Skagit County Planning Commission
Discussion: Shoreline Master Program Update
May 12, 2015

Commissioners:	**Josh Axthelm, Chair** **Keith Greenwood, Vice Chair** **Annie Lohman** **Robert Temples** **Amy Hughes** **Kathy Mitchell** **Kevin Meenaghan (absent)** **Matt Mahaffie (absent)** **Tammy Candler (absent)**
Staff:	**Dale Pernula, Planning Director** **Betsy Stevenson, Senior Planner** **Ryan Walters, Civil Deputy Prosecuting Attorney**
Public Commenters:	**Randy Good** **Ellen Bynum, Friends of Skagit County** **Carol Ehlers**

Chair Josh Axthelm: (gavel) We're going to start the meeting. So it's Tuesday, May the 12th, 6 p.m., and we call this meeting to order. Are there any adjustments to the agenda from the Commission?

Unidentified Planning Commissioner: No.

Chair Axthelm: With that we'll proceed to the first item, Public Remarks. Do we have any remarks? Please remember that you have three minutes.

Randy Good: Randy Good, 35482 State Route 20, Sedro-Woolley. During the March 17th Planning Commission Transportation Element Workshop the public was informed they could present additional public input on the Transportation Element at the regular Planning Commission meetings. So on April 7th I presented oral comments plus written letter to the Planning Commission. Today I am resubmitting those same comments with the same two attachments to be sure that the Planning Commission has the opportunity to see them. The attachments were not in the transcript. The attachments demonstrate how misled and misinformed the Planning Commission was by Walters and the Parks Department personnel in providing support information to the Planning Commission. One is a letter from the Town of Concrete opposing any paving of the Cascade Trail for many reasons, and a second letter from the Washington Department of Transportation on the United States Bicycle Route 10. We will hand out copies of these to the Planning Commission so each member has one. Please route a copy to the Transportation Element public record for us, and also we encourage the Planning Commission to provide a public comment period during the upcoming Rural Element Workshop. Thank you. And we'll hand out copies.

Chair Axthelm: Okay.

Ellen Bynum: Good evening, Commissioners. Ellen Bynum, Friends of Skagit County, Mount Vernon. I wanted to continue with the request that Randy made to have a public comment period at the upcoming workshop. I and three other people will be speaking generally about the Rural Element, but in doing my research for that I've come up with a variety of problematic pieces. For one thing, I'm getting lots of feedback from people who don't understand why rural doesn't include farms and forests. And I know that's – you know, we defined this as a rural element and some people have suggested that possibly it should be called something else so that rural could also include farms and forests and also the tax-exempt lands that aren't taxed, the national forests and parks. So there is some confusion about what rural includes.

And then the second that I've been getting is that some people are saying, Okay, the Comp Plan is supposed to and the GMA is to address land use, but there are people that live on those lands. So if we have 48,000 rural residents of Skagit, some of them do live on ag and forestry parcels, but yet we're not doing a review in this Comp Plan Update of the ag and forestry sections. And so any issues that those people might have would only able to be presented as a Comprehensive Plan amendment. So that's a second piece of it.

Then I had a nice history lesson from two previous members of the Planning Commission. And one of the things that I was reminded of is that these rural zonings, of which there are, oh, 15 or 20 as we now have it – of the zonings which include – and I'll just read them out – Rural Resource, Rural Reserve, Rural Intermediate, Rural Village Residential, Rural Village Commercial, Rural Business, Rural Center, Rural Freeway Service, Rural Marine Industries, Cottage Industries, Small Scale Business, Small Scale Recreation and Tourism. I don't know that the last one belongs in that category but of those, really the two that have the most number of acres that would tend to be places that people would want to build on are Rural Reserve and Rural Intermediate. And those two together are, let's see, I think it's 71,500 and 8600 acres, so it's a really, really small percentage of the county. But the critical notion about it is that may be the place that you have to put more development in order to *not* put development in the forestry zone and in the ag zone. And that might seem obvious to people but what it also means is that our conditioning and our things that we want to do in the rural zone are the most important of all the elements that we get to deal with. And a good reminder, too, was that the other zonings that I – all the other rurals that I read are actually put into the plan because –

Keith Greenwood: Ellen? Three minutes.

Ms. Bynum: Yeah – because they were pre-existing conditions and they're not suitable places for expansion. So I just wanted you to be aware of that and we'll be talking to you again next week about the same thing.

Carol Ehlers: Carol Ehlers, west Fidalgo Island. If you're going to talk about rural, that's everything but the cities and you can't do it in one evening. The Element, the Rural Element, does not cover forestry, does not cover farming, does not cover a lot of things. It does cover Rural Intermediate, which is where most of the houses were and therefore were grandfathered in – that's the so-called 2½-acre – and Rural Reserve, which you have been talking about for months as a residential zone but it isn't. People who are concerned with these various things need to look at the plan itself before they get to that meeting and at the code. I realize that's a hell of a job because I helped write it. It's hundreds of pages. But the real problem that I see living in Rural Intermediate is that nobody has ever really appeared to understand Rural

Intermediate. We used to meet long nights the way you guys have the last couple of times and I want to thank you for it. And at ten minutes to ten one night they said, Oh, we'll just put a 2½-acre zone over everybody who's living in the current zone, whether it's less than a tenth of an acre, or a tenth of an acre, or a quarter of an acre, or a half an acre, or an acre. We'll just call all of it 2½ acres. There won't be any problems. So a couple of years later somebody said, Oh, 2½ acres. Let's put lions and tigers as legal in any of these. And I went to the County Commissioners' hearing and said, You can't put a lion or a tiger camp/collection in a quarter of an acre. And the County attorney said, You couldn't possibly know what you're talking about that says 2½ acres, and that's what it all is. And I said, But I live in it and I helped write it and it's very small acreage and nobody understands what it means to live on small acreage with a couple of – maybe ten – feet between you and the next place and have a County Code which says you can only pay attention to noise if it's 150 feet away because, obviously, everybody lives in a large zone. There are lots of code difficulties in Rural Intermediate, even more in Rural Reserve. You've got to deal with them.

Now the trouble is I didn't intend to come tonight to talk about that, and I've used up most of my three minutes. What I handed out to you is something from the Coordinated Water System Plan, which is a legal document mandated by state law which the County finally got around to doing in 1990. When I found out – I was on board of water systems for much of my life here and I went to meetings in Seattle and I found that someone had issued a contract to see if they couldn't take the Skagit River for Lake Washington. I came back, told Commissioner Bill Vaux. Within a month the Fidalgo Island Interlocal Agreement was turned into the Skagit County Coordinated Water System Plan. This is it, 300 pages. It's on the Internet. It's dense but it's a compilation of all the laws, all the WACs, all the ideas that govern water. The road system is the skeleton of the county and its economy. Water is the blood. And if you don't have the water and you don't have it in the right places and you don't have the right quantity, then you're stuck. But what most people don't know is that the two big water systems, Anacortes and PUD, don't cover much of Rural Intermediate and Rural Reserve. Those areas are full of little water systems: Group A if they're 15 or more; Group B if they're smaller. Group A is regulated by the State Department of Health; Group B is regulated by the Skagit County Department of Health. And from what I've seen this last week there's problems because the woman who was *the* guru for decades has retired – Lorna Parent. And I don't get a straight answer about most things from anybody, which is simply because there's a transition time. But meanwhile you're doing the plan. You've got to know where the water is because we have to have it.

Now when you're reading this, there's two words that are often interchanged that are not the same. A water connection is not the same as a water right. A water right is something that comes from the Department of Ecology. A water connection is a legal arrangement with the water system, which is a corporation organized under the State Department of Health and under the homeowners association laws. And they have the authority in their water system, not the County.

Mr. Greenwood: Okay, Carol. That's –

Ms. Ehlers: Thank you for giving me the chance to say it.

Chair Axthelm: Thank you. Any other public comment?

(silence)

Chair Axthelm: Seeing none, we'll move on to the next portion of the agenda, the Shoreline Master Program Update. Betsy?

Betsy Stevenson: Sure.

Chair Axthelm: You finally get your chance here.

Ms. Stevenson: Yeah. Thank you. First of all, thank you for coming in tonight for a special meeting to kind of take care of what we didn't get to at your meeting last week. I really appreciate it. We didn't add anything more than what we were going to try to do then so hopefully it won't take *too* long and too much of your time tonight. The sections that we prepared for you was Part I in the Authority, Purpose, and Jurisdiction. We made some changes to the Jurisdiction section so that's what we're going to look at first, and then we got into Part III with Public Access, which I know we had some really good discussions. We're hopeful that we captured your comments and concerns while still kind of addressing. We kind of reorganized it, tried to make it flow a little better. We realize that there are times when public access needs to be addressed, looked at, evaluated, but we gave kind of some different options and different levels of, you know, what you need to look at and whether it's feasible, or how we can do it and some flexibility in being able to do those things, knowing that sometimes it's just not appropriate at certain places. So that's that section.

The Vegetation Conservation is something kind of new and that's been developed for these Shoreline updates during this round. We talked about it a little bit. Again, we tried to incorporate your comments. We tried to organize it at least so it made a little bit more sense and flowed a little better for us, so you can give us a sense of whether we accomplished that or not. So there again, the first section is just the Part I. There came up an error message on the printed version under Applicability under section 130. That should read 14.26.405 Agricultural Activities. I'm not sure why it printed like that. It didn't look like that on the screen. I don't know if you want me to –

Unidentified Planning Commissioner: Where are you seeing this?

Dale Pernula: I don't know where you're at.

Ms. Stevenson: Okay, in Part I under 14.26.130 Applicability in the first number (1) where it says "Error! Reference source not found." It's actually – we had typed in 14.26.405 Agricultural Activities, but it didn't show up.

Mr. Greenwood: Isn't there another error message similar, though?

Ms. Stevenson: There may be. I tried to go back and look – yeah, there's another one – but I didn't pick that one, it looks like. But I see one in 150. So you will figure that out. I think it probably printed on ours and it just – or it shows up online. It just didn't print for some reason. So we'll go back and fix that. Oh, okay. Since we only printed a portion of it, it sounds like that may be why. I would defer to Ryan for that. So, again, in the section 14.20 – well, I guess you can go through the Applicability section. We did try to make some changes based on your comments. If you have any thoughts, we can go through those.

The next section that we changed was 14.26.140 – have to make the call of whether when there's a portion of a critical area or a buffer that's within shoreline jurisdiction as well, do you just include that portion that *is* within shoreline jurisdiction or do you go ahead and take the whole critical area and the entire buffer? So we have gone both directions now. We've gone the

other way, and I know there's some reason why we thought it might make sense but I'd love to hear your thoughts too because I've thought about it both directions.

Ryan Walters: Well, the primary objective was to streamline permitting so if you had a critical area that was partially within the shoreline jurisdiction that you are probably getting a shoreline permit, you would go for the shoreline permit and not have to get also a critical area permit. But last time we went through this with you, you identified the problem of, What about a stream? The way the language is written, if the stream is perpendicular to the shore, it could include – if you read the language that way – the stream all the way back to the headwaters in Canada, so we didn't want that. So we decided to go the other way, which is to exclude the critical area or to not include the rest of the critical area outside the normal shoreline jurisdiction. Now we still want to streamline permitting so we will try to figure out some modification to the critical areas ordinance to address that. So the critical areas ordinance will get some modification that we'll draft sometime later that will say if you're getting a shoreline permit you don't also need a critical areas permit, or something. We still want there to be only one permit that you have to get, not two for the same thing. So we will accomplish that. Then this is probably a better way because you're not extending the shoreline jurisdiction and getting Ecology involved more with more of their review.

Annie Lohman: You're referring to number (2), right? On your memo. 14.26.130, it's number (2), right? Is that where you –

Mr. Walters: 14.26.1*4*0, number (2).

Ms. Lohman: Right. Sorry. I jumped. So does that mean then that you're not going to – if the critical area buffer is located in the shoreline, you're not going to have a permit fee for the critical area assessment or analysis or whatever for the permit?

Mr. Walters: No *additional*.

Ms. Lohman: No additional cost?

Mr. Walters: Right. That's the objective. For – and it might be helpful if we had those. Do we happen to have those diagrams? Do you want to put those on the projector?

Ms. Stevenson: I can. That's kind of why I brought them – just in case.

Mr. Walters: So this applies in the case – this only comes up in the case where you have a critical area that spans the shoreline jurisdiction boundary. The shoreline jurisdiction boundary – and this is an oversimplification – is 200 feet from the ordinary high water mark. So looking at this here, that red line, I believe, is the 200 feet and you've got a critical area that spans the 200-foot boundary. If you're doing work inside shoreline jurisdiction, you're going to have to get a shoreline permit. We're aware of that. But if you're also affecting the critical area outside, maybe you have to also get a separate critical area review. We don't want separate. We want it all to be integrated – one permit.

So one option – the one we chose before in the first draft – was to extend shoreline jurisdiction so that you're getting all shoreline permit for the whole thing. And after your comments we decided to go back the other way, thinking that it is simpler to not extend shoreline jurisdiction and just – you're going to have to get your shoreline permit still, but we will fix the critical areas

ordinance to prevent you from having to get a separate critical areas review. Betsy looks like she has something to add.

Chair Axthelm: So is that a choice?

Mr. Walters: Yes. Jurisdictions are specifically authorized to choose how to deal with that situation.

Ms. Stevenson: But just to make it clear, the red line on this drawing is the shoreline jurisdiction; however, because a portion of the critical area is within shoreline jurisdiction the remainder of the critical area – there's a little blue dotted line. I don't know if you can where I'm putting the paperclip – that would also be in shoreline. That would be included as part of it; however, the buffer wouldn't.

Chair Axthelm: So it's not part of the jurisdiction but it is part of the review. So Department of Ecology, even though it's not part of the jurisdiction, will be able to review it?

Ms. Stevenson: It *is* part of the jurisdiction because part of the critical area is actually within shoreline jurisdiction so you include the entire critical area.

Mr. Walters: Well, and in this case that's –

Ms. Stevenson: But not necessarily the buffer in this.

Mr. Walters: In that case, that's a wetland?

Ms. Stevenson: Right.

Mr. Walters: Yeah, an associated wetland?

Ms. Stevenson: Right.

Mr. Walters: So we must include associated wetlands but we don't have to include all other critical areas and their buffers.

Ms. Lohman: So the key word is wholly? So if that critical area was below the red line and within the shoreline then it would be only within the shoreline jurisdiction, right?

Mr. Walters: Right. If it were below the red line.

Ms. Lohman: If it was all in the shoreline.

Mr. Walters: Right. And if it were all above the red line, then it would be completely separate from shoreline jurisdiction and you would just do a regular critical area review. In practice there's not going to be a significant difference in the regulation, except to the extent Ecology might have to approve any particular permit, because we're incorporating the critical areas ordinance by reference. So we should have the same regulations that you experience now on both sides of the red line. But we do not want to have two permits and two processes for the same thing that you're trying to regulate. So we're trying to eliminate that.

Chair Axthelm: So if your property straddles the red line, and let's say the critical area's entirely below the red line here you would still have that scenario because you'd still be required to do a shoreline review?

Mr. Walters: If your property straddles –

Chair Axthelm: – is on both sides of the red line but the critical area is all in – or not the – that critical area is all within the red line – if your property goes on both sides of it.

Mr. Walters: Well, it depends on maybe your project footprint. Do we have any other examples in that packet that show both?

Ms. Stevenson: I can pull some other stuff out of the handbook, if you want me to. Here's another one with some wetlands. It's a little smaller so it's harder to see.

Mr. Walters: So actually, yeah, that's pretty handy. Because what's not a choice is associated wetlands. Those have to be in shoreline jurisdiction. So on that diagram the green puddles are associated wetlands and then the blue are wetlands not in SMP jurisdiction. So the one on the right – upper right – that's outside of shoreline jurisdiction. But if you had a house that you were putting, like, right on top of where it says 200 feet there, then you'd be looking to see if it is impacting the blue wetland or any of the green wetlands. And without some special accounting or permit streamlining provision to add it to the critical ordinance, you'd be doing a critical areas review for the blue and shoreline permit for the green. So we're going to fix that separately. We just think this is better than extending all of shoreline jurisdiction out to include that wetland, because the language that we did away with that was in the version that you saw before said grab all the critical areas and their buffers that are connected. And for a stream that's especially problematic for flood. A frequently flooded area, that could be quite problematic for – well, for all of them that could be quite problematic because there's no end to how far out you go then.

Ms. Lohman: And I thought that we weren't going to reach into the 100-year floodplain except in the Skagit floodway in that Rural Conservancy.

Mr. Walters: Yes, and we don't. We don't.

Ms. Lohman: So in this example –

Mr. Walters: Right. That's why we don't want to go in that direction.

Ms. Lohman: Which – um – it's a different topic.

Chair Axthelm: (unintelligible)

Ms. Lohman: The floodway – on number (f) in our handout, it says "floodways and contiguous floodplain areas extending 200 feet from the floodway." Can we be very specific which floodway we're talking?

Mr. Walters: Well, I think that's straight from the statute.

Ms. Lohman: But I thought that it was up to the County to decide where they wanted to. They have to pick the floodway, so I thought we only had the one floodway.

Mr. Walters: And this would extend 200 feet from the floodway.

Ms. Lohman: Right, but can we be specific? Because I think Betsy's not going to be the only one there that remembers all these discussions or somebody can pick other – I want to make sure that we are consistently specific.

Ms. Stevenson: This language is right out of the RCW, so it's the floodway and if, in fact, the contiguous land 200 feet from the edge of the floodway is still all within the floodplain, then that's all within shoreline jurisdiction.

Mr. Walters: But that's a measureable – that's a hard stop at the 200 feet.

Ms. Stevenson: Right. Right.

Mr. Walters: So it's not *all* contiguous land. It's contiguous out 200 feet.

Ms. Stevenson: Right. Right.

Ms. Lohman: But in this county, though, it is that one designated floodway, correct? Well, what other floodways –

Ms. Stevenson: ____ for maps but not the Rural Conservancy Floodway designation that we were talking about for the Shoreline Program.

Ms. Lohman: So am I mixing apples and oranges here?

Ms. Stevenson: I'm not sure.

Ms. Lohman: Am I mixing apples and oranges thinking that this is about that when it's a more generic?

Ms. Stevenson: Yes, if you are thinking that this is about that designation that we came up with for the shoreline stuff.

Ms. Lohman: Okay.

Ms. Stevenson: As we started looking at that and as we had it in our table and were talking about it, it wasn't working out very well. The reason I suggested it, which you guys probably remember, is that we had it Rural Conservancy and if people just look up Rural Conservancy and start looking across they think they can do all these things and build stuff and construct things. But if it's zoned Rural Conservancy and there's a floodway overlay, those things aren't going to apply. So it was just kind of a way to identify early on as people started looking at their property and checking what the shoreline designation was, then looking at the matrix or whatever and seeing what was allowed, we didn't want them to get a sense that, Oh, hey, by the way, you can do all these things, and then, Oh, yeah, you can under the Shoreline Program but you really can't because our flood requirements are something different. So it was a way early on when we were trying to do that. But then as we started trying to set it up, visually it didn't make a lot of sense so we thought, Okay. Go ahead.

Mr. Walters: So this is definitely a little bit different than the jurisdiction question, but the next time we meet maybe we will have the table where allowed uses are and it will not have Rural

Conservancy Skagit Floodway on it. It will only have Rural Conservancy and then there will be a note that says in Rural Conservancy Skagit Floodway, you're going to have to comply with the flood management ordinance, which is much more restrictive.

Ms. Lohman: So it's have a subchapter or a subheading?

Mr. Walters: Yes. So on the map you see, Hey, I'm not just in RC. I'm in RCSF, Rural Conservancy Skagit Floodway. And when you go to the table you'll see RC *might* allow those things, but you've got to comply with the floodway ordinance and that's a big red flag because of the restrictive nature of the floodplain, or the floodway.

Chair Axthelm: Betsy, were you done with your explanation?

Ms. Stevenson: I think so.

Chair Axthelm: Okay.

Ms. Stevenson: The question got answered.

Chair Axthelm: No, I'm talking the –

Ms. Stevenson: Oh, up there? I left it up because if you were going to talk some more about it. I'd be glad to take it back down if you want.

Chair Axthelm: No, I was just – it's more the introduction.

Ms. Stevenson: Yep. Oh, you mean my presentation that started out and generally introduced things? Yeah, I think so.

Chair Axthelm: Yeah. Okay. So do you want to start from the top and look at it?

Ms. Lohman: We have a lot of new people.

Chair Axthelm: What's that?

Ms. Lohman: We have a lot of new faces here.

Chair Axthelm: So the question I have with the floodway: I never quite understood why – it's like you have a dike. Why does the jurisdiction extend 200 feet past the dike when, really, that stops it? Why doesn't it stop at the top of the dike?

Ms. Stevenson: By definition of what the jurisdiction is, it's the floodway plus 200 feet if that 200 feet, you know, out is still within the floodplain. So if that land behind the dike on the outside of the dike is still in the floodplain, then it would still be under shoreline jurisdiction.

Chair Axthelm: Oh. It's just kind of an odd – because I understand if the dike wasn't there I could understand that because you have a high water mark, but because they move the – when you have a dike, they put the high water mark at the dike. Well – I mean, and I hate to use my situation, but that's what it is, is that we have 700 feet, I think, from the river to the top of the dike and then I have to take an additional 200 feet. You know, it's – and it hardly ever floods.

Ms. Stevenson: You're right.

Mr. Walters: It's also where you're measuring the ordinary high water mark.

Ms. Stevenson: Right. But, I mean, if he's measuring from the riverbank –

Mr. Walters: Right.

Chair Axthelm: It's a big difference. And I can understand *including* all the way up to the dike, but I just don't get why that stops or why that – it may be –

Ms. Stevenson: Well, in that area that you're talking about, you're right. I mean, it's a very wide area and the river is usually on one side and there's a lot of land inside the dike.

Chair Axthelm: Yeah. And there's other situations around the county.

Mr. Walters: Well, and to back up a little bit, though, on a marine shoreline you're usually not concerned about flooding so much – you know, like within a river system. You don't have a dike on the marine shoreline, but the jurisdiction does extend 200 feet because we're concerned not just about the river or the marine body of water, but also about the shoreline and view impacts on the shoreline, built construction on the shoreline preventing views of the water – all that kind of stuff. All that stuff – it's not just the habitat function and all that stuff. It's also the aesthetics of the shoreline and those types of values that are written into the Shoreline Management Act. So there's a lot going on in the SMA that sometimes gets sort of glossed over because of there is, especially lately, so much focus on habitat and water quality. But it's not all about that.

Chair Axthelm: Then it gets downtown Mount Vernon. They get to take the – with the new dike improvements, they're taking some of the downtown out of the floodplain. Is that correct? Am I –

Mr. Walters: Which would affect their floodplain management but not their Shoreline Master Plan.

Mr. Pernula: Unless it's taken entirely out of the 100-year floodplain. Then it would.

Mr. Walters: Well, you'd still have 200 feet of the ordinary high water mark. You'd have the other provisions.

Ms. Stevenson: Right.

Chair Axthelm: Okay.

Mr. Walters: Because the objective is to not build a wall of buildings along the shoreline still; not prohibit access, visual or otherwise. And I think a lot of the reason for this, if I'm not mistaken – I was not around in 1973 – this was becoming really a problem in Seattle on Lake Washington and the other shorelines down there because people were building up so much stuff along the shoreline normal people couldn't get to it.

Chair Axthelm: Mm-hmm. Well, that still doesn't change whether you can get to it or not, because if it's private property it's private property. All right, that's it. I'm being awful!

Mr. Walters: Well, not entirely because we do have _____.

Ms. Lohman: So can I ask one last question? Yeah? On this part, I just want to make sure that – we haven't said that we're not going to include the 100-year floodplain as just a statement except in this area. And I think that you guys aren't going to be here always.

Mr. Walters: Well, we have in (f) because it's only 200 feet.

Ms. Lohman: But you haven't said and it does not extend to the remaining 100-year floodplain. Because it is your prerogative if you want to, if a jurisdiction wants to go that far. And I don't see anywhere where we said we *weren't*. Because when you read the RCW, it's left at your option. So I want us to say we're going to take this option or not take this option.

Ms. Stevenson: It'll show up on the maps like it does now, because we don't say anything in our Program now and there were areas that we did pick up and include that were just in the floodplain in areas with our existing map – the Nookachamps area, a lot of those kinds of places we did extend it quite a ways beyond what the normal jurisdiction would be because it was in a floodplain at that time when we initially adopted things. So the maps will show the shoreline jurisdiction and it will indicate, you know, we're early on in the process as far as the mapping and some of that work goes, so if there are some especially sensitive areas or things like that that you think it would be helpful to include and use that floodplain, we can. But we're not doing it countywide just because, Hey, you're in the floodplain; you need a shoreline permit. We're not – you know, we've never said that. But we did have some areas that we identified that we thought it was important to go ahead and extend it a little bit, so we kind of left that option open for now. But the map will show and the maps are going to be a whole lot better than the one that we have now.

Mr. Walters: When did all that occur?

Ms. Stevenson: What's that?

Mr. Walters: As part of this process are you talking? You didn't give a date when you were saying that you were doing this mapping.

Ms. Stevenson: Oh.

Mr. Walters: Is that 1970s mapping or –

Ms. Stevenson: The old mapping we did choose some areas.

Mr. Walters: 1970s?

Ms. Stevenson: Yes. This time I don't think we have yet, but that's still an option that we can choose as we start looking to the maps, too.

Ms. Lohman: So then when we go to finalize this process then we need to finalize the maps that go with it?

Ms. Stevenson: Yes.

Ms. Lohman: Okay.

Ms. Stevenson: Yes. Yeah, so that'll help. Somebody can look at a map and see if they're in or out of shoreline jurisdiction and then we will have determined whether there are areas within the floodplain that are beyond, you know, any of the other regulatory kinds of things that we opt into including. I'm not sure if you will. You might want to look at what we have now and whether you want to just extend that or just go back to note we're just going to make it this. There's already enough other kind of regulations. It doesn't need to be shoreline too. Okay?

Ms. Lohman: Yeah.

Ms. Stevenson: Thank you. That's a good question.

Chair Axthelm: So is that an option for, like, the dike situation?

Mr. Walters: To reduce it?

Ms. Stevenson: To reduce it?

Mr. Walters: No.

Chair Axthelm: To say –

Mr. Walters: No.

Ms. Stevenson: No.

Chair Axthelm: Okay, so shoreline, as far as the jurisdiction, are there any other questions or comments based on the jurisdiction?

(silence)

Chair Axthelm: Okay. This is not done. We still have public – another public review of the whole thing once it gets finished up, and I'm sure that'll open a can of worms!

Ms. Stevenson: Only one?

Chair Axthelm: A *big* can of worms.

Ms. Stevenson: Yes, okay.

Chair Axthelm: Okay, so if there's no further comments there, let's move into the Public Access portion. Everybody okay with that? Okay. All right. Do you have anything you'd like to add to that, Betsy, for the Public Access?

Ms. Stevenson: I guess we tried really hard to take into consideration a lot of the comments that we've received and some of the concerns that I've kind of gotten from other people separate from the process that we've gone through with you. We try to go back kind of again, as I mentioned before, to just sort of reorganize it, give people as much flexibility and as many different options to try to address public access and whether it's feasible or not. In the memo we talked about a few things that we did. There are some rules and laws that we kind of need to go through and follow that we're aware of. You know, we don't need to get into too much detail on that, but Public Trust Doctrine – whether there's a nexus to show that having it some sort of an

impact on public access and you need to be doing something, and then also that whatever it is that is being required in the way of public access is proportional to whatever the impact may be of the proposed development that's happening.

So, like I said, there's some laws and court cases so we have to be a little bit careful. There's been an AG's Opinion and some guidance on, you know, things to look for, so that information is in here. And there are some things that we have to do and show our work that we've looked at all these things. The Administrative Official can weigh in on certain things. But we feel like we organized it a little better. We hope it flows a little better. And, you know, okay, if you can't provide this then you go to the next one: Can you provide this? If that works, great. Leave some flexibility so that it can maybe be negotiated a little bit, as well. We'd prefer onsite, but if offsite is what's going to work best and makes the most sense we want to give people the opportunity to do that as well. And we did indicate where there were exceptions or maybe it didn't need to be provided at all. So I guess if you've got something, that's fine.

Mr. Walters: I could summarize how this section works.

Ms. Stevenson: Okay.

Ms. Lohman: Can you tell us where you're starting?

Mr. Walters: On numbered page 7, 14.26.370. So the first, there's a general statement of applicability – what types of uses have to provide public access? – to which this section applies at all. And it applies to water enjoyment, water-related, and nonwater-dependent uses, so that excludes the only remaining other kind, which is a water-dependent use. It applies to commercial development on land in public ownership; land divisions creating five or more lots; development by public entities, so public entities aren't off the hook; marinas when water enjoyment uses are associates with the marina, and you've got to include that language because otherwise marinas are a water-*dependent* use; recreation; and new public structural flood hazard reduction measures such as new dikes and levees, and "new" is key there. We don't usually include the word "new" because that's generally understood but in this case we did include it to make it clear that it applies to *new* dikes and levees. And it's also modified by that parenthetical "where access rights can be secured," which I believe is not part of the WAC so we'll see how far that gets us. But the WAC statements in parentheses after each one of those indicate where the requirement comes from, but those go away in the final document. As we've discussed before, all those parentheticals at the end of sentences go away.

Ms. Lohman: But on that, you're talking about just going up and over, right?

Mr. Walters: Yes. We'll get to that in a minute.

Ms. Lohman: Or are you talking lineal?

Mr. Walters: Yeah, we'll get to that in a minute.

Chair Axthelm: I would suggest that we might listen to him and then write the comments down and then we can go back through it.

Mr. Walters: So then there are exceptions from the list of applicable things and some of them are not really even exceptions but we wanted to throw them in there to make it very clear. So agriculture and aquaculture do not have to provide public access. A use, activity, or

development that includes four or fewer lots does not have to provide public access. We already said above it's five or more but in case there were any questions. And a development that has previously provided public access through other permit processes doesn't have to provide it again. So that's a major actual exception to the list from up above.

Then there are types of public access, and in order to require public access the Administrative Official, Dale, has to make some particular findings and the reasons for those are because if these things are not true, the County cannot require public access. And it is very important for protecting the County's liability that the Administrative Official actually make those findings, and if he can't make the finding then regardless of whether it's one of those applicable activities public access won't be required.

Then we have an order of types of public access and order of preference. We prefer, first of all, physical access to the shoreline onsite. If not that, then physical access to the shoreline offsite, so off the project site. Land divisions can provide physical access that's restricted to the land division community. Nobody else can do that because if you're not doing a land division you don't have a community access. That's third in the order of preference. Fourth is visual access onsite, which includes some physical improvement but doesn't actually get you to the shoreline. Or visual access offsite – same thing, just not on the same site as the development. So that's the order of preference. Start from actually getting people to the shoreline. If you can't do that onsite then you do offsite. If you can't do that, then visual access onsite. If you can't do that, then visual access offsite.

And then the questions are: Is it feasible to provide these things? And there's a process by which you determine whether it's feasible. That's what's next described.

And then there's one other section (d) there. (2)(d) indicates that if you're providing public access it needs to consist of something really tangible like a dedication of land or an easement, and some physical improvement. If it's a walkway to the shore, great. If you can't get to the shore, it's at least some viewpoint, so some kind of railing, tower – something – interpretive sign along whatever. There's something there that you can pick from to match your level of public access so that there's actually something that encourages the public to either physical or view access to the shoreline.

Section (3) is the set of design standards for that. Access easements have to be at least 10 feet wide. You can't give a 2-foot access easement. You know, other things like that. You construct your trail, if you're making one, to protect bank stability. So there are those sections there just to have some design standards for when you do actually provide the access.

Section (a) is sort of design features. Section (b) is similar but it has a different introductory sentence because it's a thing you must include. You need to include signage, landscaping, restrooms, if necessary, based on expected demand. So there's flexibility there. I mean, if this is a huge development then maybe you have to have restrooms. If it's not, then you're not going to have to have restrooms.

And then (c) Availability, dedication, and maintenance provides some additional guidance on when you have to provide it – you provide at time of permitting, at time of build-out – and how you have to record the public access, and how you have to maintain it over time. It's not a one-time provision. You can't just let it go. It needs to be maintained as part of the shoreline permit. (d) describes offsite public access and what you have to do for offsite public access.

And then (4) talks about the Shoreline Public Access Plan. We are supposed to have a Shoreline Public Access Plan. We don't really have a Shoreline Public Access Plan. We have the UGA Open Space Concept Plan. We have the Comprehensive Parks and Recreation Plan. And so we say that taken together you should provide public access consistent with those documents. It's not much, but hopefully it satisfies the requirement for having a Shoreline Public Access Plan.

So that's the overview of how this section is organized. Do you have specific questions or comments about any provision in there?

Robert Temples: I just want some clarification, Ryan. Number (3) Public access design standards. There's been shown here a 10-foot wide – where'd that come from?

Mr. Walters: Ten-foot wide is sort of the standard for how big you would make a new sidewalk for any kind of major sidewalk. It's sort of a standard.

Mr. Temples: So you're saying in essence that public access is some type of a hard surface or –

Mr. Walters: No. No, we're not necessarily saying that.

Mr. Temples: – trail or –

Mr. Walters: Not in that instance. It's just the easement width is what we're talking about there.

Mr. Temples: Okay, so it's an easement but technically it could be 4 feet wide or whatever, but the easement is allowed there.

Mr. Walters: The easement is at least 10. The trail or whatever is constructed in the easement –

Mr. Temples: Could be less.

Mr. Walters: – could be less.

Chair Axthelm: So when you're saying "public walk" you're not meaning public sidewalk. You're meaning public walkway area.

Mr. Temples: Thank you.

Chair Axthelm: Why don't we _____ down, unless you just want to speak up as we go? Amy, do you have –

Amy Hughes: Not on what Robert brought up.

Chair Axthelm: No, I mean just in general.

Ms. Hughes: Well –

Chair Axthelm: Or should we start with this section here first?

Ms. Lohman: I think we should start with ___.

Chair Axthelm: Okay.

Ms. Lohman: Otherwise we'll all be flipping back and forth.

Chair Axthelm: Yeah, that's true. So I guess section (1) Applicability. I have one. It was on the first one. It says "Water-enjoyment, water-related, and nonwater-dependent uses." So if a private person has property that's just for water-enjoyment or water-related, how do you – is that still requiring the public access?

Ms. Stevenson: They're proposing the use on their property and it can be private property that's either water-enjoyment, water-related, or nonwater-dependent, then yes, they are subject to these rules.

Chair Axthelm: But you're not saying development. You're saying – what it looks like is existing. So if you have an existing use – let's say Big Lake or – I mean anywhere.

Ms. Stevenson: Well, we're not talking about existing uses.

Mr. Walters: Yeah. No –

Ms. Stevenson: We're talking about somebody coming in for a permit.

Mr. Walters: Right.

Mr. Temples: New development.

Mr. Walters: As a general matter, existing uses – none of these rules will immediately apply. It's only if you –

Chair Axthelm: Okay, so where does that differentiate? Am I missing that __?

Mr. Walters: No. That's a general rule for the whole plan – all development regulations really.

Chair Axthelm: Okay. It just doesn't read that way, I guess. Because like the next one says commercial development. Well, that's pretty – oh, I guess I see what you're saying. It says new commercial development.

Ms. Stevenson: Right.

Chair Axthelm: Okay.

Mr. Walters: Yeah, that's why I point out the only time we even used the word "new" was to really emphasize it on the public structural flood hazard reduction measures.

Chair Axthelm: Okay. And then I come to that: "Development by public entities, including" – let's see. That wasn't it. It was the "New public structural flood hazard reduction measures." So raising the dikes – if they come and raise the dikes, isn't that a reduction measure?

Mr. Walters: So raising the dikes would require a permit, but it wouldn't be a *new* dike.

Chair Axthelm: But isn't it new flood hazard reduction measures?

Ms. Stevenson: No, I don't think so.

Chair Axthelm: And that's the way I read it.

Ms. Stevenson: Yeah.

Chair Axthelm: A flood hazard reduction measure – like Mount Vernon putting in their flood wall.

Ms. Stevenson: Yeah. If you're raising a dike, you aren't necessarily renegotiating your easement or your right-of-way. So you wouldn't really have another opportunity to negotiate public access with whoever it is that holds – has granted you that easement. I think what we're looking for is if you just go out somewhere and build a new dike where there hasn't been one before and you're negotiating with the landowners, we want to make sure that you're looking at perhaps negotiating for some sort of public access while you're doing it. Or in some areas where they're doing restoration work now, they're actually taking the dikes out and pushing them back further or something in some of the estuary areas. We kind of want them to take a look at that. That would be another example of an opportunity.

Chair Axthelm: Okay.

Ms. Stevenson: Does that make sense?

Chair Axthelm: Yeah. See, down in south Mount Vernon they were putting in a seepage – it was gravel on the inside of the dike. I forget. I want to say seepage berm – no, that's not right. But they were purchasing the land so that would be included in that situation – or not? Because it was going in past the easements. They were purchasing additional.

Mr. Walters: Well, is it a new –

Ms. Stevenson: Were they constructing a new dike?

Chair Axthelm: No.

Ms. Stevenson: Just adding to the right-of-way to bring in some more protection or something, it seems like?

Chair Axthelm: Yes.

Ms. Stevenson: Not necessarily.

Mr. Walters: And the "new" there is not our new either. It's from the WAC.

Chair Axthelm: Okay. Thank you. Keith?

Mr. Greenwood: Yes?

Chair Axthelm: Got anything?

Mr. Greenwood: Not really. I think it's different but to me it's clearer. The ordering is a little bit different in the Applicability but I think it reflects what we discussed earlier when we talked about applicability and concerns for provision of public access. And I think it covers the exceptions in a clearer fashion too.

Chair Axthelm: Kathy?

Kathy Mitchell: Although I'm new to this I went back and listened to what the Planning Commission had done in the past on this and it does look like those concerns were addressed everywhere I can tell so far. I hope that anybody that's been around longer could know a little bit more, but it looked like those issues had been all addressed with this.

Chair Axthelm: Okay. Any other comments on the Applicability?

Ms. Lohman: Wait, I do have a question. On number (iii), Land divisions creating five or more lots. That's irregardless of the size of the parcel, because there's a vast difference between a couple hundred acres split four ways and somebody with ten acres, even if they don't intend to build anything – they just want to maybe give some acreage to their children. It triggers this requirement?

Mr. Walters: Yeah.

Chair Axthelm: If they *can* do that.

Ms. Lohman: Yeah, if they can.

Mr. Temples: Considering the amount of available shoreline that's left, that's probably a very, very small amount of even possibility of use.

Chair Axthelm: Okay. Anything else?

(silence)

Chair Axthelm: Okay. Thank you, Betsy. I think, yeah, the same as Keith here. I think it does read a whole lot better.

Mr. Temples: Oh, yeah.

Chair Axthelm: I just have my little things in there!

Ms. Stevenson: I know. I think we actually came up with a good one here.

Chair Axthelm: Yeah, much better. Thank you.

Ms. Stevenson: Hopefully. We'll see what happens.

Chair Axthelm: So "Types of public access." Just speak up, Kathy, if you want to start it out, if you have something of concern.

Ms. Mitchell: I did not have any concern on this one.

Mr. Greenwood: Again I think it's clearer. So I think where it applies and what is required again is to me quite a bit clearer. Not to say I understand all of the situations that they all apply to and be unhappy with it at some point in the future, but the way I read it right now I think I understand where it applies and it looks clearer to me. And the type: I like the ordering of preference as opposed to the way it was presented previously, so to me that helps.

Mr. Temples: I concur. I think it just – it's better organized. It's very, very clear. I had no issue whatsoever.

Ms. Lohman: I agree and I like that you added "public access is not feasible due to inherent security requirements…" So I appreciate that you *did* hear us! I mean, I don't mean that you didn't hear us, but it's obvious that you guys spent a lot of time on this.

Chair Axthelm: Okay. Looks good to me, too. All right, so we can move on to "Public access design standards and…requirements." I guess Amy, if you want to start it out.

(silence)

Chair Axthelm: Kind of a round robin, or not round robin. What is that thing called? Well, whatever it's called.

Ms. Lohman: I'm up?

Chair Axthelm: Yeah.

Ms. Lohman: On what it must include, item (3) and (4), what's the trigger for deciding whether – what's the – how are you deciding whether you need to provide those amenities?

Mr. Walters: Are we talking (3)(a)(iii) and (iv)?

Ms. Lohman: (3)(b), "Public access must include" – sorry – and you have "auxiliary facilities such as parking and restrooms" and then the trash and pet waste handling. What's the tipping point for when you require it?

Mr. Walters: Well, back up at (2)(a), "The Administrative Official must determine the nature of the public access required for a project," and it sort of articulates the general rules for how this works and it will all be about proportionality and nexus. So the development that is occurring needs to have some connection to the public access that the Department is requiring, and there has to be a proportionality between how much development is occurring and how much public access is being provided or required. So (3) and (4) there are parking and restrooms, and trash and recycling receptacles, and pet waste receptacles. And so if it's a big development that expects lots of people, then the Administrative Official is going to make some call as to what level of services like that needs to be provided. Restrooms are a big deal. Parking, you know, much less of a deal compared to restrooms.

Ms. Lohman: Well, I mean, I've seen where people have provided fishing access of their own good free will and they've been overwhelmed. And they put port-a-potties out there and it's just been overwhelmed, and it's too much for one guy to handle, plus all the litter. And so that's why I was asking what your criteria was.

Mr. Temples: Are you talking new development or existing?

Ms. Lohman: Well, I mean, that's from past experience of providing public access, so it's –

Mr. Walters: Right. So it would all be done at the time the permit is issued, so if overwhelming demand occurred later and it wasn't foreseen, there wouldn't be a new requirement to add restrooms later. I don't know. I actually can't really think of a rural public access facility provided as a requirement of a shoreline permit that has been required to provide restrooms in the past. Can you?

Ms. Stevenson: As part of the shoreline requirement?

Mr. Walters: Right.

Ms. Stevenson: Mm…

Mr. Walters: You could easily see how this could happen in a city. If there were a big development in a city, especially with much – a lot of housing, commercial development on a shoreline, yeah, they'd have to put in some public access and they'd have to put in restrooms associated with that. That could easily happen. But in the rural area, I find it somewhat unlikely.

Ms. Stevenson: It's usually port-a-potties or portable toilets and things like that, if it's required at all. And we are trying to go back to areas that are heavily used that are public access areas and finding that –

Ms. Lohman: We'll invite you out during fishing.

Ms. Stevenson: Yeah, we do need to start providing those places for folks.

Mr. Walters: But I would anticipate that we'd be talking, like, marina-sized development before you have to put in anything other than a port-a-potty.

Ms. Stevenson: No, I don't think so. I think it goes back to your idea of if you've got a lot of visitors coming in, and you can tell if they've needed a restroom facility.

Mr. Walters: Yeah.

Ms. Stevenson: It's becoming pretty apparent in the Samish and the work that's happening out there. So –

Mr. Walters: But it also has to be judged –

Ms. Stevenson: – we've had people volunteer to put them out there and they're paying for them out of their own pockets and things like that.

Ms. Lohman: Yeah, and they're paying – I mean, they're paying a price for their – you know, their good will is being trampled on.

Ms. Stevenson: Some of the things that you're talking about in terms of people just volunteering to allow people access to the river to fish, you know, if it gets overwhelming I don't think anybody's required them to do that. They can close it off, I guess, if they wanted to.

Mr. Walters: But it all has to be judged based on the cost as well. Under (2)(c)(vi), the cost of providing the public access can't be unreasonably disproportionate to the total long-term cost of the proposed development. So that's going to be taken into account as well.

Chair Axthelm: If you have private land and you provide – they're saying public access but it's still private access, isn't it? I mean, if you open it up to the public in general to come, you still have control over that so it's not really public access in that aspect, is it?

Mr. Walters: I think it –

Mr. Temples: Just on the permitted project.

Mr. Walters: Right. It depends – are you doing it yourself or are you doing it as a permit requirement?

Chair Axthelm: No, what she's referring – I think what you're referring to is just something out of somebody's good nature to open up the land.

Ms. Lohman: But it's an example of how it can get way out of control, and so I just want to make sure that people are protected.

Ms. Stevenson: Well, and that's part of the discussion that's supposed to come up. You know, what's going to be required? Who's going to be responsible for maintaining it? You know, are you turning it over to somebody else to hold an easement or do any of that kind of stuff? So hopefully before it's all put in place you have a good sense of who's supposed to be doing that.

Ms. Lohman: So then thinking about these things – if I could add on – going down into and seeing the availability, dedication and maintenance, you have as (iv), "Maintenance of the public access facility must be the responsibility of the owner or homeowner's association, unless otherwise accepted" blah blah blah. Sometimes these developments are built and then the LLC is dissolved and there's no homeowners. How do you go about that? How do you –

Mr. Walters: Well, that is going to be an ongoing obligation of the shoreline permit, so hopefully the permit is written in such a way as it accounts for that probability. But also the objective here is so that development cannot just say, Yeah, we built it and now it's yours, County, to maintain. The County *can* accept it for maintenance or another nonprofit agency can if it wants, but otherwise it would be the responsibility of the development to do that.

Ms. Lohman: But you're assuming that you have some kind of entity that controls that whole development.

Ms. Stevenson: It says either the owner or the homeowner's association, so there would still be a landowner who owns it.

Ms. Lohman: So you'd go after the landowner then? Okay.

Ms. Stevenson: Well, I guess that's one way of putting it!

Mr. Walters: Right. I mean, in a community or a development community there's generally space – real property – that's owned by the association and if the association dissolves there's some successor entity that owns it, possibly just all the homeowners in the development without

the homeowner's association. So there's something there. I mean, someone owns the real property underneath the easement.

Chair Axthelm: I think if you look at (c) Applicability, the first one there, that covers that – is that public access (c)(i), Public access must be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance" – nope, that doesn't – that's just installation, not maintenance.

Mr. Walters: Right.

Chair Axthelm: I was thinking maintenance.

Mr. Walters: Yeah, just installation.

Mr. Greenwood: Can I comment on that point about the maintenance aspect of it? I just know that – I know some properties, including my own, that have an attachment to it. The easements and the maintenance are attached to the parcel even if the HOA goes away. And so the County can – no, it's the City in this case – can come in and do the work and then attach that assessment to those properties. So, you know, it's up to the developer to attach it to, and I think you'd require that maintenance to be attached to the development before you let it go. I mean, that's part of the project proposal, is not only what you're installing but how you're going to maintain it.

Mr. Walters: Yeah, and are you talking about a public access facility _____?

Mr. Greenwood: No, it's not that but it's related to something similar, like a drainage facility.

Mr. Walters: Yes, that is going to come up again in a couple months. The Cities like to in most cases own the stormwater facilities so they have –

Mr. Greenwood: But not in all cases.

Mr. Walters: Not in all cases and not all Cities. I think the City of Mount Vernon is usually interested in owning stormwater facilities so that they don't have issues with maintaining it, because they *have* to have them function or the whole city is really in trouble. The County, with stormwater and with these other types of shared facilities, takes the opposite position. We don't want to maintain them. Counties do not have monies to maintain. They don't have stormwater facilities that are financed the way Cities are. So they will be the responsibility of the individual property owner or the association – that kind of thing. So there's a significant difference there. But still there needs – I mean, they still need to function so it's a difference in approach and it hopefully works because of the different scale. Because you have fewer of them, you're more rural, you have more space in between versus a city where everybody's on top of each other.

Mr. Greenwood: I can see opportunity for the County or the City, in whatever the case applies, to desire to take over management of an access easement route if it is heavily used or exceeds the use, because it'll blow up on it, you know, and people won't be able to use it appropriately. I've seen cases in other states where a lot of times the access is to a beach, you know, and you've got housing developments that go up to the bluffs and pretty close, and so they build their access route with their stairs or what have you, but then there is no access for the public unless it's a new development, and then I see some pretty nice access that has been

incorporated into the design, which includes restrooms and stairs and that kind of stuff. So who actually took responsibility in those cases I witnessed? They were well-maintained and they were well-used, so I'm going to assume that either you have some very wealthy associations paying for that or the County or City did, but they look very clean.

Mr. Walters: And you can imagine a situation where like the County Parks Department might want to maintain one of those – you know, take over maintenance.

Mr. Greenwood: Right.

Mr. Walters: And so that provision in the code here would allow for that, but the default position is the homeowner's association.

Chair Axthelm: Is that (c)(iv)?

Mr. Walters: Right.

Chair Axthelm: Covers that, and then Offsite public access goes into it a little bit more. Because it says "owner or homeowner's association" specifically. Even if the homeowner's association is dissolved, the owners are still responsible regardless.

Mr. Temples: Well, I'm quite familiar with the homeowner's associations after all the dealings I had down in Snohomish County and Seattle and King County, and trust me, they don't just usually dissolve because there are people paying anywhere from 300 to $1500 *a month* for their homeowner's association fees. Trust me – they're expecting to get something for that. So based on that, I can't see this – you know, this is not going to just deteriorate and go away. Most of the sites I've seen are very highly maintained, probably better than most homeowners would even probably admit to enjoying. I mean, talking landscaping, yard maintenance, lighting, redoing exterior buildings. I mean, the list goes on and on. And we are talking new construction so that's, you know, a permitted situation. So there will always be exceptions to those who get permits and build things and then don't take care of them, but that's their loss of investment.

Chair Axthelm: Thank you, Robert. Keith?

Mr. Greenwood: Oh, that's plenty on that topic. I think those are the areas that I was most concerned about was the public access items to be included, and it brought up, if necessary, based upon expected demand. I think that should be bolded so that people can see that. But pointing it out was helpful to me. And then the maintenance aspect of it is always going to be some level of issue but I think we need to try and address it.

Chair Axthelm: Kathy?

Ms. Mitchell: Nothing else, thank you.

Chair Axthelm: Same. Looks good. Thank you.

Ms. Stevenson: Thank you.

Chair Axthelm: Very clear. Okay. Number (4), Shoreline Public Access Plan. Kathy, do you want to start?

Ms. Mitchell: I've got nothing to add to that.

Chair Axthelm: Keith?

Mr. Greenwood: No, no.

Chair Axthelm: Annie?

Ms. Lohman: My turn again? I guess my frustration with just using the County UGA Open Space Concept Plan, first off I thought we were on the record as saying it wasn't a de facto park or trails plan because it had broad, gorgeous water-color pictures in it with broad sweeping areas that incorporated an awful lot of property irregardless of necessarily what was under it. Because the author of it kept referring back to the word "concept" and trying to pacify us with the idea that it's a concept plan; it wasn't going to be a detail-oriented plan. And now here we fast-forward and I feel like my fear is being realized that it's going to be not a concept plan. It's going to be The Plan. And I just think that is a bad policy to do.

Mr. Walters: Well, unless Ecology tells us to, we're not writing a Shoreline Public Access Plan. I mean, that is not on the table.

Ms. Lohman: But I think we need to be very careful that we recognize the limitations of that plan.

Mr. Walters: Yeah, but the language here doesn't say __. I mean, Ecology watches all of these videos. Hi, Bob. But, I mean, in a city, public access plan maybe makes a lot of sense because you have a limited area and you kind of know where people want to go and you want to direct them there and you may be able to really prescribe where you're going to provide public access. In a county, it seems to me that it makes less sense unless Ecology has some examples of where they would – other plans like that that they would really like us to use. But we really do not want to write a public access plan. And I think part of the intent of the statutory requirement for the public access plan is so that you could use some project that's in the public access plan as part of your – to fulfill your public access requirement if you contributed toward it or something like that. We don't have any of those projects and we don't have mechanisms for contributing toward those projects. We don't have all that set up and we don't really anticipate that happening. So we felt like it was necessary to attempt to address it in some way, but the language here does not really provide for any regulatory requirement of any kind. It wouldn't force anyone to do anything with respect to those documents.

Chair Axthelm: And that's – and I – I guess I'll pipe up – that's where I had an issue with that, too, because it's the concept plan and I think "concept" itself helps with that. But the way it looks, it constitutes the Skagit County Shoreline Public Access Plan. It seems to me they're using that for regulation.

Mr. Walters: Well, it doesn't tell you you have to do anything with it, though. I mean, the words there say that we have an Open Space Concept Plan, we have a Parks Plan. Together they constitute our Shoreline Public Access Plan and they provide more effective public access than individual project requirements for public access. And that's the standard that we're trying to meet. But then it doesn't tell you to do anything, and all it does say in the next sentence is that when you provide shoreline public access you should do it consistent with that plan. But it's sort of an ephemeral requirement because there isn't – I mean, you've seen the Concept Plan. You know, there isn't anything in there that tells you to do anything because it's a concept plan.

Mr. Temples: From what I'm reading into this and what I'm hearing is that is I think perhaps this is the way to go because, number one, until you have a project that comes before the County that is going to be completely reviewed, there's going to be public comment, there's going to be detailed information provided. At that time then you have something you can sink your teeth into. But until said project shows up, I think it *is* a concept. So for us to try to sit here and say, Hmm, we want to know all the details of what the concept's going to cover, we have no idea.

Mr. Walters: So we could try to do something alternative to this, but I don't know what.

Ms. Lohman: Well, then maybe the list is not – there's other things in the county that we've done that identified public access and open space as well, like in the Envisioning process and Envision 60. It had – if I'm recalling it right, wasn't there a section where it did identify those public facilities and public accesses in it?

Mr. Walters: I don't know.

Ms. Stevenson: This program has a map that includes public access areas for the county. So there is – they are mapped and described as to who has them, whether it's local, state, federal, whatever.

Ms. Lohman: So I'd be – I agree with the idea that you're saying that we have a lot – maybe there's actually more than just this. We have elements of what could – you could kind of create a public access plan if you needed to. We have some kind of direction. We're not just rudderless. I think they're looking for some kind of path. They don't want you to just have nothing, and I think we have several things that give us a path.

Ms. Stevenson: It's addressed in the Inventory and Analysis Report as well, so, I mean, if we had to pull that out and do that we can do that, and they're mapped. So we were just trying to identify some other work that the County has already done here and those are the things that we came up with.

Chair Axthelm: I'd like to make a suggestion. And if you go to that – down on that (4)(a), I just don't want it to look like it's regulation. If it's ideas, they give them an idea of what to do with it. And so on the last – no, second-to-the-last line it says "…Public Access Plan, which provides more effective public access…" If we could have, like, "concepts" in there – "public access concepts," so that it's not regulation or even say "concepts (not regulation)" in parentheses so that it's not regulating it. It's ideas for it. And that's okay. I think there's –

Mr. Walters: I think that would be fine. I mean, I don't know if *this* is fine, if Ecology will buy off on this, but I don't see any problem with that. I think we should try that.

Chair Axthelm: Yeah. And then I – because the Concept Plan's there and there's a lot of good ideas in it. There're some great ideas in there. It's just I don't – I'm antsy about that being a regulation or associated with it.

Mr. Greenwood: I hate to say that something is adopted when it's not, because it might be very controversial and then it looks like it's quasi-adopted when you say you're going to use it, but at the same time you're just identifying the pool of resources at the library to use so that you're not just doing your own thing off to the side. And I think we have to consider, aside from doing

something new and full-blown for access and getting it drafted and adopted, then you're just listing what options are available for your project proposal, I think.

Chair Axthelm: Because (4)(b) has – it seems like it puts that under regulation because it says "…public access as required by this section should be consistent with the Shoreline Public Access Plan." So the requirement is that it's consistent with that plan, where if you put the concept in there –

Mr. Walters: Well, it says "should."

Chair Axthelm: Okay, well, I understand.

Mr. Walters: We were trying to not really make it a – because the documents themselves don't – I mean, they don't have standards, or – I mean, they're not regulatory documents so it would be difficult to even say you *have* to be consistent with because it would be difficult to find something in there that you had to make it consistent with. If you're providing onsite public access, it's difficult to say that you're consistent or not consistent with those plans.

Chair Axthelm: I'd be comfortable with "concepts" in there. It seems appropriate.

Ms. Lohman: Well, then you – well, maybe you need to be above the list, because Betsy referenced something else that isn't there. Otherwise you need to make the (b) a different statement.

Mr. Walters: We might be able to play with (b) somewhat.

Ms. Mitchell: So what you're asking is, Is it worth adding Inventory Analysis to this?

Mr. Walters: We can mention that, but those are also – those aren't even plans. They're inventories.

Ms. Mitchell: It's a piece of it.

Ms. Stevenson: It's the foundation for our updated Master Program, so the information is in there but I wouldn't call it a plan, and it isn't adopted yet. These plans have been adopted by the County.

Ms. Lohman: What about the Non-Motorized Transportation Plan? Doesn't that have some of that?

Ms. Stevenson: Sure they have.

Ms. Lohman: Doesn't the – I mean, we have other plans like the Non-Motorized Transportation Plan. Doesn't that go into trails and some of the maybe public access points too?

Mr. Walters: I don't know if – I don't know if that one, if –

Ms. Lohman: Maybe we need to look at this a little bit closer and find out what do we have in inventory. Maybe we're not calling it a "plan" and it's not readily making you think about it, but I can't believe that we have nothing.

Mr. Walters: Well, I mean we do have these things but – and we can reference them. We can reference the inventory. We could look at the Non-Motorized Transportation Plan. I'm not familiar with that document.

Chair Axthelm: The public will be reminded this is not open to public comment. I'm sorry.

Mr. Temples: Is there any way of attaching reference to this statement as in, you know, "For more detail or something, see map so-and-so or County so-and-so"? Is there something that could be referenced? Is that allowed or permitted, or what?

Mr. Walters: Well, there are many maps in the UGA Open Space Concept Plan. They're very conceptual. But then there's also the map in the inventory of existing things.

Ms. Stevenson: Sometimes when things change over time it's hard to reference it in code. Those maps will all be appendices to the document so we can certainly keep that thought open.

Mr. Temples: Well, the map might change but could not a reference to this document be put into a statement? I mean, if we're looking for more detail then perhaps that's one way of doing it without having to formally attach the detail.

Mr. Walters: Well, I think we sort of assumed you wanted less detail, more conceptual.

Mr. Temples: I'm comfortable with the concept. But I think sometimes the public just needs to know for a fact that there's more to it than just a concept.

Mr. Walters: There's not much more than that!

Ms. Lohman: There's several new people on the Planning Commission and they don't know what the County UGA Open Space Concept Plan is. It is a very conceptual plan and I think maybe we ought to – I don't know – give that information to the rest of the Planning Commission, to the new members so they know what we're talking about.

Mr. Walters: So I think people should feel free to take a look at that. That's at skagitcounty.net/openspace. You can get the document there. And that went through – that document was created as a result of a – if I recall correctly – a Growth Board case, and so we generated this as part of a GMA requirement. There's a GMA requirement to have open space planning in and between UGAs. So now we have that. It went through the Planning Commission and the Planning Commission had edits/made edits. There was some problem with consultant money, as I recall. We got it all done. It went up to the Board of County Commissioners and they adopted it. So –

Mr. Temples: Approximately what year?

Mr. Walters: This was 2009. So it's on the page skagitcounty.net/openspace, and you can take a look at it and read through it. There's lots of pictures. It, I don't think, actually takes very long to go through it. And there's a lot of – a lot of it is just description of other things – background data.

Chair Axthelm: And there were some recommendations. I think the issue with the Commission and Annie and I – I wasn't on the Commission at that point but I came in shortly after – is that it seemed like some of the concepts or some of the things in that plan, because it ran out of

funding, were not seen through. And, yeah, the Commissioners did – is that how you termed it? Approved, accepted?

Mr. Walters: Yes – approved, adopted, accepted – all of those things.

Chair Axthelm: Is that there were some items in there that were unfinished or recommendations that weren't seen through, in our opinion.

Mr. Walters: As I recall – and I was not really working on this at that time, but I remember Annie was on the Planning Commission. There was some issue with the Planning Commission wanting some changes and staff said, Well, we don't have any more money to pay the consultant. But the consultant did do the work, I think, pro bono in order to get the plan done. I thought that there were changes to the graphics, some footnotes indicating that, you know, this stuff is conceptual. That's what I recall. The plan ended up winning an award – the Governor's Smart Growth Award, or something like that – Smart Community Award.

Chair Axthelm: And they did make some of the changes. I remember that. I think it just didn't feel like it was complete, but that's –

Mr. Greenwood: Doesn't it seem a little circumvent for us to not include a document perhaps because we didn't think it was good or complete, when the County Commissioners adopted it? I don't think we can leave it out of the list, but maybe we're just looking for less or more of a clear understanding of the regulatory implications.

Ms. Lohman: Well, what leaped out to me was when you read (b) and it said the "Shoreline public access as required by this section should be consistent with the Shoreline Public Access Plan." And I know that the UGA Open Space Plan was very conceptual, had very large drawn arrows that just swept broadly over large swatches of private property irregardless of really whether it was public access or not, or just – you know, the pictures or the diagrams were so – they were beautifully done. You can't argue that. But because they just broadly drew arrows it made – it gave the impression that everything under the arrow or leading to the arrow or from the arrow was included. And that isn't true. But everybody kept saying, Let's hang on the conceptual word.

Mr. Walters: Because the reason there's the big arrow is because the idea is somewhere inside there –

Mr. Greenwood: That direction.

Mr. Walters: Right. Well, I think maybe within the arrow or someplace, you know? If you had a small arrow, people would say, Ooh, that's my property. That's the only property it touches. That must be mine. The idea behind the big arrow was it could be anywhere in there – wherever it works, wherever it makes sense.

Ms. Lohman: But in particular, arrows that incorporated our dikes as if it could be just a trail network, irregardless if they're privately owned and they're *not* trails. So there was a lot of that so I want to make sure that we're not using it as a de facto detailed plan.

Mr. Temples: I don't think we are.

Chair Axthelm: With putting the word "concepts" in there, so adding the public access or concepts?

Ms. Lohman: I mean, I think we could go around and around on it. I think this section needs some more language massaging.

Mr. Walters: And I think we can do something there and we can maybe check with Ecology and get some preview as to what it is they think that they would accept so that we know how much more time we need to dedicate to this section.

Ms. Mitchell: Because what it really comes down to is we can't give them something that we don't have more detail on than what's already been listed. Is that correct?

Mr. Walters: Can you say that again?

Ms. Mitchell: We can't give them something we don't have, meaning more – we can't give them more detail than what's already been listed as it is. In other words, this is as far as we are on this, so what else can we do?

Mr. Walters: Yeah, well, I mean Ecology could say you need to do real public access planning and come up with a plan and that kind of stuff.

Ms. Mitchell: Which may be somewhere down the road.

Mr. Walters: Well, I think they could say that we need to do it as part of this update, but I also think there's enough room in the WAC for us to *not* have to do that. Because we have done some general planning, it would be nice if we did not have to do a whole other public access planning exercise.

Mr. Pernula: I agree. I don't know that we would want to go there. I think that we've got a very large county that we're not going to go look at every corner of the county and say, We want an access here, here, here, and here. I think having a broad brush and then we look at it on a case by case basis as somebody develops, and we look for the nexus and we look for the proportionality, and make sure that this development's actually causing the need and what you're requiring is proportional to that need, you know. And just for some guidance we have this broad brush plan that's been adopted by the Board, and I don't know that you really want to go more than that and have more detail. Otherwise, you know, we're going to be spending a lot of time planning for some specifics that we'll never get to. It's a waste of time.

Mr. Walters: But we'll look at (b).

Ms. Lohman: It's actually – (b) makes it problematic.

Chair Axthelm: (b) makes it problematic?

Ms. Lohman: Well, let's just move on.

Chair Axthelm: If you have something more to say…

Ms. Lohman: No.

Chair Axthelm: Okay. Amy? Or go ahead, Dale.

Mr. Pernula: I was just going to say since you added the term "concepts" in (a), perhaps you could modify (b) by saying something similar. "Shoreline public access as required by this section should be consistent with the concepts that are expressed in the Shoreline Public Access Plan" – something like that.

Chair Axthelm: Amy, does that feel better?

Ms. Lohman: That's closer, yes.

Chair Axthelm: And that makes sense because, really, public access – to me public access isn't – you're going to have to go through a lot of hoops to get public access anyway regardless, so what this does does not necessarily set the rules. It sets the ideas.

Ms. Stevenson: That sounds good. We'll change that language.

Chair Axthelm: I think it lightens up the burden. Amy?

Ms. Hughes: No comment.

Chair Axthelm: I would make – Ellen has had some really good ideas as far as public access and, I think, an understanding of it that I don't have. Is it all right for the Commission to open it up to public – to Ellen to have a few words?

Ms. Mitchell: It's fine with me.

Mr. Greenwood: If it provides clarity, I think it's fine.

Chair Axthelm: If you can keep it to a few minutes – is that – you were saying before that we didn't quite understand it.

Mr. Pernula: Do you want to go up to the microphone?

Chair Axthelm: Just a different view, and I'm not trying to open it to public comment necessarily. I just want to make it –

Ms. Bynum: When we did address – okay, Friends was involved in negotiating part of the settlement that created the need for the Open Space Concept Plan. And we didn't require the piece that had to be done by the County to comply with the Growth Management Hearings Board, but the Board had required that. So the consultant who did the project is an advocate for public access and the plan reflects that, and that is not in any way – it hasn't been through any public comments. It hasn't been through any public planning process. It's merely the concepts that satisfied the regulatory requirement.

Mr. Walters: Well, okay –

Ms. Bynum: I mean, it did go through comments to adopt and you guys reviewed it and had lots of public comments, and the Board approved it and took comments on it as well. But it's not a part of the Comp Plan; it's not been reviewed in that way. And it doesn't have the regulatory framework that the Comp Plan has in itself. So I think you might use it as a reference but I think

it's not something that you want to go to because it's not complete and it's by – we could do a lot better. I mean, I would rather spend the time doing a public access plan for this document than to reference the Concept Plan as fulfilling that need because I don't think it does address the entire need of shorelines. So that's kind of my two cents. Questions?

Mr. Walters: So to clarify, the plan is in fact not part of the Comprehensive Plan. There's no language in the Comp Plan that adopts it as part of the Comp Plan. There's no language in the adopting ordinance for the whatever it's called – Countywide UGA Open Space Concept Plan – that makes it part of the Comp Plan. And I wasn't working on this project at that time and I don't think anybody else here was either, so it's not clear to me what was intended there. Because it did go through the process of Planning Commission review, public comment. It was unanimously endorsed by the Planning Commission and it was adopted by the Board after that, which is the standard process for a Comp Plan Amendment, but it wasn't adopted as part of the Comp Plan. So I don't know what was – what they were thinking when they did it at that time. But it doesn't have – doesn't fit into the Comp Plan, it's not a chapter in the Comp Plan, it doesn't look like the Comp Plan, and it's not part of the Comp Plan, so we don't call it that. But I don't know if that makes a difference as to its value to you as part of this process because it has stuff in it about connections, and it seems to me that it has – if you're looking for stuff to fulfill this requirement, which I think we are because we want to get the Shoreline Plan done, it seems to have some of those constituent components.

Chair Axthelm: Okay. I think I'm personally comfortable with adding the concepts in there or the wording that we were just talking about and seeing how the public goes with that, because this isn't the end result. Let's see how the public goes with it. I understand the feelings. I just feel like we need something for a concept without having to rewrite the whole thing. I think that keeps it conceptual instead of regulation.

So anything else as far as shoreline access?

(silence)

Chair Axthelm: So that takes us – now the Vegetation Conservation, is that part of it? No. It's the next portion. So that's all we need for tonight, right?

Mr. Walters: Wait. What?

Ms. Stevenson: _____ do the Vegetation Conservation section, too _____.

Mr. Greenwood: It's just a separate section.

Ms. Lohman: It's a different element.

Chair Axthelm: Oh, okay, we do. I gotcha. I see it.

Mr. Greenwood: Did you want to have another meeting next week or –

Ms. Stevenson: We already have another meeting next week.

Chair Axthelm: I think we can get through this one easy enough. Okay. So Applicability. Kathy, why don't we start with you on that? As far as Vegetation Conservation.

Ms. Mitchell: That part's fine.

Chair Axthelm: Okay. Keith?

Mr. Greenwood: It looks like a lot of work as far – it's clear to me what is required. It looks like it's very specific. I wish Matt were here to talk about the implementation and how effective it is in practice, but since he's not it looks biologically sound to me. That's the way I look at it. Because a lot of times we put stuff in there like _____. It's like that doesn't even make sense. So this seems to incorporate some – I don't know if it's science or art but it looks like a little combination of both that at least somebody can follow. So it makes sense to me.

Chair Axthelm: All right. Robert?

Mr. Temples: I concur with Keith completely. I think it's far better than what we were seeing earlier.

Chair Axthelm: Annie?

Ms. Lohman: I agree with what Robert just said. I still struggle with where you say you have to have 100% whatever, 100% anything, because even when I have a fantastic crop that's a barn burner, it is never 100%. I mean, yeah, I got well-rewarded but – so I have a hard time when the requirement is 100% because I just don't know if you can meet 100%.

Mr. Walters: So the 100% standard applies only – it's on section (d)(i) – (3)(d)(i). The 100% standard only applies to significant trees within critical areas and their buffers.

Ms. Stevenson: (unintelligible)

Mr. Walters: Yeah, and certainly it may be the case that you lose a significant tree, but then there's a procedure for fixing that.

Chair Axthelm: All right, I'm seeing that all the way through Application Requirements _____.

Ms. Lohman: But the other question I had is on tree pruning. Is there ever an allowance for doing some pruning for view blocking – to relieve view blocking? I didn't say that quite right. My note says "view blocking"!

Ms. Mitchell: Wouldn't state law take over on that one even so?

Ms. Lohman: Because it seems to be that people get into some neighborhood wars over not being able to see.

Chair Axthelm: So, Annie? _____ just Applicability.

Ms. Lohman: Oh. Sorry.

Chair Axthelm: Let's go back – go ahead and – should _____ Application Requirements? _____.

Mr. Greenwood: Yeah, I think that would fit.

Chair Axthelm: Yeah, Application Requirements. Annie?

Ms. Lohman: No.

Chair Axthelm: Robert?

Mr. Temples: Nope.

Chair Axthelm: Keith?

Mr. Greenwood: Nope.

Chair Axthelm: No? Okay. All right, _____. So Development Standards: start with Kathy.

Ms. Mitchell: I was all right with that one, too.

Mr. Greenwood: Yeah, I think that's development that gets into – it doesn't get into pruning, which is a different case. It's talking about retention and replacement. So, again, I think that's clear.

Chair Axthelm: Robert?

(silence)

Chair Axthelm: Annie?

Ms. Lohman: I'm scared to talk!

Mr. Greenwood: No, go ahead.

Chair Axthelm: We want to hear it.

Mr. Greenwood: Yeah.

Ms. Lohman: We are on Development Standards? Okay, the question is –

Chair Axthelm: Just within (3).

Ms. Lohman: (3), (3)(e), _____.

Mr. Walters: I think the answer –

Chair Axthelm: Anywhere within (3).

Mr. Walters: Anticipating the question, I think the answer is within Romanette (ii) there, that selective pruning is allowed.

Ms. Mitchell: But aren't there state laws about that anyway? I seem to remember that from Master Gardener days. Aren't there state laws about view cutting and allowances anyway, and wouldn't that trump this?

Mr. Walters: I'm not – if you're cutting down whole trees then –

Ms. Mitchell: No, the view – actually that addressed – those addressed both. It addressed view corridor and/or pruning. It's been a while, but if I remember right there were state laws that covered that. Maybe that would answer that.

Mr. Walters: Yeah, I'm not – I mean, we're not talking about anything that raises to the level – rises to the level of a forest practice, I don't think, so I don't think so.

Mr. Temples: Well, in Seattle, for example, there was a judge that decided that the trees down below him were blocking his view of the Sound so he took them out and it was discovered he took them out and –

Mr. Walters: And he just happened to be a judge, yeah. _____.

Mr. Temples: Well, he got fined a heck of a lot of money, too, for what he did.

Mr. Walters: Yeah.

Mr. Temples: And he had to provide for a planting – what was it? – they called it a planting scheme or something to repopulate the hillside with new trees.

Mr. Walters: And I imagine that was like this, and for a local enforcement mechanism, not us.

Mr. Temples: Yes, it probably would be.

Mr. Walters: Yeah.

Ms. Stevenson: Or a lot of times it's property owner disputes. You know, sometimes the property owner says they planted these trees; they weren't there; now they're big and they blocked our views; and they try to take them to court to get them to take them out. Or people do it without permits and then the neighbors get upset too.

Mr. Walters: Or sometimes on neighboring property.

Ms. Stevenson: Right, right. That's true.

Mr. Walters: Walk over to the neighbor's house and ___ trees.

Mr. Temples: Well, I think what got their attention was this was actually on city property, park property, which didn't go over very well.

Ms. Stevenson: I mean, we're trying to get away from chopping trees where they just come in and completely cut the top out to advance the view, because it's hard on the trees. So we're just trying to give some sort of guidance of: You can do certain things. You can prune, you can do things. If you and your neighbors agree and you want to put a little hole in there to thin it, you can do that.

Mr. Temples: Well, I don't think any of us are going to become tree police so I'm not going to worry about it.

Chair Axthelm: The defense of somebody that purchased – has a piece of property and the trees have grown up in front of their view, in some aspects I don't buy that because if you can selective prune then you shouldn't have that issue.

Ms. Stevenson: All the other people who have the trees may not want to selectively prune to preserve their view. I mean, that's when it comes into a neighborhood issue.

Ms. Mitchell: I can give you a good example. I know of a neighborhood where the neighborhood is surrounded by DNR property and the lots were sold with views. Fifteen years later big trees, because they grow about three feet a year, are blocking the view and so then the debate comes in whether somebody can come in and top those trees, which some of them do anyway, and then they got the dispute with the landowner, which in the case would be the DNR or the state or something else. But that's one of the reasons I could have sworn I remember that there are state laws covering this kind of thing. But I think you've got coverage on that one way or the other. There's outlets for that.

Mr. Walters: Well, and in that case you've got a lot of different things going on because it's not your property ____, and you've got DNR right there.

Chair Axthelm: Okay. Anything more? I don't have an issue with it. That was a pretty big section. If you want to double-check _____.

Ms. Stevenson: That was the rest of it, right?

Mr. Greenwood: Yeah.

Chair Axthelm: Yep, that was it. That was the rest of it. Okay. So any other general comments?

Ms. Lohman: I just want to thank Betsy for all her effort.

Ms. Mitchell: Good job.

Ms. Stevenson: I miss you guys! Thank you very much.

Ms. Lohman: I appreciate the – you know we're not attacking you as far as on the page.

Ms. Stevenson: I've never taken it that way at all. I appreciate your feedback because you're kind of the second sounding board beyond the Advisory Committee of, Are we getting across what we're trying to get across or did we just really miss it completely? So I feel so much more comfortable with what we're coming out with now. It just seems so much better. So even though this process seems probably very painful for you for a lot of reasons, I think it's really helping and I think we're getting a much better product. So I really appreciate it, as well. But thank you.

Mr. Greenwood: Yeah, I don't think I'd be prepared to review it if I hadn't reviewed it in pieces ahead of time.

Mr. Temples: Let's just say there's a lot of little pieces of us into this.

Ms. Stevenson: And there will be more, I think, on the way.

Chair Axthelm: Yeah. _____ pieces inputted or pieces taken away. I don't know.

Mr. Temples: We said our piece.

Chair Axthelm: We said our piece – there you go. Okay, so Department Update.

Mr. Pernula: I actually have quite a few things to go over. We transmitted the recorded motion that the Planning Commission adopted last week, along with our recommendations and a lot of other information – the original staff report on the marijuana ordinance, two supplemental staff reports, and this particular document that you're getting right here. This document on page 2 summarizes the Planning Commission's recorded motion – since it's getting late, I'm not going to go into too much detail – and also on page 2 we explain what we would like the Board to do, both in terms of process and what the rules they want to consider for the future. And then on page 3 we made some recommendations regarding the recorded motion of the Planning Commission. And I'll go over these in general and you can ask questions about it.

But our first comment was that we recommended that they not require a 1000-foot notification radius. Perhaps if there's a rational basis for it and it's consistent with how we're noticing all other special use permits we could consider it. But it just seems inconsistent for some of the marijuana facilities to have that large of a radius. So we're recommending not doing that.

The second one is delete the distance "from a residence" in the measure of the distance for the BR-LI. We looked at the maps and there's only one residential use in the BR-LI zone. It's right in the middle of the Light Industrial zone. It's west of the fire station, if you know where it's at. It's just kind of a little house. And if you're going out 1000 feet from there, it's quite an area where we probably want to have some of the growing facilities and it just seems like a little bit of overkill for that dwelling. And it is an area where we would like to see industrial uses in general occur.

Item number 3: The Planning Commission, you may recall, recommended not – or prohibiting greenhouses to grow marijuana in the Ag-NRL zone. And we started looking at it and if we're not going to permit it in the Ag-NRL zone, why permit them anywhere? Because the Ag-NRL zone is where most of the greenhouses are and would you really want to build them elsewhere where they would be permitted, such as in the industrial zone where if they go bankrupt they couldn't use it for anything else? So why not just require it as – to be in solid structures anywhere that you're going to be growing marijuana? Furthermore, what that does is – you may recall where a lot of the objections we have to growing marijuana occur is in greenhouses because they have to have this eight-foot fence and they have to have the security cameras. This prohibition would do away with those requirements.

Item number 4: Carefully consider whether to prohibit marijuana production in Ag-NRL.

Consider allowing marijuana production in Rural Resource zone. And the reason for that is that this is some fairly large parcels. Some of it's old gravel pits. We actually talked to the Planning Commission last week. We discussed that with the Commission last week.

Item number 6: Outright permit (or prohibit) retail facilities in Rural Center and Rural Village Commercial. Remember that this is for retail uses and the Planning Commission recommended that you have an Administrative Special Use Permit for those in those zones. We felt that if we're going to have it and permit it with an Administrative Special Use Permit, we should have some special standards that are associated with it and they were never developed. We don't have those special standards. We even tried to consider what those special standards would be

for a retail use and we had a hard time coming up with those. We can for the production because we know that if they're in greenhouses if they have the fences, they need to be set back or whatever, they have the issues of security and so on. But for selling of marijuana we really couldn't come up with some specific standards. So we recommend either outright permitting or prohibiting retail facilities in those zones.

Item number 7: Allow conversion of retail facilities in Rural Business, per existing code. And I think as we were looking at it there appeared to be a potential conflict between our existing code and that provision that would require an Administrative Special Use Permit.

Item number 8: Outright permit retail facilities in the URC-I. That's the Urban Reserve Commercial-Industrial zone.

Item number 9: The Planning Commission recommended a 400-foot setback from residences. And you can see that there are a number of bullets – reasons why we recommended that that setback not be required. I would add another one. If we go with the provision that you're not going to be – or that they're not going to be permitting the growing of marijuana in greenhouses, that's an additional reason why maybe you don't need that prohibition. Plus, if you're requiring a special use permit that's – instead of a setback – that's a pretty good, flexible tool as an alternative.

And item number 10: Add a line characterizing marijuana production and processing as industrial, not agricultural.

So you can see some of these are, I think, things that we thought were improvements. Some are a little bit stronger. A number of those are probably a backing off of where the Planning Commission recommended.

We took it to the Board this morning. The Board decided to schedule a public hearing in the future and for that public hearing to consider both the Planning Commission's recorded motion and these deviations from the recorded motion.

Do you have something to add to that?

Mr. Walters: Well, just in terms of process. So we'll be taking the original Department code proposal, adding on top the Planning Commission's recorded motion, and then adding as options the Department's recommendations – so for some uses there may be three or more options for each zone – and then soliciting public comment on all of those options. So, for example, number 6: For Rural Center and Rural Village there will be at least three options in the table because it will say outright permit, outright prohibit, or require special use permit. And then we'll be soliciting public comment on that. So the next memo that comes out will be the mother of all memos because it will provide all the background in one place and all the options summarized in the memo so people don't have to read the code proposal text. And that will hopefully be the last series of steps before final adoption of this product.

Ms. Lohman: I have a question for Dale. Is that all right for me to ask him?

Chair Axthelm: Mm-hmm, yeah.

Ms. Lohman: On your list of items for deleting the 400-foot setback, you have because you – the potential of using an administrative use permit, but yet over in item number 6 you guys recommend outright permitting or prohibiting retail facilities in Rural Center or Rural Village.

Mr. Walters: But those are retail and the 400-foot setback was only for production.

Ms. Lohman: Oh. Okay.

Ms. Mitchell: So that recommendation for the next public comment period through the Board of County Commissioners allows them much more flexibility to consider all options.

Mr. Pernula: Yes.

Mr. Walters: All these things, all your things, nothing outside of that range – or anything in between, but nothing outside. So they will have assumedly – unless there's a whole new set of suggestions somebody comes up with – they will hold public comment on that next memo and proposal and then adopt something – not this one but the next one.

Mr. Temples: Ryan, do we have a date yet on this?

Mr. Walters: What's that?

Mr. Temples: Do we have a date planned yet for –

Mr. Walters: We have a date for the public hearing.

Mr. Pernula: Was it June 16?

Mr. Walters: Yeah, that sounds about right, if that's a Tuesday.

Mr. Pernula: I think it's June 16. I don't have my calendar in front of me.

Mr. Walters: And the comment period will open maybe next Thursday.

Mr. Temples: The 16th would probably be – what? – Monday or Tuesday?

Mr. Pernula: Should be a Tuesday morning.

Mr. Walters: It is. Yeah, that's right.

Ms. Mitchell: And what time would that be?

Mr. Walters: 8:30.

Ms. Mitchell: 8:30.

Chair Axthelm: So in viewing the comments – I watched them online, not the whole thing but part of it – then the Commissioners did mention again having public comments but also any explanation from the Planning Commission. They seemed to be specific on that, too, so, I mean, if you – you're part of the public as well. If you want to give any reasoning or defense for what the Planning Commission wanted or your individual statement there, that's an opportunity.

Mr. Greenwood: In that case, we'd be representing the Planning Commission or we'd be representing ourself?

Chair Axthelm: Yourself. Would that be correct?

Mr. Greenwood: I think that's a – would be awkward to ___.

Chair Axthelm: Or are they calling for the Planning Commission ourselves? I thought it was individuals in that case.

Mr. Walters: We're not scheduling any additional meetings for the Planning Commission to review this again. So, yeah, I think you pretty much need to represent yourselves as individual Planning Commissioners.

Chair Axthelm: And we could do that in any hearing situation. Is that correct?

Mr. Walters: Anytime, yeah.

Chair Axthelm: Okay. That doesn't jeopardize our situation or anything.

Mr. Walters: Right. Right. And some of these things are sort of highly technical things. For instance, the Rural Business one in 7: It would be more permissive to outright allow an admin special use for a marijuana retail facility because Rural Business is supposed to be only existing businesses converting to similar uses through the prescribed process. There are essentially no other uses – I mean, there are a whole bunch of uses but they're, like, piddly little things like solid waste drop box – there are essentially no other uses listed in that zone separately. That zone relies on the conversion from some preexisting use to something else, and there's already an administrative or Hearing Examiner process for that. So we don't – that's based on the GMA principles so we don't want to run afoul of those, and it's not substantively different.

Number 10 we talked about a lot, but that didn't make it into the Planning Commission's recommendation. But we think that's entirely consistent with the Planning Commission's recommendation.

And then some of these like 5 and 4 are simply consider – think about carefully because we really don't want to come back and do marijuana again.

Chair Axthelm: So is that – again – is that – any situation where we have something that we may not personally agree with we can give our public comment in general to the Commissioners, not as a Planning Commission but as our reasoning maybe for a direction?

Mr. Walters: Yes. I can't think of an example to the contrary.

Mr. Pernula: I think the Planning Commission as a whole spoke through the recorded motion that was adopted last week. You certainly can each individually speak for yourselves.

Mr. Greenwood: I just think that – I mean, it's a prerogative of the Department to make recommendations or review our recommendations but I kind of feel like undercut quite a little bit by these Department recommendations, and maybe I need to read them a little more closely.

Mr. Pernula: Some of them have some legal-backed basis for making those recommendations, too.

Mr. Greenwood: I guess I'd rather see the legal rather than – it kind of looks like an opinion, but – I just don't feel very supported in our process. But at the same time, that doesn't mean the process is wrong. It just means our particular position was different than the Department's.

Mr. Walters: And I think what's not highlighted in the memo is all the recommendations the Planning Commission made that are contrary to the Department's original recommendation the Department is silent on. You know, the Department's recommendation was to allow these uses in many other zones and the Department is not saying now, Refer back to that original proposal. It's saying, Stay with the course of the Planning Commission's recommendations on those things. Continue to prohibit marijuana cooperatives, for example.

Mr. Greenwood: Right.

Mr. Walters: The 400-foot thing, which –

Mr. Greenwood: Or the 1000-foot notification – I mean, it doesn't say let's have it be 500. It just says leave it like it is. And there's a pretty broad stretch from treating them like everything else and treating it like a different case, and these are a different case. So I –

Mr. Walters: And I would characterize the 1000-foot thing as an administrative issue. The 400-foot thing, though, is potentially a legal issue. If we can demonstrate a reason that there needs to be 400 feet, then that could be legally supportable, but I have not yet heard one. So if we could articulate one, that would be fine. In an interim ordinance even, you can get away with that because it's interim. But as a permanent regulation we need to have backing for that.

Mr. Greenwood: Well, yeah, and maybe just from a personal standpoint I'll dig some of that up because there are – this isn't the first setback that's been proposed for a project, right? I mean, there are setbacks for a variety of things and there are marijuana setbacks as well in neighboring counties that are already in place. So to say that there's no legal standing makes it sound like there's – you know, the County Commissioners are busy people and when they see something like that they say, Well, we can't do that, so we just toss it. So I don't know.

Mr. Walters: Well, and they didn't say that in this instance. They said, We want to get public comment on all of this.

Mr. Greenwood: Yeah, and I think that'll be helpful so that's good. I don't want to vent too much here.

Chair Axthelm: No, the 1000-foot comment kind of to me was an issue, too, because in the city you have – 1000 feet is a big distance, but out in the county 1000 feet really isn't that far. You're not talking that many people. If you're in a tighter area or where there's more residences then, yeah, it does impact more of it. That's their choice. At least the nice thing I like is that our solutions are still here – it's just that then they can choose between them.

Mr. Greenwood: Okay.

Chair Axthelm: Okay, any other – sorry – Department Update, anything else?

Mr. Pernula: Yeah, I've got several other things. Once again, next week will be the public workshop on Rural Character and Uses. And there was a public comment this morning about opening it up for public comment, and I talked to Commissioner Axthelm several days ago about how we could both have the small groups and a large group discussion, and we had determined that we would open it up for group comments. First of all, we'll still be breaking down into the smaller groups so that people who are reluctant to speak before a large group can voice their concerns and their issues, have it reported to the larger group, but then individuals can speak to the entire large group later, as well. So that *is* incorporated into next week's workshop.

I've been asked to ask you if you want to continue to have your meetings down here or to have them up on the dais. The reason is that I know that sometimes it's more difficult to hear, to pick up your voices when you're down here, and also because there are computers up there. But if you wish to stay down here, we can certainly accommodate it the best we can.

Mr. Temples: Does it have to be either/or?

Mr. Pernula: What's an alternative?

Chair Axthelm: It's set up. It's when – because they have to pre-set the room up beforehand, not when we get here, so –

Mr. Temples: Well, I think, like, next week, for example, we're going to have probably a large attendance, so having us up there would definitely give more room in the audience for seating and everything, as we've done before. I think that's very appropriate. And if we have a special meeting where we're small like this kind of group, I think we can be here down here just as fine. I don't know if it has to be an either/or, but it's up to you, Josh.

Mr. Pernula: So what I'm hearing is when we have larger groups or hearings you'll be up there, but you'd prefer to be down here most of the time. Is that –

Chair Axthelm: Let's just go through and see how we –

Ms. Mitchell: I was going to say it's very difficult to answer that question. And my reason for at times I prefer to be up there are when we need to be able to look at a number of documents we can see so much easier with the computer screens up there oftentimes than something like this, especially if there's more people in the room because those screens tend to go for the public rather than our use. So in those instances that's when I would prefer to be up there. Flip side, there is an advantage for being down here for a more intimate thing for more general work sessions, is the way I'm looking at it.

Chair Axthelm: Anybody else? Annie?

Ms. Lohman: No.

Chair Axthelm: I think the reason we did it was for work sessions. And so if we have deliberations or hearings planned, should we default to being up there if we have a deliberations or hearings?

Mr. Temples: Well, especially if we have a lot of documents we have to go through it's much easier. Frankly, I have to use these to read, then I have to look up there, take these off so I can

read up there. But when I'm up there and I've got a computer screen I can just stay put. Personally.

Chair Axthelm: Okay.

Mr. Pernula: Okay. One other thing: Carol asked me to let you know that the County has all new telephone numbers and we'll let you know what they are. The old numbers will continue to be in service for another year or so, but we'll have all new numbers here at the County. That's all I have.

Chair Axthelm: Okay, so the next item on the agenda – the Commissioner Comments and Announcements. Do we have any announcements from the Commission?

(silence)

Chair Axthelm: Okay. So – yes, Robert?

Mr. Temples: I so move that we adjourn this meeting.

Ms. Mitchell: Second.

Chair Axthelm: We moved and seconded to adjourn the meeting (gavel) so the meeting is adjourned.