

MASON COUNTY PLANNING ADVISORY COMMISSION

Minutes
January 6, 2003

(Note audio tape (#3) dated January 6, 2003
counter (#) for exact details of discussion)

(This document is not intended to be a verbatim transcript)

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1. CALL TO ORDER

The meeting was called to order by Chair Diane Edgin at 6:00 p.m.

2. ROLL CALL

Members Present: Bill Dewey, Diane Edgin, Steve Clayton, Theresa Kirkpatrick, Marilyn Johnston and Bob Sund were excused.

Staff Present: Bob Fink, Darren Nienaber, Allan Borden, Susie Ellingson.

3. APPROVAL OF MINUTES

None.

4. NEW BUSINESS

(#0025) Diane Edgin: This is a continuation of the public hearing from December 16, 2002 on proposed amendments to the Mason County Development Regulations and Comprehensive Plan. Staff?

(#0050) Allan Borden: At the last meeting we were following the outline of the responses to several issues that were brought up by the GMHB. Under the rural lands and FSEIS, we reviewed the nine designated hamlets, 14 unassessed ICIA's and the 175 newly designated LAMIRD's for adverse impacts and cumulative effects. The policy on ICIA expansion; that comp plan policy is to be deleted. The maps of the new LAMIRD's are illustrated on Development Areas Map 1 revision and they coordinate with Table A in the FSEIS. Those things we have talked about and they were discussed by the PAC. I annotated the recommendations that were made. On open space the corridor between the UGA's of Allyn and Shelton is to be shown on the new map with areas to be extended out and following the transmission, railroad and highway right-of-ways. That was discussed but no recommendations have been made by the PAC. Under rezone criteria, the criteria for reducing sprawl, those criteria were written to have the applicant to provide information which is used to evaluate the proposed rezone request. That was discussed last time and there were comments made by Advocates for Responsible Development to make changes in that. Under Frequently Flooded Areas, at the last meeting we really didn't fully discuss these so they're not noted as having been discussed or recommendations made. Under dike monitoring program, inspections will be coordinated with owners in advance and Public Works Department will make periodic inspections. Designated floodway and avulsion risk area in Skokomish FFA was revised to clearly state this fact. Also, new construction is precluded in Skokomish FFA and was revised to clearly state this fact. Under Fish and Wildlife Habitat Conservation Areas critical areas buffers increased to 100 feet on Type I saltwater and lake

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shoreline buffers and to also have a 15 foot building setback. The last one is having to do with permit exemption for agricultural activities. This was discussed and the exemption was proposed to be removed from the text and the discussion last time was to edit the text to include appropriate BMP's and then an HMP was needed, it would state the BMP's and effective means of minimizing instructions into buffers would be stated. Those two points were discussed last time and there's a recommendation on the buffers by the PAC but there was a recommendation that the department revise the text and I sent to you that revised text. I just wanted to focus the discussion to points that you have covered and those that you have not covered.

(#0360) Steve Clayton: As I remember it the prompting from last meeting was that we had concluded or discussion on LAMIRD's and the FWHCA and that we had made recommendations and that we had concluded those. How will our recommendations ultimately make it to the BOCC?

(#0420) Bob Fink: It varies from situation to situation. Normally the PAC recommendations are presented in the staff report and the BOCC are also presented with the minutes from the PAC meetings. There's usually a draft that incorporates the recommendation of the PAC and I won't say that's always the case but almost always. Even if there are some alternatives proposed by staff and if the recommendation by staff is different, then there would normally one set of regulations that would be as recommended by the PAC and another set of regulations that is recommended by the Planning Department.

(#0466) Theresa Kirkpatrick: I would like to say that the Findings of Fact that you presented me with on my request at the last meeting were helpful because I could see how the final document read that was signed by the BOCC. I might make the recommendation that those be made available to all the members of the PAC.

(#0498) Steve Clayton: Sometimes the minutes aren't available before the BOCC makes their decision so they actually won't get a chance to review our deliberations because this is scheduled for February 4th so it's unlikely that tonight's and our following meeting minutes will be done before that. So my concern is that there's an advocate from the Planning Department before the BOCC to say that this is the way it should be done and then the PAC said this. There's not really any advocate for our side and there's not really follow through as far as minutes available for BOCC to review.

(#0515) Bob Fink: It's only occasionally true that minutes won't be available and it might be true here that the BOCC has it's hearing in a couple of weeks and it's possible Susie won't have today's minutes typed up in their entirety in time for the BOCC to review.

(#0530) Darren Nienaber: I've had Wes ask me more than once if someone really said something on say page 35? They really do read them.

(#0538) Bob Fink: I can't say they've always been available but usually they are available.

(#0555) Steve Clayton: Down the line I'd like to see what it looks like to see how it actually got presented to the BOCC. The date that's set is for a morning meeting and I can't make a morning meeting to actually see what goes on and what gets presented.

(#0575) Bob Fink: Occasionally, PAC members do come to the hearing and clarify something that they said, for instance.

(#0580) Allan Borden: So to answer your question, we primarily present the recommendations of the PAC in the staff report when it goes to the BOCC.

(#0588) Steve Clayton: So they have the option of either going with our version or your version or a version of their own, more or less, after they listen to public testimony?

(#0595) Diane Edgin: I know there's been times when we've passed things off to the BOCC when not agreeing on them.

(#0602) Bill Dewey: So there will be situations where staff's recommendations are different than the PAC's and they'll be presented with both?

(#0610) Darren Nienaber: Last time the PAC recommended buffers that were half or a third of what was

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required under BAS and so it goes both ways.

(#0640) John Diehl: I just wanted to underline the fact that if you want your position advocated then you're probably going to have to show up and advocate it or else write a report regarding your position. You've been warned that the staff may recommend something else and I'm disappointed that staff hasn't at least tried to summarize the recommendations that you made three or four weeks ago.

(#0678) Warren Dawes: Following up on what Steve was saying it didn't specifically state that you did act on those three hamlets.

(#0695) Allan Borden: Yes, Bayshore, Spencer Lake and Deer Creek have been noted in the record.

(#0700) Diane Edgin: I will now close the public hearing. Any discussion?

(#0710) Bill Dewey: Let's clarify all the issues that we have remaining to discuss tonight.

(#0720) Diane Edgin: We have the open space and the FFA's.

(#0725) Steve Clayton: Going by the format of our previous meeting I would like to see that the public hearing is not closed unless we find it to be a problem because we have experts in the audience that are dealing with the Planning Department.

(#0745) Diane Edgin: So we will reopen the public hearing.

(#0757) Bill Dewey: Amongst the items that are noted, which would indicate we are done with, under F & W the second regarding the exemption ... staff has put forth some proposed language which confuses me and I think needs to be clarified. One question I had was about the LAMIRD's and on the first point on page 1 "Has Mason County assessed through an FSEIS the adverse impacts"? Mr. Diehl had provided us with some comments on December 12th that got into this discussion of whether you just want to pick that arbitrary date of July 1990 and say that everything is conforming that was there prior to that or whether you want to review existing commercial uses for whether they're conforming or nonconforming, like have some sort of process. I don't think we ever had a discussion of that and I thought his comments had some merit.

(#0860) Steve Clayton: He stated designating them as nonconforming.

(#0862) Bill Dewey: That would be an alternative. I think what is better yet is what he's suggesting that the county actually go through a process that makes an assessment of conforming or nonconforming.

(#0875) Theresa Kirkpatrick: We could also talk about changing uses where a location would be okay and then over time perhaps the use of that property would change and could adversely impact the neighborhood or the rural character.

(#0890) Bill Dewey: I read the comments and I felt they had merit and I don't feel like we've had a discussion as a PAC about that and the alternatives. Maybe if we've got time we can come back to that.

(#0930) Diane Edgin: One thing to remember is was that specifically remanded to us to deal with at this time or is it something that we can do in the first amendment? That's something we have to take into consideration.

(#0945) Bob Fink: I don't believe so. There was a policy decision made last year that 1990 comes out of the GMA. There was some review done of what businesses there were and what size they were and that was some of the analysis that went into picking the sizes and the other limitations on the zoning that was used. The policy decision was basically that barring information to the contrary it was deemed that these uses should be conforming and allowed to be conforming partly because of the economic impact on individual businesses and the testimony of the business owners and other parties saying that this has a major negative impact on these businesses and partly the lack of testimony regarding how these businesses weren't compatible with their surroundings. There weren't any businesses that were identified as being totally incompatible with the rural environment they were located in with the exception of the

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mobile home manufacturing, auto wrecking, junk yards and other activities that previously weren't illegal because they weren't regulated but now they thought were inappropriate.

(#1045) Diane Edgin: So we'll see if we have time at the end to tackle it.

(#1050) John Diehl: I'd like to speak to that because I think that's absolutely mistaken. Staff would have you believe that the only thing they had to do was identify these LAMIRD's. That's not exactly the case. The problem was that the LAMIRD's were defective in terms of the SEIS. That means that they have to reveal the full impacts in terms of the context of their task under GM so if the county eventually does what staff has recommended to simply automatically treat all those that are prior to 1990 as conforming uses, the argument that we will take back to the GMHB is that the county has inadequately assessed the impacts of these and has failed to maintain rural character by virtue of that failure. Ignorance is not bliss under GMA. You can't simply suppose that because you don't have evidence that that is a rational basis for proceeding and as for the allegation that the only thing that has been identified as perhaps incompatible are certain mobile home sales lots, I think that you'll find that among other businesses identified by the GMHB in previous orders as incompatible with rural character of rural areas are, for example, self storage units. I want to emphasize here that in every case the issue here is not whether you try to push these people out of business; the issue is simply whether these are deemed conforming uses and I would argue that the whole question of whether there is a rational basis in view of this criteria within the GMA for identifying these businesses as LAMIRD's is very much on the table.

(#1160) Darren Nienaber: One thing you haven't been fully made aware of is that it's true the GMHB had identified certain uses as being inherently inconsistent with the rural areas because LAMIRD's are supposed to be principally designed to serve existing and rural population. Isolated; you don't have to principally design it. The use issue, the GMHB did fight that and took it to Superior Court. Superior Court said there is no evidence in the record that says that anyone of these 14 or 10 uses that the GMHB has identified as being is inconsistent ... there's no evidence that says that these are improper.

(#1210) John Diehl: I'd like you to produce that order; I don't think you're quoting it at all accurately.

(#1214) Darren Nienaber: I don't have to do that, John.

(#1216) John Diehl: That's true but I don't have to sit here and listen to you misrepresent it either.

(#1218) Darren Nienaber: I'm the legal advisor of the county and I was asked a question. To be heckled by a member of the public is improper but this is the same argument I'll be making to the GMHB also. The order says the GMHB may not rule that certain uses are not principally designed to serve existing, projected rural population unless the GMHB finds clear facts or evidence to the contrary. So the county's philosophy is that we've kept businesses small. When you keep businesses small that's so far what the Planning Department's proposal is. By keeping them small that's how you keep them to serve the existing and projected rural population. We had given to the GMHB a list of uses that wouldn't have been allowed; it's not just mobile home sales.

(#1295) Bill Dewey: Madam Chair, clearly I've identified an issue that's won't be simple to address and perhaps it needs to be discussed but let's put it to the end of the agenda for tonight.

(#1312) Theresa Kirkpatrick: Let's discuss open space next. Has the map changed since we saw it last?

(#1322) Bob Fink: Unfortunately we do not have a new map. The person that we were relying on to make maps for us has not been available and we haven't got the work project that we requested from him earlier.

(#1335) Theresa Kirkpatrick: Have there been any changes in what's proposed? Do we need a new map?

(#1340) Bob Fink: We were making adjustments to the map primarily for purposes of clarification so people could understand the relationship between the two UGA's and the open space. One of the ways of doing that is to show both of the UGA's and it would have been helpful to see it that way but I don't know that it's necessary.

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(#1360) Theresa Kirkpatrick: So the actual corridor that is proposed this evening is not different than the corridors that were proposed the last time we were here?

(#1368) Bob Fink: We were also going to point out what was already adopted as open space corridors which was the utility easements as alternate corridors along with the railroad corridor. Also the streams are designated as open space under the current regulations that aren't being indicated on this particular map. We are now looking at an alternative way to get maps produced.

(#1425) Steve Clayton: Allan, have you had a chance to look over Mr. Diehl's e-mail and what did you think of his thoughts on the appropriateness of widening the buffer along instead of just the railroad easement but widening the corridor?

(#1440) Allan Borden: Our discussions a month ago among ourselves and staff, our proposal with the map that was to be produced was not just to be the utility and railroad right of ways but also a certain distance of width paralleling those right of ways. Our thought was more like 300 feet on each side instead of 600 feet.

(#1480) Steve Clayton: Would this be just in the rural lands or would this be in the UGA's also? I know in particular with Ironhorse Crossing I was familiar with the platting on that and he's building right up to the right of way. He's grandfathered in and that's just an example.

(#1492) Allan Borden: We haven't talked about that.

(#1496) Bill Dewey: In Mr. Diehl's e-mail he mentioned that there's railroad lines and electrical transmission lines and gas lines already connecting the two UGA's. Do we have a map that shows these utility corridors and are they common areas?

(#1510) Allan Borden: Our current open space map shows the alignments on there. I can show you that map. *(Allan shows PAC open space map and describes).*

(#1582) Bill Dewey: Are the railroad and utilities traveling on easements? On other ownerships? Does the railroad own the land that they're on?

(#1592) Allan Borden: The Navy owns the railroad line.

(#1596) Bill Dewey: Is that why the power lines follows so closely because they've gotten an easement from the railroad?

(#1600) John Diehl: That would be a good guess. It may be that they are able at a few points to use the railroad easement but I doubt if the railroad easement is wider than 100 or 200 feet.

(#1650) Warren Dawes: I think that John came up with a very good idea talking about either the pipeline or the powerline in that both are attractive for development. It would be good to reserve those areas for further planning before you allow development in there and try to accommodate a green belt area for wildlife and recreational use.

(#1700) John Diehl: The point I want to leave you with is that these railroad lines, electrical and gas lines are nuisances and at least in the case of the rail lines I don't think any of us would want to build a house within 300 feet if we had the choice. You'd want more of a buffer. Although it's conceivable that we might someday in the future have access to the rail line itself as open space but we don't now. So if we're thinking that we would like to have the option at some point in the future of having a viable trail system extending between the UGA's, it makes sense to have something more than 300 feet because that would only give you 150 feet on each side maximum.

(#1755) Steve Clayton: He indicated 300 feet on each side.

(#1757) John Diehl: Let me complete the thought. I'm saying that you would have a parallel corridor and let's say you had 300 feet on this side and 300 feet on this side. The trouble is that you have at most only 150 feet in which you could have a trail down the center where you wouldn't have a nuisance or a distraction on one side or the other so long as the rail line was still in full operation and so long as there were houses

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that were not really compatible with the concept of a trail system. That's not terrible in a forested environment but it's not good and it's not good for wildlife.

(#1805) Bill Dewey: Are you thinking each one of these being it's corridor or should we be trying to select which would be the best and choosing one?

(#1810) John Diehl: My thought is that we should recognize that all of these corridors are nuisances from the standpoint of development and so should have some kind of buffer on all of them. Maybe setback is a better term. There's certainly room for reasonable people to disagree about just what the dimension should be but I'm saying that if you put yourself in the position of a future development such as Simpson Timber and recognize that you have to have 5 acre minimum lots in this area to begin with it certainly would make sense to have 800 x 272.25 sq ft lots or 900 x 242 sq ft lots and you'd have that kind of a dimension available to work with if you were a sensible developer. All you need to do to encourage that is to approve such a corridor and to encourage the county to adopt a regulation that says that if you're engaged in new subdivisions or new development that you try to observe that distance. It could be something less than 600 in the case of the electrical transmission lines and the gas pipe lines; I would prefer to have it a shade over that in the case of the rail lines. The point would be to try to get something like a quarter of a mile of open space.

(#1965) Steve Clayton: So, Allan, the 300 feet on each side is pretty much set? Should we make a recommendation? Mr. Diehl brings up an appropriate idea that maybe a gas and electric might be somewhat less and maybe a railroad might be something more.

(#1986) Darren Nienaber: That's up to you. The advantage of having a PAC is that you come up with the recommendation and then it gives the Planning Department time to respond and say that your recommendation is great or to respectfully disagree for one reason or another.

(#2010) Allan Borden: We really hadn't talked about more than 300.

(#2025) Steve Clayton: Have you thought of doing different inside of UGA's?

(#2030) Allan Borden: We haven't given much thought to that.

(#2032) Diane Edgin: In view of the recent gas pipe line explosion a lot of people are finding themselves living on top of pipe lines who wish they wouldn't be and most landowners realize that having these things on your property does constitute a hazard and setbacks are going to be much more easily accepted on a gas pipe line.

(#2058) Theresa Kirkpatrick: I know recent legislation was passed by Washington State about gas lines. Has anybody seen that?

(#2068) Diane Edgin: They're getting tougher on the inspections but it didn't address setback issues.

(#2088) Bill Dewey: The one piece of information that I'm lacking to make an informed recommendation would be landowner opinion in that area. Whoever the major landowners are there are they concerned about it and what would their position be on it? Mr. Diehl and Mr. Dawes make a pretty good case that it can actually enhance land value. I can also hear a landowner say that you've taken away this many parcels that we weren't able to develop and that reduces our return on the property.

(#2124) Diane Edgin: Isn't there something in the ACT for open space that talks about purchasing rights for open space development?

(#2130) Darren Nienaber: It says that's one option.

(#2138) Steve Clayton: Along those lines, that's one of my concerns is the landowner issue. And not just the big landowner but the smaller parcels as well. The bigger parcels may not be affected but the smaller parcels may.

(#2180) John Diehl: Let's be clear. You're only talking about that with a UGA and the focus was on how to

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provide some answer to the GMA requirement of corridors between UGA's. There is some kind of requirement for corridors within UGA's and the City of Shelton has tried to deal with that by green space adjacent to it's streams. That may be a reasonable solution for what you're expecting to be a highly urbanized development. You need to have different standards. You can't expect open space of the sort that you can have in a rural area within a UGA.

(#2280) Warren Dawes: I would just add that when you're dealing in the rural area with a single landowner holding a large block of land, knowing what your desires are, leaving areas for open space that allows that landowner to turn that into a real amenity for the people who are going to build on either side of that. It can be an asset for the home buyer and developers can see that. It's like putting in a golf course.

(#2324) John Diehl: It's hard to imagine any real estate developer having a concern about this or any property owner because all we're saying is that you should try to keep your house as far away from it as you can given setbacks and any appropriate stream buffers. We have 50,000 people here now and I think anyone with any sense of demographics would say that it's likely that we'll have at least twice that by the end of the century. What are we going to do to look ahead and to plan for that kind of population growth? The GMA says something very important and that is to try to protect the rural areas and the GMHB has allowed much of this area to be subdivided as small as 5 acres. When that occurs it's not going to result in a lot of timber production; it's going to result in a lot of 5 acre homesteads and the question is if that's the pattern for future development let's at least do it in a way that sensible to the amenities that can be created through a coherent and thoughtful process of land use planning.

(#2432) Steve Clayton: Would a reasonable use exception be available for a landowner? If we make the corridors 'x' number of feet and somebody wants to build ...

(#2440) Darren Nienaber: That's one approach you might take just in case the lot is entirely within the proposed buffer.

(#2450) John Diehl: You don't have to do that because that's already on the books but if you want to be even more explicit about it then you could go ahead and say specifically that if it's not possible to site 'x' number of feet from the electrical transmission line on an existing lot you will site as close to 'x' as you can after observing ordinary sideyard and frontyard setbacks.

(#2480) Steve Clayton: Under our current variance procedure if somebody wants to build close to the shoreline or a stream then there's a variance procedure to go through. Would we have to somehow incorporate the particular regulations to do that for an open space buffer?

(#2495) Darren Nienaber: It's a different variance provision but it similar. There's a variance provision in the DR's that we could refer to. Since I've been here there's never been a reasonable use exception. A reasonable use exception is different from a variance. A reasonable use exception is like the very last resort. There is a process and you have used that in the F & W processes.

(#2532) Steve Clayton: So if we do designate an open space corridor can we incorporate in a variance ...

(#2535) Darren Nienaber: It's in the DR's it's already there. There's often time two ways the counties write their variance criteria and some says special circumstance and another one says it needs to meet hardship and then usually there's a minimum necessary thrown in there somewhere.

(#2572) Diane Edgin: Allan, do you have anything that addresses any properties that are developed along those corridors right now?

(#2590) Allan Borden: I know that there are properties right next to the power line and probably the gas line as well around Razor Road where Trails End Road is and just west of Allyn there are 5 acres lots that are right next to the power line or gas line.

(#2610) Diane Edgin: So let's say that those properties are development in such a manner that they're right up against the easements. What happens then to our open space corridor?

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(#2624) Darren Nienaber: That part of it might already be damaged. You'd apply the variance criteria but it would depend on the proposal. Ordinarily there's one dwelling unit so that's that per lot per parcel. Can they expand and how much? The variance criteria says you have to do it on the opposite side if we're going to allow that.

(#2666) Diane Edgin: I'm just thinking of the guy out there with his two or three horses and he's got it all fenced and we're going to take half of it for a corridor?

(#2672) Bob Fink: My concern with the proposal, and we only received it today and haven't had much time to review it, isn't with the proposal that there be 600 feet on either side of the easement. If you look at the open space proposal there you'll see it's quite a wide section and that's because it doesn't have a regulatory effect right now; it's a question of study in the future as to how wide that area should be, exactly what its location should be, what purposes are you trying to serve in that particular location. For instance, some locations may be appropriate only for recreational use and others might be important for wildlife use. So there's a number of other issues that need to be considered in a more deliberate fashion and with more opportunity for public input than we can have today. My concern with the proposal as I read it would be to adopt a regulatory setback of 600 feet from these easements which would require a variance for anyone who couldn't meet that setback and would deny the right of anyone who didn't want to meet that setback of developing their property the way they had envisioned. That would be my concern is that's a very significant impact to a large number of people and I don't think it's one that is mandated by the ACT that we adopt a setback from these open space corridors of such generous portions. If you want to designate these corridors with 600 feet there would be some immediate regulatory effect. If someone had a clustered subdivision they wanted to develop there's a requirement they set aside open space; there's a requirement that that open space be to contain or be located adjacent to other designated open space so in that case people wanting to develop a clustered subdivision in many cases they would be eligible for getting bonuses if they wanted to do a cluster and they would have an incentive to provide for this open space in a permanent and legal fashion and to come up with a development plan consistent with it. I don't know that it's not necessarily thing to request in a rural area but I don't think there's really enough evidence or brought enough opportunity the public comment to really assess whether such a change should be made or not. My own tendency would be to defer an action like that pending better information and analysis.

(#2865) Warren Dawes: I would encourage you to adopt a study area that you could get your thoughts down on a map. I think that you would find that the large land owners who would be retaining their same density on their lands would want to cluster like Bob was saying and give them an incentive to cluster away from that open space area so that it would be contiguous with adjacent lands and then build an open space corridor which would be a real amenity for the whole area. But to just do nothing would be a mistake. I think it makes sense to get your thoughts down with a study area. Even Shelton is working now on an open space corridor along Goldsboro Creek.

(#2945) John Diehl: I just want to clarify what I think is a legal point and that is, yes, it's true that you don't have to resolve tonight when it takes action what DR's are appropriate to maintain and protect open space corridors but that is not to say that it doesn't have to be done at some point. From my prospective the sooner the better. The GMHB in response to a motion to reconsider that I filed made it quite plain that if the county only identified open space corridors and failed to take action to maintain them that it would be open to me to file another petition for review which would force the issue back on the table. Yes, you don't have to now but it would be sensible to try to do it even from my prospective it would be sensible even if you have to request some kind of an extension of the time initially allowed by the GMHB to complete action with respect to its last order. As I indicated when I spoke to you last month the petitioners are perfectly happy to give you or the county any reasonable extension and I don't think there's any doubt that that would be approved by the GMHB. I do think the DR's in this instance can be fairly simple. It does seem to me that you can provide for certain setbacks and at the same time you can provide for certain exceptions to setbacks in the case of existing properties.

(#3088) Steve Clayton: Bob, this map is listed as a proposed open space for the Grapeview / Twanoh Trail.

(#3100) Bob Fink: It's a draft; that's why it's listed as proposed.

(#3102) Steve Clayton: Are we going to present to the GMHB a proposed open space corridor or are we

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going to present something that's actually in our regs as a corridor? The Allyn / Belfair corridor is a proposed corridor that we haven't narrowed down exactly where in the corridor that the open space is going to be.

(#3110) Bob Fink: My understand is that they designated an area and this would designate an area for an open space corridor but the policy language is clear in that although the corridor is this wide and this long and is designated as open space it's not known at this point exactly what portion of that would be acquired or protected through easement through purchase, through regulation, or what part would be developed or what part would be abandoned or removed from the corridor. It's essentially a tool for getting your foot in the door and making it known that this is the area for potential park, trail and open space.

(#3205) Steve Clayton: The question built on that is that we haven't designated and put regulations on particular parcels within that corridor at this time. Can we do the same thing today on the Allyn / Shelton corridor? A study area?

(#3225) Bob Fink: I don't see why you could not. I listened to Mr. Dawes and Mr. Diehl and you admire their forethought and their dreams for the county and to have a wider corridor to be established has some advantages. In some areas it won't be needed or desirable and in other areas perhaps even a wider corridor might be appropriate. But I think that the basis for making that more detailed decision hasn't been established but if you establish this designated area and recognizing what it is I think that moves the process along. There's a reason why the Overtons and other parties objected to the corridor that was designated in the Allyn / Belfair area and that is because, as they stated, when you designate areas even though you're only designating it in the sense of a study area that starts a momentum of it's own and you have to get started before you can conclude the process.

(#3325) Diane Edgin: Bob, what is this setback on power lines and gas lines? What's the easement?

(#3350) Bob Fink: The width of the power line easements? I'm not sure how wide they are. It probably depends on the situation. I know some of the BPA power lines are actually several hundred feet wide in some places. It probably varies by terrain. If you're looking at setback from a gas line because it's a potential hazard ...

(#3488) Diane Edgin: We have to have a starting point for that setback so is there a standard?

(#3500) John Diehl: Assuming that there is it's going to be a minimum standard that's geared towards urban areas; it's not going to help us to resolve the distance issue.

(#3512) Steve Clayton: In order to expedite and move this along my thoughts are sure I'd like one along the power lines and I'd like one on the railroad but let's address the GMA issue and take the railroad one and nail down a number and put it on the railroad one as a proposed open space corridor outside the UGA between Belfair and Shelton, not just Allyn, and send it off to the GMHB and then have somebody that has actually has the time and the speciality to go through and open up the other corridors that really should be opened up and looked at, particularly the power line that goes to Union and other power lines and gas lines.

(#3570) Bill Dewey: I don't disagree with that for an initial recommendation recognizing that there are other options to be discussed but for the noncompliance issue that's probably a reasonable approach. I was curious as to whether, with all these different utility corridors already existing, staff has chosen the railroad line. Is there a particular reason? The gas line seems like a pretty positive one to consider as well.

(#3630) Bob Fink: As I said before, the utility corridors are designated as open space corridors. The reason why we focused on the railroad corridor as part of this trail proposal was because of its functionality for trails. Typically railroad routes are low grade, they have bridges; they're laid with disregard for the terrain. So the railroad corridor was most likely to provide the viable recreational trail and there's a tradition of rails to trails and conversion of those.

(#3705) Bill Dewey: That makes sense. So you're saying the utility corridors are already open space corridors?

(#3710) Bob Fink: Yes. If you look at this map you'll see under open space open space corridors which

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include gas pipeline, electric transmission line, streams, railroad right of way.

(#3738) John Diehl: If the pipe line is an open space corridor what is the width of the corridor?

(#3740) Bob Fink: The width of the pipe line right of way.

(#3760) John Diehl: The right of way might be a lot less than what is regulatory as setback in an urban area.

(#3810) Bill Dewey: So this map was in place when the county was found out of compliance with the open space requirement?

(#3815) Bob Fink: That's correct.

(#3818) Bill Dewey: So those utility corridor open space corridors were found to be inadequate by the GMHB?

(#3828) Bob Fink: In and of themselves and that's why the added components. The railroad corridor was there but the whole proposal for the trail is all new. This is analogous to what was done between Belfair and Allyn where they established a width of open space corridor and a number of potential trails for a future study with the idea being that whether any one of those would go forward ultimately would depend on that future study but they were still designated and show at this time and that was accepted by the GMHB as meeting their requirements and their understanding of the ACT. But we didn't do the same thing between Allyn and Shelton so that is what this map was attempting to do. You're at a very general level of planning here and when you get more specific to each site and each purpose of each area then you're going to end up looking at all the potentials for each area. That kind of analysis hasn't been done and would probably take years to do.

(#0200) Darren Nienaber: If you look at the railroad line it's pretty skinny and it just looks like the railroad tracks and maybe the gravel on either side so it's not clear. If you provided a distance which identifies it as a proposed corridor for further study and analysis that's one way you might go about it.

(#0220) John Diehl: If you're just doing it as a study corridor why not make it ample so that you've got enough space so that if you do run into obstacles you have to work around you've still got some area within your study corridor to work around them.

(#0228) Bob Fink: The 600 feet doesn't seem unreasonable and I don't know that we'd have an objection to doing that because understanding in some places it may be narrower and in some purposes even more area might be needed.

(#0236) John Diehl: Would you agree that it would be appropriate to have such a corridor for all three types of lines?

(#0242) Bob Fink: The only real objection to doing that is the objection that the Overtons voiced is coming into this process at the point it is and the way it's been advertised you're going to surprise some people with it. That always can be an issue. As a practical matter I think that the effect of it should be seen as damaging to the property owners. That in and of itself doesn't restrict their reasonable use of the property or even their pre-existing use of the property. It may change the way they develop the property in the case of clustered developments that have certain standards that apply to open space. It may change it right away but it doesn't keep someone from developing their property with the kind of density and expectations they had previously. I think the Overtons understood that that was true but they still objected. I don't really have a real objection to widening the corridor on the other corridors that we did previously designate.

(#0288) Steve Clayton: So, Bob, you used the words '600 feet'. Is that 600 on each side?

(#0290) Bob Fink: That was my understanding of Diehl's proposal so that would be a 1200 foot plus whatever the easements would be.

(#0298) Steve Clayton: So you think planning can find that acceptable and support that?

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(#0300) Bob Fink: I think we could. Remember, we only just got this proposal today, also.

(#0302) Steve Clayton: What number would we use for the electrical and gas lines? Same?

(#0308) Bob Fink: Yes, I don't have a strong objection to that. We were thinking, as Allan noted, about 300 feet from either side of the easements as a way to establish a wider corridor. One of the open space corridors within the Shelton UGA that we wanted to show you is this is the power line here and they were trying to connect this county park with an existing walkway. If you follow the power line corridor you will see that you come to these rivers and when the public works department was trying to make a trail they ended up going out quite a distance from the power line to be able to establish a reasonable grade. That's one of the reasons why on power line corridors you might even need additional area because of the topography.

(#0385) Diane Edgin: Are we ready for a motion?

(#0390) Bill Dewey: We've had discussions about pros and cons of each of the types of utility corridors. Would you want to add to a recommendation any prioritization to the study areas from railroad to gas to power; that seems like to order in which you'd want to do it if you have limited resources.

(#0405) John Diehl: It's not important that you resolve that; there's two requirements under the ACT. One is to identify the corridors and the other is to maintain them. You can do just the first if you want and then we can tackle the second one later. Presumably in tackling that there will be ample opportunity to discuss which you want to do first.

(#0420) Bill Dewey: I recognize that and I'm not necessarily suggesting we need to incorporate it in the motion but I thought capturing it in the minutes from a standpoint that we have deliberated it would be good.

(#0440) Steve Clayton: I make a motion that we designate a 1200 foot, 600 foot on each side, proposed study area for open space down the easements for the railroad, BPA power, and Cascade Natural Gas between the UGA's of Belfair and Allyn and Shelton.

(#0462) John Diehl: A study area for a corridor is not the same as identification of a corridor as I understand the language so I would suggest that it would be best to move to designate or identify a certain area as a corridor not just as a study area for a corridor.

(#0480) Darren Nienaber: I agree with that.

(#0486) Steve Clayton: So we'll make that friendly amendment and the study area to lie outside the UGA's.

(#0492) Bill Dewey: I second the motion.

(#0495) Diane Edgin: We have a motion and a second. Any further discussion? All in favor? Motion passed.

(#0510) Steve Clayton: As a thought, sometimes we don't finish things. We have three different issues with the GMHB : Rural lands, Resource and Fish & Wildlife, so why don't we work on finishing one or two of those and then if we don't get to the last one we can carry it on to the next meeting.

Break in meeting.

(#0590) Diane Edgin: Let's now address the BMP's in the Fish & Wildlife.

(#0600) John Diehl: I appreciate that there is some step in the direction of what I suggested but it's not clear to me if this quite does the trick. With respect to the first section under C, it says that these agricultural restrictions: In all development proposals which would permit introduction of agriculture adjacent to FWHCA, damage to the area shall be minimized by the following methods ... I proposed some changes to that current language and I've pointed out why I think there's some ambiguity here. So you're proposing to replace the C at the top with the C at the bottom?

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(#0656) Allan Borden: That's correct.

(#0658) John Diehl: Let's look at the first sentence you're written below. Is what you've written equivalent to existing and ongoing agricultural activities outside of the FWHCA and its buffer shall follow permit requirements of existing and ongoing agriculture, aquaculture, etc. This is something where the key word is 'needs' and that's not a regulatory word in my book.

(#0690) Theresa Kirkpatrick: So we need to change the word 'needs' to 'shall'. Any other suggestions?

(#0715) John Diehl: Yes. I'm at least puzzled here because you notice the heading is 'applies to activities that need MEP but no HMP required'. If you look at the second paragraph you see that if it's a new agricultural development an HMP is required. But if you're putting this under a category of something where the things listed do not require an HMP ...

(#0765) Bob Fink: The purpose of the subsection is when this regulation was developed it would seem that if certain standards were met then you didn't need the more detailed analysis provided by the HMP. So if you did your develop according to the standards you didn't have to do an HMP; if you wouldn't meet those standards or exceeded them in certain specified ways then an HMP would be required. An HMP is a fairly expensive process and they thought that they had sufficient standards to show that so it wouldn't be required. That's different from another subsection which says that a permit is required and an HMP is required.

(#0798) Bill Dewey: And that's under G.1?

(#0800) Bob Fink: I believe that's correct.

(#0802) Bill Dewey: And what Mr. Diehl proposed in his comments was actually a new section J under G.1 and what we're proposing is amending C in G.2.

(#0806) John Diehl: I think it can be done as Allan is suggesting but I do think it invites confusion because the general heading for G.2 is a habitat management plan will not be required and then there's a typographical error there. So what we're saying is under this general heading that HMP will not be required except as specified and then we're saying it will be required. I think it could be clearer to do it the way I suggested. The other question I have is on the third item which may represent no change but I think it would be good to have some clarification where it says an MEP is not required for those agricultural activities defined in Section D.2.d and I'm wondering what those are?

(#0860) Allan Borden: The reason I added that was because it wasn't very specific.

(#0870) John Diehl: Can you tell me what activities are defined in that section for which an MEP is not required?

(#0900) Allan Borden: Okay, D.2.d. is under the Wetlands Chapter, activities permitted with an MEP. Existing and ongoing activities including farming, horticulture, aquaculture, irrigation, ranching and grazing of animals, etc.

(#0940) John Diehl: Doesn't that create a contradiction with Section c? Where you're providing for BMP's and some sort of regulatory process?

(#0975) Darren Nienaber: It's tough to get an expensive environmental document that supposedly reduces F & W buffers but they're just sparing the farmer from getting any MEP. They're still regulated.

(#0995) Allan Borden: The phrase links two part of the RO; F & W and Wetlands. Sometimes they occur together. So it says environmental permits not required for agricultural activities defined in the Wetland Chapter which also occur in FWHCA.

(#1012) John Diehl: Does that mean that any agricultural activities defined in the section that's named are

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activities that would require an HMP?

(#1023) Allan Borden: If they're existing and ongoing as described in this Wetlands Chapter they wouldn't have to get an HMP. The Wetlands Chapter talks about existing and ongoing; if it's a new operation then it has to get an HMP or if it expands to an area that's not been used then it has to get an HMP.

(#1055) John Diehl: The concept here is that there are activities that will need at least an MEP and the MEP would be presumably the kind of thing that would be issued for existing and ongoing agricultural activities?

(#1066) Allan Borden: That's correct.

(#1068) John Diehl: And if those existing and ongoing agricultural activities occurred within designated wetlands, would an MEP be required?

(#1080) Allan Borden: If it's in the wetlands, then it wouldn't but if it's in the areas adjacent that are streams then you probably would.

(#1088) John Diehl: If I understand that, you think that there would be a requirement for an HMP even though there was not a requirement for an MEP in wetlands?

(#1098) Allan Borden: I don't think HMP's are stated as a necessary special report in the Wetlands Chapter.

(#1104) John Diehl: For existing and ongoing agricultural uses?

(#1106) Allan Borden: Right.

(#1110) John Diehl: So what this clause does is to exclude from either the need to have an MEP that conforms to the restrictions laid in the first paragraph in Section C or for an HMP. It seems on its face for ongoing agricultural activities to create a full exemption from either an MEP or and HMP.

(#1135) Allan Borden: If it's in the wetlands, that's the way the regulations are stated.

(#1138) John Diehl: I think that's a mistake; I think that should be corrected. It doesn't make sense to, especially in a sensitive area, that you create an exemption if it were a wetland for at least an MEP but would not create an exception if it just happened to be a FWHCA as opposed to a wetland.

(#1166) Bill Dewey: For me, this issue has become very confusing. I thought your recommendation, which I thought made sense, when you're in a FWHCA and you need an HMP you were trying to provide an opportunity instead of having to get a very expensive HMP, the opportunity to have BMP's in place. That's what we gave staff direction to try to create that opportunity for. But now we've got something that to me has gotten somewhat confusing.

(#1200) Allan Borden: Mr. Diehl proposed that when there's an intrusion in an FWHCA buffer an HMP is required which is exactly what this new revised part also stated.

(#1210) John Diehl: But as I understand it you've created an exception for wetlands.

(#1214) Allan Borden: We didn't create it; it already existed and the reason for the reference is to make two parts of the RO.

(#1225) John Diehl: I think one of the most fundamental requirements of the GMA is internal consistency. It looks to me as though we have a situation now that parcel a that you're farming is both a wetland and a FWHCA you don't even have to abide by the restrictions of the first paragraph of section c., whereas if it's only a FWHCA or its buffer then you do have to conform to those requirements. It makes no sense on the face of it to have that kind of exemption exist.

(#1290) Bob Fink: The provision, as it was originally written, when existing and ongoing agricultural activities were exempt it clarified in length the two areas together but it clarified that ongoing agricultural was exempt so it made sense in that context. When you're required to address ongoing and existing agriculture, as Mr.

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Diehl says, it's probably an aspect of that even though it's in the existing ordinance it's an aspect of that exemption that probably should be addressed. It should probably simply be deleted at this point where it says 'A MEP is not required, etc' in the new proposed C section.

(#1340) John Diehl: Wouldn't it also require an amendment to the Wetlands Section to remove the exemption there?

(#1345) Bob Fink: No. The Wetlands exemption is adopted and approved by the GMHB. It stands on the record and there's nothing in the record or the remand to go back and change that. It's a different critical area than the F & W critical area. However, the reference to it in this section should be deleted.

(#1375) John Diehl: So you want to preserve the consistency but you want to take out the explicit reference to it in this section?

(#1390) Bob Fink: There's no new record on the wetlands that says that that needs to be changed nor is it under review, nor is it under remand so there is no BAS to support that change and there is not a remand to cause that change. It's outside the scope of our review.

(#1405) John Diehl: I understand your position but my point would be that it's not a matter of BAS; it's a matter of simple logic.

(#1412) Bob Fink: There's a difference between FWHCA and wetlands areas and that's why they're different critical areas so there is no logical inconsistency.

(#1418) John Diehl: The fundamental inconsistency is that if there is a reason not to allow a blanket exemption for agriculture in FWHCA's it applies with equal force to wetlands because wetlands are typically FWHCA's so the inconsistency may in part be simply that they're overlapping.

(#1445) Bob Fink: There are isolated wetlands that aren't on streams. There is indeed overlap but there is also non overlap.

(#1455) John Diehl: To the extent that there is overlap then you've created an internal inconsistency where you've said that the designated FWHCA's are no longer subject to this blanket exemption but that the designated wetlands that also happen to be FWHCA's are exempt. You've removed the logical inconsistency but I think there's still a problem that falls within the purview of the remand. The point of the remand is that if you're trying to protect critical areas you don't want to offer a blanket exemption to agricultural uses. You may allow agricultural uses in a somewhat different way; you may not want to exclude agricultural uses but you want to regulate them in some way. I can think of no reason why anyone could seriously argue that it's okay to let whatever agricultural uses occurring at present in a wetland go on without regulation but we're going to clamp down and require BMP's on existing agricultural uses in FWHCA's. It makes no sense and I don't think the GMHB is going to agree with that.

(#1558) Allan Borden: You don't have this in front of you but the activities permitted for MEP's in wetlands need to be conducted using BMP's except activities that result in conversion of regulated wetland or wetland vegetation areas.

(#1585) Bob Fink: It's from the exemption section in the Wetlands Ordinance. In the beginning of that section it says 'these activities are exempt only when they are conducted in an appropriate manner' or as Allan read the language 'consistent with BMP's'. So while it's not language that is quite as specific as what we're reviewing here it does provide for a check on activities of existing agricultural activity.

(#1600) John Diehl: It's not a permitted check. The distinction is that in the case of FWHCA's there's a regulatory process that this would put in place whereas in the other case there's no permit that goes along with checking to see if BMP's are actually followed or subscribed to.

(#1622) Bob Fink: It would be something that is regulated and enforceable for existing and ongoing activities.

(#1628) John Diehl: The distinction is that in the one case you actually have to go through a process that generates an okay and approval. In the other case we have to imagine that somebody's going to track down a

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problem, file a complaint and then the issues arises as to whether it represents BMP's.

(#1648) Bob Fink: I don't think that Section c here in the ag restrictions requires people who have ag activities to apply for permits to simply continue their activities.

(#1660) John Diehl: If they have to follow permit requirements what's the permit? If you're not reading this as requiring a permit for existing and ongoing ag activities then what is reference in that paragraph to permit requirements?

(#1745) Bill Dewey: When I first raised this and was wanting clarify this was the question I had. You follow permit requirements and then it references BMP's. Often times BMP's aren't a permit requirement. A lot of times they're nonregulatory recommendations as opposed to a permit. I mentioned at the last meeting about the Shellfish Growers Association BMP's' and that we're going to a process trying to get accountability and third party audit built into through our Growers Association not necessarily through a government agency in trying to find a way to make that be adequate.

(#1800) Darren Nienaber: What if you substitute BMP's for permit?

(#1810) Bob Fink: That's possibly one way to change it.

(#1812) John Diehl: You need something that's going to capture the fact that it doesn't help much to have a list of BMP's if that's their only importance. You need to have some connection between whatever is written and what occurs in the field. That could be through a permitting process and that is the preferable route especially when we're dealing with critical areas. The other alternative is to require that people adopt BMP's so there's at least some commitment, some sort of farm program that they subscribe to and then they can be held to that. At the minimum you need some kind of a sign off that the farmers says this is what I'll agree to do in the nature of BMP's so if he doesn't you can hold his feet to the fire.

(#1900) Bill Dewey: This is where I was confused further by this language. I thought your recommendation was to let them off the hook from the expensive HMP if they had BMP's that included accountability whether it was through a permit requirement or some other program that they were accountable and the second paragraph reads to me that they're still required to get the HMP and that HMP will include the BMP's so you haven't let them off the hook.

(#1925) Diane Edgin: Isn't that only if you get into the FWHCA versus the wetlands?

(#1930) John Diehl: The difference between the first and second paragraph is that the second paragraph pertains to new ag uses or expanded uses.

(#1938) Bill Dewey: My point is whether it's new or expanded or existing if you've got someone who's obligated to doing BMP's they should be let off the hook for doing the HMP.

(#1948) John Diehl: I think that's fine and that was the essence of my recommendation but I do think that you need to focus on that notion of obligated to ...

(#1955) Bill Dewey: I don't disagree with that. If there isn't some process that they're to be accountable for doing the BMP's then they're on the hook for doing the HMP.

(#1964) Bob Fink: I think the appropriate process for that is to actually take the statements in the first paragraph of c and reintroduce that as the exemptions and say that these activities are exempt when they are done according to these specific guidelines. Then it becomes an enforcement issue if someone does something egregious or noticeable then leave the second paragraph in here for expansion of activity or new activity would then require a permit or would require them to also follow BMP's. You have to realize that the nature of the FWHCA's are not just stream buffers.

(#2020) Bill Dewey: From a shellfish aquaculture standpoint everything we do is an HMP. If we're going to expand our farming operations we're doing it in an HMP.

(#2028) Bob Fink: Right. So depending on the nature of which type of habitat area it is, in some cases

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aquacultural activities may be done in a way that's harmful to species.

(#2110) Diane Edgin: With regards to time, don't you think we should remand this back to staff to rework this thing and we deal with it next time?

(#2117) Bill Dewey: I don't think that's a bad suggestion. I don't think we're close to a solution and we do have a lot of other things to cover.

(#2125) Steve Clayton: Have you figured out how we can put in an enforceable BMP provision? That's my concern.

(#2132) Bill Dewey: You think of a way to craft it but if there's a program in place that an enforceable BMP or adequate accountability to the satisfaction of the county then no HMP would be required. If that's not available then they're going to have to do an HMP.

(#2150) John Diehl: There certainly are provisions for development of farm plans that incorporate BMP's where there is a signed agreement between the conservation district and the farmer and something like that might be an appropriate alternative. My original concept was that the county might adopt certain BMP's but I know there's some problems with that so I'm trying to work around that but maybe then somebody needs to adopt them and do they have an enforceability. I don't think at the moment the shellfish industry is considered agriculture.

(#2240) Bill Dewey: Under state law it is.

(#2275) Bob Fink: Without addressing every possible county regulation, this regulation under discussion, the RO, does consider aquaculture as agriculture.

(#2300) Bill Dewey: From an environmental health standpoint there isn't an existing approved permitting BMP program. That's why we're trying to do it as an industry. We've spent two years developing environmental codes of practice and have adopted them as an association. Now we're working on a process to get individual farmers with farm plans developed and accountability so when people are implementing those farm plans people from the outside looking in can see that they're doing it and here's the report. We're trying to get that all in place and we do have a very comprehensive environmental code of practice that the industry as a whole has adopted and now we're just working on implementing it at the grower level.

(#2375) Steve Clayton: So you're saying that your shellfish industry does have a program which could be construed as a BMP plan that the county could adopt?

(#2380) Bill Dewey: Absolutely.

(#2382) John Diehl: But you don't yet have in place a procedure by which there's in effect a contractual agreement between the shellfish operator and some other agency.

(#2390) Bill Dewey: That's correct. We're working on that but we're not there yet. It could be the conservation district locally if Mason County adopted something like this.

(#2402) John Diehl: Certainly there's not anything that excludes the conservation district from tackling that kind of arrangement.

(#2448) Darren Nienaber: This is all under a general umbrella of what we were remanded. Did the county delete the blanket permit exemption for agricultural activities? You can take this ball and run a few yards with it but at a certain point ...

(#2466) Steve Clayton: So we've deleted the exemptions so our attempts are to create a system where we deleted the exemption for ongoing activity and we're trying to bring it back to a point where they don't have to go through an HMP and an MEP. So what you're saying is just take out the exemption and they'd be required to go through that but what we're trying to do is say in some cases we want to give them an exemption from further expenses.

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(#2492) Bob Fink: What we've proposed is to remove the so called blanket exemption and put a conditional exemption in its place saying that agricultural activities conducted in an environmentally appropriate way are allowed as existing and ongoing activities similar to what's in the wetlands section. It would be very difficult for us to require everyone doing any kind of agricultural activity who might be in a FWHCA to come in and get a permit within 'x' amount of days or they would be in violation of the law. What we'd like to do is to make sure those operations are done in a way that are environmentally benign or acceptable. I think putting a paragraph back in the exemptions which would say that if you have existing and ongoing agriculture that is done by a farm plan approved by the conservation district or consistent with some other specific standard then that would be an exemption and then for any new activity or expansion thereof we would keep a permit requirement which might require an HMP if there weren't standards. There's one section where an HMP is always required another where an HMP is sometimes required; this could go into the sometimes required section.

(#2682) Bill Dewey: That sound reasonable to me. I would just like to reiterate my concern from the shellfish industry standpoint that we are trying proactively to get these BMP's in place. I don't want to stifle our industry by all of a sudden requiring us to get the HMP's on every new activity or existing activities if we don't have a ratification process in place because the conservation district isn't currently doing this. I'd like to offer for the record tonight that this is a recent assessment done by the Economic Development Council of Mason County of the shellfish industry just to show the significance of the industry and to reiterate the potential of this industry to support economic development in Mason County. I think you will find these numbers staggering on what this industry is currently contributing to Mason County economics.

(#2740) Bob Fink: What I would suggest as a possibility is if you would submit for the record your BMP's that have been adopted with the possibility that the county would review them and approve them and if people did meet them that would be the basis for an exemption. If they didn't meet them that doesn't mean they couldn't get a permit to do it their own way or some way that's maybe not in your BMP's but would not be damaging.

(#2770) Bill Dewey: I'll do that.

(#2774) John Diehl: Do you know when you'll have BMP's in some formal version?

(#2780) Bill Dewey: We actually have them in a formal version now. But they have no force of law behind them and we don't have the audit process in place.

(#2798) John Diehl: Is there a problem from your standpoint in making the county the auditor?

(#2808) Bill Dewey: Potentially, yes.

(#2810) John Diehl: Do you have a better idea?

(#2812) Darren Nienaber: We physically could not do that with the cutbacks.

(#2815) Bob Fink: I don't know that we could audit it from the sense of insuring maintainance proactively.

(#2828) Bill Dewey: With our health regulations we self monitor and keep records and then the audit by the health department is of our record keeping which simplifies the process.

(#2885) John Diehl: Are you far enough along in your own internal thinking to conceive of an agreement or contract to abide by BMP's? Will individual growers be prepared to sign off and say that they promise to abide by these practices?

(#2908) Bill Dewey: I think the industry is mature enough in what we're doing. We've been working on this for three or four years now.

(#2922) John Diehl: So it wouldn't be an obstacle to require the contract. The question is who will the contract be with?

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(#2925) Bill Dewey: For new, I can see it being a requirement. For existing, something a little more delicate would be called for.

(#2945) John Diehl: Again, we don't want to have a blanket exemption for existing agricultural uses whether they're on land or on water. The GMHB would not have any problem with some sort of phasing in of saying within a year or so that existing ag operations shall adopt plans that incorporate BMP's either in the form of agreements with the conservation district or the form of agreements with the county.

(#2988) Bill Dewey: What I would ask at this time is that we be offered that flexibility. The ultimate goal is to provide accountability that we're doing it.

(#3000) John Diehl: The regulation could read something like an agreement between the operator and/or owner and the conservation district or other government agency.

(#3020) Bob Fink: Or it could be an implementation plan. If I could make a suggestion. If the PAC would be agreeable to ask for us to go and redraft this language along the lines that I laid out before looking at an exemption portion of it for well managed sites and then a certain permit process and we will have further discussions regarding what those specific standards could be that would be useable. Then we'll come back to you with that specific language along that direction.

(#3230) Theresa Kirkpatrick: I move that we remand this back to staff as per Mr. Fink's recommendations and we will give it further review with new language and with our thanks to the staff for redrafting it.

(#3240) Steve Clayton: Allan, could you talk to the Conservation District and see what they have along these lines and make sure it's amicable to them.

(#3255) Bill Dewey: I second the motion with an apology for belaboring this as long as we did.

(#3262) Diane Edgin: We have a motion and a second. All in favor? Motion passed. On to the LAMIRD's.

(#3310) Bill Dewey: There were comments from Mr. Diehl on December 12th in the form of an e-mail talking about this issue of 1990 and the date and the conforming versus nonconforming.

(#3340) John Diehl: I don't think there's been any discussion yet of the whole matter of the appropriate width of setbacks and some of these other things that are included. It's part of the overall picture of whether a LAMIRD is compatible with the basic concept of preserving rural character.

(#3378) Bill Dewey: In your comments relating to those setbacks can you direct us to which submittal had that reference?

(#3398) John Diehl: On December 16th I submitted some very specific comments about rural commercial zoning and rural tourist zoning. There's other language there that has to do with the way that the zoning is characterized. It's part of the whole process of reviewing what gets treated as a LAMIRD.

(#3634) Theresa Kirkpatrick: I don't think we went through the setbacks specifically. What we were trying to ascertain was conforming and nonconforming uses based on a date and also the phrase 'spot zoning' came up frequently in our previous discussion.

(#3664) Bill Dewey: Reading through Mr. Diehl's comments from December 12th in that e-mail and this whole issue of conforming and nonconforming and the date in 1990. I don't have the history on this. Part of this process Bob explained to us tonight and that was useful to hear that there was public input and how the county arrived at their decision, right or wrong. Mr. Diehl has offered some pretty compelling arguments as well. I'm still unresolved in my own mind as to what I would make as a recommendation. If a LAMIRD was found to be nonconforming that doesn't necessarily mean that it's going to be discontinued or that they would be told that they would have to move but you would try to put provisions in so that over time you might reclaim that land to a conforming use. That's what I was reading in here and that made sense.

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(#3750) Diane Edgin: It also means that if it's one business right now that that person would not be able to sell that business.

(#3764) Steve Clayton: No, that's not true.

(#3774) Diane Edgin: They put it in the language in the ACT in California that if there is a cessation of business that if it doesn't pick back up in two years it's out.

(#3795) John Diehl: That is if it's a nonconforming use and it ceases but that's what we would like.

(#3805) Theresa Kirkpatrick: But that doesn't keep someone from selling an active business.

(#3832) Steve Clayton: I think that's what nonconforming does. There's an interpretation from the Planning Department on whether or not a trucking company can go into a place where there was previously a food distributor. There's kind of a gray area there.

(#0090) Theresa Kirkpatrick: We need to also address expanding businesses that are nonconforming.

(#0102) Steve Clayton: I think Mr. Diehl brought up some good comments to look at them on an individual basis and make them nonconforming. It would be interesting to see the public comments about why conforming was better than nonconforming.

(#0115) Bill Dewey: It sounds like there was not public testimony brought forward of nonconforming uses.

(#0120) Diane Edgin: I think the EDC did make some comments. They had in mind that we had so few businesses that they didn't want to lose any or drive any out.

(#0140) Bob Fink: There were comments along those lines in the very beginning in 1994 and 1995 for the adoption in 1996. Nonconforming and conforming uses has always been an issue and what the impact is. The decision that was made in 2002 was that barring other information specific to a property the burden would be on the county to show that the business should be out rather than the business should be made conforming and there was no testimony that came forward that I can remember during the process of adoption in 2002. It said what you're doing is fine but this business over here is totally surrounded by all these residents who come out and scream at them every day because he's disrupting their lives. There just wasn't that kind of record that said that most of those businesses were a problem. That doesn't mean that every business is in the best location and that doesn't mean necessarily even that every business should be conforming but I think that the burden is to identify those few businesses and they haven't been identified. In the record that was established in 2002 there was no record that says that those things were a problem where they were and should not be allowed to continue to the extent they could be made nonconforming and hopefully within some period of time they could change to something that was conforming.

(#0205) John Diehl: You should keep in mind that at that time these weren't even mapped. We just had a list of the LAMIRD's and yes, if someone had known that that list existed, had looked up things in their neighborhood, and had gone to the trouble of coming in and offering testimony, then you might have had more site specific comments.

(#0234) Bob Fink: Mr. Diehl is correct in the sense that these weren't individually mapped but there was a list of parcel numbers with the names of the property owners and people often know the names of the people who run these businesses so there was at least some opportunity to comment. That doesn't mean that there wouldn't be more comment had more people been aware of the specifics; that's always an issue with any public process. That doesn't mean that these things can't be revisited in the future.

(#0278) Diane Edgin: John, it seems to be that in one of your correspondences that you offered an Alternative #4 which would allow this question to be addressed at a later time by adopting it.

(#0298) John Diehl: That refers back to something that has already been discussed this evening and that is I was saying if you didn't want to rationalize the process entirely at this point then you could adopt what is shown as Alternative #4 which was the discussion in the DEIS and that is 'no action and recognize all non-residential development in the rural lands as nonconforming, except where already occurring within a

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designated RAC or designated Hamlet'. That is a way to get into compliance and at the same time to keep the door open to a more rational approach which is not to treat them all as nonconforming but to go through and probably treat most of them as conforming but to at least make some sort of reasonable decision based upon consideration of those businesses.

(#0340) Diane Edgin: I'm thinking that would be the best thing to do at this time given the constraints of time.

(#0342) John Diehl: It would be the easiest.

(#0345) Bill Dewey: The FSEIS did not consider the alternative of a review for nonconforming and conforming.

(#0352) Bob Fink: Yes, it did. That's an alternative in the draft. One alternative is to make them all nonconforming and when you make them nonconforming they still don't go away.

(#0368) Darren Nienaber: I can say fairly for sure that the BOCC aren't going to go that route. They'll adopt something different from making them all nonconforming.

(#0376) Bob Fink: I don't disagree with Mr. Diehl in the sense that he says that's one logical way to go but I don't think that's the only logical way to go. I think it's equally logical from an economic standpoint to legalize them all and then as we identify ones that perhaps should be made nonconforming then make them nonconforming later. That's just as logical. Given the need for the county for economic vitality and the threat this is to the business community in their own minds that that is the wrong way to do. To go and say let's make them all nonconforming is potentially very damaging.

(#0405) Darren Nienaber: Diehl himself recommended a number of far more pragmatic suggestions by modifying some of the development regulations and with setbacks. That might be the best route to go but it's up to you. It might be more fruitful to go by those other suggestions.

(#0452) Bill Dewey: I don't like the idea for the reasons you suggested the message it sends to reclassify everything as nonconforming from an economic standpoint. I don't think that is wise. I think it sends a bad message to business. I do like the idea of incorporating some sort of a methodical review of the LAMIRD's for conformity as opposed to just if they're brought by a complaint in the future that someone finds it a nonconforming use. My own personal preference would be at some point there's some sort of a review for conformity and I'm intimidated by tonight trying to address Mr. Diehl's list of all the different changes that you referred to, Darren, to setbacks and heights. I don't mean to criticize it because it's exactly what I asked you to do in the past is give us specifics but I don't feel like I have the expertise to review these to know whether they're appropriate or not. I don't know that I could make a decision tonight.

(#0520) Diane Edgin: I think we probably could make a motion stating that we realize that there are properties that are both conforming and nonconforming and because of time constraints we recognize this fact and that we ask that these be designated at a later date.

(#0530) Theresa Kirkpatrick: I like the idea of the methodical review that every property is subject to the same criteria and not just based on complaints.

(#0542) Steve Clayton: The GMA says that the intent is just to have rural businesses addressing rural needs and a number of these don't address them.

(#0550) Darren Nienaber: Rural businesses in Hamlets in RAC's; those are the D1 LAMIRD's. D3 don't have to be principally designed to serve the existing and projected rural population.

(#0558) John Diehl: That's true but they do have to be consistent with rural character.

(#0565) Steve Clayton: So there are a number of these 175 that won't fit that parameter and what we're doing is saying it's okay and maybe we'll take it away some day and I don't see the county ever having the where with all to ever take away a designation as conforming.

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(#0575) Darren Nienaber: I don't know if I follow you there. There are uses that we enforce against and I don't think the Planning Department is afraid of code enforcement. I certainly am not afraid of enforcement; I've had plenty of it.

(#0586) Steve Clayton: We talked earlier about the trucking company out at Kamilche. Ideally that would be a nonconforming use and that some generation in the future it would go away but that's pretty much the only way you're going to really address having trucks there.

(#0598) Bob Fink: I don't know that that's the ideal solution. The ideal solution may be the guy sells his house and somebody who buys his house doesn't mind the truck driving by his house moves into the area. Maybe that's the ideal solution rather than driving the business out. The number of businesses of which there are problems are probably very few but what we're looking at really is not the businesses that are problems to their neighbors so much as the issue about whether these things comply with the ACT, are they allowable, can we zone them for rural industrial or rural commercial and if so what is the nature of that activity that should be allowed. That really is the issue that you want to focus on.

(#0646) Diane Edgin: What sort of time table would it take to identify those? Once we set down with some criteria?

(#0652) Bob Fink: What parameters? When we designated these zones we set certain restrictions. You have to differentiate between places nonconforming because of use and places nonconforming because of the structure.

(#0680) Diane Edgin: Let's say there's a fire in a large building and one of these isolated things is burnt down. If my understanding is correct a lot of the times they won't be able to rebuild on the same footprint.

(#0688) Bob Fink: In the shorelines the rebuilding of a non-residence is not allowed without coming into compliance with the current regulations of the SMP. In most of our codes we do allow rebuilding to the pre-existing condition. That's within a two year time period.

(#0735) John Diehl: One option would be to table this for tonight, give it some further thought and I hope look at some of the specific language I suggested, and use the remaining time this evening to get into some of the areas that haven't been discussed at all.

(#0755) Bill Dewey: I make a motion to table this until the next meeting on January 22, 2003.

(#0762) Theresa Kirkpatrick: I second the motion.

(#0764) Diane Edgin: We have a motion and a second. All in favor? Motion passed. On to Frequently Flooded.

(#0840) John Diehl: In my letter of December 16th on page 4 I've offered some specific comments.

(#0936) Darren Nienaber: In John's letter on page 4 under FFA's it says 'Variances shall not be granted for residential or commercial construction in designated floodways'. I don't think planning has a problem with that. Next, 'No parcel may be created that would require a reasonable use exception or variance before new residential or commercial construction would be allowed'. The reason why the GMHB wanted us to designate a floodway was because in a floodway no reasonable use exceptions would be allowed at all and there are none allowed under our proposal. I don't know if that's a problem. Next, 'Since the floodway is an extremely hazardous area due to the velocity of flood water that carry debris and potential projectiles, and create substantial potential for erosion, the following provisions shall apply to areas designated as floodways'. That is under appeal and I'm fairly sure that the county wouldn't adopt that wording but I can see the reason why it's there. It doesn't really have any regulatory effect; it's more explanatory.

(#1012) John Diehl: Let me explain what went behind that. It was more for clarification. If you look at 5.3 in your draft; it's superficially much the same as what I'm proposing but I deleted the first sentence because it seemed to me to be unnecessary. The second sentence says 'apply except to that zone of special flood risk, Skokomish River Valley as defined in Section 2.0'. That seemed to me very odd and maybe not even

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what staff intended.

(#1044) Darren Nienaber: That does seem odd. I'll have Bob take a look at that. Looking down at where John is recommending about dikes. 'Dikes shall be inspected by the Public Works Director at least biennially'. Instead of how the county previously said 'it's the opinion of the Public Works Director are unsafe shall be inspected'. I don't think the Planning Department has a problem with John's wording. So no issue there. The last one says 'Existing dikes, levees, and berms shall require permits for any proposed maintenance or reconstruction. Such permits shall be conditioned by compliance with the Skokomish Comprehensive Flood Hazard Management Plan'. The first sentence does require permits already. It's in subsection 6.0. In terms of the second sentence, that's a lot harder to do because the Comprehensive Flood Hazard Management Plan is a policy document; it's not a legal document and it has two different alternatives so which alternative do you follow? So the Comprehensive Flood Hazard Management Plan was never written to be a legal document so by incorporating it by reference you do create a legal document and the whole thing is subject to petition by anybody.

(#1135) John Diehl: The very provision that you point to that does indicate permits are required. Look at page 25, subparagraph 6 refers to the Skokomish River Comprehensive Flood Hazard Management Plan. So what this boils down to is that it already has a connection whether you consider it a regulatory connection or not. This is the important point which is not spelled out.

(#1165) Darren Nienaber: Shall we say 'such construction shall meet the NRCS standards'?

(#1170) John Diehl: This is where there may be a difference and we may not agree. The NRCS standards are basically just building requirements. The Skokomish River Comprehensive Flood Hazard Management Plan offers a more sensible consideration not just of what materials you use to construct dikes but of where you should have dikes and it specifically proposes that instead of relatively high dikes that a system of low berms be established with appropriate setbacks from the stream. You have lower ag berms which give you some protection against flood damage to ag lands but they don't have the effect of backing up water onto a neighbors property and causing damage to his property. That's the fundamental issue with dikes right now. Apart from the fact that they don't work and are unpredictable and dangerous the fundamental problem is that to the extent that they do work they divert water where they have no business diverting water to other peoples property. If we were to make the commitment to follow through on this Skokomish Plan we wouldn't be just building bigger and stronger dikes where they now are but we would be, over time, phasing out some of these dikes. Many of these dikes could be set back further from the river and in so doing you would reduce the level of hazards and the potential liability for diverting flood waters onto someone elses property.

(#1310) Steve Clayton: Mr. Diehl, explain to me how your addition of Section 8 is different than what is already in subsection 6; activities related to repair, maintenance, etc. It seems to have the aspects of if you're going to repair it or maintain it you need a permit.

(#1320) John Diehl: The difference lies in the final clause on page 5 of my letter and at the bottom of paragraph 6 in the draft on page 25 where I suggested that it conform with the Flood Hazard Management Plan and particularly the policy adopted October 24, 1995 and there's a reference to the page there. That's the policy that would achieve some setbacks and some lower agricultural berms as opposed to these higher dikes.

(#1362) Bill Dewey: Following up with Steve's question, I wonder if your suggested language isn't more appropriate to add to #6 or if you really intend it to go on #8. I don't disagree; I have some of the same concerns shared by Darren as to how you take this document and now incorporate it into a regulation is troubling from a legal standpoint. I don't know how you'd accomplish that. The place to reference it, though, might be more appropriate in #6.

(#1392) John Diehl: That part doesn't bother me a bit; I'm happy to see it there. All I'm saying is that if you're going to do that the reference to the Flood Hazard Management Plan should be not just that construction should meet NRCS standards but that it shall also conform to the policy adopted October 24, 1995 by Planning Advisory Committee and referenced in the plan.

(#1420) Bill Dewey: The NRCS standards I can see that's legally something you can make people abide by;

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the Skokomish River Comprehensive Flood Hazard Management Plan - I don't disagree with it's recommendation but can you council us on how that could be accomplished legally.

(#1460) John Diehl: If you're worried about the whole of the plan how about deleting the reference to the plan entirely or rephrasing it this way saying 'shall be conditioned by compliance with the policy adopted October 24, 1995 by the Planning Advisory Committee and made part of the Skokomish River Comprehensive Flood Hazard Management Plan'.

(#1484) Bill Dewey: The sections that you had cited in your letter were marked wrong.

(#1528) John Diehl: There may be a typo there but it was an attempt to refer to the Mason County Flood Damage Prevention Ordinance.

(#1550) Steve Clayton: I'd be hesitant to recommend something based on a Planning Advisory Committee approval.

(#1560) John Diehl: You can plug in some language from the plan ... The concept is that in the future you wouldn't simply build bigger and stronger dikes where they are now but we would be adopting a policy of in most cases setting these dikes back at lower levels and they would be further from the stream. They were termed in the plan as agricultural berms. Let me read a little out of the plan for you. 'On October 24, 1995 the Planning Advisory Committee adopted a policy on dikes. Agreement was reached that diking is not a preferred alternative for addressing flooding in the valley but there are instances where dikes can provide legitimate flood protection. Planning Advisory Committee recommended as a priority completion of a reconnaissance analysis of existing dikes to develop recommendations for removal, abandonment, or approval for maintenance and upgrading to meet its approved minimum standards for dike construction, alteration, and maintenance. The full policy is that diking is not the preferred alternative. Although dikes were originally constructed in the valley with the intention of providing protection and safety existing dikes generally do not meet standards adopted in this plan and construction and alteration and maintenance should meet the following design and construction standards. The intent of these standards is to ensure that dikes meet basic structural standards, do not cause increased flood hazard, meet FEMA requirements and are distanced from the natural stream channel and stream bank'. Then there's a list of a through g: 'a is dikes shall be constructed to meet soil conservation service class II standards for compaction'; that probably falls under the NCRS. Then it goes on to say under b: 'dikes shall be designed and constructed to overtop at the 5-year return period flood or lesser event and shall comply with FEMA standards'. Under c: 'dikes and designated overflow zones shall be required to overflow at lesser flood events than the maximum established in b above'. Under d: 'dikes shall be set back from the channel at least 200 feet. Variance criteria shall be established at the time these policies are enacted through an ordinance'. Under e: 'dikes shall be constructed with a minimum side slope of 2:1 in the river side embankment unless must meet a minimum side slope of 5:1 for landslide embankment. Variance criteria will be established at the time these policies are enacted through an ordinance'. Under f: 'dikes shall not increase flood hazard for public or private interests'. Under g: 'satisfaction of design and construction standards a through e above shall be certified by qualified engineer licensed in the State of Washington'. Under g: 'establish a process for analyzing each existing dike to develop recommendations for removal, abandonment, or approval for maintenance and upgrading to meet standard above. This analysis shall include planning level cost estimates and identification of any public benefits that would justify use of public funds'. 'Applications for construction alteration and maintenance of dikes shall be considered on a case by case basis. Examination of individual cases shall consider analysis performed as above. Applicants claiming public benefits and proposing use of public funds shall provide justification. Applications shall be required to show intent and ability to meet anticipated maintenance costs'.

We need to be looking at some specific standards that are applicable including the 200 feet that they're talking about setting back from the stream. Those are specific enough that I'm reasonably sure that Darren wouldn't have a problem from the standpoint of it being a usable legal tool. It might still be a policy issue but legally this is good specific stuff.

(#1800) Bob Fink: There's a problem implementing in a case by case basis. The concept of that policy is that the county, FEMA and other interested parties would get together and come up with a program of dikes that would be developed. The situation we have now is people are trying to preserve the status quo in the

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sense that they're coming in for dike repairs; they're not coming in for dike construction and I think it's prohibited to construct new dikes except consistent with this plan. Let me withdraw that statement until I have the chance to look at the regulations again. The policy as written here is to develop this program and then people would make the transition in a rational way to this program of setback dikes as Mr. Diehl described from the policy. The problem is if you didn't allow people to preserve the status quo and if you had no specific program for how one person's little piece of dike combined with someone else's little piece of dike and the next neighbor's dike to make actually a system that would form that function that it becomes problematic to implement on a case by case basis as people might feel the need to repair damage. If they feel they want to repair the dike simply to preserve the status quo ultimately the goal was to change to this program here that was adopted in the plan. There's certainly an interest with the county and the community to come up with a long range program for the Skok Valley but I don't think it's a practical solution to make people who want to repair their dike to tell them they have to move the dike back on their property 200 feet and they've got to lower the dike 5 feet and because it's not a coordinated system you've actually created problems that haven't been analyzed in trying to implement a program on a piece meal basis.

(#1918) John Diehl: We've got to keep in mind, Bob, that we don't have a system in place now. It's not as though in some sense an approved or effective line of dikes and we're suddenly talking about creating a hole in that line. No, we've got a bunch of holes with occasional dikes already. If we're going to eventually get to something that's rational we have to start someplace but starting with the status quo is not there.

(#1944) Bill Dewey: In the process of reviewing the whole Skokomish flooding problem and the diking issue was the option ever considered of forming a diking district?

(#1950) Bob Fink: There's a Flood Control District.

(#1955) Diane Edgin: Let's wrap up this meeting for tonight.

(#1960) Darren Nienaber: We resolved three of the issues in Diehl's letter and have remaining whether or not it should be compliant with the Skokomish Comprehensive Flood Hazard Management Plan.

(#1975) John Diehl: I believe you've resolved four of the issues.

(#1980) Darren Nienaber: I was waiting for an answer from Bob on #3.

(#1982) Bob Fink: I didn't understand the purpose of that change. The language that was deleted in the first part 'located within an area of special flood hazard established in section 3.2 are the areas designated as floodways'. I just don't know if that's necessary. Section 3.2 is the section that says that we follow the FEMA maps. I'm not sure what that achieves.

(#2018) Bill Dewey: I move we adopt the recommendations in Mr. Diehl's December 16th letter; the first four recommendations under FFA's on page 4.

(#2030) Theresa Kirkpatrick: I second the motion.

(#2035) Bill Dewey: To finish my motion it would be to table the 5th recommendation until our next meeting.

(#2040) Steve Clayton: Or else we could just leave it to Planning Department to come back to us with it reprinted because they've already agreed to it.

(#2065) Diane Edgin: We have a motion and a second. Any further discussion? All in favor? Motion passed.

Meeting adjourned.