

**DISCLAIMER: This document contains the Whatcom County Council or Committee minutes, as approved. However, unless an attested signature page is attached, they are not the final approved minutes.**

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WHATCOM COUNTY COUNCIL  
**Regular County Council**

January 14, 2003

The meeting was called to order at 7:00 p.m. by Council Chair L. Ward Nelson in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner  
Laurie Caskey-Schreiber  
Sam Crawford  
Seth Fleetwood  
Dan McShane  
Sharon Roy

Absent:

None

**ANNOUNCEMENTS**

Nelson announced there was discussion in Committee of the Whole on the following items:

- **Discussion with Whatcom County Medical Examiner Gary Goldfogel (AB2003-017)**
- **Discussion with members of the Bellingham City Council regarding emergency management services (AB2003-027)**
- **Discussion regarding collective bargaining negotiations (AB2001-390)**
- **Discussion regarding the 2002 and 2003 unrepresented salary resolutions (AB2003-018)**
- **Discussion with a representative from the Whatcom County Prosecutor's Office regarding pending litigation (AB2002-018)**

The Council provided direction on all items discussed.

**SPECIAL ORDER OF BUSINESS**

**ANNUAL REORGANIZATION OF THE WHATCOM COUNTY COUNCIL  
(AB2003-023)**

Council Chair

Roy voted for McShane.

Crawford voted for Crawford.

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1 Caskey-Schreiber voted for McShane.

2  
3 McShane voted for McShane.

4  
5 Nelson voted for McShane.

6  
7 Fleetwood voted for McShane.

8  
9 Brenner voted for Brenner.

10  
11 Councilmember McShane was elected Council Chair for 2003.

12  
13 *(Clerk's Note: Councilmember McShane assumed the duties of the chair.)*

14  
15 McShane thanked Councilmember Nelson for serving as Council Chair for the  
16 past two years.

17  
18 Council Vice-Chair

19  
20 Fleetwood voted for Caskey-Schreiber.

21  
22 McShane voted for Caskey-Schreiber.

23  
24 Crawford voted for Caskey-Schreiber.

25  
26 Roy voted for Caskey-Schreiber.

27  
28 Caskey-Schreiber voted for Caskey-Schreiber.

29  
30 Nelson voted for Brenner.

31  
32 Brenner voted for Brenner.

33  
34 Caskey-Schreiber was appointed Council Vice-Chair for 2003.

35  
36 Executive Pro-Tempore

37  
38 Caskey-Schreiber nominated Councilmember Roy for Executive Pro-Tempore.

39  
40 **McShane moved** to approve the nomination by acclamation.

41  
42 **Motion carried unanimously.**

43  
44 McShane withdrew his name from the committee preferences for the Finance  
45 and Administrative Services Committee and Natural Resources Committee.

46  
47 Finance and Administrative Services Committee

1  
2 **McShane moved** to appoint Councilmembers Crawford, Roy, and Nelson by  
3 acclamation.

4  
5 **Motion carried unanimously.**

6  
7 Planning and Development Committee

8  
9 Crawford withdrew his name from the nomination list.

10  
11 Brenner asked Councilmember McShane to withdraw his name from the  
12 nomination list.

13  
14 McShane stated he preferred to leave his name on the nomination list.

15  
16 Brenner stated that since Councilmember McShane was elected Council  
17 Chair, it would be nice to let other people share some of the load.

18  
19 McShane stated another committee only has one person nominated, so there  
20 is opportunity there to share the load.

21  
22 Brenner stated that is the Public Works Committee, which she always does.  
23 Nobody ever wants to be on that committee. This is a committee on which  
24 everyone wants to serve. It would be nice to split it up.

25  
26 Roy stated she liked the continuity of having the same people on the  
27 committees.

28  
29 Brenner stated all three members of the committee seem to have the same  
30 perspective. It would be nice to have a little diversity on the Planning and  
31 Development Committee.

32  
33 Crawford voted for Nelson, McShane, and Caskey-Schreiber.

34  
35 Caskey-Schreiber voted for Fleetwood, McShane, and Caskey-Schreiber.

36  
37 Fleetwood voted for Fleetwood, McShane, and Caskey-Schreiber.

38  
39 McShane voted for Fleetwood, McShane, and Caskey-Schreiber.

40  
41 Brenner voted for Fleetwood, Nelson, and Caskey-Schreiber.

42  
43 Nelson voted for Fleetwood, Nelson, and Caskey-Schreiber.

44  
45 Roy voted for Fleetwood, Caskey-Schreiber, and McShane.

46  
47 Councilmembers Fleetwood, McShane, and Caskey-Schreiber were appointed

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1 to the Planning and Development Committee for 2003.

2  
3 Public Works and Capital Projects Committee

4  
5 Crawford included his name on the nomination list.

6  
7 Nelson included his name on the nomination list.

8  
9 **McShane moved** to appoint Crawford, Brenner, and Nelson by acclamation.

10  
11 **Motion carried unanimously.**

12  
13 Natural Resources Committee

14  
15 **McShane moved** to appoint Councilmembers Fleetwood, Caskey-Schreiber,  
16 and Roy by acclamation.

17  
18 **Motion carried unanimously.**

19  
20 Bellingham International Airport Advisory

21  
22 **McShane moved** to appoint Councilmember Brenner.

23  
24 **McShane withdrew his motion.**

25  
26 Other Committee Assignments (Uncontested)

27  
28 **McShane moved** to appoint all uncontested nominees to the various  
29 committees:

- 30 • Bellingham International Airport Advisory Committee = Brenner
- 31 • Drayton Harbor Shellfish Protection District = Roy
- 32 • Economic Development Council = Crawford
- 33 • Forestry Advisory Forum = Nelson
- 34 • Health and Human Services Advisory Board (2) = Nelson and Brenner
- 35 • Public Health Advisory Board = Nelson
- 36 • Developmental Disabilities Board = Roy
- 37 • Energy Faculty Site Evaluation Council = McShane
- 38 • Mental Health Advisory Board = Brenner
- 39 • Substance Abuse Board = Crawford
- 40 • Law Enforcement Officers and Fire Fighters (LEOFF) Board = McShane
- 41 • Marine Resources Committee = Roy
- 42 • North Sound Regional Support Network = Nelson
- 43 • Northwest Air Pollution Authority = Caskey-Schreiber
- 44 • Northwest Regional Council = Nelson
- 45 • Portage Bay Shellfish Protection District = Roy
- 46 • Opportunity Council = Crawford
- 47 • Whatcom Transit Authority = Fleetwood

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**Motion carried unanimously.**

Council of Governments (2)

McShane stated they need one more nominee.

Crawford stated there are two positions on the Council of Governments. One position is for their General Board and one is for the Executive Board. He has been serving the past year on both. The obligation for the General Board is once every month or two.

**McShane moved** to appoint Crawford to the Executive Board and Crawford and Fleetwood to the General Board.

**Motion carried unanimously.**

Intergovernmental Tribal Relations (2)

McShane withdrew his name from the nomination list.

Roy voted for Caskey-Schreiber and Fleetwood.

Nelson voted for Brenner and Caskey-Schreiber.

Brenner voted for Brenner and Fleetwood.

McShane voted for Brenner and Fleetwood.

Fleetwood voted for Brenner and Fleetwood.

Caskey-Schreiber voted for Caskey-Schreiber and Brenner.

Crawford voted for Brenner and Fleetwood.

Councilmembers Brenner and Fleetwood were appointed.

Local Emergency Planning Committee

McShane withdrew his name from the nomination list.

Crawford stated he would attend the annual meeting.

*(Clerk's Note: The appointment for this committee was not voted on.)*

Public Defense Advisory

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1 Fleetwood withdrew his name from the nomination list.

2  
3 McShane announced that Councilmember Brenner would serve on this  
4 committee.

5  
6 *(Clerk's Note: No vote was taken.)*

7  
8 Solid Waste Advisory Committee

9  
10 McShane stated he has served on this committee for the last couple of years.

11  
12 Caskey-Schreiber voted for McShane.

13  
14 Crawford voted for McShane.

15  
16 Roy voted for McShane.

17  
18 Brenner voted for Brenner.

19  
20 McShane voted for McShane.

21  
22 Nelson voted for McShane.

23  
24 Fleetwood voted for Brenner.

25  
26 Urban County Caucus

27  
28 Nelson stated this is a caucus made up of the urban counties. However,  
29 Whatcom County is a rural county.

30  
31 Pete Kremen, County Executive, stated Whatcom County is both urban and  
32 rural. The meetings are held primarily in Olympia. They meet during most of the  
33 legislative session on a monthly or more basis. During the off-months, they don't  
34 have too many meetings. Participation requires extensive travel.

35  
36 **Nelson moved** to appoint Caskey-Schreiber.

37  
38 Caskey-Schreiber declined the nomination.

39  
40 McShane stated this is a committee assignment that is a bit burdensome for  
41 a part-time council.

42  
43 Caskey-Schreiber stated she has a full-time job.

44  
45 Crawford asked Caskey-Schreiber to accept the nomination with the  
46 understanding that she would not be able to attend the meetings, but she would  
47 get the literature and go through it.

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1  
2 Caskey-Schreiber accepted the nomination under those conditions. She does  
3 go to Olympia two or three times per legislative session.  
4

5 **Motion to appoint carried unanimously.**  
6

7 Pete Kremen, County Executive, commended and recognized the diligence  
8 and excellence demonstrated by Councilmember Nelson over the past two years.  
9 The Council has made a wise and prudent selection in electing Councilmember  
10 McShane as the new Council Chair.  
11

12  
13 **SPECIAL PRESENTATION**  
14

15 **PROCLAMATION BY COUNTY EXECUTIVE PETE KREMEN DECLARING**  
16 **JANUARY 2003 AS ALZHEIMER'S AWARENESS MONTH (AB2003-017)**  
17

18 Pete Kremen, County Executive, read the proclamation into the record. He  
19 introduced Penny Henderson and Ann Denson, co-chairs of the upcoming  
20 Alzheimer's Walk.  
21

22 Penny Henderson thanked the Council for the proclamation and invited the  
23 councilmembers to the Alzheimer's Walk/Run on January 25, 2003.  
24

25 Ann Denson stated they attended the City Council meeting the previous  
26 evening. The City Council has challenged the County Council to see how many will  
27 participate in this race/run.  
28

29 Brenner stated it is scheduled on or near the same day as the Drayton  
30 Harbor Shellfish Protection District oyster feed.  
31

32  
33 **MINUTES CONSENT**  
34

35 **Nelson moved** to approve Minutes Consent items one through seven.  
36

37 **Motion carried unanimously.**  
38

- 39 **1. SPECIAL COUNTY COUNCIL – LAW AND JUSTICE MIS PROJECT, FOR**  
40 **NOVEMBER 19, 2002**
- 41
- 42 **2. WATER RESOURCES WORK SESSION FOR NOVEMBER 19, 2002**  
43
- 44 **3. COMMITTEE OF THE WHOLE FOR NOVEMBER 26, 2002**  
45
- 46 **4. REGULAR COUNTY COUNCIL FOR NOVEMBER 26, 2002**  
47

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1 **5. COMMITTEE OF THE WHOLE FOR DECEMBER 10, 2002**

2  
3 **6. REGULAR COUNTY COUNCIL FOR DECEMBER 10, 2002**

4  
5 **7. BOARD OF HEALTH FOR DECEMBER 3, 2002**

6  
7  
8 **OPEN SESSION**

9  
10 The following people spoke:

11  
12 Patrick McKee, 2801 Grant Street, Bellingham, spoke regarding the Medic  
13 One tax levy. Set the levy rate at a higher range. The levy amount the councils  
14 are setting is the maximum rate. Each year, during the six years, the Council can  
15 set a rate lower than the maximum rate. Set the rate at the \$.40 rate to be sure  
16 the funds are available to fund a first class program.

17  
18 If they do go ahead with the levy, they need to come up with some way to  
19 relieve property owners from taxes. Currently, the Medic One program is being  
20 funded from the general funds of the City of Bellingham and the County. Various  
21 revenue streams fund the general fund. If they are going to create a Medic One  
22 fund that is funded entirely from property taxes, then the Council needs to grant  
23 tax relief to property owners. Come up with a pledge or program to assure  
24 property owners that the funds they were formerly used for the Medic One program  
25 will be returned to them. The levy won't pass unless there is a property tax  
26 neutrality.

27  
28 Patrick Alesse, 4825 Alderson Road, Birch Bay, stated the Birch Bay hostel  
29 was scheduled to have been closed. The County Park Board wants the hostel to  
30 continue. The Birch Bay Lions Club is interested in taking it on as a club project.  
31 They are still working on the finances. The goal is to get it open by March. There  
32 will be some demand for a couple of large groups at Birch Bay at that time.

33  
34  
35 **PUBLIC HEARING**

36  
37 **1. ORDINANCE ADOPTING A MINERAL RESOURCE LAND**  
38 **COMPREHENSIVE PLAN AND ZONING DESIGNATION FOR THE**  
39 **BENNER PROPERTY (AB2002-084L)**

40  
41 McShane opened the public hearing and the following people spoke.

42  
43 Jonathan Sitkin, 1500 Railroad Avenue, Bellingham, stated he represents  
44 the Benners. He would like Benner and Killam applications to be considered  
45 together. Also, just before the Council meeting started, an easement agreement  
46 was signed that gave the Benners access to a 30-foot easement for mining access  
47 purposes across the Killam property. County staff has a copy of the agreement.

1 The mineral resource land (MRL) designation for the entire sites can be conditioned  
2 on barring any access to the south. He submitted information to the Council this  
3 afternoon. He submitted more information (*on file*) indicating that the pipeline  
4 crossing Minaker Road is adequate. He also submitted an engineering analysis  
5 from a professional engineer on mine volumes of the Benner and Killam sites.  
6 Because the Benner and Killam properties are joined, there is no issue about  
7 whether the one million cubic yards of resources exists.

8  
9 He submitted a map that depicts the boundaries of the entire area, as  
10 surveyed and digitized over an aerial photograph, with the pipeline easement. It  
11 also shows the volumes calculated based upon the resource. The resource in the  
12 expanded areas is only calculated to a depth of 13 feet.

13  
14 There is a million yards of extractable sand, proven by testing by geologists  
15 and engineers. The overall site is over 20 acres. Criteria doesn't apply because  
16 they are not dealing with accessory conditional use permits. The site has been  
17 classified as MR2, and has a proven resource based upon those calculations and  
18 the testing that was done for the expanded Killam area. The Benner area meets  
19 the testing requirements. Doug Goldthorp reviewed and confirmed that. It is not  
20 adjacent to any developed residential zones or subdivisions. It is not within a five-  
21 year zone of contribution for designated wellhead protection areas. The MRL does  
22 not enclose 50 percent of non-designated parcels. The abutting parcel size does  
23 not exceed a nominal five acres for more than 25 percent of the perimeter of the  
24 site. All ten criteria are clearly met. The issue raised was of the access going to  
25 the south, which was not a designation issue. However, they've developed an  
26 easement that would go to the north and would resolve that issue.

27  
28 Caskey-Schreiber asked if the easement to the north is conditioned on the  
29 Killam's MRL application being approved. Sitkin stated there was no opposition  
30 from either the Killams or Benners. They were focused more on location. It was  
31 not specifically discussed.

32  
33 Brenner stated the letter he submitted from William's Pipeline referenced  
34 the access from Minaker Road. She asked if approval guarantees that the owners  
35 will use the easement to the north and not the Minaker Road. Sitkin stated that if  
36 they condition approval of the MRL to bar access to the south, then the permit  
37 conditions would be so conditioned.

38  
39 Brenner asked if the Council could condition approval that way.

40  
41 Dave Grant, Senior Civil Deputy Prosecutor, stated they can.

42  
43 Ron Robertson, 4419 Minaker Road, Sumas, stated he is glad to hear about  
44 the easement. As long as that goes through, he and others will have no objection  
45 to the mine. He just doesn't want them on the Minaker Road.

46  
47 Betty Robertson, 4419 Minaker Road, Sumas, stated she is strongly opposed  
48 to trucks using Minaker Road for access to the gravel pit. Trucks would enter and

1 exit approximately 200 feet from her home. When she moved to Minaker Road, it  
2 was quiet and rural. There is very little traffic and noise. It is pleasant, quiet, and  
3 rural. Once that is gone, it will never be back.  
4

5 Dale B. Ulm, 4445 Minaker Road, Sumas, stated he was relieved to hear of  
6 the easement agreement. It takes a huge load off his mind. He asked that any  
7 approval of the MRL would be contingent upon Minaker Road not being used as an  
8 access.  
9

10 Suzanne Lange, 4373, Minaker Road, Sumas, asked that approval be  
11 contingent on access not being on Minaker Road.  
12

13 Jan Hatch, 9008 North Pass Road, stated she is happy to hear of the  
14 easement agreement. Minaker Road is not conducive to gravel trucks. It is not  
15 wide enough, and there are many dangerous corners. Approve the MRL with the  
16 stipulation that access not be on Minaker Road.  
17

18 John Kirk, 4332 Minaker Road, Sumas, stated the Council needs to seriously  
19 consider the conditional access.  
20

21 Hearing no one else, McShane closed the public hearing.  
22

23 Brenner stated she wanted to make sure they can legally condition approval.  
24

25 Grant stated he's not familiar with the precise language.  
26

27 McShane stated the Planning Commission conditioned approval with having  
28 access only to the north.  
29

30 Grant stated the objectionable language that was apparently stricken was  
31 directed more toward trying to order the Killams to grant an easement, as opposed  
32 to just conditioning the approval of the zoning change on access to the north.  
33 That's a different creature. If that's what they want to do, then they would have  
34 to draft language to accomplish that.  
35

36 Brenner read the language from the Planning Commission. She asked why  
37 it had to be taken out.  
38

39 McShane stated the Natural Resources Committee recommended that the  
40 language be removed. It came before the full Council to schedule a public hearing  
41 with that language removed. That doesn't mean the Council can't put it back in.  
42

43 Brenner stated the Council was legally advised that it couldn't have that  
44 language.  
45

46 Roy stated the Natural Resources Committee was told that it can't keep the  
47 language.  
48

1 (Clerk's Note: End of tape one, side A.)  
2

3 Roy continued to state that they could not legally force the Killams to give  
4 access to the Benners. Now the situation has changed because the Killams and  
5 Benners have an agreement for an easement. It is a different legal issue than  
6 what was before the Natural Resources Committee.  
7

8 Brenner asked if the County Council can insert that very same language.  
9 The property owners can have all the agreements they want, but it doesn't  
10 preclude the owners from changing the agreement and having access to Minaker  
11 Road in the future. If the Council approves this, she wants to make sure there is  
12 no possibility of any easement onto Minaker Road. Grant stated the Council could  
13 include that language legally.  
14

15 **Nelson moved** to forward to the concurrency hearing conditioned upon  
16 access as agreed to in the Benner/Killam agreement to the north.  
17

18 Crawford stated the Council could condition approval on access not being to  
19 Minaker Road. How the two parties get access is up to them. **Crawford**  
20 **proposed a friendly amendment** to adopt this with the language that there shall  
21 be no access to the Minaker Road. How the parties get access is up to them.  
22

23 **Nelson accepted** the friendly amendment to his motion to approve the  
24 ordinance.  
25

26 Brenner asked if the Council put the same condition on the Killam ordinance.  
27 Grant indicated that the Council could.  
28

29 Caskey-Schreiber asked what happens if the Killams back out of the  
30 agreement. Sitkin stated the agreement is signed and notarized.  
31

32 Nelson stated that approval of MRLs is not allowing the permit.  
33

34 Crawford stated they are talking about a Comprehensive Plan designation.  
35 He asked if that allows a mechanism where the Council can include conditions.  
36 Grant stated an ordinance goes along with it and that will guide the administrative  
37 permit that will ultimately be sought.  
38

39 Crawford asked if every MRL ordinance could be crafted specifically to that  
40 MRL. Grant stated they could.  
41

42 **Motion to forward to the concurrency hearing with the amendment**  
43 **carried unanimously.**  
44

45 **2. ORDINANCE ADOPTING A MINERAL RESOURCE LANDS**  
46 **COMPREHENSIVE PLAN AND ZONING DESIGNATION FOR THE**  
47 **KILLAM PROPERTY (AB2002-084M)**  
48

1 McShane opened the public hearing and the following people spoke.  
2

3 Lesa Starkenburg-Kroontje, 115 Front Street, Lynden, stated she represents  
4 the Killams. This is a request for a 69-acre addition into the MRL. It lies on both  
5 sides of the Benner request that the Council just approved. This item doesn't  
6 grant a permit. There will still be a need to go through an administrative approval  
7 process with Whatcom County, the State Department of Natural Resources, and  
8 the State Department of Ecology.  
9

10 The application materials were approved by County staff before the Planning  
11 Commission hearing. Staff noted two issues. One issue related to the quality of  
12 the aggregate. The other issue related to the total volume of the resource on site.  
13 The Planning Commission made a condition that the additional analysis on quality  
14 and volume be submitted. That analysis was turned in to Whatcom County and  
15 reviewed and deemed acceptable by the County geologist. She submitted the  
16 analysis to the Council (*on file*).  
17

18 The Killam site meets the necessary criteria for MRL designation. The site  
19 contains the necessary yardage of material. The resource from the current mine  
20 goes to an approximate depth of 40 feet. The site is over 20 acres, is not  
21 surrounded by residential use, and does not surround by 50 percent non-MRL  
22 parcels.  
23

24 Docketing this area this year will protect this resource. The only immediate  
25 change is that the Killams will not be able to subdivide their property into parcels  
26 of less than 20 acres. That is the protection Whatcom County gains from an MRL  
27 designation. That protection will allow this material to be available for use in  
28 future years for an aggregate supply. As the Council continues to look at the  
29 quantity and quality of available aggregates in Whatcom County, this area will be a  
30 protected supply.  
31

32 The Planning Commission sought to condition the access of the Killam  
33 proposal as well as the Benner proposal. The Planning Commission sought to tell  
34 the Killams that they shall grant an easement to the Benners, or would not be  
35 included in the MRL. That was the objectionable issue from a legal standpoint.  
36 The Killams and Benners have entered into an agreement. The Killams have no  
37 objection to a restriction being placed on their application indicating that they will  
38 not access to Minaker Road.  
39

40 The question was asked about the enforceability of an agreement between  
41 the two parties. Any legal contract between parties can be enforced by the court.  
42 In the event that there is an issue by either party, it won't be a County Council  
43 issue. She submitted a letter into the record (*on file*). Because this is not a  
44 permitting request, all aspects of the operation will go through the proper  
45 permitting and environmental reviews at that time.  
46

47 Hearing no one else, McShane closed the public hearing.  
48

1           **Nelson moved** to forward to the concurrency hearing.  
2

3           **Brenner suggested a friendly amendment** to condition approval on  
4 there being no access onto Minaker Road.  
5

6           **Nelson accepted** the friendly amendment.  
7

8           **Motion to forward to the concurrency hearing as amended carried**  
9 **unanimously.**  
10

11           Caskey-Schreiber stated the neighbors are concerned about mining the  
12 Killam parcel over the Williams pipeline. She asked if they are just assuming that  
13 the mining operation will be done cautiously and the operation will adhere to the  
14 125-foot buffers, even though it has been disturbed and exploded in the past.  
15

16           Nelson stated they would have to have a condition applied through the  
17 permitting process.  
18

19           McShane stated he assumed the 125-foot buffer is a condition of the  
20 easement.  
21

22           Doug Goldthorp, Senior Land Use Specialist/Geo-Hazards, stated the 125-  
23 foot buffer is a typical buffer around a pipeline.  
24

25           Caskey-Schreiber asked if the Council could designate a larger buffer if it  
26 wants to be safer. Goldthorp stated it could.  
27

28           Starkenburg-Kroontje stated there is already a State Environmental  
29 Protection Act (SEPA) condition. This process triggered SEPA review, which  
30 resulted in a mitigated determination of non-significance. That mitigated  
31 determination of non-significance included the setback for the pipeline, which is  
32 significantly larger than the pipeline easement. The pipeline company provided a  
33 letter indicating that it is comfortable with the setbacks being to its easement. The  
34 County, out of caution, set buffers larger than what the pipeline company found  
35 acceptable. That is now a condition that carries forward into the permitting  
36 stages.  
37

38           Brenner asked if the County has done enough research to determine that  
39 the 125-foot buffer is appropriate. Goldthorp stated it has. There was another  
40 case in Whatcom County with similar circumstances, so the staff had some  
41 background information it could rely on.  
42

43           Brenner asked what happens to the other Comprehensive Plan amendments  
44 if the Council chooses to not approve one. Grant stated it is not an all-or-nothing  
45 option. The Council can reject an amendment. The annual concurrency  
46 examination is about how the amendments dovetail with the budget.  
47

1 Caskey-Schreiber asked if erosion would be an issue in the future if the  
2 aggregate is extracted up to the 125-foot buffer.

3  
4 McShane stated it is a very conservative buffer.

5  
6 Goldthorp stated erosion won't be a factor or safety issue over time. The  
7 pipeline company has done its own analysis, and the County is asking for a larger  
8 buffer than what the pipeline company requires. The pipeline company doesn't  
9 want its pipeline ruptured any more than anyone else does. The County added  
10 that margin of safety with the wider buffer. A 2-to-1 slope is required on the pit  
11 wall anyway. That makes a big difference also.

12  
13 McShane asked for the vote to be taken again.

14  
15 **Motion to forward to the concurrency hearing with the amendment**  
16 **carried unanimously.**

17  
18 **3. ORDINANCE IN THE MATTER OF GRANTING A NON-EXCLUSIVE**  
19 **FRANCHISE TO PEACE ARCH FACTORY OUTLET FOR A PERIOD OF 25**  
20 **YEARS PURSUANT TO STATE LAW AND SECTION 9.30 OF THE**  
21 **WHATCOM COUNTY HOME RULE CHARTER, TO OPERATE AND**  
22 **MAINTAIN WATER MAINS AND WATER DISTRIBUTION LINES ALONG**  
23 **CERTAIN ROADS WITHIN THE UNINCORPORATED AREAS OF**  
24 **WHATCOM COUNTY (AB2002-418)**

25  
26 McShane opened the public hearing and, hearing no one, closed the public  
27 hearing.

28  
29 **Brenner moved** to adopt the ordinance.

30  
31 Crawford asked for an explanation of what they are doing.

32  
33 Heather Wolf, 709 DuPont, stated she is the attorney for the applicant. The  
34 applicant has had a revocable encroachment permit for his water main for  
35 approximately ten years. His lender is requiring him to get a franchise because it  
36 gives the property owner more security in maintaining the water line.

37  
38 Crawford asked why the County is involved.

39  
40 Dave Grant, Senior Civil Deputy Prosecutor, stated the County owns the  
41 road and right-of-way.

42  
43 Crawford asked if the revocable permit is issued by the County. Wolf stated  
44 it is.

45  
46 Crawford asked if there is any compensation to the County for this. Wolf  
47 stated the applicant paid for the improvements that are there. There was an  
48 annual fee with the encroachment permit. The franchise ordinance requires that

1 the applicant carry insurance and post a bond. The County does this most  
2 commonly for water associations. This is a pretty common type of franchise.

3  
4 Roy asked if the administration endorses this item. Grant stated he has  
5 talked to Dan Gibson about this item. Mr. Gibson helped draft the franchise  
6 agreement. They are all comfortable with it going forward.

7  
8 **Motion carried unanimously.**

9  
10 **4. RESOLUTION REGARDING APPLICATION FOR A COMMUNITY**  
11 **DEVELOPMENT BLOCK GRANT (AB2002-450)**

12  
13 *(Clerk's Note: The required handouts for the CDBG are included in the*  
14 *Council's packet.)*

15  
16 McShane opened the public hearing and the following people spoke.

17  
18 Samya Clumpner, Lummi Island Community Land Trust Executive Director,  
19 stated the cost of housing on Lummi Island has skyrocketed and has driven out  
20 the lower income households from the community. The development is a nine  
21 single-family cooperative development. She presented information on the citizen  
22 participation requirements for the CDBG program (*on file*). The request is for  
23 \$223,737 from the CDBG program. It will be gap financing to enable the  
24 households to afford the homes. It is a \$1.7 million project. The households will  
25 pay only a small portion of that amount. This grant will allow people earning 30  
26 percent of the area's median income to live in these homes.

27  
28 Nelson asked if the amount the Council was approving is \$225,000.  
29 Clumpner stated the numbers were adjusted somewhat. The correct amount is in  
30 the handout.

31  
32 Brenner stated she doesn't understand how they are going to have  
33 affordable housing on Lummi Island because of the ferry. Ferry rates are going to  
34 keep increasing. She asked the income level of people who can afford to live in  
35 this affordable housing. Clumpner stated a survey in 2000 indicated that over  
36 one-third of residents depend on island businesses for their primary source of  
37 income. The majority of the households that have applied and been accepted  
38 depend on island-based income. One person has a landscaping company. There  
39 are a number of service workers that work at the Willows Inn, Nettles Farm, and  
40 other similar places. Their mission is not to serve those who are from outside of  
41 the community, but to serve existing island residents and to preserve the  
42 traditional economy of Lummi Island.

43  
44 Hearing no one else, McShane closed the public hearing.

45  
46 **Nelson moved** approval of the resolution.

47  
48 **Motion carried unanimously.**

1  
2  
3 **CONSENT AGENDA**  
4

5 Crawford reported for the Finance and Administrative Services Committee.  
6 **Crawford moved** approval of Consent Agenda items one through five.  
7

8 McShane withdrew items one and two.  
9

10 **Motion to approve Consent Agenda items three through five carried**  
11 **unanimously.**  
12

13 **1. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**  
14 **CONTRACT BETWEEN WHATCOM COUNTY AND THE INTERNATIONAL**  
15 **FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS, LOCAL**  
16 **17 COLLECTIVE BARGAINING AGREEMENT (AB2003-028)**  
17

18 **Nelson moved** to approve the request.  
19

20 **Motion carried unanimously.**  
21

22 **2. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**  
23 **CONTRACT BETWEEN WHATCOM COUNTY AND TEAMSTERS LOCAL**  
24 **UNION NO. 231 MASTER COLLECTIVE BARGAINING AGREEMENT**  
25 **(AB2001-390)**  
26

27 **Nelson moved** to approve the request.  
28

29 Chris Heintz, representative of Whatcom County Employees for Wage Equity  
30 (CEWE), stated that although the contract was ratified by the membership of the  
31 union, it was only ratified because of the unlawful threat that employees would lose  
32 their retroactive pay and unilateral implementation of the contract by the County.  
33 Employees simply couldn't take the chance. The Union and the County both told  
34 the employees that the County would take away the retro pay. The law doesn't  
35 allow for that, but the employees aren't lawyers and couldn't take that chance.  
36

37 They've filed a representation challenge and appeal. Unfair labor practices  
38 (ULP) are currently pending. The County and the Teamsters are unlawfully  
39 negotiating to come up with this contract. If the Council approves this contract, it  
40 can be considered an extension and an act of participation by the Council in the  
41 unfair labor practices, further exasperating this matter. If the appeal or ULP are  
42 ruled in favor of the Whatcom CEWE, the contract will probably be rolled back,  
43 causing a catastrophic mess. Some of the consequences would include breaking a  
44 contract with the medical provider, repaying employee out-of-pocket medical  
45 expenses, recovering retroactive pay from employees, and more. However, these  
46 extremely adverse consequences can be avoided if the Council does not approve  
47 this contract and the status quo is maintained. They have also filed a notice of  
48 request for emergency relief to speed up this process.

1  
2 Brenner asked if the Council is acting lawfully to approve this request.

3  
4 Dave Grant, Senior Civil Deputy Prosecutor, stated it is.

5  
6 Caskey-Schreiber asked if the CEWE folks are against the contract or the  
7 union representation as it is with this contract. Heintz stated they are against both.  
8 She submitted information (*on file*), including a joint salary study that the Union  
9 and County did together. It illustrates the adjustment percentage of which the  
10 County employees are behind the City of Bellingham and five comparable counties.  
11 This information was used in the Sheriff's arbitration. She also submitted  
12 information on the actual salary decrease, after out-of-pocket expenses, and which  
13 people are calling a two percent increase. Last, she submitted information on all  
14 the increases and raise that Teamster's said the employees will get. The lowest  
15 paid employee will receive \$35 per month. That employee is already on public  
16 assistance but will not qualify for it any longer because it looks like she has a two  
17 percent raise. However, the person has to pay \$58 per month for benefits and \$8  
18 in dues. She can't afford the co-pay to go to a doctor's appointment.

19  
20 Chuck Eggert, Teamsters Local 231, stated the Union has been in negotiation  
21 with the County for a year. In the meantime, disgruntled employees filed lots of  
22 charges. None of them have been approved. Of the membership, 220 people  
23 voted yes and 99 people voted no. They were not happy with the contract, but  
24 they also know what is going on with other counties, cities, and what is happening  
25 to health care plans all over the nation. He asked for Council approval. The  
26 members have accepted it. CEWE will continue to do what it will. The Union  
27 negotiated in good faith.

28  
29 **Motion carried unanimously.**

- 30  
31 **3. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**  
32 **MODIFICATION OF CONTRACT BETWEEN WHATCOM COUNTY AND**  
33 **THE CITY OF BELLINGHAM, TO PROVIDE FUNDING FOR THE ALCOHOL**  
34 **PROTECTIVE CUSTODY PROGRAM IN THE AMOUNT OF \$56,036**  
35 **(AB2003-029)**  
36  
37 **4. RESOLUTION ACCEPTING THE TREASURER'S LIST OF PROPERTY TAX**  
38 **REFUNDS (AB2003-030)**  
39  
40 **5. RESOLUTION TO SET HEARING TO SELL TAX-TITLE PROPERTY BY**  
41 **NEGOTIATION (AB2003-031)**

42  
43  
44 **OTHER ITEMS**

- 45  
46 **1. APPOINTMENT TO THE SOLID WASTE ADVISORY COMMITTEE**  
47 **(AB2003-026)**  
48

1           **Brenner moved** to appoint Rod Pemble.

2  
3           **Motion carried unanimously.**

4  
5   **2.    REQUEST CONFIRMATION OF THE EXECUTIVE’S APPOINTMENT OF**  
6    **WILLIAM KEOWN AND GILBERT THURSTON TO THE NORTHWEST**  
7    **SENIOR SERVICES BOARD (AB2003-032)**

8  
9           **Nelson moved** approval.

10  
11          **Motion carried unanimously.**

12  
13   **3.    REQUEST CONFIRMATION OF THE EXECUTIVE’S APPOINTMENT OF**  
14    **JONATHAN MCGRATH AND THE REAPPOINTMENT OF FRANCES**  
15    **ARMINTROUT, ALLISON HAHNEL AND KEN LARSON TO THE**  
16    **DEVELOPMENT DISABILITIES BOARD (AB2003-033)**

17  
18          **Brenner moved** approval.

19  
20          **Motion carried unanimously.**

21  
22           Crawford stated Ms. Armintrout, Ms. Hahnel, and Mr. Larson are self-  
23   advocates on the Board. They fill an important role, and are excellent choices.  
24   They are great people. The Council needs to have a presentation from these folks.

25  
26           Roy stated they’ve developed a television spot. She has invited them to  
27   come to the Council. One of the self-advocates is now the chair of the committee.

28  
29   **4.    REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
30    **PHYLLIS ENTRIKIN, LARRY ESTRADA, JIM KAEMINGK TO THEIR**  
31    **SECOND FULL TERMS AS MEMBERS OF THE ETHICS COMMISSION**  
32    **(AB2003-034)**

33  
34          **Nelson moved** approval.

35  
36          **Motion carried unanimously.**

37  
38   **5.    REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
39    **SCOTT MCCREERY AND AMY KRAHAM TO THE MARINE RESOURCES**  
40    **COMMITTEE (AB2003-035)**

41  
42          **Caskey-Schreiber moved** approval

43  
44          **Motion carried unanimously.**

45  
46   **6.    REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
47    **ANDY ROSS AND THE APPOINTMENT OF CHAD SCHULHAUSER TO THE**

1           **DEVELOPMENT STANDARDS TECHNICAL ADVISORY COMMITTEE**  
2           **(AB2003-036)**

3  
4  
5           **Caskey-Schreiber moved** approval

6  
7           **Motion carried unanimously.**

8  
9   **7.    REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
10 **KIMMERON L. POSTER TO THE CIVIL SERVICE COMMISSION**  
11 **(AB2003-037)**

12  
13           **Brenner moved** approval.

14  
15           **Motion carried unanimously.**

16  
17 **8.    REQUEST CONFIRMATION OF THE EXECUTIVE’S APPOINTMENT OF**  
18 **PATRICIA WOODALL TO THE PARKS AND RECREATION COMMISSION**  
19 **(AB2003-038)**

20  
21           **Fleetwood moved** approval.

22  
23           **Motion carried unanimously.**

24  
25 **9.    REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
26 **EDWARD ONYON TO THE RURAL LIBRARY BOARD (AB2003-039)**

27  
28           **Nelson moved** approval.

29  
30           **Motion carried unanimously.**

31  
32 **10.   REQUEST CONFIRMATION OF THE EXECUTIVE’S REAPPOINTMENT OF**  
33 **BEVERLY PORTER AND DAVID ASHTON TO THE MENTAL HEALTH**  
34 **ADVISORY BOARD (AB2003-040)**

35  
36           **Brenner moved** approval.

37  
38           **Motion carried unanimously.**

39  
40 **11.   RESOLUTION AMENDING RESOLUTION 2002-029, APPROVING A**  
41 **SALARY SCHEDULE FOR UNREPRESENTED EMPLOYEES FOR THE YEAR**  
42 **2002 (AB2003-042)**

43  
44           **Caskey-Schreiber moved** approval.

45  
46           **Brenner moved** to amend the resolution to remove the Executive,  
47 Prosecuting Attorney, Sheriff, and Council.  
48

1           **Motion to amend failed 1-6 with Brenner in favor.**

2  
3           **Motion to approve carried 5-2 with Brenner and Crawford opposed.**

4  
5   **12. RESOLUTION AMENDING RESOLUTION 2002-049, APPROVING A**  
6   **SALARY SCHEDULE FOR UNREPRESENTED EMPLOYEES FOR THE YEAR**  
7   **2003 (AB2003-043)**

8  
9           **Roy moved** approval.

10  
11           *(Clerk's Note: End of tape one, side B.)*

12  
13           **Brenner moved** to amend the resolution to remove the Executive,  
14   Prosecuting Attorney, Sheriff, and Council.

15  
16           **Motion to amend failed 1-6 with Brenner opposed.**

17  
18           **Motion to approve the resolution carried 4-3 with Crawford, Nelson,**  
19   **and Brenner opposed.**

20  
21  
22   **INTRODUCTION ITEMS**

23  
24           **Nelson moved to accept the Introduction Items.**

25  
26           Fleetwood withdrew item five for discussion. **Fleetwood moved** to amend  
27   the ordinance to delete the date of April 22, 2003 in the title and to leave the  
28   voting date blank. It's not necessary to designate that date today.

29  
30           Nelson stated the Council had a meeting with City Council Members about  
31   this item. He does not support the April date, but the City of Bellingham and  
32   Whatcom County have to concur on this ordinance. He would move an amendment  
33   to include a specific dollar amount. That would give the City Council a chance to  
34   know where the County's position is. It's important to be consistent and have the  
35   voting date on the ordinance. The ordinance will come back to the County Council  
36   for discussion and approval. It can be changed then. In the meantime, the Council  
37   will have that discussion. It's important that the public have information on the  
38   dates and levy rate.

39  
40           **Fleetwood withdrew his motion.**

41  
42           **Brenner moved** to amend the ordinance to change the date in the title,  
43   "~~...at a special election on April 22, 2003,~~ **the general election on November 4,**  
44   **2003,** a proposition...."

45  
46           **Motion to amend failed 3-4 with Nelson, Brenner, and Crawford in**  
47   **favor.**

1           **Crawford moved** to include language "property tax levies of \$2,700,000 or  
2 less" in place of "per \$1,000 of assessed valuation" in all locations in the ordinance.

3  
4           Caskey-Schreiber stated the Council had a public meeting today in which the  
5 councilmembers stated their preferences and voted on them. The Council left an  
6 impression with all those present and the City Council Members. They should not  
7 make that change at another meeting on the same day, when the Council is going  
8 to review it again. They need to have some continuity for all those people.

9  
10           Crawford stated that is a good point. **Crawford withdrew his motion.**

11  
12           Brenner stated specifying an amount such as \$2.7 million is confusing. The  
13 levy rate is a certain amount per thousand. She doesn't understand how that can  
14 change.

15  
16           Dewey Desler, Deputy Administrator, stated the County has the ability to  
17 either use a rate per \$1,000, or a specific amount. If the County uses an amount,  
18 the language should say, "a levy in the amount up to..." The County Council would  
19 have the choice each year to levy that amount during the budget time. The same  
20 thing would apply to the rate. The language should say, "up to a levy rate of..."  
21 The County Council would have the choice of doing that as long as the levy rate and  
22 levy amount does not exceed 101 percent of that collected the year before.

23  
24           Crawford stated his point today is that the Council would ultimately assign a  
25 dollar figure to the total levy.

26  
27           **Crawford moved** to amend the ordinance to specify a levy rate of \$.255 or  
28 less per \$1,000 in all locations in the ordinance.

29  
30           Nelson stated that amount funds the current service level.

31  
32           Crawford stated it also includes some funds for inflation and other things.

33  
34           Nelson stated it does not include funds for Point Roberts, dispatch, and other  
35 issues.

36  
37           **Motion failed 1-6 with Crawford in favor.**

38  
39           **Nelson moved** to insert a levy rate of \$.384 per \$1,000 in all locations in  
40 the ordinance. It is an average of all the rates preferred during the meeting today.

41  
42           McShane stated they should look very carefully at those numbers and the  
43 various scenarios that play out. Adjust that number accordingly.

44  
45           Brenner stated Mike Lee spoke to that issue today. Mr. Lee said the levy  
46 rate of \$.37 would cover the fifth medic one unit, dispatch, the refund to the fire  
47 districts, and Point Roberts. The County should not do any more than what is  
48 absolutely necessary.

1  
2 Fleetwood stated he would vote in favor of the motion, but he prefers a levy  
3 rate of \$.39. That is the minimum levy that was acceptable to the fire districts.  
4

5 Nelson stated all the councilmembers had a variety of preferred levy rates,  
6 ranging from \$.37 to \$.40, with the exception of Councilmember Crawford, whose  
7 preference was lower than that range. The amount in his motion is an average of  
8 all those preferences. The fire districts want a levy rate in the range of \$.37 and  
9 \$.41 per \$1,000 of assessed value. Each cent of the levy rate will generate  
10 approximately \$130,000. The fire districts were trying to generate reserves and  
11 other services.  
12

13 Roy stated a rate of \$.37, which is a minimum from which they can begin  
14 discussions. Start with the lowest rate in the range of acceptable rates.  
15 Psychologically, it's more positive to add to the rate than to take it away.  
16

17 **Motion failed 3-4 with Nelson, McShane, and Fleetwood in favor.**  
18

19 **Brenner moved** to insert a levy rate of \$.37 or less per \$1,000 in all  
20 locations in the ordinance.  
21

22 Nelson stated the Fire Commissioners who do the budgeting asked for a rate  
23 higher than \$.37. The City of Lynden is concerned with any rate lower than \$.38.  
24

25 Brenner stated she would rather start at the bare minimum that the fire  
26 districts said they could deal with.  
27

28 **Motion carried 6-1 with Crawford opposed.**  
29

30 **Motion to accept the Introduction Items, with item five as amended,**  
31 **carried unanimously.**  
32

- 33 **1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING**  
34 **MAP FROM NEIGHBORHOOD COMMERCIAL (NC) TO TOURIST**  
35 **COMMERCIAL (TC) FOR .7 ACRES IN THE LAKE WHATCOM**  
36 **WATERSHED (AB2002-453)**  
37
- 38 **2. ORDINANCE AMENDING THE WHATCOM COUNTY COMPREHENSIVE**  
39 **PLAN TO ADD 12 ACRES TO THE FERNDALE URBAN GROWTH AREA**  
40 **(OLSON/NELLES SITE) (AB2002-084D)**  
41
- 42 **3. RESOLUTION TO SELL COUNTY TAX TITLE PROPERTY BY**  
43 **NEGOTIATION (AB2003-031A)**  
44
- 45 **4. ORDINANCE MAKING IT A CLASS 1 CIVIL INFRACTION, AND A**  
46 **MISDEMEANOR UPON THE THIRD VIOLATION, TO OPERATE OR RIDE**  
47 **MOTORIZED VEHICLES UPON DIKES AND LEVEES ALONG THE**  
48 **NOOKSACK RIVER WITHOUT AUTHORIZATION (AB2003-041)**

1  
2 **5. ORDINANCE SUBMITTING TO THE VOTERS OF WHATCOM COUNTY A**  
3 **PROPOSITION IMPOSING THE LEVY OF AN ANNUAL PROPERTY TAX**  
4 **FOR SIX YEARS TO FUND FIRE SERVICE PRE-HOSPITAL EMERGENCY**  
5 **MEDICAL SERVICES (AB2003-027A)**  
6

7 **OTHER BUSINESS**  
8

9 There was no other business.  
10

11  
12 **REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS**  
13

14 Roy stated she will arrange for the councilmembers to see some of the  
15 activities of the Developmental Disabilities Committee.  
16

17 Nelson stated an individual has been concerned about having a noise  
18 ordinance. He will discuss some possibilities with the Sheriff's Office on that issue.  
19

20 Brenner stated three County councilmembers went to a meeting with  
21 farmers. She felt that Roger Bajema had a legitimate concern. She asked the  
22 Executive to allow County staff to provide information on that issue. She wanted to  
23 understand what happened. It didn't seem to be a spill.  
24

25 Caskey-Schreiber asked if Councilmember Brenner had read the Department  
26 of Ecology's report.  
27

28 Brenner stated she had. It was absolutely ridiculous. It didn't look like any  
29 spill.  
30

31 Caskey-Schreiber stated it happened in October.  
32

33 Brenner stated there were photographs from October. It didn't look like a  
34 spill. It looked like a guy was turning around, and something fell off his truck that  
35 was minimal. The County doesn't have any control over the Department of  
36 Ecology. It was the County's own administrative people who put it down as a  
37 moderate rather than minor violation.  
38

39 McShane stated this is an administrative matter that could be appealed to  
40 the Council. The councilmembers talked about that during the site visit. The  
41 farmer has appealed it. He would be curious to know the number of manure  
42 spreading violations the County has cited. He would like a report on this program.  
43

44 Brenner spoke regarding having a six-foot fence with a seven-foot limit on  
45 agricultural land. There should not be a limit for fences. She asked to find out  
46 where the seven-foot maximum limit came from and whether the Council could  
47 amend the statute to not require permits on agricultural fences.  
48

1 Pete Kremen, County Executive, stated the administration would provide any  
2 information the Council desires, as long as the administration has that information.

3  
4 Before councilmembers make somewhat disparaging remarks about staff, he  
5 would at least like the administration to be provided the information and then talk  
6 about whatever corrective action needs to be made, if necessary. He is very proud  
7 of his staff, which does an excellent job. There are constituents who have been  
8 levied with fines and penalties at times for whatever reasons. Hopefully they are  
9 justified. Most of the time, they are. These are gray issues. He would at least like  
10 the opportunity to provide information he has that backs up whatever position the  
11 administration takes.

12  
13 Brenner stated she didn't understand what was disparaging. She was just  
14 asking questions.

15  
16 McShane stated he was concerned that Councilmember Brenner was  
17 expressing an opinion that would remove her from the appeal process.

18  
19  
20 **ADJOURN**

21  
22 The meeting adjourned at 9:01 p.m.

23  
24  
25 \_\_\_\_\_  
26 Jill Nixon, Minutes Transcription

27  
28 These minutes were approved by Council on January 28, 2003.

29  
30 ATTEST:

WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

31  
32  
33  
34  
35 \_\_\_\_\_  
36 Dana Brown-Davis, Council Clerk

\_\_\_\_\_  
Dan McShane, Council Chair