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WHATCOM COUNTY COUNCIL
Special County Council

April 5, 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
Sharon Roy
Seth Fleetwood

Absent:

L. Ward Nelson
Sam Crawford

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

Joe Rutan, County Road Engineer, stated the Council had a question about doing a ten-foot setback from the road right-of-way. Staff is concerned about full-size trucks that won't be able to park without sticking out into the road. Staff has allowed less than a ten-foot setback if there is at least a 25-foot driveway. In a lot of cases, the right-of-way is different from where the street improvement is. A ten-foot setback from the right-of-way is appropriate if there is at least a 20-foot setback from road improvements.

Brenner stated she read about work in King County, which allows grass instead of regular asphalt. Rutan stated that is a viable alternative surface method. His concern is more about the length of the driveway.

Also, people want more parking, so a homeowner eventually installs a homemade culvert and covers it with gravel. Make sure the ditches continue to work and make sure there is appropriate parking so people don't fill in the ditches.

A ten-foot setback is appropriate as long as driveway length is addressed.

Caskey-Schreiber stated they've talked about road development standards for five-acre parcels and minimizing the water flow velocity. She asked for recommended language. Rutan stated he doesn't have specific language for that issue. On private driveways, he doesn't have language, but he can consider potential language. There is a special district street section with a diagram called road standards drawing 508.U-2 (*on file*). That is the special standard that doesn't

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1 have curbs and provides a filter strip between the edge of the road and a bioswale
2 for areas where there is no parking. With this design, filtration goes on in the filter
3 strip before going into the bioswale. Use of this design depends on how the
4 developer wants the development to look.
5

6 McShane stated he had a concern regarding the construction of the road on a
7 slope and the tendency of creating a ditch on the uphill side to keep the roadbed
8 drained. A saturated roadbed is tough on the underlying pavement. He asked if
9 there are design standards that get around making a ditch become the headwaters
10 of a creek due to interception of shallow groundwater, or if that's a significant
11 issue. That could be a major cause of sediment and conveyance of water that leads
12 to sedimentation. Avoiding creek crossings by going up higher in the watershed
13 may not be a great idea because it may just move the headwaters of the creek up
14 the hillside. The ditch water has to go somewhere, and it becomes concentrated.
15 Rutan stated they have to drain the water somehow. Water will come across the
16 road. If they don't put a ditch on the uphill side, the water will sheet flow across
17 the road, which causes drainage and icing problems, and then they will pick it up
18 on the downhill side. The ditch goes in on the uphill side to keep the water off the
19 road, not to pick up all the water coming off the slope.
20

21 McShane asked if there is a way to craft policy or regulations for private
22 driveways on rural, one unit per five acres (R5A) zoned parcels so ditching and
23 stream creation doesn't occur. Creating such policies and regulations will be
24 challenging. A proposed development on a slope had a road without a ditch, so the
25 water flowed across the road and was infiltrated. The slope angles weren't so bad,
26 and they could get away with the design. The road was built with a crown system
27 versus a ditch system. The geo-fabric and subsurface water flow was under the
28 road. Rutan stated that would be appropriate for low volume private drives, but
29 not for higher volume public roads with heavier trucks. He would be concerned
30 about the roads withstanding garbage trucks in November.
31

32 Brenner asked about having several culverts strategically placed from the top
33 to the bottom of the slope to diffuse the water. Rutan stated it depends on flow
34 patterns before development. That would create several drainage courses that will
35 come out of the culvert in a concentrated flow. Maintenance over time becomes an
36 issue. It would help if there could be some way to memorialize the reason for
37 maintaining these designs over time and through different homeowners. People
38 generally don't remember the reason the roads were created the way they were.
39

40 Brenner stated a number of culverts, if large enough, would dissuade people
41 from messing with the culvert. Rutan stated he's not as worried about it with a
42 road. There must be a method to spread out the water flowing from the multiple
43 culverts. The problem is that people downstream may block off the flow coming
44 from the culverts.
45

46 Brenner stated that would require a legal solution. Rutan stated nine out of
47 ten ditches in Tweed Twenty is filled in because people fill them in.

1
2 McShane stated the focus of the question is regarding the driveway
3 constraints on R5A rural settings where people do this on their own lots. Relief
4 culverts to transport water off the property is a good idea. He can understand the
5 problems associated with a subdivision. Rutan stated that if they're talking about
6 alternative surfacing methods for a private driveway for a private house on a five-
7 acre lot, then they're not even into having to pass the water across the driveway
8 because the driveway is pervious. The road standards are developed a certain level
9 of development. Developments with more than ten lots require a more substantial
10 road.

11
12 Caskey-Schreiber asked if there is any way they can incorporate bioswales
13 on five-acre tracts. Rutan stated they cannot. Water flows off the slope in sheets.
14 A bioswale is to mimic the natural filter strip at the bottom of a slope.

15
16 Caskey-Schreiber asked if they could change the velocity of water flow to
17 create more infiltration by requiring the bioswales at the lower elevated portion of
18 the road. Rutan stated sheet flow velocity depends on the soil type. Treatment is
19 generally a combination of systems depending on the site characteristics.
20 Combining the driveways to more than one house is one of the best ways to deal
21 with it.

22
23 Brenner stated that in ten or twenty years, someone could asphalt over
24 everything on his or her property, and the County wouldn't know unless someone
25 complains. Rutan stated he learned at a recent class that a really good system that
26 is poorly maintained is not as good as a poor system that is well maintained.

27
28 McShane stated that if there are any changes of standards, focus on the rural
29 lots. They could send the water to an area to infiltrate through the forest floor.
30 Don't change the designs for more urban settings. The question is whether the
31 Council can do something on the R5A parcels to limit their impacts. It's clear from
32 other reports that R5A zone doesn't inherently protect water quality without ditch
33 systems being appropriately designed and retaining trees. The ditch system is the
34 one area of concern he has left. Rutan suggested language, such as, "a ten-foot
35 setback from the right-of-way can be considered as long as utility requirements are
36 met and a 20-foot driveway from the proposed improved road can be designed."
37 From the road to the garage, there should be at least 25-feet. If the road were to
38 be widened in the future, make sure that 25 feet is from the proposed final,
39 widened road width. If there is 20 feet from the right-of-way, he is okay. He has
40 allowed narrower setbacks if they know the ultimate road width will always be well
41 within the road right-of-way. In some areas, there are very narrow rights-of-way.

42
43 Caskey-Schreiber stated the Environmental Protection Agency (EPA) put out
44 a table of the costs and useful lives of all runoff treatment options. One of the
45 largest useful lives is vegetative swales. Rutan stated the only maintenance for
46 filter strips is mowing. They're low maintenance.

47

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1 Caskey-Schreiber asked if they are required for new subdivisions in the
2 watershed. Rutan stated they are. The problem is when the individual lot owner
3 develops a single lot. The County doesn't have as much control over those
4 developments as it does over subdivisions.

5
6 Caskey-Schreiber asked if anyone has ever thought of creating a bioswale
7 catch basins at low elevations. Rutan stated certain subdivisions have such
8 measures. The Engineering Division doesn't even see building applications for
9 individual five-acre lot developments.

10
11 Brenner asked the smallest stormwater district or subdistrict. Rutan stated
12 small neighborhoods informally work together to do projects and resolve
13 neighborhood problems.

14
15 Roy asked if there is any kind of incentive for a builder to do that kind of low
16 impact development procedure. She asked if that is worth considering, if the
17 incentive doesn't exist. Rutan stated there is a little bit of cynicism when
18 developers want to do low impact development because it is cheaper. Developers
19 want low impact development with roads that must be safe and last and are not a
20 burden on the public. Many times, low impact development roads have been
21 proposed to him simply as money-saving options. He has to look at the road safety
22 and durability factor. He balances those factors.

23
24 Roy asked if Mr. Rutan looks at individual projects and feels comfortable that
25 he is encouraging the best practices. Rutan stated he does. However, clarifying
26 the regulations may clarify questions and assist staff.

27
28 Fleetwood asked if there is not much room for improvement for road
29 standards. Rutan stated there is always room for improvement. Last year, the
30 County incorporated special district road standards. Science always changes. As
31 the road standards are implemented, they will discover what works well and what
32 must be changed. The most improvement could be made on private roads, how
33 the private roads go in and where they go, not the public roads.

34
35 Brenner stated there is already a national standard for low impact
36 development. The Council should at least adopt that national standard. She keeps
37 hearing that, in the long run, low impact development should be and is less
38 expensive as long as the maintenance is done. Rutan stated the public road
39 system design he handed out has a lower impact than the national standards. A
40 14-foot wide public road is very narrow.

41
42 Brenner stated make sure the regulations are flexible. Make sure the County
43 does these standards or something comparable. Have a presentation from Brennan
44 Schumacher from Be Green Consulting and a member of the United States Green
45 Building Council. Adopt the national standards, at least. Adopt the regulations
46 countywide, including the County. Once people get used to the low impact
47 development standards, it will be a lot simpler. There would be support for the

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1 regulations. Rutan stated his department requires these things of people. He has
2 a greater interest in making sure the County complies to its own standards, more
3 so than anyone because staff is the first to hear complaints. The County really tries
4 to go beyond what it requires of other people.
5

6 Roy stated go forward with Mr. Rutan's driveway recommendation. She
7 doesn't want to put the Public Works Department in a bind, but it sounds like this is
8 doable for the staff. She'd like to look at and discuss the national low impact
9 development standards.

10
11 Rutan stated the committee should also address site distance issues. A
12 structure within ten feet could block site distance for turning or driving.
13

14 McShane stated he would work with Mr. Rutan on exact language.
15

16 Brenner asked about class one and two roads having 20-foot setbacks.
17 Rutan stated he would need the same conditions. In some cases, if the road isn't
18 centered in the right-of-way, they need to make adjustments. Spell out the intent
19 of what they're trying to do so staff can interpret the intent appropriately.
20

21 *(Clerk's Note: There was no motion.)*
22

23 ***Motion carried unanimously.***
24

25 Caskey-Schreiber stated the vote was to allow Councilmember McShane to
26 work with Mr. Rutan to adopt the ten-foot and 20-foot setback standards with
27 driveway requirements and site distance requirements.
28

29 Brenner asked about the language used in the ordinance and using the word
30 'tract' versus 'area.' If the Council makes changes, the ordinance has to go through
31 the process again. There are several references to "tract" on page seven. She
32 asked if they were all supposed to change to "area."
33

34 Amy Pederson, Planner II, stated there is a difference between tracts and
35 areas.
36

37 Brenner stated it would have to be correct before the hearing. She will meet
38 with Ms. Pederson after the meeting.
39

40 Fleetwood asked if the Council is going to have a conversation about it's final
41 effort before the first of May. They have taken action on the phosphorus and
42 seasonal land clearing issues. Today, they're working on stricter building codes.
43 The Council has been doing this work in the context of the water resource
44 protection overlay. He asked if the general consideration of establishing new best
45 management practices and development standards are in the context of this code.
46 He thought the Council would give direction to staff to bring forward certain things.
47

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

3 Fleetwood continued to state they are not discussing how to incorporate
4 those ideas and make final decisions on those ideas.
5

6 Caskey-Schreiber stated the Council has been working on items in
7 Councilmember Fleetwood's earlier memo. One item in the memo is to review and
8 establish, if necessary, stricter building codes and enforcement capabilities. That's
9 what they're doing now. This issue is about building codes in the water resource
10 protection overlay. Once the Council gets through this, it will look at what it needs
11 to work on next.
12

13 Fleetwood stated his question is whether or not consideration of the universe
14 of possible changes are all incorporated into this particular statute. Address the
15 issue of criteria for how and why the Council makes changes.
16

17 McShane stated some of the criteria have been covered in the past from
18 presentations given to the Council. One thing called out for was about loading.
19 The Council hasn't had a formal meeting on where it is at in understanding the load
20 sources and existing data. There may be limitations on the amount of information
21 the Council has. They are operating on limited information. A presentation of that
22 data would be useful. Address build out of the urban growth area (UGA).
23 Discussing building standards is helpful, but they only go so far.
24

25 Two other areas in the code they should look at are stormwater special
26 district requirements and transfers of development rights (TDR's). Get information
27 on where that program is, and be more aggressive with creating opportunities.
28 Getting all of that done by May 1 is unlikely. The question will be whether the
29 Council lifts the moratorium completely or partially. The Council is putting a lot of
30 effort into this process, which does take a long time.
31

32 Roy stated she agrees with Councilmember McShane. The councilmembers
33 must consider which topics will justify lifting the moratorium. The Council as a
34 group has not agreed on that. One of her criteria is whether the issue is critical for
35 lifting the moratorium.
36

37 Caskey-Schreiber stated she is thinking of addressing her concerns about the
38 impact of new construction in the watershed in every way possible. That is her
39 criterion.
40

41 Brenner stated every single thing they've worked on since enacting the
42 moratorium are issues that the Council could have worked on without the
43 moratorium without causing problems. She doesn't intend to support the
44 moratorium extension. The Council can continue its work without the moratorium.
45

46 Fleetwood stated the Council has not had a discussion on the policy of
47 establishing criteria. Criteria are established as a matter of policy. The criteria are

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1 going to inform the Council on how strict it intends to be and why. Without that
2 conversation, the Council cannot make informed decisions. The Council may get
3 into that subject after today.

4
5 Kraig Olason, Senior Planner, indicated on a map the current agricultural
6 activities that exist.

7
8 John Gillies, Natural Resources Conservation Service (NRCS), stated the data
9 on the map he presented is a combination of County Assessor land use data and
10 U.S. Department of Agriculture land use data. He explained the items on the map.
11 Lake Whatcom isn't the hub of traditional commercial agriculture in the county.
12 Horse farms are increasing. There is low-density agriculture. It is probably not the
13 number one cause of water quality problems, but there are always concentrated
14 areas and hot spots. He deals with source control. They're looking for the nutrient
15 sources and applying practices to control the nutrient.

16
17 He gave a Power Point presentation on animal units (*on file*). The genesis of
18 animal units was about rangeland and how many animals could be supported in a
19 particular range area. It's all about manure production. He read the presentation
20 on recommended acres per individual animal unit and the recommendation for
21 Whatcom County Code (WCC) 20.97.015. Within the Lake Whatcom watershed,
22 half the density of animal units would perhaps be more appropriate. Another
23 option is to just look at animal weight equivalents and allow a certain amount of
24 weight per acre, no matter what are the species.

25
26 Caskey-Schreiber asked about using specific management practices for
27 composting in an enclosed area. The Conservation District has worked with
28 different small farm owners on closed composting for safer runoff from a farm
29 property. Gillies stated there is room for that kind of a program. This information
30 is basic information on typical farms.

31
32 Brenner asked if the recommendation for WCC 20.97.015 is the
33 recommended number of animals per ten acres. Gillies stated that's correct.

34
35 Olason stated the recommendation looked at properties of smaller acres and
36 how much would be allowed. Whenever they talk about the allowed amount of
37 animal units, it depends on year-round management. Staff wanted to look also at
38 management, not just loading. He showed slide photos of different areas with
39 animal units. Another question is calculating loading rates. The third factor is the
40 structures on the property. When writing the code on animal units (AU), it depends
41 on how the AU are treated and what the soils are like. No property in the county
42 can have animals year-round without a lot of acreage or some sort of facilities.
43 There is not a lot of money in agriculture for a lot of the small properties, and they
44 end up with water quality problems in concentrated areas. The question of whether
45 there should be agriculture in the watershed depends on how its done. Commercial
46 agriculture in the watershed is something to be seriously considered. There is a lot
47 of potential for having many horse farms because they are recreational. There is a

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1 critical area ordinance and a lower tolerance for runoff in the watershed. Look at
2 reducing the stocking rate or requiring a farm plan that is maintained as a condition
3 of keeping the animals.
4

5 Roy asked for an opinion on a minimal size for keeping animal units, below
6 which keeping animal units can't work. Olason stated there is a joint problem of
7 nuisance complaints and density that is too high. In his opinion, if there is
8 adequate area on a lot, then they could allow a small, appropriate number of
9 animal units. However, don't have County enforcement people chasing down
10 chickens, which could happen.
11

12 Roy asked if the County would monitor farm plans. Olason stated in the
13 event there is a question, staff could contact with NRCS or the Conservation District
14 to get an opinion on an individual farm situation. He doesn't know if County staff
15 would want to figure it out or if NRCS has the staff to look at individual areas.
16

17 Gillies stated he doesn't monitor or enforce such things.
18

19 Caskey-Schreiber asked if the County could require an approved farm plan
20 from the Conservation District. She boarded her horse at three different farms.
21 One was horrendous. The second was marginal. Now, her boarder is very good.
22 There is a wide variation of maintenance. Olason stated there is a difference
23 between a commercial stable and someone who owns a horse. A commercial
24 operation has to have a manure management plan. That's different from the
25 average person with an overgrown pet. There isn't really much more care and
26 work from the owner than an interest in having the animals. At some point, it's not
27 worth it to the owner to do everything that's required to have the animals. The
28 owners could be not well versed on everything it takes to have the animals. It's an
29 education effort.
30

31 Caskey-Schreiber asked if it's unrealistic to allow two horses per five acres
32 without degradation, or if it's all about management. Gillies stated it's all about
33 management, to a degree. If animals are confined for 45 days or more, and no
34 grass is growing on the lot, the operation is considered an animal feeding
35 operation. Also, if water flows through the lot, and there's contact between the
36 surface water and the lot, there are different criteria. In watershed areas, the issue
37 is mud management. Mud must be limited. Shore up the confined areas so there
38 are not wallows of mud. A primary criterion is to focus on concentrated areas and
39 install controls there. In some areas the use is just not appropriate.
40

41 McShane stated part of the issue is importing phosphorus onto the land from
42 animal feed. The amount of fecal phosphorus produced per lactating cow is
43 enormous. Gillies stated that's true. Most of the farm plans are nitrogen-based.
44 They balance the nutrients in the manure in the cropland based on nitrogen. In
45 recent times, they have done a phosphorus index and looked at risks associated
46 with applying phosphorus on certain fields. There are studies done that looked at
47 agricultural land and number of livestock. Whatcom County is a problem area. He

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1 agrees with phosphorus importation that doesn't leave the area. Potassium is also
2 an issue metabolically with cows. They must limit the source of phosphorus as
3 much as possible. They are doing good things with phosphorus to get it out of the
4 watershed.

5
6 McShane asked if similar loading comes from horses. Gillies stated he's not
7 sure. All animals excrete phosphorus. Phosphorus is typically not as big a factor
8 on a horse farm because the materials are hauled off.

9
10 Caskey-Schreiber asked what the one exclusion the Council should make,
11 such as allowing two horses per five acres without a farm plan and more with a
12 farm plan. Gillies stated that is one option. The owner would have to have a
13 management scheme in place. The Council should talk to George Boggs at the
14 Conservation District. The Conservation District in King County works heavily with
15 small farmers.

16
17 Olason stated the rules they're talking about today are for properties ten-
18 acres or less. This is a provision for the smaller farms. If there is a water quality
19 violation, a farm plan will be required.

20
21 Caskey-Schreiber asked if the Council could mandate a farm plan. Olason
22 stated the Council should look at the option to lower the rate of animals per acre,
23 and if someone wants to exceed that rate, the person must have an approved plan.
24 A lot of the uses in the watershed will be grandfathered in. There are not a lot of
25 new operations coming in.

26
27 Roy asked if this was presented to the Planning Commission as part of the
28 critical areas ordinance discussion. Olason stated it was discussed as part of the
29 code scrub to clear up questions in the text.

30
31 Roy stated the fecal counts coming down Dakota and California Creeks have
32 been an issue. She asked if that came up in their discussion. Olason stated he's
33 not sure.

34
35 Roy stated there are implications of this in other watersheds. Olason stated
36 the Planning Commission wanted to write an entire animal-keeping ordinance, but
37 that's not where the County is headed.

38
39 McShane stated he recommends removing WCC 20.71.051 as a permitted
40 use. If someone wants to craft language to make it a conditional use, he or she
41 can. Agriculture should not be an outright permitted use in the watershed. Given
42 that a good portion of the watershed is rural, much of the watershed is opened to
43 huge animal loads. It makes sense to cut back on agriculture as a potential use.

44
45 Roy asked how prevalent is growing crops and the fertilizer issue.
46

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1 McShane stated it is the same situation. It might not be as big of a risk as
2 the animals.

3
4 Brenner stated retail or wholesale plant nurseries or greenhouses should not
5 be eliminated.

6
7 *(Clerk's Note: End of tape one, side B.)*

8
9 Brenner continued to state that the County should allow the nurseries and
10 greenhouses to use phosphorus-free fertilizer.

11
12 McShane stated the focus is only on this section, .051.

13
14 Brenner stated a nursery or greenhouse should remain a conditional use.

15
16 Caskey-Schreiber stated she would support the motion if they allow as a
17 conditional use two to five animal units with an approved conservation plan.

18
19 Sylvia Goodwin, Planning Division Manager, stated the conditional use permit
20 then requires a staff report written and a Hearing Examiner review. Instead, do an
21 administrative approval process. If all animal units have to go to the Hearing
22 Examiner for approval, the Hearing Examiner workload will get backed up. The
23 administrative approval section normally goes between the accessory uses and the
24 conditional uses.

25
26 Fleetwood stated remove the use as permitted. Condition the use somehow.
27 Administrative approval is fine. He asked if staff or a councilmember would bring
28 forward language for administrative approval use, and when.

29
30 Caskey-Schreiber stated she would work with staff on language. It's not a
31 timely issue. Currently, there are some hobby farms in the watershed. It might be
32 difficult to enforce certain uses when some already exists. Also, there is a question
33 of whether the regulation will spur development.

34
35 Roy stated ask staff to craft language. There are models from other
36 sections. Take the conditional use idea and make it an administrative review.

37
38 **McShane moved** to delete WCC 20.71.051.

39
40 **Motion carried unanimously.**

41
42 Fleetwood referenced section 20.71.153. He asked why they would prohibit
43 it as a conditional use if it can be conditioned in a way to ensure the capture of
44 runoff.

45
46 McShane stated there is not a lot of language within the conditions about
47 preventing phosphorus. One could add conditions to remove phosphorus. He

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1 should have also added these to prohibited uses in 20.71.200. Any use not allowed
2 at all should be added to the list of prohibited uses. One option is to prohibit the
3 uses on an interim basis until the Council can come up with conditions that limit
4 phosphorus from these operations. Any ordinance now would be temporary. Leave
5 agriculture and other conditional uses as prohibited. Then, over time add the uses
6 through administrative approval and conditional uses.

7
8 Brenner stated they don't need an interim ordinance. Keep working on this
9 ordinance until they get it right.

10
11 Roy stated she's concerned about adopting an interim ordinance that
12 eliminates many uses and the resulting impact on staff. She would rather leave the
13 interim ordinance the way it is, and go about taking these things out. She's
14 concerned that they've eliminated many things, which could affect many people
15 and the County staff negatively.

16
17 McShane stated that the Council has to have an interim ordinance because
18 the ordinance has to go through the Planning Commission. This is the process of
19 updating the zoning ordinances, which needs to be done. The question regarding
20 staff workload is a good one at this time. This is his proposal for things that he
21 believes don't belong in the watershed. The councilmembers can propose changes.

22
23 Caskey-Schreiber stated the only way she would be comfortable supporting
24 this is to change it to commercial agriculture. It's very broad as it is. If they are
25 sending this on to the Planning Commission, don't influence the commission. Look
26 at the issue openly and see if current uses can be grandfathered in. It will be
27 difficult to prohibit the use from one person and not another person.

28
29 Brenner stated that if the Council prohibits commercial agriculture, it will
30 prohibit nurseries and greenhouses. Add a condition that the nurseries and
31 greenhouses use phosphorus-free fertilizers, which are readily available. There is
32 nothing wrong with those uses as long as they don't discharge a lot of
33 phosphorous.

34
35 Caskey-Schreiber asked if there are currently any nurseries or greenhouses
36 in the watershed. Goodwin stated there may be small, private greenhouses. She's
37 not aware of any commercial greenhouses in the watershed.

38
39 McShane stated there is a phosphorus fertilizer ordinance in the works, that
40 would apply to everything. Don't worry about adding it as a conditional use.
41 Language elsewhere in the code allows a residential use of greenhouses. Be careful
42 about having a definition of commercial agriculture. The phosphorus from animals
43 on a five-acre lot might be better than a single home on a five-acre lot.

44
45 Brenner stated she assumes that commercial agriculture is defined as
46 someone who earns money from the use. Goodwin stated the code only defines
47 agriculture, not commercial agriculture.

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1
2 Roy stated there are good arguments on both sides. She doesn't want to see
3 cows in the watershed. If there are no commercial nurseries, it's a moot issue.
4 There are certain things that may not be appropriate for the watershed. She'd like
5 time to think about it.

6
7 Caskey-Schreiber asked staff to give the Council an idea of the impacts,
8 based on what is there.

9
10 Pederson stated the map in the packet shows existing land use codes for
11 agriculture and open space. The parcels in the watershed are limited. The only
12 way to gather that information would be to drive around and look for those uses.

13
14 McShane stated don't get bogged down on an issue that is minor. The
15 greenhouse issue isn't anything to be worried about. Don't put that much staff
16 time in on creating those conditions. The rural zone talks about tree retention.
17 Opening up land for horses is not appropriate where they want to encourage 65
18 percent tree retention. The simpler thing to do is to not allow these uses. Don't
19 worry about the one small area where someone might want to put in a greenhouse
20 in the future. Everyone now is grandfathered in. Everyone recognizes
21 grandfathering as part of development codes. He suspects most are hobbies.

22
23 Caskey-Schreiber stated that horses don't need clear cut property.

24
25 Brenner stated there is no reason to eliminate nurseries and greenhouses.
26 They've already got strict limitations to their use.

27
28 Roy stated she doesn't think grandfathering will be an issue. People
29 understand the concept of grandfathering.

30
31 Fleetwood stated there isn't a need to act on this today.

32
33 Caskey-Schreiber stated she's ready to make amendments.

34
35 Fleetwood asked the process.

36
37 Caskey-Schreiber stated this draft will eventually be introduced to the
38 Council, and the Council will have a public hearing on this as an interim ordinance.

39
40 Roy stated she agrees with eliminating all those permitted uses and make
41 them as administrative approval uses.

42
43 **McShane moved** to amend WCC 20.71.301(3), as, "...native conifer trees
44 and vegetation appropriate for the region in accordance with the landscaping
45 requirements of WCC 20.80.325. Trees shall be maintained per WCC
46 20.80.735(2)(d)."
47

1 Fleetwood asked if there is research to show that the conifer will provide the
2 best protection.

3
4 McShane stated there is, given the type of rainfall in Western Washington.
5 Make sure the reasons on which these decisions are based are on the record.
6 There are articles by Booth. Consultant information was provided on the Birch
7 Point issue regarding infiltration and impacts to groundwater at Birch Point before
8 and after trees were cleared. He will make sure the basis for this decision is on the
9 record, which includes information the Council has received over the last year or
10 two and information individual councilmembers have received. The science
11 supporting the decision is available.

12
13 Caskey-Schreiber stated she's read from many sources that native, mature
14 conifers are the best for the watershed.

15
16 ***Motion carried unanimously.***

17
18 ***Fleetwood moved*** to amend WCC 20.71.301(3), as shown in the packet,
19 "Required open space areas shall be maintained in natural vegetation where
20 existing native conifer trees and vegetation are present. Parcels that have been
21 cleared prior to permit application or which contain non-native invasive species
22 shall be planted with native conifer trees and vegetation appropriate for the region
23 in accordance with the landscaping requirements of WCC 20.80.325. Trees shall be
24 maintained per WCC 20.80.735(2)(d)."

25
26 ***Motion carried unanimously.***

27
28 ***Roy moved*** to amend 20.71.302(8), "Alternative surface methods described
29 in WCC 20.71.603 may be used."

30
31 ***Motion carried unanimously.***

32
33 ***Brenner moved*** to amend 20.71.603, "...or wood mulch, gravel, turf
34 block...WCC 20.71.600 if it is designed so that all rainwater hitting the covered area
35 will be infiltrated through the surface for the two-year, 24-hour storm event."

36
37 Fleetwood asked if the science exists to support the amendment.

38
39 Caskey-Schreiber stated she has a lot of scientific information to support the
40 amendment.

41
42 McShane stated the record would include the Council discussion about the
43 reasonableness of choosing the two-year, 24-hour storm event, which is elsewhere
44 in the code and a common reference point.

45
46 ***Motion carried unanimously.***

1 Pederson submitted and referenced an email from the fire marshal related to
2 road widths and landscaping limits (*on file*).
3

4 Caskey-Schreiber stated there is a way to install filter strips in a way that fire
5 trucks can run on them.
6

7 Brenner stated the fire chief from the City of Bellingham has been to the low
8 impact development workshops and is in favor of these measures. The County fire
9 marshal hasn't attended these workshops that she's attended. She asked that Mr.
10 Schumacher give the Council a presentation, with the fire marshal present. Other
11 fire officials agreed that this could work. Also invite the person from Sustainable
12 Connections.
13

14 Caskey-Schreiber stated adopting this interim ordinance is important to her
15 before she will agree to lifting the moratorium on May 1.
16

17 McShane stated this will not be adopted by May 1 because it must go
18 through the State Environmental Protection Act (SEPA) process.
19

20 (*Clerk's Note: End of tape two, side A.*)
21

22 Caskey-Schreiber stated the Council would meet again on this issue at 10:00
23 a.m. in two weeks.
24

25 Caskey-Schreiber referenced the suggested prioritization criteria for
26 implementation measures to lift the lake Whatcom building subdivision moratorium,
27 submitted by Amy Pederson.
28

29 Pederson stated she talked to a couple of different people in the Planning
30 Department to develop ideas for evaluating alternatives for the moratorium. The
31 biggest concerns were the effectiveness of alternatives to address stormwater
32 impacts, whether there is a system in place already that can be worked into the
33 overlay, implementing existing plans that the Council has already adopted, the cost
34 of implementation, the impact to staff resources, and the impact of private property
35 owners.
36

37 Brenner stated cost/feasibility of implementation, impact to staff resources,
38 and fiscal impact are all the same thing. By lifting the moratorium, they will lessen
39 the impact to reasonable use of impact. The other three are the ones the Council is
40 working on and can continue to work on after the moratorium is lifted.
41

42 Caskey-Schreiber asked what is meant by the impact on reasonable use of
43 property. Pederson stated that item is about whether the County is essentially
44 making it extremely difficult or impossible for someone to develop a site.
45

46 McShane stated the proposed Chapter 20.71 is just his idea. If there is
47 anything the Council has done that seems overboard, he relies on the staff to let

1 him know. Pederson stated there are many creative ideas and alternatives. The
2 challenge is making the ideas and alternatives work in the field.
3

4 McShane stated that's why he worries about approval criteria for conditional
5 uses. The fiscal impact is the impact to the County taxpayers as a whole. The idea
6 of these measures is to limit the cost to taxpayers for infrastructure and
7 maintenance to reduce and reverse the phosphorus that is heading into the lake.
8

9 Roy stated all of these items are similar. The items about fiscal implications
10 and impacts to users are built into other discussions. These are issues the Council
11 brings up with every issue it discusses. These items are embedded in every
12 discussion about changing regulations. They don't need to be specific criteria.
13

14 Brenner stated that as the Council goes along, it considers impacts, costs,
15 and feasibility. They can't consider impact on reasonable use of property before
16 lifting the moratorium. There is no reasonable use of property with the moratorium
17 in place. Everyone has a different belief about reasonable use of property.
18

19 Fleetwood stated the Council needs good reasons to justify its decisions,
20 related to substantive due process. There must be a connection between what the
21 Council does and an appropriate governmental end. A question is how strict the
22 Council wants to be. This is all considered in the context of the justification for
23 lifting the moratorium. The Council's actions are related to the building
24 moratorium. Ask whether the Council could be doing these things separate from
25 the moratorium. Concentrate on things that result in a stricter building code. One
26 criterion to consider is the County's position on how strict it will be regarding
27 runoff. Decide how much runoff the County will permit off a building site. The
28 Council has not had that conversation, and it must because it will direct everything
29 the Council does from here on out.
30

31 Caskey-Schreiber stated Chapter 20.71 addresses how much runoff will be
32 allowed.
33

34 McShane stated they've addressed clearing rules already. Now, they're
35 working on the development rules. The amount of runoff allowed off a site is worth
36 discussing. He will present an amendment to the Council of WCC 20.80.636. The
37 next step is deciding whether to allow stormwater filtration facilities or infiltration,
38 which is tied to building standards. The Council hasn't yet looked at the subdivision
39 moratorium, which the Council should continue.
40

41 Fleetwood stated the question of how strict the Council is going to be in the
42 new building code is a policy question that will be reflected in criteria, such as
43 ensuring zero runoff from a building site. The Council hasn't made that decision.
44 Once it does, the question will be the least restrictive means by which to achieve
45 that goal. He asked if the Council wants a policy in the new code that says one
46 cannot build without a guarantee that there will be no runoff from the built site. He
47 asked if that is how strict the Council wants to be.

1
2 Brenner stated she's in favor of being that strict. The Council can adopt the
3 national standards for low impact development and be that strict. That standard is
4 flexible enough to allow comparable measures.
5

6 Caskey-Schreiber stated that if the Council mandates a no runoff policy, the
7 question is how a builder gets there and how the County ensures the builder gets
8 there. It's essential to go into this ordinance and do what they can to limit runoff
9 and create infiltration.
10

11 McShane stated the goal for any of his proposals is zero runoff from a
12 building site. He's not sure he wants to make that a policy statement because he
13 doesn't want to get locked into something that possibly cannot be achieved. Maybe
14 the goal should be runoff at a level as close as possible to minimize phosphorus
15 loading into the lake, as close to zero as possible. The Council must also allow
16 reasonableness for how someone goes about doing that.
17

18 Brenner stated they keep talking about cutting out phosphorus loading from
19 new development. However, 99 percent of phosphorus loading comes from
20 existing development. The Council must also talk about issues bigger than
21 construction, which is a no-runoff policy that requires retrofitting of existing
22 properties.
23

24 Roy stated there is a lot of phosphorous from built areas. However, this is a
25 building moratorium. That's what the Council must focus on now. Have a goal for
26 the Council to communicate to the public. They can't hit a target without having a
27 target. State what that target is to the community. A goal is what they are
28 shooting for, but are not necessarily obtained.
29

30 Fleetwood stated he's hearing consensus about how strict the Council intends
31 to be, which is capturing all runoff that it is reasonable to capture. If that's the
32 case, since the Council has already gone through Chapter 20.71, and since staff
33 presented low impact development measures, ask staff to find the least restrictive
34 means to achieve this goal, rank it, and have a discussion. From there, consider
35 new codes and standards.
36

37 McShane stated the Department of Ecology will give the County the goal
38 within the total maximum daily load (TMDL). The County will have to retrofit
39 because it will be part of the assigned goal. How the County meets the TMDL goal
40 is up to the County.
41

42 He agreed about staff bringing something forward, but the reality is he's not
43 sure it's going to happen until the TMDL comes out. The Council is acting
44 aggressively to do these things, and the staff is willing to help. This Council has
45 taken on a huge project and a difficult assignment when it voted for the
46 moratorium.
47

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1 Caskey-Schreiber stated she would like more information. She doesn't want
2 to adopt a no-runoff policy. Do everything they can to eliminate phosphorus
3 loading and sediment loading in the lake. Make sure future houses don't pollute.
4 That's her perspective. She likes looking at the development standards and
5 stormwater standards. Do as much as they have the power to do. Incorporate
6 recommendations from staff and other agencies into the regulations. The whole
7 goal is to reduce phosphorus loading and sediment loading in the lake.
8

9 Brenner stated she's not convinced the current development standards have
10 failed. She doesn't know if the problem is with standards or lack of enforcement.
11 The County could stop all development today and there would still be an increase in
12 phosphorus loading. The point system wasn't given enough time or enforcement to
13 make sure it works. She's frustrated that they don't know if the current
14 development standards have been enforced enough.
15

16 Caskey-Schreiber residential dwellings contribute phosphorus at twice the
17 amount than commercial uses. That was a surprise. Future councils, governments,
18 and citizens will spend years working on treatment of existing problems. This
19 building moratorium is about doing what the Council can to not add to that
20 problem.
21

22 Fleetwood stated the Council is clearly working on this to strengthen what it
23 can. If the Council is not actively working toward a goal, based on standards
24 established by criteria, the Council won't know where it's going. The question is of
25 how strict the Council can be. Unless they decide how strict they want to be, their
26 decisions will be arbitrary. Everyone has said the goal is something like zero
27 pollution. It's their honest intention to say out loud, publicly, that they won't have
28 sufficient information to impose stricter building codes until they get the TMDL
29 study. If that's true, this moratorium needs to stay in place significantly longer. If
30 this policy is in addition to TMDL, then go ahead with this policy.
31

32 Caskey-Schreiber stated the TMDL directs where and how much they need to
33 retrofit. There is a lot of things the Council will have to do with existing homes
34 when it gets the TMDL information.
35

36 Roy stated the ultimate goal is to increase the dissolved oxygen in Lake
37 Whatcom. Phosphorus is a contributor to the real problem, which is the lack of
38 oxygen. They all know enough now to know that the trend won't change tomorrow
39 if building stops. It's very hard to accomplish that goal. They must do what they
40 can. They know the goal is to make the lake healthier. The Council is focusing on
41 certain pieces of the issue. The Department of Ecology will bring forward more
42 pieces later. That is all they can do.
43

44 Fleetwood stated Councilmember Roy's stated goal is over-broad. The
45 overall general object is to deal with reduced oxygen. In this context, deal with
46 issues as it relates to the building moratorium. That focuses in on the questions of

1 how to establish a stricter building code, how strict they want to be, and why they
2 want to be stricter. Those are the questions they must establish through criteria.

3
4 **McShane moved** to have a goal to reduce current and future phosphorus
5 loads. They don't know by how much. The problem as policy makers is that there
6 is no black and white decision. There are other issues besides phosphorus that
7 people bring forward. Now, the Council is willing to take on what they can
8 accomplish. Reducing future phosphorus is the goal driving every one of these
9 proposals. The next step will be reducing the existing loads. That won't be easy,
10 either.

11
12 *(Clerk's Note: The motion was not voted on.)*

13
14 Brenner stated another goal is to increase the oxygenation of the lake.

15
16 Fleetwood stated those are good, lofty goals. Talk about them in the context
17 of the building moratorium. Talk about when, why, and how they justify lifting the
18 moratorium. The Council doesn't have that information, but the public will be
19 entitled to have those questions answered. If the Council won't have that
20 information until it gets the TMDL, then it must decide whether or not it will keep
21 the moratorium in effect until it gets that information. That is inconsistent with
22 what many of them said when they debated the issue to begin with.

23
24 McShane stated the reality is that when the moratorium was proposed, the
25 Council decided to explore certain things. The Council exempted certain areas
26 from the moratorium. That's fine. The Council also decided at that time not to
27 have the moratorium extend beyond May 1. If the moratorium should continue to
28 meet certain goals, then fine. He doesn't think the Council as a whole will do that.

29
30 Brenner stated people were ready to turn around and have their properties
31 clear cut through the State Department of Natural Resources (DNR), and now
32 they're not doing that. The Council has taken small steps, which is laudable.

33
34 Roy stated Councilmember Fleetwood's issue seems to be more rhetorical. If
35 the Council did not have the right information, the question could be asked how
36 they justify the building moratorium. It is the same argument for shortening the
37 moratorium.

38
39 Fleetwood stated he raised a question, which is different from making a
40 statement.

41
42 Caskey-Schreiber asked what Councilmember Fleetwood views as criteria
43 and deliverables necessary before voting off the moratorium.

44
45 Fleetwood stated he would have a strict building code in place. Find out if
46 the County can implement, as an ordinance, some of these things so that they are
47 law. When they lift the moratorium, have as strict a building code as possible in

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1 place through low impact development. He asked if they can do that in a short
2 time frame. Goodwin stated staff can draft a few items, but can't draft them in
3 time for the next meeting.
4

5 **Fleetwood moved** to have staff present their prioritization of things the
6 Council can implement that are the least restrictive means by which the Council can
7 get closer to this goal about runoff reduction. He would like to have that
8 discussion, whether or not they meet the deadline. At least they're trying to come
9 as close as possible to meeting the deadline as they can.

10
11 McShane stated it sounds like there isn't enough time to incorporate all those
12 ideas by May 1. The alternative is to propose another moratorium until those
13 things are done.
14

15 Brenner stated the Council could, as an interim ordinance, adopt the national
16 low impact development standards.
17

18 McShane submitted information (*on file*).
19

20 **Fleetwood restated the motion** to have staff present their prioritization of
21 things the Council can implement that are the least restrictive means by which the
22 Council can get closer to this goal about runoff reduction and come back with
23 proposals for the top three or four low impact development standards.
24

25 Pederson stated she can bring forward this information to show the
26 mechanisms in place and additional mechanisms.
27

28 **Motion carried unanimously.**
29

30 **Brenner moved** to invite Brennan Schumacher to the next meeting in two
31 weeks to make a presentation on national standards for low impact development.
32 Also invite Derek Long of Sustainable Connections. This is more important than
33 getting the low impact development stuff piecemeal.
34

35 (*Clerk's Note: The motion was not voted on.*)
36

37 Caskey-Schreiber stated she is concerned about not having as much time as
38 they need for adopting and implementing this ordinance before May 1.
39

40 McShane stated it won't be done by May 1. The ordinance requires a State
41 Environmental Protection Act (SEPA) review and determination, which takes two
42 weeks.
43

44 Caskey-Schreiber stated the question is whether staff should prepare another
45 moratorium for introduction at the next meeting.
46

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1 Brenner stated they should not. Have the presentation by Mr. Schumacher
2 and Mr. Long before proceeding. They have all the information on standards that
3 are flexible. The Council may want to adopt the natural standards instead of
4 anything else.
5

6 Roy stated the Council is feeling rushed because of the May 1 deadline, but
7 they must listen to the experts before crafting legislation. It makes a lot of sense
8 to hear from these people.
9

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

12 Brenner stated the Council can lift the moratorium in May 1st, and continue
13 this work. One doesn't have to be tied to the other. They already passed the
14 seasonal restriction. When people start applying for their building permits, it takes
15 a long time to get an appointment with the Planning Department. Those
16 applications are not vested until staff determines at the appointment that the
17 application is complete. There is no point in making people distrust the County
18 even more when continuing the moratorium won't make a difference to what the
19 Council is working on.
20

21 Fleetwood stated everything the Council will do in this process will increase
22 environmental protection. The Council won't do anything to decrease
23 environmental protection. He asked if there is a way to expedite the SEPA process.
24

25 Karen Frakes, Senior Civil Deputy Prosecutor, stated she's not aware of a
26 way to expedite the process. John Gunther, the SEPA official, may know of a
27 process.
28

29 McShane stated this ordinance wouldn't qualify for expediting the process for
30 emergency reasons.
31

32 **OTHER BUSINESS**

34 **Discussion with Senior Deputy Prosecutor Karen Frakes regarding**
35 **two cases of pending litigation (AB2005-018)**
36

37 ***McShane moved*** to go into executive session for 20 minutes regarding the
38 Birch Bay Urban Growth area commercial zoning.
39

40 ***Motion carried unanimously.***
41

42 *(Clerk's Note: The Council went into executive session at 1:10 p.m.)*
43
44

45 **ADJOURN**

46
47

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1 The meeting adjourned at 1:35 p.m.
2
3

4 _____
5

Jill Nixon, Minutes Transcription
6

7 The Council approved these minutes on April 26, 2005.
8

9 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

10
11
12
13
14 _____

Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair