud.

Mr. Walters: We have already sent the postcard to them but we will reach out and specifically ask them to forward that news to their database.

Chairman Easton: Excellent. That would be helpful.

Ms. Lohman: You wouldn't have to spend – reinvent the wheel on that.

Chairman Easton: Great suggestion. Okay. Anything else about this topic that the Planning Commission members or the members of this roundtable would like to add before I move us to the next section? Matt, did you want to add anything?

Mr. Mahaffie: No.

Chairman Easton: Elinor?

Ms. Nakis: Oh, I just wanted to confirm what I'm thinking I hear.

Chairman Easton: That would be helpful.

Ms. Nakis: Okay! So the pre-formal draft, or the draft of the draft, is going to be done real soon and it's going to be given out to the Ag Advisory Board for their meeting on the – October 8th? Is that –

Chairman Easton: October 12th.

Mr. Walters: October 12th.

Ms. Nakis: Oh.

Mr. Walters: They have a land use subcommittee on Thursday; they'll have it in advance of that.

Chairman Easton: And the draft – we can assume that the draft draft will also come to us?

Mr. Walters: No, we're not providing it to you because it is a secret draft.

(laughter)

Chairman Easton: Is that part of the black budget, the black ___ budget inside the Prosecutor's office?

Mr. Walters: Yeah, that's what that covered.

Mr. [REDACTED]: That's when the TV went fuzzy.

Chairman Easton: Nice!

Mr. Walters: No, it'll be on the website and you will have all this.

Chairman Easton: Excellent. Thank you.

Ms. Nakis: And then possibly then we would meet on October 18th?

Chairman Easton: We're still – we're scheduled to meet on the 18th. You'll hear from the Director or the Chair about what our agendas will be for the upcoming month as they develop. How's that for a plan for the two of us?

Mr. Christensen: Sounds good.

Chairman Easton: We came up with a plan right there.

Ms. Nakis: Okay. And so I just wanted to kind of get that in my head.

Chairman Easton: Okay.

Ms. Nakis: And then just say that I don't believe I need another work session.

Chairman Easton: Okay.

Ms. Nakis: I received very good information.

Mr. Walters: I think that the Department really appreciates the Planning Commission's flexibility with respect to the dates that you're scheduled to __. Because it helps the Department and everybody else who's working on these things perform more quickly if, you know, we're working to meet as soon as we can.

Chairman Easton: So, to that end – I just want to be really clear that in the calendar for us, the only dates that I'm at this point asking that these folks commit to are the following: October 18th, November 1st, November 15th, December 6th, and if necessary, December 13th. That would be for the remainder of all business for the Planning Commission for 2011.

Mr. Christensen: So I've got your permission to delete the reference to Tuesday, December 20th?

Chairman Easton: Oh, you have my heartfelt thanks for you deleting December 20th.

Mr. Christensen: Do you want us to add the 15th there?

Chairman Easton: No.

Mr. Christensen: "To be determined"?

Chairman Easton: No. Just leave it at the 13th – only if we can't finish on the 13th. Annie?

Ms. Lohman: To finish up, can we post Ron Schultz's presentation that he gave us?

Mr. Walters: It's already on the website.

Chairman Easton: Excellent. And any other issues about – and, Nels, we understand – you understand what I'm asking for about you guys considering whether you want an additional public work session with us.

Mr. Lagerlund: Yes.

Chairman Easton: Awesome. And we look forward to seeing your recommendation. And, by the way, if you weigh in before the draft draft – I mean, after the draft draft and

before the draft – it doesn't mean you can't – you guys couldn't re-weigh in again on the draft.

Mr. Lagerlund: Okay!

Mr. Walters: Well, you could call it a preliminary draft.

Chairman Easton: Right?

Mr. Walters: Sure.

Chairman Easton: Okay, great. All right, so we're done with Ruckelshaus tonight. I think that we'll go to General Business then. Thank you, Ron, and thank you, all of you, for coming today. We appreciate – I know that this was a slightly hastily-called meeting and we appreciate Ron being here, and all of you. And I want to say thank you to Annie for helping to facilitate this and to the Director. Thank you, Annie, for chairing this portion of the meeting.

Ms. Ehlers: May I also say this to Ron? That I got this before the meeting, and trying to read it it didn't make a lot of sense. Your explaining did help considerably, although I'm still not quite sure that the word "voluntary" is applicable.

Chairman Easton: And I look forward to you debating – I look forward to you discussing that with Ron offline. And Ron will be here for you after the meeting, I'm sure. And, with that, we'll go into General Business. I have two short announcements – real quick announcements. Is there anybody else with any other General Business?

Mr. Christensen: One.

Chairman Easton: Okay. Go ahead, Mr. Christensen.

Mr. Christensen: Let's see. On September 20th, I think it was, I provided an update to the 2011 Legislative Work Program to the County Commissioners. So that, of course, is televised and you can look at that on the website. I now have that in a pdf file, which we will send out as a listserve, and a copy of which will go to the Planning Commission.

Chairman Easton: Thank you. I have two things for me. This morning, as Chair of the Planning Commission, I appeared before the Board of County Commissioners on two topics. If you're interested in reviewing those, they are on this morning's – can be seen on Skagit 21 or on the website. They were – the Commissioners took some – did some – took some action on pipeline safety and took some action on our – was it – the 2011 Version 2 code amendments, which covered the extensions of plats and the issues around the Bayview Ridge area. So that's –

Mr. Christensen: School siting.

Chairman Easton: School siting. Thank you. If that's of interest to you, be aware that that's what we did. That did happen this morning and you can review it there. Is there anything to come before the Commission before we close?

(silence)

Chairman Easton: All right, we're adjourned (gavel).