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WHATCOM COUNTY COUNCIL
Special County Council

March 1, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 10:00 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Barbara Brenner
Dan McShane
Sam Crawford
Seth Fleetwood
Sharon Roy
L. Ward Nelson

Absent:

None

2. INTERIM ORDINANCE AMENDING WHATCOM COUNTY CODE, TITLE 20, SECTION 20.80.735, TO IMPLEMENT A SEASONAL RESTRICTION ON LAND CLEARING ACTIVITIES WITHIN THE LAKE WHATCOM WATERSHED WATER RESOURCE SPECIAL MANAGEMENT AREA BETWEEN OCTOBER 1 AND APRIL 30 (AB2005-125)

Andrew Craig, Department of Ecology Water Quality Inspector, stated his primary duties have to do with construction and industrial stormwater sites that have National Pollution Discharge and Elimination System (NPDES) permits, although not all sites he inspects are under those permits, but may be causing stormwater pollution.

He was made aware of the ordinance to implement a seasonal restriction on land clearing in the watershed. He has worked with County staff on at least a dozen different construction sites, with or without NPDES permit coverage. County staff is very responsive in coordinating with the Department of Ecology (Ecology). The bottom line in coordinating with County staff is that there are not enough people for the job. He works with two County staff on construction stormwater issues.

He supports the County in trying to address source control measures. The County implemented the point system. As he understands it, the system evaluates each site's risk for pollution of stormwater. It's a great system on paper. In practice, it's difficult to evaluate those sites once they've been given the point value, due to limited manpower. This proposed amendment to the ordinance, a seasonal ban on activities during the wet season, appears appropriate to address the lack of manpower. It would simplify the criteria that a County inspector can use to evaluate sites for compliance. The site can change over the time, which the point system doesn't account for. Having a simpler set of rules makes it much easier for a person to evaluate those sites. Construction sites can rapidly change

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1 daily because they are constantly moving materials around. It's too difficult for an
2 inspector to go out there to keep up on it.
3

4 Another reason for simpler rules is the cumulative construction sites on one
5 parcel. A site will be developed by a single developer. Once the initial roads and
6 infrastructure is in, individual lots are built on the site. That brings in more builders
7 and contractors, which mushrooms the amount of activity on that particular
8 location. To check on those sites and provide a level regulatory playing field, have
9 a simpler set of rules, which is more feasible and reliable to address resource issues
10 and works better fiscally for the County.
11

12 Ecology wants to continue working with the County in all county watersheds.
13 All the steps the Council has taken are legitimate steps to protect water quality.
14 Ecology wants to provide as much support and staff time it can. There is no way
15 Ecology can do all this work itself. It takes a team effort to make a measurable
16 impact on stormwater pollution in all county watersheds.
17

18 Brenner stated it still isn't clear how the point system changes. Either a
19 developer can clear and grade or can't. That doesn't change. Either the parcel is
20 on a steep slope or is not on a steep slope. Craig stated the point system doesn't
21 change. However, site conditions can change. The percentage of exposed soils can
22 change, and the degree that those areas are covered can change over time.
23

24 Brenner asked about the possibility of a more simplified point system that
25 doesn't change, and just allows for the facts of the property that can't change, like
26 slopes. Some sites wouldn't even need a site visit if they already know those facts.
27 Fewer people could build, but some still could. They'd know that those who can't
28 build, but do build, would be violators. Craig stated Ecology would support that
29 option as well. This proposed ordinance is an effective source control approach.
30 Tightening up the point system may limit areas that are cleared, but still opens
31 some areas to clearing. For totally eliminating pollution at the source, the proposed
32 ordinance is the best. A better point system would be better than the current point
33 system.
34

35 Kurt Baumgarten, Planner stated he can answer questions on the point
36 system. This point system represents a snapshot of the site in time. A site can
37 change. Another site above the subject site could be cleared above the subject
38 site. A person may clear a greater amount than proposed. It's accurate to say that
39 this point system requires more oversight and follow up. If there is a full seasonal
40 clearing restriction, those sites would still be under construction, including framing
41 and utility work. Those sites would still be monitored for compliance. This
42 ordinance enables him to better follow up on the existing sites that are under
43 construction during the winter months.
44

45 Roy asked what resources and staff would be required to keep the current
46 system and how many times staff should visit each site, just for Lake Whatcom.
47 Craig stated the County has more than one watershed to deal with. If they narrow

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1 down the focus for staff, they could focus on that watershed. However, there are
2 enacted rules and regulations for other watersheds. Those other watersheds need
3 to be checked for compliance also. The County must have a presence in those
4 watersheds as well.
5

6 Roy stated she's prone to support the seasonal land clearing ban, but there
7 are options. She asked what means in terms of staffing for the option to provide
8 more resources to visit the sites more often and retain the point system.

9 Baumgarten stated if they can bring in enough staff, the point system should be
10 given a chance to function accordingly. There is not enough staff to do that
11 presently. There are between 300 and 400 sites open in the lake Whatcom
12 watershed. There are two staff who work in Lake Whatcom and also Birch Bay,
13 Drayton Harbor, and Lake Samish. The ration just for Lake Whatcom is over 150
14 sites per staff member. The question is the frequency of visits to each site. The
15 first year he started doing this, there were 50 to 60 sites, and now it is up to over
16 300 sites.
17

18 Roy stated they'd have to at least double the staff.
19

20 Hal Hart, Planning and Development Services Director, stated they might not
21 have to double the staff. A lot of this depends on what growth will be over the next
22 couple of years. His recommendation to the Executive would be for one additional
23 staff person to handle the existing growth. If they increase growth by another 25
24 or 50 percent, which is the kind of growth they're beginning to see, he'll be back for
25 more staff. With the existing point system, the County is one staff person short of
26 keeping up with Lake Whatcom.
27

28 Nelson asked if they have explored the option of outsourcing the resources.
29 Staffing is an issue countywide. For instance, if someone wants to clear during the
30 wet season, that person must have engineering people to do assessment and be
31 willing to pay for those assessments. Hart stated he discussed options with the
32 Executive briefly this morning. The administration wants the departments to look
33 at staffing as an overall approach department-wide. Before asking for a full-time
34 equivalent (FTE) employee, look at what they can change and outsource. The
35 number one service to outsource in his department is plans examination. They are
36 currently outsourcing two plans examiners. He would have to carefully think
37 through any kind of erosion control outsourcing. Mr. Craig might know of other
38 jurisdictions that have done that. He will look into that if that is the direction from
39 Council.
40

41 Nelson stated the County wouldn't hire the erosion control outsource, but
42 require it of the developer in addition to regular permitting. Craig stated he doesn't
43 know in his experience of other jurisdictions doing that. Certain individuals have
44 hired consultants to monitor and report to government agencies. The County must
45 be careful about the reliability of the information reported. The relationship
46 between the landowner and consultant can provide an opportunity for dishonesty.
47

1 Hart stated the County is still responsible for evaluating the consultant's
2 report.

3
4 Brenner stated that if they change the point system, and an application has
5 higher soil, slope, and proximity to wetlands, there is outright denial for those
6 properties during the wet season. She asked what would happen if there is a point
7 system like that, with a new staff person. She understands how much simpler the
8 process would be to not allow any building activity during the wet season, but it
9 doesn't seem fair to the property owners who won't have runoff to not supply them
10 with what they need, too. Baumgarten stated that when the point values were
11 established, the system came from a long discussion with many stakeholders. If
12 the numbers of a few categories were increased, they would effectively have a
13 seasonal ban. Staff still has to review every site, but they would still have an
14 effective seasonal ban because they'd increase the numbers of permits the
15 department holds on to until the wet season is over. Staff would have to evaluate
16 the site, then still do follow up on the sites that are open. That number of sites
17 would get much smaller.

18
19 Sites that were started in August, for example, must maintain best
20 management practices (BMP's) throughout the winter. During the heavy rain
21 events, the BMP's aren't necessarily 100 percent effective, even if installed
22 correctly. The councilmembers must ask themselves if the level of sediment is
23 acceptable to leave the site, given the phosphorus discussion. Even with an
24 enhanced point system or seasonal ban, some sediment still leaves the site. The
25 discussion should also include how much is acceptable.

26
27 Fleetwood asked if staff is saying that a point system, if properly staffed and
28 implemented, would be just as effective at protecting the lake as a seasonal ban.
29 Hart stated the County can do a better job with existing point system with
30 additional staff, if they can button up the sites tighter. That was the entire process
31 they went through before. The key policy debate was how far they want to go
32 buttoning up those sites during the winter. They can do a better job on those sites
33 with additional staff. They can work with and educate people in this and the other
34 three watersheds as well. However, if the Council wants to go the next increment
35 higher, then tighten up the criteria.

36
37 Fleetwood asked if there is a compelling reason to convert to a seasonal ban.
38 Baumgarten stated that if everyone does everything perfect on all the sites, then
39 maybe those BMP's will still be 80 percent effective during heavy storm events in
40 the winter. If they kept the point system, then they have X number of those sites
41 are open. A seasonal restriction is X minus those sites that are banned. The
42 County still has to inspect all the summer sites going through the winter. The
43 decision becomes the level of risk they want to take.

44
45 McShane stated there was a site along Lake Whatcom Boulevard in a little
46 valley that the County staff had to visit. He asked if there were fines on that site.

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1 Craig stated there were, by the County. That site is still under investigation by
2 Ecology.

3
4 McShane asked the fine levied. Baumgarten stated there were two fines of
5 \$1,000 each.

6
7 McShane asked the fee for the clearing permit. Baumgarten stated there
8 were long plat fees.

9
10 Craig stated that developer spent in excess of \$30,000 on source control and
11 pumping.

12
13 McShane asked if that is taken into account when assessing a penalty. Craig
14 stated it is. Everything is taken into account. The developer made strong efforts to
15 put in source control measures, but it was too little, too late. The result was
16 ongoing discharges to Euclid Creek, which discharges into Lake Whatcom. If that
17 area was preserved in native vegetation, the runoff would not have happened, or
18 would have been less likely to happen.

19
20 McShane asked how much staff time was put into that site. Craig stated
21 Ecology spent about 35 hours on that site because of ongoing risks to water quality
22 and violations.

23
24 Hart stated the County also spent about 35 hours. If this site becomes a
25 formal enforcement case, then additional time is spent by enforcement officers.

26
27 Nelson asked the impact of a seasonal ban, during which the department
28 would not request additional FTE. Some people will do things they need to do
29 anyway, and begin building anyway. He asked if they have weighed those
30 questions. Baumgarten stated one question being asked is whether they will have
31 enforcement problems regardless. Some people don't do what they say they are
32 going to do. Occasionally, someone does something without a permit, but that's
33 different from an erosion control violation.

34
35 Hart stated someone without a permit becomes an investigation and
36 enforcement case.

37
38 Nelson stated a question is whether the regulations will force people into that
39 violation. They may find an increase in people who risk penalties because the cost-
40 effectiveness is far better. Or, should they tighten up the system, fix the point
41 system, and work with the public. They can't always say that strict prevention of
42 any type of activity will alleviate the activity.

43
44 Craig stated in any regulatory program, there will be people who choose to
45 break the rules. It becomes a question of the percentage of people who are
46 regulated. However, if there is a set of rules where clearing is prohibited, it will be

1 easier to identify those people who are violating the rules. People will report to the
2 County or Ecology for speedy follow up.

3
4 Nelson stated it may not be as clear to the public. Forestry land would be
5 exempt from clearing bans. The public would have a hard time discerning between
6 clearing forestry land or for development. Baumgarten stated that if folks are
7 aware of the seasonal ban, they are more apt to report a violation. In addition, the
8 City of Bellingham has not had that type of problem with its Silver Beach
9 Ordinance. At the beginning of the season, the City spends time making contact
10 with people to make sure they know the regulations. It closes that window of sites
11 that are confusing about whether or not they should be open. Someone violating
12 would be pretty flagrant.

13
14 Hart stated the County has about six times as many units as the City that are
15 going into the watershed now. If there is a scale issue, he's not sure that the ban
16 is going to lessen the workload. A ban forces the same number of permits into a
17 smaller window of time. They have to factor that in as well. He may still request
18 that additional FTE.

19
20 Brenner asked if they would effectively be doing a seasonal ban if the point
21 system is based only on soil slope and proximity. Baumgarten stated that when
22 establishing the point values, staff ran a bunch of scenarios. They looked for the
23 breaking point. Once they start changing the points and raising them, they would
24 effectively still have a seasonal ban because so many would not make it through
25 the point system.

26
27 Brenner stated that is not a ban. Only fewer properties would be allowed. It
28 would be a seasonal ban for some people, just like it is now. Baumgarten stated
29 the Council has to decide how much sediment it wants to allow.

30
31 Brenner stated it seems like the problem is more about violations rather than
32 about a point system not working. Raise fines, eliminate the clearing part of the
33 point system, and readjust the points. She asked if that would solve the problem
34 and still allow the people who can adequately clear in the winter. Base the points
35 only on soils, slope, and proximity to wetlands.

36
37 Caskey-Schreiber stated that at the very best, BMP's are still only 80 percent
38 effective. During a rain event, there is no way to keep sediment from leaving that
39 site.

40
41 Brenner asked how sediment would leave a flat site.

42
43 McShane stated that on an interim level, the Council should go forward with
44 the seasonal ban. The point system could be tweaked to allow a few places that
45 could be cleared. The key issue is the hydrologic soil groups. The point system can
46 be tweaked, and they can find places in the watershed that can be cleared and
47 won't have phosphorus loading. On other sites with infiltration problems, there will

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1 be runoff no matter how flat the site. There may be places where the County can
2 allow land clearing during the wet season. On an interim basis, move forward with
3 the ordinance, revisit this after the moratorium is lifted, and deal with this in the
4 most appropriate matter with sound, technical decisions. The County has had a
5 two year experiment and found out about which soil types could not be cleared
6 during the winter. That debate should occur later. Don't get hung up on just land
7 clearing. They have to deal with many other standards in a very short time.

8
9 *(Clerk's Note: End of tape one, side A.)*

10
11 Caskey-Schreiber stated they have talked about the months a seasonal ban
12 should begin, either September 1 or October 1. Craig stated October 1 is
13 historically and statistically when most precipitation begins in the Pacific Northwest.
14 Stabilizing the site before that date with a root system is an issue. The question is
15 whether the site is covered with mulch and whether there is an established root
16 system. On some sites he's seen, hydro-seed will be placed on the soil, but the
17 seed hasn't had time to germinate to be established. Effectively, the landowner
18 waited to the last minute to put them in, but it is not effective if there is a storm
19 event. Any rain event greater than half an inch in 24 hours can cause erosion,
20 which will render many BMP's ineffective. After that starts, more erosion can occur.
21 It becomes more difficult to stop that process from happening.

22
23 Hart stated he agrees with those comments.

24
25 Craig stated he recommends that the Council consider starting the ban
26 sometime in September, not October 1, for more preventative source control.

27
28 Caskey-Schreiber stated she is willing to work in the long run to determine
29 areas where the seasonal clearing would not be in effect. However, a seasonal ban
30 is the only thing guaranteed to not add phosphorus and sediment loading to the
31 lake. They are at a crisis point, according to the information provided by Dr.
32 Matthews. The Council has a responsibility to not contribute any more to the
33 eutrication cycle. They've tried the compromise. It's not fair to the rest of the
34 citizens for the County to keep throwing staff and money at this problem to
35 subsidize someone's right to clear in the wet months. They can accommodate the
36 county, and clear when it's safe. There will be a lot of expense to upgrade the
37 water treatment system to keep out sediments. It's prudent to save costs up front
38 and still allow development in the watershed. This is the only responsible
39 alternative they have.

40
41 Fleetwood stated assume they have fully adequate staff and either a point
42 system or seasonal ban. He asked which system would afford greater water quality
43 protection. Baumgarten stated that not opening up a site during the winter is
44 compared to an open site with BMP's. Anyone would agree that a site in its natural
45 vegetative state would lessen erosion. That's the comparison to look at.

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1 Roy stated she agreed with Councilmember McShane. Move the date from
2 October to September. There are many other issues to talk about. This interim
3 ordinance provides a structure for the Council to move forward. Discuss tweaking
4 the points later. If the Council tweaks the point system today, they will have to put
5 off the vote on this. She would like the Council to go with this decision, then step
6 back to consider changes to the point system.

7
8 **McShane moved** to amend the ordinance to change the effective date of the
9 ban to September 1, throughout the ordinance.

10
11 Nelson stated he is not comfortable with beginning the ban on September 1.
12 He hates choosing arbitrary figures because he can't defend it. He understands the
13 argument about getting the plantings in on time and giving them a chance to make
14 sure they take root. According to the precipitation schedule, move back the period
15 to be from September 15 to April 15. Allow germination in the spring. That would
16 allow the same building period, but would not unduly burden the building
17 developer.

18
19 McShane stated he likes September 1 because it allows the entire length of
20 September. Growing degree days are better the first part of September than the
21 latter part of September. The growing days in April are very different. The risk of
22 soil being saturated and susceptible to erosion is higher in the spring.

23
24 Nelson stated from personal experience, don't plant in September, because
25 the plantings will die from lack of moisture.

26
27 Baumgarten stated the reason they chose those dates in the ordinance are
28 because they look at the greatest changes in the rainfall pattern and to match the
29 Silver Beach ordinance, which provides predictability for builders working in both
30 watersheds. The Ecology manual recommend those dates, based on analyzing
31 similar precipitation data.

32
33 McShane stated he agrees with the dates for precipitation. His experience is
34 with dealing with cleared and unstable slopes, getting vegetation planted the end of
35 September, and watching all the sprout die in early October. The vegetation will
36 not be well established. It's an aggressive position, but they are in a unique
37 circumstance that goes beyond what should be typical of stormwater controls
38 because the lake is a drinking water reservoir.

39
40 Roy stated this is an issue she would like to talk about if they pass the
41 October through April deadline, and get some horticultural experts in to talk to
42 them about this. There may be another way of saying they can't disturb the land
43 unless there is a certain degree of groundcover. There may be other ways to
44 approach the issue. She would like to hear more expertise. The Council can still
45 look at and tweak this, but not today.

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1 Caskey-Schreiber asked Ecology's opinion of the ban from mid-September
2 through mid-April. Craig stated that if the Council does that, it still presents risk
3 during the spring time. He agrees with Councilmember McShane. There is more
4 possibility of soils being full of water in April than in September. In addition, this
5 Council adopted an ordinance preventing dairy farmers from applying manure to
6 bare corn ground beginning September 1, and chose that date because it was
7 considered more protective of water quality and runoff of pollutants into ditches
8 and streams. It's worked. It's helped very much in cleaning up water quality in the
9 county. If this is a drinking water reservoir situation, and the water body is already
10 impaired, then choosing a preventative measure like the September 1 date is more
11 effective and is defensible. That's the defense for that date.
12

13 McShane referenced the average number of growing degree days.
14 September is fourth best, and is much greater than October, May, and April. It
15 makes much more sense to choose the September 1 date. A decision was made
16 some time ago that was radical. It was to allow residential development in a
17 drinking water watershed. The solutions need to be more protective than usual.
18

19 Nelson stated the size of many developments they're looking at are not the
20 size of dairy pastures. It is not the same scale. He'd like to change that date, too,
21 however. In August, the developer will be out there watering the vegetation. It
22 will be a factor to get anything to grow. If it gets hot in August, they can't get stuff
23 to grow on dry ground. A ban of September 1 means planting in August.
24

25 Caskey-Schreiber stated the September 1 date means no clearing by
26 September 1, not that the developer has to lay down his or her yard by September
27 1.
28

29 Nelson stated he's talking about erosion control, not yards.
30

31 Caskey-Schreiber stated she is in favor of the motion. Be more restrictive up
32 front, then lessen it as they go along if the science supports it. For so long, the
33 Council has gone the other way, trying to accommodate development in the
34 watershed. The results are disastrous. No one can deny that the lake is in a
35 serious state of decline. At some point, the Council has to address the fact that
36 what it's allowed in the past isn't working. The Council must be more aggressive.
37 This is the only opportunity they have. This watershed will build out. How they get
38 to that point will determine how much work it will take to keep the watershed
39 healthy down the road. Proceed cautiously, but still allow development. The worst
40 case scenario is that it all goes to pieces, and the Council will be asked to allow no
41 development at all. Make development as responsible as it can. That is prudent
42 and makes good sense.
43

44 Baumgarten stated County Code section 20.80.735 says that if the proposed
45 clearing activity exceeds the maximum established threshold for seasonal clearing
46 limitations, the technical administrator shall deny approval of the proposed activity
47 during the wet season. That section only covers whether or not an activity is

1 approved for clearing. It does not have the same provision as the Silver Beach
2 ordinance, which says that the land has to be completely covered by that date.
3

4 The code also doesn't address a site that is open longer than one season. It
5 prevents the staff from issuing a permit for the winter. Once the developer got that
6 permit for spring and continue to work up until the next winter, the staff doesn't
7 have the authority to close that site down. That is something to consider.
8

9 Given the number of permits that have come in and are "vested" next year,
10 they will have a mix of permits that are under either the point system or ban. The
11 ban will have a limited impact next winter.
12

13 Caskey-Schreiber stated a vested permit is a completed permit, not the
14 appointments that are hanging out there.
15

16 Baumgarten stated staff needs that clarification.
17

18 Brenner stated the temporary ban ordinance says those who already made
19 their appointments would be allowed to continue. It's an allowance made by the
20 ordinance.
21

22 Caskey-Schreiber stated legal counsel stated those applications are exempt
23 from the moratorium, but not from clearing regulations that the Council comes up
24 with.
25

26 Nelson stated he can't support the motion. They need more discussion
27 before he can defend that position. He asked about the number of stop work
28 orders that were issued during the wet season.
29

30 Sylvia Goodwin, Planning Division Manager, submitted permit tracking
31 numbers (*on file*). The department does issue a lot of stop work orders. According
32 to the information, the department only issued two correction notices in 2003 and
33 seven in 2004, which are the formal correction notices issued and documented.
34 Normally, staff works with people to educate them and get them into compliance
35 rather than issue a stop-work order and fine. They've only issued stop work orders
36 when the person refuses to come into compliance. Usually, the department gives
37 builders a couple of days to come into compliance, which they usually do.
38

39 Crawford asked if those numbers are stop work orders for stormwater
40 problems only. Goodwin stated they encompass many issues. Staff hasn't
41 documented the number of violations, but focus on getting the violations under
42 control. They are working on a better system for tracking the information.
43

44 Nelson stated they are enforcing the seasonal clearing regulations. Goodwin
45 stated they are.
46

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1 Nelson stated if silt-laden runoff leaves the construction site or if clearing
2 activity sediment control measures are not maintained during the course of
3 construction, a correction notice shall be issued. He asked if that is done. Goodwin
4 stated it is done, to the extent they can with two staff. Some may be missed.
5

6 Nelson stated there were 300 site reviews in 2004, with seven notices.
7 Goodwin stated that is correct.
8

9 Baumgarten stated the numbers are artificially low. There were problems
10 with the Tidemark system in 2004. In 2003, certain numbers are more accurate.
11 Early in 2003, he wasn't entering correction notices into the system. Many
12 correction notices were written up and started that didn't get into the system. They
13 have gotten better at making sure they are in the database.
14

15 Hart stated the numbers in the handout are accurate to what they know.
16 The numbers will go up as they recreate the data that occurred during the year.
17 The county had so much growth this year, staff is still accounting for it. Staff will
18 continue to account for that growth during the next 60 to 90 days.
19

20 Crawford stated he opposes the motion. If phosphorus levels are going up,
21 they can't blame it only on construction. It is not the single source. There have
22 been landslides they haven't looked into. The staff has issued only a few correction
23 notices. The Council is stretching very far to attach development to the
24 degradation of Lake Whatcom, especially new development compared to current
25 development that provides contribution to the lake already.
26

27 Roy stated she supports the motion. She still wants to have a discussion
28 with the horticulture experts. She's not inclined to shorten this any more than they
29 need to. Start off more restrictive, and bring in experts to justify the dates. She is
30 impressed with the growing season statistics, but they must still talk about it.
31 Clearly, the heavy rainfall starts in October.
32

33 ***Motion carried 4-3 with Nelson, Brenner, and Crawford opposed.***

34 *(Clerk's Note: Discussion continued, below.)*
35

36
37 **1. COUNCIL TO DISCUSS ISSUES AND CONCERNS RELATED TO THE**
38 **RECENTLY ADOPTED BUILDING AND SUBDIVISION MORATORIUM IN**
39 **THE LAKE WHATCOM WATERSHED (ITEMS TO BE DISCUSSED**
40 **INCLUDE: THE PROCESS, JUSTIFICATION FOR LIFTING THE**
41 **MORATORIUM, BENCHMARKS, AND PRIORITIZATION OF TASKS)**
42 **(AB2005-072B)**
43

44 Caskey-Schreiber asked if there are ways to adopt development standards
45 that have less impact to water quality. Craig stated tree retention and natural
46 vegetation requirements that the Council is considering or has implemented is a
47 step in the right direction. The Council has already talked about low impact

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1 development techniques. Those examples abound. The City of Bellingham City Hall
2 is an example that works well. It includes a rain garden that collects the
3 stormwater runoff from the parking lot to infiltrate into the soil. Those measures
4 can be effective if implemented and maintained on a broad scale. They act like any
5 filter that will wear out quickly if the filter is not changed periodically. The
6 percentage of impervious surfaces can be reduced in many ways. The Puget Sound
7 Action Team has a website devoted to these types of measures. There are more
8 and more examples every day that communities nationwide are implementing. For
9 existing development, the City of Portland is tracking areas where it finds runoff
10 from parking lots and puts the stormwater back into the soils. That is a way of
11 measuring and demonstrating how they reduce the stormwater leaving impervious
12 surfaces. Downspout retrofits keep roof runoff out of the system. Those are all
13 just examples.

14
15 *(Clerk's Note: Discussion continued, below.)*

16
17 **2. INTERIM ORDINANCE AMENDING WHATCOM COUNTY CODE, TITLE**
18 **20, SECTION 20.80.735, TO IMPLEMENT A SEASONAL RESTRICTION**
19 **ON LAND CLEARING ACTIVITIES WITHIN THE LAKE WHATCOM**
20 **WATERSHED WATER RESOURCE SPECIAL MANAGEMENT AREA**
21 **BETWEEN OCTOBER 1 AND APRIL 30 (AB2005-125)**

22
23 *(Clerk's Note: Discussion continued from above.)*

24
25 **McShane moved** to introduce as amended.

26
27 **Motion carried 5-1 with Nelson opposed and Crawford out of the**
28 **room.**

29
30 **1. COUNCIL TO DISCUSS ISSUES AND CONCERNS RELATED TO THE**
31 **RECENTLY ADOPTED BUILDING AND SUBDIVISION MORATORIUM IN**
32 **THE LAKE WHATCOM WATERSHED (ITEMS TO BE DISCUSSED**
33 **INCLUDE: THE PROCESS, JUSTIFICATION FOR LIFTING THE**
34 **MORATORIUM, BENCHMARKS, AND PRIORITIZATION OF TASKS)**
35 **(AB2005-072B)**

36
37 *(Clerk's Note: Discussion continued from above.)*

38
39 Steve Hood, State Department of Ecology, stated they can't do development
40 with zero impact. They can do many things with minimal impact. Sudden Valley
41 has shown that a standard design requirement can reduce the amount of
42 stormwater discharge, but they haven't eliminated it and the increase doesn't seem
43 to be caused by human impact. If they want to move toward zero level, they need
44 to focus on a negative net loss. The Building Industry Association (BIA) proposed
45 some sort of tie between new development and funding of retrofits to make sure
46 retrofitting gets done. That's a great idea. He doesn't know now how much retrofit
47 is needed. That shouldn't stop them from examining how to go forward with an

1 idea like that. Start getting the retrofitting done as part of the growth process,
2 which will result in a negative increase.

3
4 Nelson asked if there has been legislation to allow counties to provide
5 incentives in the property tax mechanism to allow credit to homeowners. A credit
6 would be against the property tax in the amount spent on retrofitting. If the
7 legislature is really concerned about it, it should provide the counties with tools to
8 do that. Hood stated stormwater fees are frequently associated with impervious
9 area. The concern about stormwater and the need to fund stormwater
10 infrastructure is related to impervious area. To the extent reasonable, a
11 municipality will examine the amount of impervious area. Low impact development
12 reduces impervious areas.

13
14 Nelson stated that is all to do with new construction. He asked about
15 retrofitting of existing construction. Hood stated that when a tax collected is based
16 on an impervious area, the fee should go down when those areas are reduced. He
17 doesn't know if there are barriers to do that.

18
19 McShane stated the BIA view that new development pays for retrofits is not
20 legally possible. In the City of Bellingham, there is some flexibility about how much
21 people pay into the stormwater utility fee for impervious surface. There was a
22 heated debate about a fair way of doing that. A day will come when the County
23 Council will have that same debate. The County may require new development to
24 approach zero hydrologic impact, but with the knowledge that those individuals who
25 own the property will pay a lesser amount for stormwater fees. Those with more
26 impact may have to pay more. Keep that in mind as they work on development
27 standards for new construction. It may seem unfair to new development up front,
28 but it will be made up down the road in terms of lower utility fees that they would
29 pay. Those not causing as much impact shouldn't have to pay as much. That is a
30 way to tip the fairness issue back the other way.

31
32 Nelson stated that's not an incentive.

33
34 McShane stated the County can't tell property owners to put in rain barrels,
35 for example, but if the property owners do put in rain barrels, the property owners
36 would get a break on their utilities.

37
38 Nelson stated all the property owners see is increased utility rates. They
39 may or may not see an incentive to spend additional money.

40
41 McShane stated that would be the property owners' decision.

42
43 Nelson stated there are easier tools to use.

44
45 *(Clerk's Note: End of tape one, side B.)*

1 Brenner stated there are easier ways to start off that are tied to the
2 moratorium. She submitted an article (*on file*) on Urban Lake Management. She
3 read the third paragraph on page two of the handout regarding lawn runoff
4 consistently being the greatest source of phosphorus in urban lakes. When she
5 brought this up, people didn't listen. Fertilizers were the first things she
6 mentioned, in addition to pesticides. This information shows that lawns are a big
7 source of the problem. Someone said that according to Craig MacConnell,
8 phosphorus from lawns is not a big problem. She talked to Craig MacConnell, who
9 told her that wasn't true and that Cooperative Extension helped create the
10 phosphorus-free lawn fertilizer for Lake Whatcom. There are communities in
11 Wisconsin who have banned phosphorus fertilizers for lawns in the watershed. That
12 regulation, which other communities have done, is simple to do. There will be more
13 compliance. People who are asked to retrofit can do that now to make less of an
14 impact.

15
16 Caskey-Schreiber stated Councilmember Brenner could bring something like
17 that forward, and she would support it. Executive Kremen and the City of
18 Bellingham are proposing a ban on phosphorus fertilizers in the watershed.

19
20 Bruce Roll, Assistant Director, stated the staff has a draft they're working on.
21 They are wrestling with how to apply it for enforcement. Staff looked at all
22 available ordinances in other jurisdictions around the U.S. It comes down to some
23 policy questions they will have to deal with on enforcement, implementation, and
24 certain exceptions. Staff is working with agencies such as the golf course on good
25 integrated pest management. That proposal will come forward soon.

26
27 Fleetwood stated he would support a phosphorus fertilizer and pesticide ban.
28 People For Lake Whatcom have spent a lot of time recently working with the
29 Washington Toxics Coalition to come up with a version. The City incorporated parts
30 of it into its proposal. Roll stated that was the starting point, but it needs a lot
31 more work. He has that information and is using it.

32
33 Fleetwood stated the program is to review and establish, if necessary,
34 stricter building codes. The answer from staff and Ecology is that they can do that.
35 Staff allocated resources to work on that in the next few months. The question
36 today is the direction that staff needs from Council to start this process.

37
38 Hal Hart, Planning and Development Services Department Director, stated
39 staff first needs a schedule of when the Council wants to bring up these policy
40 discussions, so staff can bring forward recommendations and information. Staff
41 would invite Ecology to work with the County.

42
43 Fleetwood stated staff should move within the moratorium deadline. He
44 asked when staff would be comfortable bringing proposals forward to the Council.
45 Hart stated the more time staff has, the better the recommendations will be on
46 ways to incorporate additional low impact development into the watershed.

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1 Kurt Baumgarten, Planner I, stated staff will know soon if the County will
2 receive technical assistance from the Puget Sound Action Team on this for the
3 entire county. It would be a way of looking at the code to develop a stronger set of
4 low impact development guidelines.

5
6 Fleetwood stated his concern is the development standards in place for land
7 clearing. His emphasis is looking at those issues and the dates. Get information
8 back to the Council on what works well so they can work on that legislation now.

9
10 McShane stated the next step for the Council, now that they've dealt with
11 land clearing, is Whatcom County Code (WCC) section 20.71, the water resource
12 protection overlay rules that go with Lake Whatcom. Revisit those debates on the
13 amount of impervious surface.

14
15 Next, look at changes to the stormwater section, whether they allow
16 discharge to offsite locations or require treatment onsite with no runoff at all. That
17 is a policy decision, which may be more important than WCC 20.71, that the
18 Council should talk about.

19
20 Third, look at development standards from foundation design. Look at
21 development that has no surface water flow off the site at all, and no drainage
22 either. It may be that, instead of a standard foundation design, a builder would do
23 something else with the subsurface flow. Those are really technical issues.

24
25 Finally, address road design standards. Look carefully at the required road
26 designs. One builder in the watershed wants an eight-foot driveway, but is
27 required to develop a 12-foot driveway for emergency vehicles. Some people are
28 trying to do the environmentally right thing in the watershed on their own, but are
29 told to build a wider driveway. That causes a lot of upset. Road design may be a
30 huge factor. It's a big issue on five-acre lots as well. Silver Beach Creek is now
31 starting in ditches along the road. Those are the four areas of concern.

32
33 Hart stated another issue is the urban growth area (UGA) and its future.
34 That totals five issues, in addition to seasonal land clearing. The County must
35 indicate to the community the County is going forward in a logical way.

36
37 Brenner stated she attended a workshop on Friday. During the workshop,
38 she'd asked about the problem with the requirement of wider roads for emergency
39 vehicles. Participants at the workshop from the Seattle area have worked with the
40 fire personnel to devise ways to develop narrow driveways and roads. Whatcom
41 County should contact those communities and find out what they are doing.

42
43 Roy stated it seems a lot of the points Councilmember McShane raised were
44 subsumed under low impact development discussions. When the Council talks
45 about stormwater protection and the water resource protection overlay, they allude
46 to low impact development without being specific. She's seen presentations on
47 areas in Seattle that have practiced low impact development, including narrower

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1 driveways and parking strips that have been approved by fire personnel. She
2 asked if onsite stormwater treatment is subsumed under the technical aspects of
3 low impact development. Hart stated that's correct. That would give staff an
4 option to bring forward for logical discussions. The Council will begin to see the
5 links between the recommendations.

6
7 Roy stated when she hears about these things, she thinks of other
8 watersheds in the county. Some of these measures could be applicable in the
9 future, even though they must focus on Lake Whatcom now.

10
11 Regarding road width, she's had the same experience as Councilmember
12 McShane with developers who want to do low impact development strategies, but
13 were discouraged from doing so by the current regulations. Hopefully, the Public
14 Works Department can be part of the discussion. Hart agreed. He will work with
15 the Public Works Department, including the Engineering Division. With the \$50,000
16 grant, all will come to the table at once.

17
18 Roll stated the Public Works Department will work to evaluate these
19 measures. However, deal with long-term maintenance to make sure these
20 measures functions properly. Many times, with untested processes, they don't
21 work without a clear monitoring and upkeep program.

22
23 Hart referenced Councilmember Fleetwood's February 18 memo. Item three
24 is Public Works Department responsibility, to initiate development of a
25 comprehensive stormwater plan. All the low impact development options are linked
26 to that.

27
28 Caskey-Schreiber stated the Council is asking Mr. Hart to come forward on
29 March 15 with low impact development standards to consider adopting for this area.
30 It would help the councilmembers prioritize which will be most effective. She asked
31 if that is possible. Goodwin stated staff can come up with a list for discussion.

32
33 Brenner stated she appreciates Dr. Roll's willingness to look at this.
34 However, everyone was invited to the workshop she attended. The Public Works
35 Department must be in sync with what the rest of them want to do. Hart stated the
36 Public Works Department is really feeling the growth in the county, just as they are.
37 The County growth is really going to hit the Engineering Division hard.

38
39 Brenner stated someone from Public Works Department can always come to
40 workshops. There is a lot of staff in that department.

41
42 Fleetwood stated staff has direction on the different areas of interest. Hart
43 stated they do.

44
45 Fleetwood stated he would like a progress update in two weeks. Hart stated
46 that is possible. The Council should look at item three on the memo. Create a
47 clear schedule for that item.

1
2 Caskey-Schreiber stated they talked about it a week ago. The consensus
3 was that developing a comprehensive stormwater management plan is a big part of
4 the solution, but is not necessarily related to new building. In this interim, focus on
5 new development.
6

7 Fleetwood stated someone made that observation, but this is a matter of
8 policy that this Council kept in. It is a part of their moratorium response. The
9 proposal is to start the process to create the comprehensive stormwater plan in the
10 next eight weeks. He agreed the County couldn't implement a plan in eight weeks,
11 but they demonstrate a commitment to that process and can come up with an
12 outline for creating the plan.
13

14 Caskey-Schreiber stated the Council needs to prioritize what Planning staff
15 and Public Works staff will work on.
16

17 Fleetwood stated the Council talked about item four, phosphorus. They
18 talked about item one, stricter building codes. They talked about land clearing.
19 The next item is about initiating the development of a comprehensive stormwater
20 management plan. They haven't had that conversation yet. He hopes they do
21 have that conversation.
22

23 McShane stated narrow the items to two possibilities. First, deal with WCC
24 20.71. The Council had a long struggle with it before. It loosely gets into road and
25 curb designs. Focus on the stormwater special overlay and requirements in place
26 for onsite development. Look carefully at that ordinance. It will be discomfoting
27 to ask staff to make policy recommendations and take onerous positions.
28

29 He commended the County staff and Ecology staff for helping to clarify a
30 variety of issues. They've assisted enormously today on the land clearing issue.
31 Begin to answer the questions as honestly as they can. At the next meeting, talk
32 about WCC 20.71 and stormwater overlay. Recognize that they will give a break in
33 the future to those who are carrying this burden.
34

35 Roy stated she agrees with that approach. She would still like to see them
36 look at WCC 20.71 and stormwater, within the template of low impact
37 development. The Council knows more now than it did before about low impact
38 development. Address how those regulations relate to and incorporate with the
39 things they know now.
40

41 Hart stated staff has heard that message from the councilmembers. The
42 staff will come forward with both those parts of the code and have that discussion
43 during the next meeting.
44

45 Roy asked to bring up items that are not related to lifting the moratorium,
46 but that need to happen. Do whatever they can to strengthen the transfer of
47 development right (TDR) program, and get some receiving areas that are

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1 meaningful and useful. She asked if they need a TDR bank. Anyone who wants to
2 transfer a development right could do that by selling the right to the TDR bank and
3 getting instant money. She asked if there is a system so anyone in Lake Whatcom
4 who wants to transfer their development rights can do that.

5
6 Goodwin stated there isn't a system for that now. It's in the ordinance to
7 allow for it. It would require funding from the County to buy and hold those
8 development rights. Troy Holbrook is leaning away from that option now. They are
9 seeing a lot of private market transfers of development rights, and are seeing
10 people buy them. It may be premature for the County to have a TDR bank if the
11 private market is doing that. The City is putting TDR's on the private market for
12 sale to see what prices they will get. The County and City have created some TDR
13 receiving areas, and are starting to see some action. A TDR bank is something they
14 can do in the future if the County has the money.

15
16 Hart stated staff and the Council will have a discussion about TDR's.

17
18 McShane stated he is not thrilled with the City of Bellingham flooding the
19 TDR market with development rights. He's worried about that because it may be
20 contrary to the goals of protecting the watershed.

21
22 Brenner stated someone said a problem with TDR's is the cities are not
23 setting up enough receiving areas. There was an implication that they should look
24 to the UGA's for the receiving areas. She's in favor of that, however those in UGA's
25 don't want to be dumping grounds. Negotiate with the cities so that the cities will
26 develop a percentage of receiving areas that are not in the UGA's. Otherwise, the
27 County has no means to control where the receiving areas go, except in the UGA's.

28
29 Caskey-Schreiber stated the Councilmember Fleetwood listed a goal of
30 establishing a revenue source for stormwater. She asked who would work on that.
31 Hart stated it is a joint effort between the Planning and Public Works departments.
32 The Council will see something on March 9 for the Birch Bay area as an effort to
33 define how the County wants to do regional stormwater planning in Birch Bay.
34 There is also an opportunity to decide on a utility stormwater concept within the
35 county. That larger strategy will be presented shortly for the Birch Bay area. Staff
36 in the Planning and Public Works department have discussed how to make
37 recommendations for the county.

38
39 Roll stated staff needs Council input. Staff is using the Cable Street area to
40 flush out the policy questions. There are on- and off-road issues, including
41 enforcement and maintenance. Concurrently, they are developing good loading
42 estimates for all drainages in watershed so they can be more prescriptive in the
43 drainages. Staff is bringing forward what they can do in retrofit areas to reduce
44 phosphorus. He cautions against having a fiscal discussion until the Council knows
45 how big the project and accomplishments will be. In some cases, they may find
46 sufficient revenue for a project. However, other projects are multi-million dollar
47 projects. In the Lake Whatcom watershed alone, they will never have a revenue

1 stream large enough for retrofits. Staff has a lot of work to do before they can
2 describe specific revenue sources.

3
4 Caskey-Schreiber stated they can explore it, but they won't have information
5 before the May 1 moratorium deadline. She wants information on any ways to
6 address pollution at the source and onsite. They can develop a porous recharge
7 area, for instance, to filter through the ground more naturally. Come up with
8 things like that that don't need a lot of maintenance down the road. Come up with
9 suggested improvements. As part of what they are going to require of new
10 development, look at how to manage onsite drainage.

11
12 Roll asked if they are talking about new or existing development, or both.

13
14 Caskey-Schreiber stated she is talking about new development, because that
15 is what the moratorium is about. That doesn't mean the Council won't address
16 both.

17
18 Roy stated she agrees with working on items that have specifically a one-on-
19 one correlation with the moratorium. However, a large part of the pollution comes
20 from existing homes. The Council doesn't talk about that very much. The Council
21 needs to start talking about retrofitting options. Roll stated they need to
22 understand how much land is left to be built out and how much time and energy
23 the Council is spending in that area compared to other areas.

24
25 Hart stated the question is what they do once the remaining lots are built
26 out. Initiating that conversation is what the councilmembers are asking. To
27 provide that information, staff must break it down to its component parts, including
28 the staff's strategy and best recommendation for evaluating stormwater and the
29 level of information it has currently. That information will imply the design
30 approach the County should take.

31
32 McShane stated there are difficult-to-design, publicly-owned stormwater
33 retrofit areas. The Council needs to take steps to minimize the size and amount of
34 water that has to be handled. Minimizing the cost to the County should be the goal
35 of the moratorium. Another step beyond is retrofit on individual lots and how
36 retrofitting will minimize costs to the County. The Public Works staff is working
37 toward that. He thanked Dr. Roll, who put together a proposal to the State for a
38 grant application of \$1.5 million.

39
40 *(Clerk's Note: End of tape two, side A.)*

41
42 Brenner asked if build out in the watershed is not going to be as high as they
43 originally thought. Hart stated the numbers are a moving target. He will work out
44 an answer by next week. He needs many people to contribute to the answer to
45 that question.

1 Brenner stated that even if the City information isn't ready, she'd still like to
2 know in the unincorporated area of the watershed.
3

4 Fleetwood stated the conditions in place to lift the moratorium need to deal
5 with the moratorium, which is a moratorium on new development. Regarding
6 initiating development, some people will be concerned that it could be used as
7 justification for not lifting the moratorium. That means they must establish an
8 outline for a process to guide them in the future. He wants to see a process for
9 establishing a jurisdictional boundary, within which they could seek public funds
10 and identify the big issues.
11

12 Marian Beddill, 3600 Seeley Street, Bellingham, stated encourage onsite
13 stormwater treatment, maximize the small scale treatment facilities through
14 regulatory or educational techniques, look at the cost and responsibility of private
15 homeowners of existing and future development, determine how much of the cost
16 should be borne by the public, and determine who will finance the expense. Bring
17 all these issues into a comprehensive plan for a low impact development plan or
18 low impact retrofit plan.
19

20 Chris Ungern, 2095 Northshore Road, stated it seems they've overlooked two
21 things. First, there are a number of wet season streams that are dry during the
22 summer. As they get into the wintertime storm events, plumes go into the lake
23 that provide silt. Generally there is no construction or development happening
24 upstream. Some of the storm events are such that the storm overruns the banks
25 and begins eroding the banks. That is a large source of silt contamination in the
26 lake.
27

28 The second item is related to inspection and enforcement efforts. He knows
29 that's a challenge. There is an opportunity through the stormwater watcher
30 training to allow volunteers to get into the process and help the County staff see
31 violations. That is an area the County could develop.
32

33 Roy asked who runs the stormwater watch workshops. Baumgarten stated
34 those trainings were sponsored by RESources. Ecology and Planning staff were on
35 hand to provide training, at RESources' request.
36

37 Gary Lysne, 2472 Northshore Road, stated he speaks on behalf of Jean
38 Quinliven, regarding the trail at Northshore. He has the photos the Council
39 requested (*on file*). Whatcom County property in basin three at end of Northshore
40 is not following best management practices.
41

42 In his opinion, Whatcom County doesn't have the data yet needed to make
43 decisions. If they are going to control water, control all the water and runoff on
44 Whatcom County property. Set the example. Staff doesn't have any data. The
45 Council is drawing conclusions on assumptions.
46

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1 One of the Whereas statements in the ordinance reference Revised Code of
2 Washington (RCW) 36.70.390 and 36.70.795. Compare those to RCW 36.70A.390
3 and 36.70A.330 in terms of the legality of what they are doing. Allow the planners
4 to do their jobs. Protect water quality in a legal way, without stepping on peoples'
5 rights.
6

7 Fleetwood stated they've gone over most of the outline, except the UGA's.
8 Staff understands what needs to be done.
9

10 Goodwin stated staff is working on looking at the UGA's right now. A
11 Planning Commission hearing on Geneva is scheduled on April 14, preceded by a
12 neighborhood meeting in March with the Yew Street and Geneva neighborhoods.
13 Most of Geneva is platted, developed, and vested. The Summit View property the
14 City just bought from Kurt Denke and certain other areas may be able to come out
15 of the UGA. The Planning Commission will also look at Hillsdale in late April. Those
16 should be through the Planning Commission before the May 1 deadline. If
17 necessary, the Council can adopt the Geneva and Yew Street areas earlier because
18 they are not in the Bellingham Urban Fringe Subarea.
19

20 Hart stated another layer to UGA planning is the TDR layer. He suggested to
21 the City of Bellingham Planning Director that they begin to structure the City
22 County UGA agreement. In terms of TDR's, the question is how to get the density
23 in those neighborhoods, or how to treat resource protection neighborhoods, such as
24 Geneva.
25

26 Amy Pederson, Planner II, stated staff is working on build out numbers. She
27 hopes to have that information ready by the Council's next meeting. She hopes
28 those numbers will help define the discussion on the City of Bellingham UGA in the
29 watershed. Those numbers can target what may or may not be effective.
30

31 Caskey-Schreiber stated Sudden Valley has been a leader in the watershed
32 for the amount of building and permits issued. She also asked for an update report
33 of that.
34

35 McShane stated that just as important, or more important, than the UGA size
36 is the neighborhood protection overlay in an urban growth setting. However, don't
37 be too panicky about rushing it to May 1. Because of the timeliness of that process,
38 they could extend the subdivision moratorium in the Geneva Hillsdale area until all
39 that is worked out.
40

41 Brenner stated she wants to hear specifics on what has been done on the
42 phosphorus fertilizer ban in the Lake Whatcom watershed. Roll stated he can go
43 over a draft, but it's not available yet for public release. He understood from the
44 last Special Council Meeting that it wasn't a priority over the other stuff.
45

46 Caskey-Schreiber stated she said during the last meeting that it wasn't
47 important for the moratorium, but it is an important issue.

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1
2 Roy stated they have accomplished a lot today. She's willing to wait until the
3 next Water Resources Work Session to hear about the fertilizer issue.

4
5 Fleetwood stated they've made progress. Things are moving forward.
6 People who want more information can talk to staff afterward.

7
8
9 **OTHER BUSINESS**

10 No was other business.

11
12
13
14 **ADJOURN**

15
16 ***Fleetwood moved*** to adjourn.

17
18 ***Motion carried 4-1 with Brenner opposed.***

19
20 The meeting adjourned at 12:45 p.m.

21
22
23
24 _____
Jill Nixon, Minutes Transcription

25
26 The Council approved these minutes on March 15, 2005.

27
28 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

29
30
31
32
33
34 _____
Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair