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1 WHATCOM COUNTY COUNCIL
2 **Natural Resources Committee**
3

4 December 9, 2003
5

6 The meeting was called to order at 9:00 a.m. by Committee Chair Sharon
7 Roy in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.
8

9 Present: Absent:
10 Seth Fleetwood None
11 Laurie Caskey-Schreiber
12

13 Also Present:
14 L. Ward Nelson
15 Barbara Brenner
16 Sam Crawford
17

18 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**
19

20 **2. RESOLUTION APPROVING A MINERAL RESOURCE STUDY FOR**
21 **WHATCOM COUNTY, RECENTLY COMPLETED BY GEO-ENGINEERS**
22 **(AB2003-391)**
23

24 Roy stated this item was withdrawn from the agenda.
25

26 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL –**
27 **COMPREHENSIVE PLAN**
28

29 **1. ORDINANCE ADOPTING AMENDMENTS TO THE ENVIRONMENT**
30 **CHAPTER OF THE WHATCOM COUNTY COMPREHENSIVE PLAN**
31 **(CHAPTER 11) (AB2003-075D)**
32

33 **Roy** referenced policy 11K-1 on chapter page 11-30. She would like to
34 move the second bulleted item to the bottom of the list. The establishment of a
35 regional system of Marine Protected Areas (MPA's) has not been a focus of the
36 Marine Resources Committee (MRC). It probably isn't going to be. These bulleted
37 items aren't prioritized, but this item is close to the top of the list, but it is really
38 close to the bottom of the priorities. She **moved** to move the second bulleted item
39 to the bottom of the list. The MRC believes that they should have a lot of tribal
40 support for marine protected areas, but there hasn't been. They've decided not to
41 pursue that item.
42

43 ***Motion carried unanimously.***
44

45 Roy noted a typo in the first paragraph in the Shellfish Habitat section on
46 chapter page 11-31, "Birch Bays."
47

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1 Roy referenced policy 11L-2 on chapter page 11-31. The word 'restore' was
2 replaced with the word 'improve.' She preferred the original language. She asked
3 the reason for the change.
4

5 Hal Hart, Planning and Development Director, stated some of the controversy
6 was about defining the function and value to which they are restoring the waters.
7

8 **Roy** stated the language says they have to improve the water to a level that
9 allows and support shellfish harvesting. That's clear. It won't do them any good to
10 improve the water below that level. She **moved** to amend policy 11L-2 on chapter
11 page 11-31, "Improve **Restore** degraded waters...."
12

13 **Motion carried unanimously.**
14

15 **Roy** referenced chapter page 11-35, Section B, item seven. Include Birch
16 Bay in areas where they are talking about shellfish, since the State Department of
17 Health has declared it to be at-risk for shellfish closure. She **moved** to amend item
18 seven, "...areas such as Lake Whatcom, Lake Samish, and Drayton Harbor, and
19 **Birch Bay** watersheds.... They have an opportunity do something before they have
20 a closure, rather than having to set up a protection district after closure. Keep in
21 mind that they have another threatened area.
22

23 Caskey-Schreiber asked if they are currently harvesting at Birch Bay.
24

25 Roy stated they are, for recreation.
26

27 **Motion carried unanimously.**
28

29 Caskey-Schreiber asked if the language about using the Technical Advisory
30 Committee or a citizens panel to hear critical areas ordinance appeals is only in
31 action item 68.
32

33 Jeff Chalfant, Senior Planner, stated it is.
34

35 Caskey-Schreiber stated the minutes talked about adding an appeals
36 committee for wetlands. She doesn't see that language anywhere. Chalfant stated
37 the amendments may have shifted the page numbers. He would check to find out.
38

39 Roy stated Councilmember McShane suggested in writing amendments to
40 several action items. The first amendment is to action item 12.
41

42 **Caskey-Schreiber moved** to amend action item 12, "Develop a working
43 relationship with the Chamber of Commerce, Bellingham-Whatcom County
44 Economic Development Council, Building Industry Association (BIA), and other
45 development organizations, as well as environmental protection and property rights
46 organizations."
47

1 **Motion carried unanimously.**
2

3 **Roy** stated the next of Councilmember McShane's proposed amendments is
4 to action item 14. She **moved** to amend action item 14, "...The established level of
5 risk may be expressed as the largest known event **potential hazard posed** as
6 determined by scientific and historical methods applicable to each specific natural
7 hazard."

8
9 **Motion carried unanimously.**
10

11 Nelson asked Councilmember McShane's reasoning for the suggested
12 amendment.
13

14 Roy read from Councilmember McShane's memo to the Natural Resources
15 Committee dated December 7, 2003 (*on file*).
16

17 Nelson asked how one evaluates potential. Chalfant stated potential would
18 be based on a risk assessment with a number of parameters, including soil type,
19 slope, groundwater seepage, and other external environmental or development
20 parameters that might cause a hazard.
21

22 Nelson stated the reverse could also be true. For example, risk could be less
23 if a large event already occurred.
24

25 Roy stated that's correct. That would be evaluated.
26

27 Chalfant stated that if the hazard was alleviated by the occurrence of a large
28 event, they could determine there is little risk.
29

30 Roy asked if the intent is for evaluation. They could do an evaluation that
31 results in a determination of little or no risk.
32

33 Nelson stated he didn't know if there are measurement tools to do that. He
34 asked the historical methods used. Chalfant stated they would use aerial photos to
35 determine whether landslides have occurred. They would look for visible signs of
36 large events. There are lots of methodologies to use.
37

38 Caskey-Schreiber stated they could also see layers of sediment with core
39 sampling. Chalfant stated that's correct.
40

41 Roy stated Councilmember McShane's next suggested change is to add an
42 action item after the existing action item 15.

43 Fleetwood asked the difference between the suggested language from
44 Councilmember McShane and the existing language in action item 16.
45

46 Caskey-Schreiber stated the language gets more specific in identifying these
47 areas up front. Chalfant stated the Comprehensive Flood Hazard Management Plan

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1 may identify alluvial fan hazards. Technically, they're regulated in the critical areas
2 ordinance. Those areas are identified on the new Federal Emergency Management
3 Agency (FEMA) maps, but FEMA has no authority to regulate those.

4
5 Roy stated those areas are not currently identified in the Flood Hazard
6 Management Plan. Chalfant stated they should be. He would support this
7 language.

8
9 **Fleetwood moved** to add a new action item following action item 15 as
10 recommended by Councilmember McShane, with one change, "Review the findings
11 and recommendations of alluvial fan hazard evaluations and make appropriate
12 recommendations for land use and zoning regulations to the Planning Commission
13 and County Council to assist in reducing the hazards posed on these fans.
14 ~~Whatcom County has completed or nearly completed alluvial fan evaluations an~~
15 ~~Whatcom County has completed or nearly completed alluvial fan evaluations an~~" The last sentence of
16 Councilmember McShane's recommendation should be deleted. The status of the
17 evaluations are what they are. They don't need to identify the various states of
18 preparation.

19
20 Caskey-Schreiber stated there's no harm in identifying these areas.

21
22 Fleetwood stated the first sentence is a straightforward description of what
23 they want. They could add the state of preparation for many things in every
24 provision, but it doesn't add anything to the policy.

25
26 Caskey-Schreiber stated they do talk about sensitive areas and talk about
27 Lake Whatcom, Drayton Harbor, Birch Bay, and Lake Samish.

28
29 Nelson stated he agreed with Councilmember Fleetwood. This is a
30 Comprehensive Plan. There are other ordinances that deal specifically with those
31 areas. As those areas improve, the Council would have to amend the
32 Comprehensive Plan.

33
34 Roy restated the motion to add new action item following action item 15,
35 "Review the findings and recommendations of alluvial fan hazard evaluations and
36 make appropriate recommendations for land use and zoning regulations to the
37 Planning Commission and County Council to assist in reducing the hazards posed on
38 these fans."

39
40 **Motion failed 1-2 with Fleetwood in favor.**

41
42 **Roy moved** to add a new action item following action item 15 as
43 recommended by Councilmember McShane, "Review the findings and
44 recommendations of alluvial fan hazard evaluations and make appropriate
45 recommendations for land use and zoning regulations to the Planning Commission
46 and County Council to assist in reducing the hazards posed on these fans."

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1 Whatcom County has completed or nearly completed alluvial fan evaluations an
2 Canyon Creek, Jones Creek, and Glacier-Gallop Creeks.”

3
4 ***Motion carried unanimously.***

5
6
7 ***Roy moved*** to amend action item 17 as recommended by Councilmember
8 McShane, “...in areas designated for incentive-downzone programs **density**
9 **reduction.**”

10
11 ***Motion carried unanimously.***

12
13 Nelson asked why the new federal programs for stormwater reduction are
14 not mentioned. Chalfant stated those are the new National Pollution Discharge and
15 Elimination System (NPDES) program. They are referenced throughout the
16 amendments.

17
18 Caskey-Schreiber stated it is mentioned in action item 29.

19
20 ***Caskey-Schreiber moved*** to delete action item 68. They already have
21 procedures. This item is misleading and dangerous.

22
23 Roy stated she agreed.

24
25 Fleetwood asked the current appeal process for critical areas. Chalfant
26 stated that if there is an appeal of a critical areas determination, it is heard first
27 administratively by the Land Use Division Manager and Planning Department, then
28 the Hearing Examiner, and then the County Council.

29
30 Fleetwood asked if this action item is to add one more layer to the appeals
31 process. Chalfant stated the action item would be to replace the existing appeals
32 process.

33
34 Roy stated the system is in place with people who understand the issues.
35 The Hearing Examiner understands the process issues. The Planning Department
36 understands the scientific and technical issues. They could do this in everything.
37 She would not want to establish review panels for everything.

38
39 Nelson stated the Technical Advisory Committee (TAC) has been in place and
40 used for appeal processes. The reason it was set up in the past was because of
41 concerns with using alternative management practices. He asked if that’s true.
42 Chalfant stated he’s never heard of the TAC being used for critical areas appeals.

43
44 Nelson stated one example is with the issue of stormwater procedures and
45 the correct pipe size to accommodate flow. Chalfant stated that works well for the
46 Public Works Department that works with stormwater design because the panel
47 includes professional engineers that are all subject to State licensing standards and

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1 a code of ethics. They wouldn't find that with respect to wetland science. There
2 wouldn't be that professional accreditation.

3
4 Nelson stated they should not eliminate the possibility of having a group of
5 qualified engineers being able to evaluate work brought forward that is contrary to
6 what the Planning Department would allow.

7
8 Roy stated Mr. Chalfant just said there is no equivalent expertise on
9 wetlands. Engineers don't necessarily have wetland or critical areas knowledge.

10
11 Nelson asked for an example of what they would deal with under this
12 evaluation. Chalfant stated that when considering impacts to wetlands and natural
13 resources issues, they have to look at the geology, biology, and chemical
14 processes. It's a scientific analysis.

15
16 Nelson asked if that is what engineers do. Chalfant stated engineers
17 typically deal with structural issues, such as how water moves across the landscape
18 in a mechanical fashion, as opposed to natural systems.

19
20 Nelson stated they would evaluate the function of the wetlands. He asked
21 why someone would go with the TAC.

22
23 Roy stated the person would disagree with what the Planning Department
24 says.

25
26 Nelson asked if the Planning Department is better qualified than the TAC to
27 evaluate the effect of flooding. Chalfant stated frequently flooded areas are dealt
28 with under Title 17, the flood ordinance, and the purview of the Public Works
29 Department. Appeals to that would be heard by FEMA in most instances.

30
31 Caskey-Schreiber stated she has concerns about creating another layer. The
32 TAC is appointed by the Executive. There's no guarantee that the TAC will have the
33 same knowledge, background, and expertise needed.

34
35 *(Clerk's Note: End of tape one, side A.)*

36
37 Caskey-Schreiber stated the Planning Commissioner who proposed this item
38 said the wetlands regulator is tough to work with. That's not a good reason to
39 create a whole other layer of bureaucracy in the appeals process.

40
41 Roy asked how many appeals they have each year. Hart stated the total
42 number of reviews they do is in the thousands. He doesn't know how many
43 challenges there are. They have to do a better job educating people about what
44 wetland issues are.

45
46 Nelson asked the intent of this action item. Chalfant stated the wetland
47 mitigation process is wide open. There aren't any alternatives that can't be

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1 considered. The intent of this item would be to replace the current process. He
2 does not recall any appeal of a critical areas determination going to the Hearing
3 Examiner in the four years he's been with the County. There have been maybe two
4 items go to the Hearing Examiner regarding forest practices for moratorium
5 releases, but never a critical areas determination.

6
7 Roy stated the fact that few items have gone to the Hearing Examiner
8 indicates that the system works.

9
10 ***Motion carried unanimously.***

11
12 ***Fleetwood moved*** to recommend that this item be forwarded for a public
13 hearing as amended.

14
15 ***Motion carried unanimously.***

16
17 Caskey-Schreiber stated they need to address the language change to the
18 Introduction, as recommended by Councilmember McShane two weeks ago.

19
20 Chalfant stated staff reviewed the proposed language. The County geologist
21 suggests a marriage of the proposed language with the existing language, which he
22 submitted (*on file*).

23
24 Roy asked if the County geologist concurred with Councilmember McShane
25 that the some of the existing language in the Introduction-Environmental Setting
26 section is not appropriate to Whatcom County. Chalfant stated he is. They
27 reorganized the existing language to include the good details that Councilmember
28 McShane suggested. Staff disagreed with certain language regarding lakebed
29 deposits.

30
31 ***Caskey-Schreiber moved*** to amend the Introduction-Environmental
32 Setting section as recommended by staff in the new handout (*on file*).
33 Councilmember McShane can propose revisions after the public hearing.

34
35 ***Motion carried unanimously.***

36
37 Roy stated this item will move forward for a hearing.

38
39 (*Clerk's Note: The committee took a five-minute break at 9:55 a.m.*)

40 41 **COMMITTEE DISCUSSION AND RECOMMENDATION TO COUNCIL**

42 43 **1. DISCUSSION AND FORMULATION OF RECOMMENDATION REGARDING** 44 **THE DRAFT GROUNDWATER MODEL ACTION PLAN (AB2003-390)**

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1 Brenner stated this has gone beyond what the County Council recommended
2 at the Water Resources work session. The Council only approved the first four
3 steps in the plan. It didn't want to make commitments to hire staff at this point.
4

5 Crawford stated he discussed spending \$100,000 to get a multi-layer model
6 instead of a single-layer model.
7

8 Nelson stated this is only the language to seek a consultant that can do a
9 multi-layer groundwater evaluation. This language is the criteria that group would
10 have to meet. These are changed recommendations. He likes the additional
11 language that is included.
12

13 Brenner asked if the Council has changed its mind from approving only items
14 one through four. Item five is something the Council said it wasn't ready to do.
15

16 Roy asked if items five through seven logically follow once they decide what
17 they are going to do. This isn't inconsistent. This says they have to do items one
18 through four first. At some point, they are going to have to face decisions on
19 staffing, funding resources, and management. She received another document that
20 goes into great detail about management options.
21

22 Nelson stated the information reflects the previous Planning Unit
23 recommendation plus additional language to strengthen the request for proposals
24 (RFP) process.
25

26 John Thompson, Resources Planner/Endangered Species Act, stated this item
27 is scheduled for the evening's Committee of the Whole meeting.
28

29 Fleetwood stated he'd prefer to hold discussion until the Committee of the
30 Whole meeting.
31

32 Roy agreed.
33

34 **OTHER BUSINESS**

35
36 There was no other business.
37

38 **ADJOURN**

39
40 The meeting adjourned at approximately 10:05 a.m.
41
42
43

44 Jill Nixon, Minutes Transcription
45
46

47 ATTEST:

WHATCOM COUNTY COUNCIL

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WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Sharon Roy, Committee Chair