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1 Whatcom County Council
2 **Special Water Resources Work Session**
3

4 November 16, 2004
5

6 Council Chair Dan McShane called the meeting to order at 10:10 a.m. in the
7 Whatcom County Civic Center Annex, Second Floor Meeting Room, 322 N.
8 Commercial, Bellingham, Washington.
9

10 Present:

11 Barbara Brenner
12 Laurie Caskey-Schreiber
13 Sam Crawford
14 Seth Fleetwood
15 Sharon Roy
16

Absent:

L. Ward Nelson
17

18 **WATER RESOURCES WORK SESSION (AB2004-025)**
19

20 **1. WRIA INSTREAM FLOW**
21

22 Draft: Instream Resources Protection and Water Resources Program - Samish River
23 Basin
24

25 Bruce Roll, Assistant Director, stated the Samish River basin is part of water
26 resource inventory area (WRIA) 3. There are instream flow proposals for the Friday
27 Creek drainage. There are lawsuits between the Swinomish Tribe and Skagit
28 County. Skagit County is also in a lawsuit with the State Department of Ecology
29 (Ecology). Because of the lawsuits, work on instream flows stopped. At the same
30 time, the group wanted to move forward with instream flows and asked Ecology to
31 go through its rulemaking mechanism. Ecology worked independently to come up
32 with the instream flow levels. There are three drainages in the basin that go into
33 Whatcom County, which are Lake Samish, Silver Creek, and the Upper Samish
34 drainages. Some of the Friday Creek drainage is part of the Samish drainage area.
35

36 Staff met with Ecology. Ecology hopes to work through this and subsequent
37 drafts with the counties in the next two or three months, with a public draft
38 available after the first of the year. That is a different schedule than before.
39 Originally, they planned a public comment in November. Ecology said it is not
40 prepared yet for the public comments and wants to work more with the counties.
41

42 Key points in this draft include how Lake Samish is managed and a history of
43 Lake Samish. The history of the lake level goes back to the mid-1980's, when the
44 Department of Fish and Wildlife asked that flows be augmented out to two cubic
45 feet per second (cfs) during dry periods of year. In exchange, property owners in
46 the basin were granted water rights if they draw from the lake. Almost everyone

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1 has applied for a water right. Twelve applications are pending until the instream
2 flows are decided.

3
4 As a result of that negotiation in the late 1980's and early 1990's, a Lake
5 Management District was created to control the lake level. It was established
6 through a county ordinance. The ordinance also identified fees charged to people in
7 the drainage when the district was established. The district has been operating
8 with that fee for the past ten years to manage the lake levels only.

9
10 Ecology proposes that if the lake management district continues to operate,
11 Ecology would be willing to grant water rights to the twelve pending applicants and
12 any future applicants, only if the two cfs level is maintained. Exempt wells are
13 considered hydraulically connected to the streams and part of the instream flow
14 rule. That will influence how the County manages land in the areas.

15
16 The Silver Creek and Upper Samish drainages are closed to future
17 appropriation, other than a provision to reserve a certain amount of water for
18 future growth. Ecology proposes a level of one cfs to be set aside for future
19 withdrawals. If the County wants to use that reserve, it would adopt a County
20 ordinance regulating how the water would be managed in conjunction with the
21 flows and reserve waters.

22
23 Fleetwood asked if a future appropriation would lower the flow if the water is
24 fully allocated. Roll stated a level of one cfs wouldn't have a profound influence,
25 according to Ecology and the Department of Fish and Wildlife. He's interested in
26 understanding why Ecology derived a level of one cfs, how much ability someone
27 would have to get an exempt well status, and how many exempt wells can happen
28 in Samish and Whatcom Counties. He will be working with the County planning
29 department and the portions of the Samish drainage that is in Skagit County.

30
31 Brenner asked who is on the WRIA 3 Planning Unit and why they couldn't
32 reach consensus. Roll stated the group got to a point where some flows were
33 recommended at such a high level that they weren't achievable. The Swinomish
34 Tribe wanted the higher level and wouldn't change its perspective. Skagit County
35 finally quit the planning effort. That's when Ecology stepped in.

36
37 Brenner asked if the Tribe can appeal Ecology's decision. Roll stated Ecology
38 has to respect tribal claims and rights. The tribes have been engaged with
39 Ecology's process.

40
41 Brenner stated she understands that the Tribe has the last word. Roll stated
42 Ecology has the last word. Ecology is obligated to consult with tribes, but
43 regulating water rights and quantity is an Ecology charge.

44
45 McShane stated the value set for instream flow and drainage is probably
46 unachievable. Tribes may be happy with the decision and not interested in pushing
47 it further because it may lose ground.

1
2 McShane stated it sounds like the instream flow for that drainage can't be
3 achieved, and the Tribe is not interested in pushing back because they will lose
4 ground. Roll stated they're lower, but still pretty high. The difference in the two
5 WRIA approaches is that in WRIA 3, Ecology is doing the rulemaking efforts. WRIA
6 1 is negotiating its flow locally, which will drive Ecology to do a rulemaking
7 consistent with the negotiated amount.
8

9 Roy asked what happens if Ecology doesn't like what WRIA 1 comes up with.
10 Roll stated Ecology has been a representative at the table all the way along.
11

12 Roy asked about the Lummi and Nooksack tribes. Roll stated they are very
13 much engaged with determining instream flows.
14

15 Roy asked if the tribes and Ecology agree enough that they don't anticipate a
16 problem.
17

18 John Thompson, Senior Planner, stated the difference between two WRIs is
19 that the Lummi Nation is clearly interested in quantifying its water right. The
20 rulemaking for WRIA 3 would not address water rights for the Skagit tribes.
21

22 Caskey-Schreiber asked who would augment the water being drawn from
23 Lake Samish to the streams to allow further development. Roll stated they are
24 doing that now, since 1992, locally.
25

26 Caskey-Schreiber asked if there is a risk for people drawing water from the
27 lake. Roll stated that if they continue the flow regime downstream, they would be
28 open to additional withdrawals and new water rights. This version implies it also
29 works for groundwater withdrawals in the Samish drainage. The approach for the
30 Samish drainage allows for some level of future growth and still protects fisheries.
31 The current strategy for regulating instream flow is a shared responsibility between
32 Ecology and the local WRIA.
33

34 Caskey-Schreiber asked if this is a significant increase. Roll stated it is not
35 for the Samish drainage. They still have to deal with groundwater in Silver Creek.
36 Staff is doing an analysis of other drainages and will provide an update later on.
37

38 Paul Chudek, Environmental Health Supervisor, stated the Silver Creek
39 drainage includes the Cain Lake and Reed Lake area. There are a couple of small
40 public water supplies that serve the area. It is a well-defined service area that is
41 not likely to expand. Groundwater is available. Wells have been drilled deep
42 enough to be reasonable sources of water. Because there is not a lot of public
43 water, development would subtract from the reserve, which is split between
44 Whatcom and Skagit counties.
45

46 The Upper Samish drainage goes to Wickersham. It parallels the south fork
47 of the Nooksack River at Saxon. It belongs to Whatcom County and only goes to

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1 the county line. Wickersham is the only water supply. Limited service area and low
2 capacity to expand. The few private wells mostly are shallow, less than 20 feet.
3 There is groundwater but no public water. All new development outside of
4 Glenhaven lakes and Wickersham will draw from the reserve.

5
6 Roll stated they will discuss in the future what one cfs will get them and how
7 the areas can develop.

8
9 McShane stated one cfs is 648,000 gallons per day. The County would
10 assign a level of water use per day, and subtract that amount from the total.
11 Chudek stated other conditions must be followed to allow that to occur.

12
13 Caskey-Schreiber stated she is worried that augmenting this stream will
14 exacerbate development and encourage sewer and water installation.

15
16 Sylvia Goodwin, Planning Division Manager, stated they don't know how
17 much of the 648,000 gallons will go to Whatcom County. She submitted
18 information (*on file*) on potential build out. The Friday Creek area has a potential
19 build out of 2,639 units. The Samish River north area potential build out is only
20 346 units. She didn't split between the Lake Samish area and surface water and
21 ground water and Cain and Reed lakes. Some units would use surface water from
22 Lake Samish and other units would use groundwater that would subtract from the
23 reserve.

24
25 Chudek stated there are lots that are away from Lake Samish and don't have
26 access to drawing surface water from the lake.

27
28 Goodwin stated staff can further split the potential build out in each
29 watershed area. They haven't had time to do it yet.

30
31 McShane asked about Silver Creek. Goodwin stated the Friday Creek
32 statistics include Silver Creek.

33
34 McShane stated it also includes Lake Samish and the Cain and Reed lakes
35 areas.

36
37 Roll stated staff will divide the information by drainage. On the table now is
38 a requirement for Whatcom County, if it decides to participate, to acquire the
39 reserve water for future allocation. This rule applies from when it was enacted and
40 to future appropriations, not existing appropriations. This rule lumps exempt wells
41 in with all resources because of potential hydrologic continuity and the influence on
42 instream flows.

43
44 Chudek stated that if this rule passes, exempt wells are treated like
45 everything else. Until then, people living there now have a right-in-time.
46

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1 McShane asked if this rulemaking would step in for accounting of existing
2 and future exempt wells, and would create management for instream flows, which
3 is a significant change. Roll stated the proposal is for county people to have access
4 to reserve water. The County must adopt ordinance with all these conditions. If a
5 public water supply becomes available, residents would have to hook on. He read
6 the other conditions on Council packet page 13.

7
8 Crawford asked if there is still an effort to bring in water and sewer to Lake
9 Samish. Roll stated there have been attempts.

10
11 Crawford asked if it is a question of money. Chudek stated it is a question of
12 both money and the will of the community.

13
14 Crawford asked if the barrier is cost. Chudek stated a barrier is also that
15 residents want to control growth in the area by controlling the amount of water that
16 is available. He's not sure in the case of one development if the reason for not
17 bringing in public sewer and water is financial or other considerations.

18
19 McShane stated he's not sure if that issue is there anymore, as it was at one
20 time. The potential build out is much less. There is an existing plat that would
21 have to be served by public water. Bringing in public water and sewer might pencil
22 out in the future, depending on future property values. Once the line goes in, some
23 people will be required to hook up.

24
25 *(Clerk's Note: There was more discussion that is inaudible due to*
26 *construction occurring outside the building.)*

27
28 Crawford asked about an existing development at Lake Samish.

29
30 Amy Pederson, Planner II, stated that development has received water
31 rights.

32
33 Chudek stated the developer would rather bring in a water supply than treat
34 water. To move the project forward, the developer was willing to build its own
35 treatment system.

36
37 Brenner asked about forced no-protest agreements not being legal, according
38 to a recent court case. Goodwin stated that court case was about annexation, not
39 hooking up to sewer and water service.

40
41 Roy asked where the public water would come from theoretically. Roll stated
42 public water would be drawn from the Skagit River.

43
44 Caskey-Schreiber asked if there are more paper rights than what is allowed.
45 Roll stated he would ask that question.

46

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1 Chudek stated that if they don't exceed their water right, they can change
2 their service area boundary. The water right can be used anywhere within the
3 service boundary. As long as they don't exceed their water right, it can be put to
4 any beneficial use.
5

6 Crawford asked what happens if WRIA 3 prefers to have the Lake Samish
7 folks have public water. He asked if there is a cost mechanism that water could go
8 to Lake Samish in a larger scheme. Roll stated the planning process didn't talk
9 about it before the planning group quit.
10

11 Crawford stated it's important to make sure they know that county lines are
12 less significant than doing what's right for the watershed. Look at any possible
13 solutions they see as appropriate.
14

15 Roll stated staff will bring forward more information on future build out
16 scenarios in the drainage and what one cfs means. Staff will talk in the future
17 about Whatcom County's role and what it would be responsible for.
18

19 *(Clerk's Note: End of tape one, side A.)*
20

21 Chudek stated water is available for public health purposes. This is more for
22 water used outside the home, such as for irrigation. He's hopeful they can figure
23 out a way to have assurances that people understand their obligations.
24

25 Instream Flows in WRIA 1 26

27 Bruce Roll, Assistant Director, stated the WRIA 1 process is more locally
28 negotiated than the WRIA 3 process. It is driven by the participants. Ecology will
29 eventually do its rulemaking consistent with the group's decision.
30

31 There is a draft instream flow strategy. The Planning Unit and the Joint
32 Board felt that they should begin in clearly defined pilot project areas so they can
33 refine and understand how to do this in the rest of the WRIA.
34

35 There are two instream flow pilot project areas. One is in the Bertrand Creek
36 drainage. Bertrand has a Watershed Improvement District (WID), which includes
37 participants representing the residents of that geographic area and from other
38 governments.
39

40 The second area is the Middle Fork of the Nooksack River, and is tied more to
41 City of Bellingham issues. The project includes tribal interests and City of
42 Bellingham water right interests. It is much different in nature than Bertrand.
43

44 Those pilot projects will move along at the same time. The Lummi Nation
45 wants to assert its tribal rights through this process. It's part of the WRIA plan.
46 They will begin to decide what that tribal claim is as they go through the instream
47 flow activities.

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1
2 Fleetwood asked if the Lummi plan is currently pending litigation. Roll stated
3 that is for on-reservation issues only. This plan is for off-reservation issues.
4

5 Jeff Monsen, Public Works Director, stated there are two claims. One is for
6 fisheries and one for water for the reservation. A third element is groundwater on
7 the reservation.
8

9 Roll stated the pilot projects will hopefully lead to flow recommendations for
10 the two drainages.
11

12 Most member governments support the Bertrand project. The level of
13 support from each government will be different. For instance, the Lummi Nation is
14 more interested in dealing with instream flows on the Middle Fork because of
15 impacts to fisheries. He submitted proposed memoranda of agreement (*on file*) for
16 each pilot project and their participants. The scopes of work will come out in the
17 next three to four months. The agreements are written as though the Joint Board
18 is the administrator for instream flows. He and the Executive differ from the other
19 participants about everyone's roles in implementation. The agreements are
20 elements of implementation. Whatcom County is named as a participant in the
21 agreements. He recommends the County approve the agreement as a County
22 interest, not as a participant of the Joint Board. Implementation would be done
23 only in those areas where the County is willing to act. They are at a stage where
24 implementation happens through regulation updates. Other participants feel that
25 the Joint Board should implement all the pieces, which won't be effective. The
26 Planning Unit wants the instream flow pilots to move forward, but most participants
27 don't want to participate in every aspect of the projects, only do general oversight.
28 Set up a strategy where the stakeholders with an interest will act.
29

30 Roy asked if the concern is that the Joint Board not carry the responsibility it
31 has up to this point, and that the Joint Board needs to change so that the individual
32 participants will act independent of each other. Neither the County nor the Joint
33 Board needs to be the lead agency on all the implementation projects. Roll stated
34 focus on the stakeholders. Bringing aboard the Joint Board has historically also
35 brought along the whole Planning Unit with it. They never enter a Joint Board
36 proposal without Planning Unit concurrence. However, implementation must be
37 different from plan development.
38

39 Crawford asked if the Planning Unit members agree. Roll stated they do.
40 Ultimately, the recommendations go back through the Planning Unit. Use the
41 Planning Unit as the mechanism for establishing flows.
42

43 Thompson stated that as the scope of work is developed, it will define the
44 County's role.
45

46 Crawford asked where the agreements go for approval. Roll stated the
47 participants of the proposal will agree to it. There is no intent to take the

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1 agreements to the Planning Unit for approval. The agreements recognize the plan
2 for setting instream flows, so they are consistent with the Planning Unit.

3
4 Brenner asked if the Planning Unit should at least weigh in, since the Joint
5 Board has used the Planning Unit for everything else. Roll stated its not the same
6 mechanism they will use for implementation. After the first of the year, there is no
7 more money to support the caucuses or Planning Unit. Planning Unit members
8 don't want to continue to meet monthly forever.

9
10 Sue Blake, Senior Planner, stated the agreements are made available to the
11 Planning Unit, and they will take comment.

12
13 Roy stated she accepts Dr. Roll's explanation. If the Planning Unit
14 understands the process, that's fine. The concept of implementation is to move
15 away from using the Planning Unit. They don't have the money to continue it, and
16 that's the way the system has been set up from the beginning. Individuals can
17 comment, but having the Planning Unit approve or deny the agreements doesn't fit
18 with the process.

19
20 Roll stated including Ecology as a signatory to the agreement is not in the
21 current draft, but was discussed. He recommends Ecology be included because it
22 has to receive and administer the results of the negotiated process at some future
23 date.

24
25 Thompson stated that now, Ecology is a participant in the process, but not a
26 signatory.

27
28 Monsen stated the WRIA planning process created the Initiating
29 Governments and Planning Unit with the goal to adopt the plan. If the State
30 participates in the plan process through the Planning Unit, the State is obligated to
31 implement its role. Now, they are talking about implementing the plan when
32 adopted. They've never talked about the organizational structure during
33 implementation. The current thinking is that elements of the plan will be
34 implemented by a different collection of entities. The only way Ecology and the
35 State remain engaged is either through the Joint Board and Planning Unit, or it's
36 engaged in specific activities. He doesn't recommend maintaining the large
37 organizational structure for implementation.

38
39 Roy asked if Ecology has a role in implementation of instream flows. Roll
40 stated the County wants Ecology to receive what the group recommends, and
41 Ecology will do a rulemaking process to establish the legal framework. Ecology
42 should be there throughout so it is committed to the local process. Ecology is
43 needed to resolve problems before dealing with water right issues.

44
45 Monsen stated the State has a role in water rights and instream flow,
46 however it can't resolve the issue, including tribal claims, because tribal claims are
47 a federal matter. Implementation should be focused task by task. However, if a

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1 tribal claim is part of instream flow, the State is a party to the decision, but can't
2 resolve the issue.

3
4 Roy asked if the State has the ultimate approval on instream flow if the
5 tribes agree. Mosen stated the State sets the instream flow. That date the flow
6 rate is set becomes the priority date in the context of water rights. All water rights
7 before the priority date are senior to the flow. That's where the federal interest can
8 step in and move the target date back in time.

9
10 McShane stated the goal is to have a healthy stream and try not to let the
11 legal issues get in the way.

12
13 Mosen stated they need to move cautiously to avoid unintended results.

14
15 Roll stated decide how to manage the Bertrand area before they put a huge
16 legal framework on that group. They need to also understand what it means to
17 work through it. There will be a future draft of the agreements. It seems like
18 everyone approves of the draft agreements.

19
20 ***The Council concurred.***

21
22 Mosen stated the County has a different recommendation from the
23 participants on the Joint Board. Everyone else wants the Joint Board to continue to
24 administer the implementation projects, and the County wants everyone do their
25 own implementation.

26
27 Blake stated the agreements include reduced responsibilities for the Joint
28 Board and the Planning Unit. The actions are divided between the different
29 jurisdictions.

30
31 Roll asked if the Council agrees with including Ecology as a party to the
32 agreement.

33
34 ***The Council concurred.***

35
36 Roll stated he wants to add an overlay that is the tribal claim. State
37 legislation identified \$200,000 to resolve tribal claims in WRIA 1. Ecology proposes
38 to enter into a contract with Dr. Bob Anderson, a professor of law at the University
39 of Washington, to serve as a diplomat between the tribal claim and these efforts as
40 they move forward.

41
42 McShane asked if this would be done to work something out for the good of
43 the streams and water users do it doesn't blow up later into something legally that
44 no one thought of. Thompson stated Dr. Anderson has status in Washington D.C.
45 by working on federal negotiations on the Lummi Reservation. Getting the financial
46 backing to the basin to do that brings political support to resolve those water right
47 issues. Dr. Anderson has the skills and status needed.

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1
2 McShane asked if the Lummi representatives are happy with Mr. Anderson.
3 Roll stated both tribes are happy with the choice.
4

5 Thompson stated there may be some disagreement in the community
6 because of his work in the past on behalf of the tribes.
7

8 Roll stated go cautiously with legal framework in Bertrand. For the Middle
9 Fork project, fewer people are involved. Resolve that initially to help them
10 understand the tribal claims. The WID needs to understand its role before creating
11 a legal framework.
12

13 Monsen stated Bertrand has issues regarding State water law.
14

15 Fleetwood asked when they will begin implementation of WRIA, salmon
16 recovery, and established instream flows. Monsen stated they have invested a lot
17 of money in a lot of great data collections and management. That will help them
18 make difficult decisions.
19

20 Roll stated that between the Middle Fork and Bertrand projects, they can
21 make good headway into 2005. There will be recommendations from those
22 projects in a year and a half.
23

24 Caskey-Schreiber asked if Whatcom County will hire Dr. Anderson. Roll
25 stated Ecology hires Anderson. He's not asking to put this through the Joint Board.
26 The interest in Dr. Anderson is tied to County's interests the Bertrand and Middle
27 Fork projects. He won't necessarily represent the County, but the County will work
28 to come up with a strategy that everyone can live with.
29

30 Roy asked the people who would object to this would be the agricultural
31 people. Roll stated he talked to Henry Bierlink about the Joint Board versus
32 individual governments. Mr. Bierlink doesn't need to support Joint Board.
33 Regarding Dr. Anderson, Mr. Bierlink agrees with him that they need to put
34 strategies in place before they put a legal framework on Bertrand.
35

36 *(Clerk's Note: End of tape one, side B.)*
37

38 Roy asked if the farming community would perceive Dr. Anderson as a tribal
39 advocate.
40

41 McShane stated the State is committed to the success of the Bertrand WID.
42 It came up with \$200,000 for Dr. Anderson.
43

44 Salmon Recovery Plan 45

46 Roll stated members of the Shared Strategy Development Committee
47 requests the Council write a letter identifying early action items to send to Olympia.

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1 He submitted a draft letter (*on file*). By the end of the year, craft something to
2 send forward in support of the salmon recovery plan. There will be a summit in
3 January, including all Puget Sound salmon recovery plans, to go through these
4 types of letters. He would like to hear from the Council on any suggested changes.
5

6 McShane stated he will put this proposed letter through the Council's letter
7 writing policy process. It will go in the Council's packet for approval.
8

9 Roll submitted a packet of information (*on file*) describing to the early actions
10 described in the letter.
11

12 Last, he submitted a white paper (*on file*) on what they've accomplished and
13 how they will fund WRIA implementation in the future. The white paper was crafted
14 by a number of the WRIA participants. The County has been silent on this topic for
15 some time. The struggle is understanding what the County will implement and the
16 resources needed. There is no shortage of people who want to continue the Joint
17 Board and Planning Unit framework indefinitely, and want more resources to
18 continue the effort. He submitted the paper because the Council will probably hear
19 from those people. There are two proposals for funding from a countywide tax,
20 either through the County or through Public Utility District (PUD) 1. Executive
21 Kremen commented that the County staff doesn't have the resources to implement
22 something like this. The County should make sure it understands its priorities
23 before going out for funding. Executive Kremen proposed funding not be driven by
24 the County, but he didn't say no to the possibility of the PUD 1 taking it on if it
25 wants.
26

27 Caskey-Schreiber asked if the WID would be arm of implementation, and
28 each area should build in funding as it wants.
29

30 Crawford asked who wrote the white paper. Roll stated a variety of people,
31 including Joint Board staff, contributed to the paper.
32

33 Brenner stated she is not comfortable with the PUD collecting the countywide
34 tax.
35

36 Roy stated her concern is perpetuating the Joint Board and that this is a
37 control issue.
38

39 Crawford stated the white paper doesn't throw out ideas. It offers
40 conclusions without showing analysis, yet no one is taking responsibility for the
41 document. He is concerned about that, and he doesn't accept the document. They
42 need information from someone with a proposal who is willing to talk to them about
43 it.
44

45 McShane stated this paper is for information. Discussion is on the
46 fundamental County philosophy for its role with water. The County should protect
47 the resource, but it is not a purveyor.

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1
2 Crawford stated he doesn't object to the argument in the paper, but the
3 paper's presentation. Roll stated a perspective of staff is that they want to engage
4 in elements of implementation and see pieces moving forward and understand what
5 its going to take to get people committed to moving forward.
6

7 Brenner stated consider a levy. People don't like property taxes. A levy is a
8 better way to go. There has been support in the past for conservation futures.
9 This brings out the same protectiveness in people.

10
11 Roy stated it's premature to talk about how they are going to do this. They
12 don't even know if they are going to do this.

13
14 Brenner stated she agreed it may not be necessary.
15

16 McShane stated the councilmembers can read the paper, but it is not before
17 the Council at this time.

18
19 *(Clerk's Note: The Council took a five-minute break at noon.)*
20

21 **2. LAKE WHATCOM**

22 23 Lake Whatcom Work Plan Update - Watershed UGA's

24
25 Erika Stroebel, Senior Planner, stated City and County staff worked on urban
26 growth area (UGA) options. They identified some areas where they can take
27 watershed protection actions in 2005.
28

29 Sylvia Goodwin, Planning Division Manager, stated areas are built out in the
30 Britton Road and Hillsdale area. A maximum of 131 additional housing units can be
31 built. As of October 2003, there are 150 vacant lots in Geneva. Almost all areas
32 have been platted. She displayed a map of the areas.
33

34 One option for watershed protection is density reduction in the Hillsdale area,
35 because the City of Bellingham has control of sewer and water utilities. Urban
36 residential zoning without utility service is one house per five acres. Platted lots
37 already have access to water and sewer. Many of the bigger lots don't have access
38 to utilities. The City will allow utilities if an owner agrees to a density decrease.
39 The problem with a downzone is that the lots can be platted smaller if they are
40 rural lots, even without sewer service. An owner can get more density from a
41 downzone.
42

43 McShane stated they could change the rules in that area anyway. Goodwin
44 stated another option was to make sewer service mandatory, but they would have
45 to work closely with the City and make sure they don't have a takings challenge.
46 There must be an agreement with the City to allow sewer extension in certain
47 circumstances.

1
2 Caskey-Schreiber asked what the goal is for the area's density. Goodwin
3 stated at the last joint meeting, they discussed whether it should come out of the
4 UGA and be downzoned. The final decision for that is the County Council's. In her
5 opinion, there is no value to remove the area from UGA other than the Denke
6 property.

7
8 Stroebel stated that through the Lake Whatcom Management Program, there
9 is a special designation for UGA's in the watershed. Another option is to have a
10 special designation for those areas that don't move the UGA boundary, but is still
11 protective.

12
13 Kurt Baumgarten, Planner I, stated the special designation is described in the
14 Comprehensive Plan as a water resource overlay/special UGA, but is not defined
15 and has not been used. The County can define it with a new set of stricter
16 regulations for the overlay.

17
18 Fleetwood asked if these areas constitute about 10 percent of the
19 developable units around the lake. Goodwin stated the downzone took out around
20 1,000 units. The Sudden Valley density reduction program took out about 1,400
21 units.

22
23 Amy Pederson, Planner II, stated the rezone is about 400 units.

24
25 Goodwin stated that is a total reduction of 2,800 units. In addition, the City
26 and County have bought development rights.

27
28 McShane stated a cost of stormwater issues in urbanized areas is a concern.
29 They are constrained in designing systems. He would like to see predictability, or
30 know if they need to over-design for future complete build out. The two ideas are
31 to tighten the cluster development and the unused UGA designation. Goodwin
32 stated tightening the cluster development for areas already platted.

33
34 McShane stated that even though there are no big tracts, it is a sensitive
35 area.

36
37 Caskey-Schreiber stated a concern is that Water and Sewer District 10 is
38 going to expand. She asked if all these areas are in the jurisdiction of the City of
39 Bellingham. Goodwin stated the County has an interlocal agreement with the City
40 to use City development standards within the UGA.

41
42 Fleetwood asked what is problematic with figuring out how to fund
43 stormwater retrofits that collect stormwater and keep it from going into the lake.
44 He asked if that is viable.

45
46 Jeff Monsen, Public Works Director, stated that most entities start by having
47 a public storm sewer, which the County doesn't have anywhere in the county. If

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1 the Council believes that a public entity needs to have that facility, the next step
2 would be to create the authority and develop that system.

3
4 Fleetwood asked if a public storm sewer would divert into the City's system.
5 Monsen stated there is a difference between a storm sewer to collect and treat
6 water and a sanitary sewer. In both cases, they are capturing and managing the
7 quality of the water. A stormwater system is a collection system.

8
9 Crawford asked if there are funding options to allow the County to make the
10 determination of who benefits and to assess those who benefit. Monsen stated that
11 if they fund through a fee structure, they must allocate based on benefit. It is a
12 utility.

13
14 Crawford asked if the County has not done this because the Council has not
15 given the Public Works Department that direction. Monsen stated that is part of the
16 reason. As they go through the design process for the Cable Street project, various
17 scenarios for the creation of a utility will come up. There is a range of options for
18 what type of system they will create.

19
20 Crawford indicated on the map areas they should consider.

21
22 Fleetwood asked what they'd have to do to create a public storm sewer in
23 this area. Monsen stated they would have to make sure there is continuity between
24 the different pieces of the system. Understand how water flows. Also, understand
25 there is a water quality function.

26
27 Roy asked if a stormwater system includes a treatment plant. Monsen stated
28 it depends on the level of treatment they choose. They would have to decide how
29 much phosphorus, for instance, they want to remove. The costs depend on level of
30 removal.

31
32 Caskey-Schreiber stated the water has to go back into the lake. She asked if
33 the City already collects a stormwater fee, if the City fee will conflict with any fee
34 the County collects, and whether people who don't negatively impact the watershed
35 should pay. Any stormwater fixes will be costly and cross-jurisdictional. Monsen
36 stated the fee structure is based legally in benefit received. If they want to have a
37 public debate on sharing the cost inside the community, then they are talking about
38 a tax.

39
40 Fleetwood stated this is the reason they should consider what a jurisdiction
41 would look like and what the equities would be.

42
43 *(Clerk's Note: End of tape two, side A.)*

44
45 Roy asked if the only people who benefit would be the 85,000 people who
46 drink the water. She asked if it is reasonable to think that people who drink the
47 water would pay the fee. Monsen stated they can't assess a fee on someone who

1 lives inside the City of Bellingham. The County can tax those people for the
2 County's general fund.

3
4 Brenner stated that would require all taxpayers to pay.

5
6 Roy stated they need to further explore this option, even though it may be
7 too expensive and not wise politically. They all need to understand what it means
8 to have an effective stormwater system.

9
10 Crawford stated one option is to have a hearing that is policy based, so the
11 public can provide input and the Council can make a decision. Then, staff can
12 respond accordingly. This may be worth having a hearing on, so the Council can
13 make a policy direction for the administration.

14
15 **Fleetwood moved** to form a discussion committee on Lake Whatcom
16 stormwater systems.

17
18 McShane stated Councilmember Fleetwood should spend time figuring out
19 exactly what he has in mind before bringing it forward.

20
21 **Fleetwood** agreed. He **withdrew his motion**.

22
23 McShane asked the density to which people must reduce before the City
24 provides sewer and water. Baumgarten stated it is very variable. Staff has talked
25 with City planners about formalizing that policy so it's more predictable.

26
27 McShane stated a question is whether it remains in UGA. Zoning should be
28 predictable.

29
30 Goodwin asked if they want to go to the density of the smaller areas that are
31 there already. There are areas with larger five-acre lots.

32
33 McShane stated zoning seems to have been driven in the past by the lots
34 that already exist in an area. He asked the flaws of the type of zoning that creates
35 a lot of holes in an area. He asked if there is a problem with creating a zoning limit
36 that will create more nonconforming lots. Goodwin stated legal issues will come up.
37 If they do a blanket change, everyone is treated equally. However, if one neighbor
38 has different regulations from another, there will be legal challenges. It can be
39 considered spot zoning. There can be exceptions for public health and safety
40 reasons.

41
42 Brenner stated exceptions are happening now to allow public water and
43 sewer beyond the UGA for reasons other than public health and safety. Goodwin
44 stated people can't do that legally, according to regulations. However, they can
45 always hook people up to the lines that are there.

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1 Brenner asked if the County can use the public health and safety reason for
2 this. Goodwin stated it can. If they downzone Hillsdale and not put utilities out
3 there, they can probably do that. Don't downzone to one- or two-acre zoning
4 because that is urban sprawl.
5

6 Fleetwood asked if staff can contemplate the benefits to water quality if there
7 is sewer with more density, or no sewer with less density. Goodwin stated they
8 can't do that level of detail with a model.
9

10 Stroebel stated staff can extrapolate information for general estimates, but
11 can't get that specific or a particular area.
12

13 Goodwin stated there are too many variables.
14

15 Roy asked if they have done as much as they can in terms of land use, and
16 property acquisition, and density reduction. Also look at what it will take to keep
17 stormwater out of the lake. She wonders if they have done all they can do in terms
18 of land use, and if they can start looking at retrofitting.
19

20 John Watts, Bellingham City Council Member, stated one option is for the City
21 and County to work on a site specific pilot project such as the Park Place system,
22 and learn from that. There are things different from phosphorus that are of
23 concern. They would see how the pilot project works, evaluate costs versus
24 effectiveness, monitor the outcome, and figure out all the liabilities. They could get
25 real information in a short period of time.
26

27 Caskey-Schreiber stated make sure stormwater efforts are based on good
28 science. The total maximum daily load (TMDL) study will figure out where most of
29 the pollutants come from. Target those specific areas. Retrofitting for stormwater
30 will not fix the problem. Adding more residential development will exacerbate the
31 problem and make future fixes more expensive. She advocates for density
32 reduction wherever possible. They learn more and more that all the effects add to
33 the problem. Basin three is beginning to show signs of degradation.
34

35 Fleetwood stated it will be impossible to get public support if the public
36 perceives that the lake can't be saved. He hopes they're not yet at that point.
37

38 Crawford stated he's not worried at all about basin three. He likes Mr. Watts'
39 idea. It will require some property acquisition. He is concerned about basin one
40 and should address that stormwater issue and associated funding options.
41

42 Stroebel asked if the County and City staff should continue to work on these
43 options together in 2005.
44

45 ***The Council concurred.***
46

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1 *(Clerk's Note: The remaining five-minutes of the meeting discussion is*
2 *inaudible.)*

3
4
5 **ADJOURN**

6
7 The meeting adjourned at 1:05 p.m.

8
9
10 _____
11 Jill Nixon, Minutes Transcription

12
13 The Council approved these minutes on January 11, 2005.

14
15 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

16
17
18
19 _____
20 Dana Brown-Davis, Council Clerk

Dan McShane, Council Chair