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1 **2. REGULAR COUNTY COUNCIL FOR JULY 12, 2005**

2
3
4 **OPEN SESSION**

5
6 The following people spoke:

7
8 Tim Paxton, 2120 Ellis Street, Bellingham, stated the Clean Water Alliance is
9 suing Whatcom County over designation of Sudden Valley as an urban growth area
10 in the Lake Whatcom reservoir. The designation was based on three fallacies. One
11 fallacy is that there was a State Environmental Protection Act (SEPA) process. A
12 determination of non-significance (DNS) was issued without taking public comment
13 so there was no SEPA process on the impact of allowing Sudden Valley to become a
14 city. Another fallacy is that an agreement with the Sudden Valley Community
15 Association would keep the future City of Sudden Valley from increasing density.
16 Really, the County is unleashing an uncontrolled civic entity in the reservoir. The
17 third fallacy is that there is no impact from the designation. The State Department
18 of Ecology predicted that buildout of Sudden Valley could lead to the end of Lake
19 Whatcom as the drinking water reservoir. Dr. Robin Matthews is saying this is
20 already happening. The increased phosphorus causes an increase of
21 trihalomethanes. He would like the County to hold a public hearing on the urban
22 growth area (UGA) in the watershed.

23
24 Sharon Crozier, Bellingham, stated the Council should pass the critical areas
25 ordinance. Whenever they do something to protect the environment, the Council
26 comes under fire from the same group of people. Look at where the county was
27 ten years ago, compared to where it is now. Do anything they can to prevent more
28 development.

29
30 Kathryn Hanowell, 3850 Gilmore Road, Everson, stated she thanks the
31 councilmembers who supported the mushroom substrate ordinance at the last
32 meeting. She is in Fire District 1, which includes Everson, Nooksack, and Deming.
33 She thanked all who worked on the emergency medical service (EMS) levy
34 proposal. A regional approach is best for this issue. The cost-consciousness of the
35 work that went into the plan is merited. Residents of unincorporated Whatcom
36 County needs the highest level of emergency care at times and depends on a
37 regional public service. Support the Finance Committee recommendation to
38 support this plan.

39
40 Chris Covert-Bowlds, Bellingham, stated there are health implications
41 pertaining to the Ferndale regional mall area in Ferndale. He supports a
42 development that is closer downtown to promote bicycling, walking, and less car
43 use.

44
45 John Flarry, Lattimore Road, Ferndale, stated he supports the resolution
46 coming forward to oppose the proposed regional mall in the Ferndale area. The
47 size of the mall is a concern. Ferndale residents are concerned about the mall

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1 development. In a very short time, he collected over 400 signatures of Ferndale
2 citizens who are opposed to the development. He worked with the City of Ferndale
3 to mitigate. The City of Ferndale PUD ordinance is inadequate. This mall is not in
4 keeping with the Ferndale Comprehensive Plan or countywide planning policies.
5

6 Bob Wiesen, 3314 Douglas Road, Ferndale, stated that the way the public
7 hearings are scheduled is unfair. There are too many hearings.
8
9

10 **PUBLIC HEARINGS**

11 12 **1. ORDINANCE REGARDING INSTALLING STOP SIGNS ON MILL ROAD** 13 **(AB2005-282)**

14
15 Caskey-Schreiber opened the public hearing and the following people spoke:
16

17 Carol Tan, 2121 Whalen Drive, Point Roberts, stated they really need to have
18 a four-way stop at this location.
19

20 Crawford asked if there is anyone who doesn't want this to happen, for any
21 reason. Tan stated there isn't anyone opposed that she knows of.
22

23 Hearing no one else, Caskey-Schreiber closed the public hearing.
24

25 ***Brenner moved*** to adopt the ordinance. She doesn't know of anyone who is
26 opposed to it, which she told Point Roberts residents recently.
27

28 ***Motion carried unanimously.***
29

30 **2. ORDINANCE (INTERIM) AMENDING THE WHATCOM COUNTY** 31 **SHORELINE MANAGEMENT PROGRAM, SECTION 23.100.20.57,** 32 **AQUACULTURE REGULATIONS (AB2005-085A)** 33

34 Caskey-Schreiber opened the public hearing and, hearing no one, closed the
35 public hearing.
36

37 ***Roy moved*** to adopt the ordinance.
38

39 Brenner stated this and some other ordinances scheduled for a public hearing
40 tonight are interim ordinances, extending ordinances that are already in place.
41

42 ***Motion carried 5-2 with Crawford and Nelson opposed.***
43

44 **3. ORDINANCE AMENDING WHATCOM COUNTY CODE (WCC) TITLE 20,** 45 **SECTION 20.80.735 (ON AN INTERIM BASIS) TO IMPLEMENT A** 46 **SEASONAL RESTRICTION ON LAND CLEARING ACTIVITIES WITHIN** 47 **THE LAKE WHATCOM WATERSHED WATER RESOURCE SPECIAL**

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1 **MANAGEMENT AREA BETWEEN SEPTEMBER 1 AND APRIL 30**
2 **(AB2005-125A)**
3

4 Caskey-Schreiber opened the public hearing and the following people spoke:
5

6 Tom Pratum, 2241 Northshore Road, stated the Council should extend the
7 interim ordinance. It hasn't had an effect yet. It's important to control the building
8 that is happening in the watershed. Try to control the runoff that occurs due to
9 clearing activities during the wet season. The point system didn't work well
10 enough.
11

12 Bill Quehrn, Building Industry Association (BIA) of Whatcom County
13 Executive Officer, stated his comments apply to this issue and the next ordinance
14 also. The point system offered advantages and was working. However, the
15 imposition of the dysfunctional moratorium and the subsequent elimination of the
16 point system has resulted in an increased workload for building services staff and
17 chaos for home buyers and builders. The 2,500 square foot impervious surface
18 limit allows sufficient design flexibility for marketable homes to be constructed on
19 buildable portions of the watershed and to respect the architectural design
20 standards in Sudden Valley. There is no scientific evidence to show that a
21 reduction of the impervious surface limit by 500 square feet will make a difference to
22 water quality protection. It does make an enormous difference in the kind of home
23 that can be built. The reduction was proposed with inadequate public notice. It will
24 unfairly harm many permit applicants with 2,500 square foot projects that will be
25 deemed out of compliance and make it impossible to qualify before September 1 of
26 this year. Creating a single building season cripples the County staff's ability to
27 serve the customers, disrupts home building, and increases housing costs. No
28 where and at no time have these actions considered compensation for those unduly
29 burdened, as required by the County charter. Litigation by those harmed should be
30 expected if all these regulations come to bear at the same time.
31

32 Wendy Stephenson, North Sound Bay Keeper, stated her organization
33 studied construction activities in the county and in Sudden Valley. They found that
34 best management practices were not being used or maintained. There was not
35 enough inspection to ensure that the best management practices were maintained.
36 There weren't enough fines being levied or corrective notices being issued. She
37 supports a wet weather ban on clearing activities.
38

39 Hearing no one else, Caskey-Schreiber closed the public hearing.
40

41 ***McShane moved*** to adopt the ordinance.
42

43 ***Brenner moved*** to amend the closure dates to October 1 to April 1. That is
44 the wet season.
45

46 McShane stated the issue isn't just the wet season. The issue is also that
47 September 1 is better in order to allow vegetation time to grow. It ensures that the

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1 cleared lands are prepared for the wet season. If clearing happens in September,
2 vegetation won't be established once the wet season begins in October. He agrees
3 that September is not a wet month generally. However, if vegetation and erosion
4 control isn't established during that September growing period, there will be
5 problems in the fall if there are early heavy rains. There were many systems that
6 they tried that didn't work.

7
8 Nelson stated that if there is no one out there inspecting and issuing
9 corrective notices, the dates don't make a difference. Address the issue of
10 enforcement. There is no reason to change the dates. They need to modify the
11 point system and other protective methods in the watershed. Be sure they are
12 solving a problem, not creating more problems. There are other ways to address
13 the issues, through the inspection process. Shortening the period would create
14 other problems.

15
16 Brenner stated a concern was about working with the developers who are
17 violating, rather than fining them. However, that allowed the few bad players to
18 make it not work for everyone. Most good developers would have appreciated it if
19 the County had beefed up the enforcement, charging high violation fees. This is a
20 more appropriate date.

21
22 *(Clerk's Note: Beginning of tape two, side A.)*
23

24 Roy stated that people can still build their projects during the wet season.
25 This ordinance simply limits land clearing.

26
27 Caskey-Schreiber stated many permits were processed and vested to which
28 this regulation won't apply. They will still see a lot of land clearing this fall. The
29 buildout of this watershed is happening in the next five to ten years. They won't
30 get a second chance to do things better. Be as cautious as possible. If they really
31 want development to continue, and have no negative consequences to the lake, this
32 is the best option. Keep sediment out of the lake. It leads to eutrophication. Don't
33 fuel that growth by adding even more sediments. They have to get roots
34 established.

35
36 Nelson asked what the dates have to do with it. They are worried about
37 precipitation. There are materials that can be put down in that time. They still
38 don't have inspection and enforcement. People will eventually just clear the land
39 when they need to. Instead, cooperate with the public and make sure there is a
40 consequence to the action. Changing dates doesn't change the quality of water.

41
42 Crawford said there is erosion going on, but it is an erosion of the public's
43 rights to enjoy their property and the lifestyle they enjoy today in a prudent and
44 environmentally sound way that makes sense. This is another step in a continuous
45 effort of the County Council to make it more difficult to live, enjoy, and prosper in
46 Whatcom County. The councilmembers enjoy that lifestyle, but don't want others
47 to enjoy it. That is wrong.

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1
2 McShane stated the reason for the September 1 date is due to the amount of
3 growing degree days in September being double what they are in October. This is
4 a degraded lake. It is the drinking water source for 80,000 people. He has a right
5 to affordable drinking water. As a Bellingham resident, he's watched his water bill
6 go up and up. More and more fees are applied to drinking water utilities. What
7 they've done in the past hasn't worked. The County may be successful with other
8 approaches, but he hasn't seen any proposals for increased staff or fines. This isn't
9 the perfect solution. There is no perfect solution. The County Council recognized in
10 January that there is a big problem with this lake. Knowing that, he hopes for more
11 support to create more stringent criteria. It's amazing they allow any development
12 at all in the watershed.
13

14 Brenner stated everyone on the Council is trying to do whatever they feel is
15 right to protect the watershed. It's strange to portray them as wanting to have
16 costs go up. No matter what the Council does or doesn't do, either the costs of
17 protecting the lake will go up or the County will be such a big mess that no one will
18 want to live here.
19

20 Nelson stated there used to be 70 permits applied for in the Lake Whatcom
21 watershed. Now there are up to 500 permits applied for. Perhaps the reason there
22 has been such an increase in permits is because of the actions of the Council. It
23 may encourage the public to consider its ability to develop their properties. These
24 types of actions may be detrimental to water quality by encouraging people to
25 develop now. He is frustrated with the City's efforts to discourage the State from
26 giving the County a grant for stormwater control. The Council needs to work with
27 the community on stormwater management. There isn't one ordinance that will be
28 the answer. However, this is not the appropriate step to work with the community.
29

30 Caskey-Schreiber stated the City of Bellingham is doing a lot. They do care.
31 The County has a good working relationship with the City. She hopes to continue
32 that relationship.
33

34 Roy stated the people from Bay Keeper have provided startling statistics.
35 Personally, she's driven around and counted the number of flattened silt fences.
36 Eighty percent of the silt fences are laying down flat, and not just in Lake Whatcom.
37 They tried the point system, but it didn't meet the objective they hoped, which was
38 keeping flow out of the lake. When they look at a countywide stormwater
39 management system, they can look at some of these things again. Maybe then the
40 Council can lift a seasonal clearing ban. For now, there is ample evidence that what
41 they've done hasn't worked.
42

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

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1 Brenner stated she would support the ordinance as an interim ordinance.
2 She hopes the final ordinance has more enforcement staff and charges people for
3 the cost of issuing violations.
4

5 Caskey-Schreiber stated she has reservations about adding staff time to
6 baby sit these sites. They've heard from the State Department of Ecology how
7 frequently these sites change. There is no way that inspectors can be at 300
8 different sites more than once every two weeks.
9

10 ***Motion to adopt the ordinance carried 5-2 with Nelson and Crawford***
11 ***opposed.***
12

13 **4. ORDINANCE AMENDING WHATCOM COUNTY CODE (WCC) TITLE 20,**
14 **CHAPTER 20.71 - WATER RESOURCE PROTECTION OVERLAY**
15 **DISTRICT (ON AN INTERIM BASIS), TO PROVIDE ADDITIONAL**
16 **REGULATORY PROTECTION FOR THE LAKE WHATCOM WATERSHED**
17 **(AB2005-072B)**
18

19 Caskey-Schreiber opened the public hearing and the following people spoke:
20

21 Craig Ostrom, 2310 Williams Street, stated he works for Sudden Valley.
22 Sudden Valley has reduced density greatly already. Also, Sudden Valley
23 implements a stormwater plan that keeps a footprint below 2,500 square feet.
24 There are stormwater retention systems. The County should join them. He is
25 concerned about the footprint restriction of 2,500 square feet. Sudden Valley
26 already has a height restriction. A maximum of 2,500 square feet of allowed
27 impervious surface is a good size. He is against the ordinance without that level.
28

29 He is concerned about the new language in 20.71.302(3). He would like
30 clarification on the kinds of restrictive covenants to which that language refers.
31 There are all kinds of restrictive covenants. This language isn't specific. That was
32 their incentive for consolidating lots. With two lots, they only have to pay one dues
33 and also build that garage, for instance. He's concerned that language will remove
34 that incentive.
35

36 Hearing no one else, Caskey-Schreiber closed the public hearing.
37

38 ***Roy moved*** to adopt the ordinance.
39

40 ***Nelson moved*** to amend the ordinance to restore the original square
41 footage of 2,500 square feet of impervious surfaces allowed. Five hundred square
42 feet is about the size of a garage. He is concerned people being able to put in
43 ramps and surfaces that are conducive to a wheelchair. People need the flexibility
44 to put in accessibility items that come up in the future. There is no evidence that
45 reducing the impervious surfaces by 500 square feet will change anything.
46

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1 Roy asked what percentage of an average lot is 2,500 square feet. Research
2 has shown that a total impervious surface of ten percent or more has negative
3 impacts to things such as shellfish beds.
4

5 Crawford stated people are currently allowed 20 percent of the lot for
6 impervious surfaces. A lot that is 12,500 square feet can currently build a footprint
7 of 2,500 square feet. This action will take it down to a lot that is 10,000 square
8 feet, and a person will only get 2,000 square feet for a footprint. This affects all
9 lots under one-quarter of an acre, which is all of Sudden Valley. Most Sudden
10 Valley lots are less than 10,000 square feet. Those people will be able to have a
11 footprint of 2,000 square feet. Other areas of the watershed will also be affected.
12

13 McShane stated there is a break for those who don't have lots with a 20
14 percent opportunity, in the urban zone. In the rural areas, the limit will still be 10
15 percent. In the rural areas, a small lot will get some extra square footage of the
16 percent puts the total footprint area below 2,000 square feet. There is also
17 language the Council added to encourage lot consolidation.
18

19 Amy Pederson, Planner II, stated that language in section 20.71.302(3) is
20 currently before the Planning Commission for consideration.
21

22 Brenner asked how many lots are left in Sudden Valley that have not been
23 developed. Ostrom stated a rough estimate is between 800 and 1,000, including
24 those that have permits pending.
25

26 Crawford stated the permits that are out there are not vested.
27

28 Caskey-Schreiber stated it depends on when the permit appointment is
29 scheduled with the Planning Department.
30

31 Nelson stated a carport and mobile home would reach the 2,000 square foot
32 limit. One couldn't get any additions for wheelchair access.
33

34 McShane stated this is an interim ordinance. Wheelchair access is a concern,
35 no matter how big the footprint is. If someone build a footprint of 2,500 square
36 feet, and then needs to expand for wheelchair access, it's the same problem. If
37 that is the concern, allow an exception to allow that access. That issue has never
38 been addressed, and probably should be considered to allow a deviation from the
39 rule for that reason.
40

41 Brenner stated the final ordinance should include an incentive to do low
42 impact development that would allow for increased square footage. She will
43 support this amendment. She was impressed with what she saw on the low impact
44 development tour, but most of it was about the house being built up, not out. Baby
45 boomers are aging. Make sure there is enough square footage for people to be able
46 to move around.
47

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1 ***Nelson restated the motion*** to amend 20.71.302(3) to replace 2,000
2 square feet with 2,500 square feet.

3
4 Roy stated she agreed with Councilmember Brenner about allowing additional
5 impervious surfaces if there are low impact development strategies and if
6 stormwater can be kept onsite.

7
8 McShane stated this is an interim ordinance. If they go that route, it will
9 require some additional staff. That will be very site specific.

10
11 Fleetwood stated he will support the motion. When the Council considered
12 the land clearing ordinance in 2003, it went down from 3,000 square feet to 2,500
13 square feet. He appreciates the reasoning for reducing it further, but he will stay
14 with his vote two years ago for 2,500 square feet.

15
16 Nelson stated they deal with low impact materials that can be used. There is
17 nothing that gives someone a benefit for using that material. They may want to
18 address that in the future. He would rather stick with something that can be
19 quantified, and work with the public on alternative surfacing methods that are
20 stormwater friendly.

21
22 McShane stated that if there are 1,000 lots in Sudden Valley, the difference
23 between 2,000 square feet and 2,500 square feet is the equivalent of 12 acres.
24 There would be 12 acres of additional impervious surfaces within Sudden Valley.

25
26 Caskey-Schreiber stated she is against the amendment. The ocean suffers
27 when there is more than 10 percent of impervious surfaces. A lake would be far
28 more fragile. It's best to err on the side of caution.

29
30 Brenner stated they know not much more will happen this season. It will
31 give staff and the Council a great incentive to get to the final ordinance. Offset the
32 extra square footage by other low impact development options, more than what is
33 included currently. Those 1,000 lots won't be developed during the interim period.
34 There are plenty of people in Whatcom County and other counties who do this for a
35 living, including Sustainable Connections. Have the applicants do it through their
36 own consultants. The County's job would be to oversee it to make sure it's fine,
37 but not take the initiative to do all the intermediate stages. It's a worthy goal that
38 won't make things more difficult than they are now. She is in favor of the
39 amendment.

40
41 McShane stated the purpose is to establish the 2,000 square feet as the
42 threshold with the type of impact they will see and to encourage low impact
43 development. If this is the threshold they strive for on an interim basis, the low
44 impact development will try to achieve that low impact. By increasing the level of
45 impervious surfaces, they are just saying the threshold of what they will tolerate is
46 higher, and the motivation for low impact development becomes less. How one
47 gets to the equivalent of a 2,000 square foot threshold is complicated. It should

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1 create incentive to do low impact development that really does work. Otherwise,
2 they're allowing the equivalent of a lot more runoff.

3
4 ***Motion to amend carried 4-3 with McShane, Caskey-Schreiber, and***
5 ***Roy opposed.***

6
7 Caskey-Schreiber stated the Council will not vote on the ordinance tonight.
8 The Council will hold another public hearing in two weeks.

9
10 **5. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY CRITICAL**
11 **AREAS ORDINANCE, WCC CHAPTER 16.16 – CRITICAL AREAS AND**
12 **ASSOCIATED PROVISIONS OF WCC TITLE 2, CHAPTER 2.33, AND**
13 **WCC TITLE 20 (AB2005-226)**

14
15 Caskey-Schreiber opened the public hearing and the following people spoke:

16
17 Hilary Culverwell, 208 Bayside Road, Bellingham, stated she works for the
18 Puget Sound Action Team as the liaison to Whatcom County. She served on the
19 Technical Advisory Committee and commented on this ordinance. She thanked the
20 Council and County staff for an excellent process and a very good ordinance.
21 Almost all of her recommendations were incorporated into the final draft. Many
22 Puget Sound problems are directly related to changes in the landscape. There is
23 much scientific evidence linking the two. Protecting critical areas through a tool like
24 this is powerful to reverse the downward decline in Puget Sound's health. The
25 State puts that power in the hands of local government. Bring back Puget Sound to
26 a level to protect and support fish and wildlife populations and, ultimately, people.
27 She supports the ordinance. It is based on sound science.

28
29 Elizabeth Denny, 7082 Goodwin Road, Everson, stated she is a disabled
30 advocate. Wheelchair ramps and therapy hot tubs, with doctor prescriptions, must
31 be considered exceptions. Internal Revenue Service (IRS) rules allow them as
32 medical equipment. They are as important as prescription drugs.

33
34 Richard Gilda, Jensen Road, Bellingham, submitted information (*on file,*
35 *Exhibit B*). This is similar to the old Lake Whatcom ordinance. This new ordinance
36 is much larger. Much of it is not needed. Consider carrying over the decision for
37 two weeks or a month so changes can be considered. Not all environmental
38 problems are manmade. In the name of environmental protection, new problems
39 are created. The rights of some citizens are infringed upon. Acreage is taken off
40 the tax roll. Everyones' taxes go up. Agriculture is cut back due to the loss of land.

41
42 (*Clerk's Note: End of tape two, side A.*)

43
44 Gilda continued to state that everyone is hit with overregulation. Land prices
45 are going up because the land is taken for environmental reasons. Wetlands are
46 planted with trees that suck up the water. Many of the trees they are planning are

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1 nodular trees that produce nutrients. As they decay, more nutrients go into the
2 water. People complain that they have a problem with nutrients in the water.
3

4 Regarding Whatcom County Code (WCC) section 16.16.235 on activities
5 allowed with notification. He asked if notification with permission is an exemption.
6 If notification is necessary, then two days is more than enough.
7

8 Tom Pratum, North Cascades Audubon, stated water quality and wildlife
9 habitat are being eroded. This ordinance is fairly good. Preservation of wildlife
10 habitat corridors is not really addressed in this ordinance other than the Chuckanut
11 wildlife corridor. The exemption for category IV wetlands is not good policy. No
12 wetland should be compromised without mitigation. Wetland buffer widths should
13 not be under 50 feet. The critical areas ordinance (CAO) is complex and lax in its
14 protection of critical areas. Don't weaken it further.
15

16 David Hovde, Association of Realtors Government Affairs Chair, submitted
17 information (*on file, Exhibit C*). Don't approve the critical areas ordinance as it is
18 currently written. The current law provides protection. The proposed ordinance will
19 only hurt property owners and the community. This ordinance extends buffers up
20 to 300 feet, which are based on theory of restoration. This ordinance goes beyond
21 the requirements of the Growth Management Act (GMA). The wording in the
22 ordinance is vague. There are undefined critical areas in the buffers required for
23 them. Firm guidelines need to be set for critical areas and buffers instead of
24 leaving the decision to one individual. The ordinance will negatively affect their
25 ability to grow and expand. Natural buffers offer 50 to 70 percent effectiveness to
26 maintain water quality in the first 50 feet. They require an additional 200 feet to
27 gain an additional 10 to 20 percent effectiveness. Modern drain systems are more
28 effective. The solution should not hurt the economy. A client of his lost more than
29 40 percent of her density to buffering a seasonal drainage stream that had no
30 biological life. Many larger parcels are getting only 60 percent of their yield.
31

32 Brenner asked if the client could have developed her original density outside
33 of the buffer. Hovde stated the allowed zoning can be met through clustering.
34 However, the minimum lot size did not allow the full density. The client lowered
35 the lot size and clustered, but still lost 40 percent of the density. For many of the
36 larger lots, the owners are losing 40 percent of their yield.
37

38 Carolyn Dwyer, Windemere Realtor, stated she represents small property
39 owners who have held land for many years and now want to do something with
40 their lands. Those owners are trying to recoup their investment. The owners are
41 required to hire professionals at their own cost and complete the mitigation plan,
42 which is a huge financial burden. The owners are required to fix any problems.
43 They should be required to fix only problems that are at risk. The owner must
44 monitor potential risk of failed mitigation for five years. This requires that technical
45 people be allowed to come onto the property during that time. Demand the most
46 effective protection, without consideration of the cost to the property owner. A
47 surety bond 125 percent the cost of the mitigation is a financial burden. The

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1 government technical people have an enormous amount of latitude given to them in
2 the ordinance.

3
4 Bill Henshaw, 2653 North Park Drive, Bellingham, stated there are elements
5 of the Growth Management Act that need to be addressed, including the housing,
6 facilities, transportation, and other elements. There is a lot of focus on the critical
7 areas. Best available science must be produced through a valid scientific process.
8 The definition in the ordinance is significantly broader than that. A valid scientific
9 process is one that produces reliable information useful in understanding the
10 consequences of a local government's regulatory decisions. They haven't looked
11 hard enough at what those consequences are. The courts and Growth Management
12 Hearings Board said that the duty is to protect critical area functions and values,
13 not each component of the system. The ordinance focuses on restorative value
14 rather than functions and values. Create incentives, rather than heavy regulation,
15 for improving function and value. Also, required buffers may encroach upon a
16 neighbor's property.

17
18 Jon Soine, Windemere Real Estate Associate Broker, stated the Council
19 should vote against the ordinance. There is a cost to individual property owners
20 who lose money due to the ordinance. The property owner must pay for a building
21 permit, a professional mitigation plan, mitigation implementation, annual
22 monitoring, and a 125 surety fee. A friend lost his property due to required
23 wetland mitigation.

24
25 Richard Baila, Realtor, Washington Realtors Legislative Steering Committee
26 Member, stated the ordinance is unfair. People who develop their properties must
27 pay for it in a way that is not equitable. There is too large a financial burden on the
28 landowner. The government could bear some of the expense. In WCC
29 16.16.245(D), the technical administrator can choose to hire a third party to review
30 the permit application, at the expense of the applicant. The applicant has no say as
31 to who is appointed as the third party reviewer or how much it will cost. It's ironic
32 that the applicant already paid for a professional report to be made as the
33 government mandated. Now the government gets to have the applicant pay for
34 someone to review the original report. This is unfair. An unfair ordinance make the
35 property owners feel backed into a corner. The councilmembers risk the ire of the
36 property owners at the poll. There is no protection for citizens against the
37 government's regulations and authority. The State Constitution says the
38 government must err on the side of the individual property owner, not the
39 collective.

40
41 Roger Almskaar, Land Use Consultant, submitted information (*on file,*
42 *Exhibits D through G*). Protect the environment, but pay attention to who is
43 paying. Leave the record open for at least ten days. The critical areas ordinance
44 ignores the 13 planning goals. The emphasis on best available science is not
45 consistent with the goals and policies of the GMA. This ordinance would increase
46 sprawl. Buffers are too large. When doing development regulations, a county must
47 provide sufficient land supply. Counties shall include best available science. It

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1 doesn't say that counties only consider best available science. The County must
2 also consider the economics and peoples' rights.
3

4 Mary Dickinson, Building Industry Association (BIA) Government Affairs,
5 stated she is against the ordinance. Implementation will not keep the community
6 compliant with the GMA. The amount of land that will have to be used as buffered
7 will take land away from the available land supply. The land supply analysis
8 submitted to the State will be affected. The large buffers will be a burden to
9 landowners. The requirements make it difficult to exempt any of the wetlands. The
10 recommended buffer sizes are at the high end, as recommended by the State
11 department of Ecology. Development over one dwelling unit per acre is not a high
12 intensity land use. Don't value a three-lot subdivision the same as a mall parking
13 lot complex. There is a lack of coordinated planning between the County and City
14 of Bellingham. Keep the written record open.
15

16 James Syke, People for Puget Sound, stated he supports the ordinance. It
17 protects the marine shorelines, eelgrass, shellfish beds, forage fish habitat, and
18 other sensitive habitat. New development must be set back 150 feet from the
19 beach. The County and staff have done a good job using best available science
20 needed to develop the protection needed to keep marine shorelines healthy and
21 safe for future generations. Adopt the ordinance.
22

23 Polly Hanson, 2781 West Shore Drive, Lummi Island, stated that states with
24 higher environmental standards have a stronger economy. Water is the basis of
25 life. The glaciers are melting, including Mt. Baker. When the Deming Glacier is
26 gone, there will be an effect to the Nooksack River. Wetlands are all connected.
27 They are not isolated. Look at the whole picture. The costs are to protect the
28 purity of water. However, there is also a cost of medical treatment due to poisoned
29 water.
30

31 Peter Roberts, Whatcom County Association of Realtors President Elect,
32 stated he is opposed to the changes to the current critical areas ordinance because
33 it takes away the opportunity to transfer development rights, which is allowed in
34 the current version of the critical areas ordinance. The County zones land at a
35 particular density. A property owner with critical areas agrees not to develop the
36 property to the allowed density. The owner then files legally binding paperwork
37 saying the property will not be developed to the allowable density. The left over
38 development rights can be used or sold to someone who has a right to build at a
39 higher density within the urban growth areas (UGA's). The County must provide a
40 certain amount of housing for the citizens of Whatcom County. The City and
41 County councils and planners spent many hours figuring out where to put
42 development. The CAO takes away that potential developable property. To cover
43 those lost densities, allow property owners to transfer their development rights.
44 Selling unused development rights is a way to cover losses from the designated
45 critical areas. By keeping the transfer of development rights (TDR) provision in the
46 ordinance, the County may avoid takings claims because there is still value left in
47 the development rights.

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1
2 Alan Friedlob, 6934 Holeman Avenue, Birch Bay, submitted and read from his
3 testimony (*on file, Exhibit H*). Support the proposed CAO. Discuss how to create
4 and implement effective management of tree canopy in the UGA's. Be concerned
5 about the effects of stormwater runoff on water quality and stream degradation.
6 The tree cover in critical areas should be considered urban forests that are
7 maintained. Benefits will accrue to all citizens of the UGA's and enhance property
8 values. Avoid land cover changes, a consequence of development projects, through
9 regulation and enforcement.

10
11 Albert Marshall, 2781 West Shore Drive, Lummi Island, thanked the Council
12 for working on this issue. Identify aquifer recharge areas. He is worried about
13 contamination of the aquifer. Support a strong ordinance for those who rely on
14 groundwater.

15
16 (*Clerk's Note: End of tape two, side B.*)
17

18 Darcy Jones, 4164 Meridian Street, Suite 200, Bellingham, submitted
19 information (*on file, Exhibit A*). Make sure the ordinance is legally defensible,
20 practical to use, and easy to understand. They will lose 40 to 50 percent of the
21 density in the urban growth area (UGA). There should be an environmental impact
22 statement. Do an economic impact analysis of the loss of revenue to the tax roles.
23 The Chuckanut wildlife corridor is a good approach. Do resource-based planning.
24 Establish a resource inventory. The fire marshal needs to review this ordinance and
25 be part of the committee discussion. Give people longer than 18 months to rebuild
26 a structure destroyed by fire. It will take the insurance company longer than 18
27 months to settle the claim.

28
29 Jo Slivinski, 6163 Semiahmoo Lane, stated the Council should adopt the
30 ordinance. Protect all wetlands, even those smaller than 4,356 square feet.
31 Address the issue of wildlife corridors in tandem with the concept of the continuing
32 development they cannot stop. Allow animals to migrate where there is
33 development.

34
35 Larry Helm, 2600 East 41st Terrace, stated he is doing a farm plan for five
36 cows, which cost him \$2,000. That is his profit for six years. Do not vote for the
37 ordinance. Allow more time at another meeting for comment. The notification
38 section, WCC 16.16.235, is a disguised permit section. It should be rewritten. The
39 technical administrator is given too much authority in this document. Include a
40 clear appeal process in section 16.16.240. The farm plan section is a concern.
41 Clearing ditches now requires a long permit process through the State Department
42 of Ecology. That requirement doesn't make sense. The farm section should be in
43 one section, not spread throughout the code. Water Associations maintenance
44 activities should be exempt. The legal basis of the critical areas ordinance is to
45 regulate activities that cause environmental damage. Many small hobby farms with
46 less than one animal unit per acre must have expensive farm plans. They are not

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1 an environmental threat. Therefore, the owners' constitutional rights are probably
2 being violated by this process.

3
4 Lincoln Rutter, 8373 Semiahmoo Drive, stated Councilmember Crawford and
5 many who have testified talked about the erosion of people's rights to enjoy their
6 property. In fact, only 23 percent of Americans owned their own home 30 years
7 ago. Recently, that number has increased to almost 70 percent. More people are
8 enjoying property rights as never before in the history of America. There are more
9 new homes built each year than in any time in American history. More single family
10 residences are being sold. The reason for the increase is because the Federal
11 Reserve system lowered the rate to one percent, and kept it there. The U.S.
12 banking system is awash in reserves. That is what has driven up the price of home
13 ownership. More Americans are in debt now than ever before. Builders,
14 developers, and realtors have never had it so good. People are building homes in
15 more sensitive areas. The ordinance is critical to protect the critical areas of this
16 county. Urban growth areas have to be enforced and properly sized. The CAO
17 should be established in that context.

18
19 Trevor Hoskins, 8686 Great Horned Owl, Blaine, submitted information (*on*
20 *file, Exhibit 1*). The Birch Bay and Blaine area is exploding with housing
21 development with little regard for the environment or wildlife. Adopt the ordinance.

22
23 Barbara Burk-Zielsta, 316 Willow Court North, Bellingham, stated the Council
24 should pass the ordinance even though it is a compromise. There will always be
25 people who will be unhappy with it. Protect the water and wildlife resources and
26 critical areas.

27
28 Alison Simmers, 316 Willow Court North, Bellingham, stated she used to take
29 for granted what they have. Now, she appreciates what they have. Many people
30 will look out for their best interests and see how they can profit from land. There is
31 no guarantee in investing in land. Protect critical areas.

32
33 Fred Bovenkamp, 700 Fern Drive, Lynden, stated the wetland buffers and
34 mitigation ratios are extremely onerous. Professional and respected local wetland
35 biologists agree, especially with the buffers for category IV wetlands. The State
36 says it has a limited resource value. Many category IV wetlands were created by
37 poor farming and poor land management practices years ago. Further review those
38 sections.

39
40 Bob Wiesen, 3314 Douglas Road, Ferndale, stated that according to the
41 section on citizen rights in the Whatcom County Charter there must be
42 compensation to those unduly burdened. The ordinance requires private
43 landowners to provide a large public benefit at a high cost in loss of use of their
44 properties. Look into the information available that refutes the best available
45 science of the State Department of Ecology. Many people were appointed to a
46 committee that worked for months to create a plan. A lot of compromises were
47 made. Then, agencies and people who didn't participate in the committee process

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1 think other changes should be made. Many people don't know how this may affect
2 them. There are unintended consequences, including urban sprawl. They are
3 reducing the amount of buildable lands in urban growth areas. Another unintended
4 consequence is increased housing costs. The existing, working residents of the
5 county are not the ones buying houses. The rich people from other places are the
6 ones who are coming in and buying the houses. The working man can't afford a
7 house. That's not good for the community. There will be higher utility costs due to
8 the lack of density. There will be higher taxes, also.

9
10 Ellie Friedlob, 6934 Hollman, stated she is in favor of the ordinance. There
11 has always been tension between individual rights and the obligations to the
12 community. Both sides of the issue made excellent points. Most people recognize
13 the rights of the individual. However, they have something special here. If they
14 lose this, it will not be through a mass action. The ordinance will be interpreted by
15 the Hearing Examiner and judges. Things can still be whittled away one decision at
16 a time. The people in the audience should think beyond their own narrow self
17 interest and think about the future of the community.

18
19 David Dickinson, 4100 Legoe Bay Road, Lummi Island, stated the technical
20 administrator would hold more power than any other official in the County. There is
21 no information on the credentials and qualifications required for such a position.
22 There is no information on the bonding that would be required to see to it that the
23 technical administrator doesn't use his or her official position to forward the agenda
24 of a private interest group. Hold open the comment period.

25
26 Mike Kent, 8201 Chehalis Road, Birch Bay, stated he is concerned about the
27 County being left open to takings consideration. People will vehemently fight for
28 their property rights. That will lead to division instead of cooperation and
29 communication. Use the transfer of development right (TDR) program and other
30 incentives to create environmental protection and incentives. Provide an
31 environment they can all enjoy while also providing adequate desirable housing.
32 Developers and environmentalists should speak together countywide, as they do in
33 Birch Bay.

34
35 Wendy Stephenson, North Sound Bay Keeper, stated the American Dream is
36 also having a healthy environment, clean water, and wildlife. Wetland buffers are
37 too small but they are the compromise at which they arrived. Planning took the
38 most flexible and lenient wetland buffers that were sanctioned by the Department
39 of Ecology. A 300-foot buffer will be used rarely. It's only for category I wetlands.
40 There may not be any in Whatcom County. There is no mechanism to ensure that
41 wildlife habitat will be connected. That needs to be a County Council priority.

42
43 Cyrilla Cook, People for Puget Sound, submitted and read from information
44 (*on file, Exhibit J*). The staff, Planning Commission, and County Council used best
45 available science in the development of these protections. Adopt the ordinance.

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1 Dennis Jones, Sudden Valley, stated the CAO is one of three tools in the
2 state to protect the county. They all want to protect the living environment.
3 People have found Whatcom County. Property values are doubling. He hopes the
4 ordinance has teeth for enforcement. The other tools are zoning and restrictive
5 covenants. They are a lot more expensive. Adopt the ordinance.
6

7 Ellen Gray, Futurewise, submitted and read from information (*on file, Exhibit*
8 *K*). This ordinance will help the County with flood, water quality, and natural
9 hazard issues. There are costs to not protecting the environment. Look at the tree
10 retention and impervious surface limits countywide. Look at the stormwater
11 management plan. Both of those regulations may be a better fit for the
12 recommendations in her letter. Even small wetlands store water. Consider the cost
13 of flooding by allowing the exemption for small wetlands. Consider floodwater
14 mitigation for those exempted wetlands. The public process was excellent. Adopt
15 the ordinance tonight.
16

17 Hearing no one else, Caskey-Schreiber closed the public hearing.
18

19 **Brenner** stated there is a lot of new information that she would like to look
20 through. She **moved** to refer to committee for further discussion.
21

22 McShane stated he is against the motion. These are all issues that were
23 discussed in committee. The letters address many of those issues, and are follows-
24 up of the same comments they've seen. They've gotten the same comments from
25 Futurewise before, for example. There is nothing new that he sees. There isn't a
26 reason, other than for appearance, to go back to committee. He doesn't
27 recommend it.
28

29 (*Clerk's Note: End of tape 3, side A.*)
30

31 Brenner continued to state she is not willing to create the wording regarding
32 transfers of development rights (TDR's) without the assistance of Hal Hart and Troy
33 Holbrook. The TDR issue was not brought up in committee. It was new information
34 for her. She doesn't know if there is something new in them. It's not about
35 appearances. She would like to finish reading the information.
36

37 McShane stated some questions could be readily answered tonight. Staff and
38 the consultant have done a great job on this ordinance. He asked if TDR's were
39 ever a part of the original CAO that they're amending. Chalfant stated TDR's were
40 mentioned as a non-regulatory action that could be used, but there was no
41 implementing ordinance to make TDR's occur. The TDR program is part of the Title
42 20 zoning ordinance. That section of the code identifies sending and receiving
43 areas, but it doesn't relate back to the CAO. To have that connection and to
44 identify critical areas as potential sending areas, Title 20 would have to make that
45 connection. The Planning Commission decided to take it out of the CAO because
46 there was that confusion. There were no implementing tools to make it happen.
47

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1 McShane stated it's an attractive program. The Council received a comment
2 regarding wildlife corridors. He disagrees that they should create more wildlife
3 corridors through the CAO. Wildlife corridors should be created through other
4 mechanisms, including TDR's. The Council should explore a TDR program that
5 would include the opportunity for people to opt out of the critical areas ordinance.
6

7 Caskey-Schreiber stated Futurewise asked the Council to drop wetlands to
8 2,500 square feet for exemption. She's now comfortable with the level the Natural
9 Resources Committee set. This is a situation where the Council won't make anyone
10 happy. The environmental community would like the Council to do more. The
11 builders would like the Council to do less. She's inclined to deal with it tonight.
12

13 Nelson stated they've gone through a long process for this. They have a CAO
14 in place now that has some protection mechanisms. The proposed CAO goes
15 beyond the scope of that CAO. Some modifications are good, and others he can't
16 support. This is a draft that has gone through a lot of committee work. It hasn't
17 had a lot of public examination, which the first CAO had. He would like the
18 opportunity to go through the materials handed out tonight and to address global
19 issues such as smaller acreages. A question is why people would want to protect
20 and enhance their properties when they will be restricted and scrutinized when they
21 own more than a lot. To be fair, have an economic evaluation of this if possible.
22 One cost to look at is enforcement. He asked the effect in the rural areas where
23 people have plans to use their acreage. Many people have been impacted in urban
24 areas. An issue to consider are flow of water and ditches. He asked if the
25 Agricultural Advisory Committee has looked at the proposed CAO. Chalfant stated
26 the advisory committee reviewed the ordinance and support it.
27

28 Roy stated she supports Councilmember McShane. The meetings were in the
29 newspaper and on the website. The committee held three special meetings. A
30 community committee worked on the ordinance. There has been input from the
31 Agricultural Advisory Committee and the Technical Advisory Committee. During
32 every Natural Resources Committee meeting, the public was invited and given the
33 opportunity to speak. There has been much thought and public input. If it goes to
34 committee, they will just start all over again. This is a good document. There has
35 been a lot of discussion. She is ready to vote on the ordinance.
36

37 McShane stated he is against the motion to refer to committee. The
38 committee did not make that many changes. The changes made were technical
39 changes implementing recommendations of staff based on comments from many
40 groups. In some cases, they've already debated some of the issues were brought
41 up tonight. If this is sent back to committee, there won't be any more changes.
42

43 Brenner stated there may not be many changes before the vote. The
44 committee did not work on this in the evening. Many people work during the day.
45 The people who are not paid to be here work during the day. Also, the purpose of a
46 public hearing is to look at the information the Council received. She understands

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1 the frustration of the committee, but it's their job to consider the information from
2 the public. They won't take a lot more time on this.

3
4 Chalfant stated that if the Council takes action tonight on staff's
5 recommended changes, there must be another public hearing.

6
7 McShane stated that's why they should deal with the changes now, with the
8 entire Council.

9
10 ***Motion to refer to committee failed 3-4 with Nelson, Brenner, and***
11 ***Crawford in favor.***

12
13 *(Clerk's Note: The Council took a break. Beginning of tape four, side A.)*

14
15 ***McShane moved*** to adopt the ordinance. Adopt the ordinance as it is
16 tonight, without amendments, with a request that Planning staff bring forward
17 amendments at a later date.

18
19 Brenner stated they would have to have another hearing anyway, if there
20 were amendments.

21
22 McShane stated the hearing on amendments would be very narrow, focusing
23 just on the amendments, versus the entire ordinance.

24
25 Brenner stated she would support this tonight if she could address a couple
26 of important issues.

27
28 Roy stated the basic principles are covered. It is about critical areas. From
29 that foundation, the Council can do some fine-tuning. She supports
30 councilmembers adding amendments. She supports Councilmember McShane's
31 suggestion.

32
33 Nelson stated the suggestion would be difficult. The reason for the hearing is
34 to get the public's input. He has issues about the role and responsibility of the
35 technical advisor. He has troubles about impacts on Class IV's. He needs an
36 economic evaluation. He has one amendment tonight to bring forward. He asked
37 why they don't just put it back in committee.

38
39 Roy stated they want to pass 98 percent of the ordinance tonight.

40
41 McShane asked if a future ordinance to amend the critical areas ordinance
42 (CAO) would have to go through the Planning Commission.

43
44 Karen Frakes, Senior Civil Deputy Prosecutor, stated it may have to go to the
45 Planning Commission.

46

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1 McShane stated he's changed his mind, because a future ordinance would
2 have to go to the Planning Commission. It's not a good idea after all.
3

4 Nelson stated there was much information about the power of the technical
5 administrator. The technical administrator helps with the administrative process.
6 He asked if there is an appeal process before the Hearing Examiner in the code.
7

8 Jeff Chalfant, Senior Planner, stated the appeal process is in Whatcom
9 County Code (WCC) section 16.16.280. He explained the process.
10

11 **McShane moved** to amend WCC section 16.16.310(C)(1)(b)(i) as
12 recommended by staff in the memo from Jeff Chalfant to the County Council dated
13 July 26, 2005 regarding recommended amendments to the July 12, 2005 Council
14 Natural Resources Committee Draft Whatcom County Critical Areas Ordinance,
15 "...failing or very likely to fail within the next 100 years near future."
16

17 Chalfant stated the staff geologist said defining 100 years would make
18 administration of the ordinance difficult and onerous, and it would have unintended
19 consequences on over-regulating folks who could otherwise engineer structures to
20 be safely located within an active geologically hazardous area.
21

22 McShane stated this language is not the problem, however language in
23 another section becomes a problem with this language.
24

25 **Motion carried unanimously.**
26

27 Chalfant stated the next proposed amendment from staff is to section
28 16.16.610(E)(7). It deals with exempt category IV wetlands that are less than
29 one-tenth of an acre in size. The committee added language to not allow wetlands
30 in special protection areas to be exempted, regardless of size. However,
31 administration of this would be very difficult. There are certain wetlands that have
32 no function, yet would be regulated per this section.
33

34 Nelson stated this is a useless exemption. Any birdbath with a frog in it
35 would have to be buffered.
36

37 Margaret Clancy, consultant, stated amphibian habitat has been one of the
38 key concerns with regard to exempting small wetlands from regulation. Many
39 amphibian species in Western Washington are declining because of wetland loss,
40 among other things. For a wetland to have breeding habitat for frogs and
41 salamanders, the wetlands must have stable hydrology, clean water, and the right
42 types of plant species. The wetlands tend to be less disturbed and, therefore, more
43 valuable.
44

45 Nelson stated any wet area, from small mud puddles to large wet areas, will
46 have habitat and can fit into this definition.
47

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1 Roy stated that if those wet areas have habitat, then they should be
2 protected. If an area is an amphibian breeding area, and 100 percent of the small
3 wetlands have them, then the small wetlands may need to be protected. They are
4 a part of the cycle.

5
6 Nelson stated the new buffer requirements that restrict land use don't give
7 people incentive for protecting those wetlands.

8
9 Caskey-Schreiber stated the motion is to eliminate some of those
10 restrictions. She is inclined to not delete the language. Those wetlands are very
11 important. She asked for an explanation of category IV wetlands. Clancy stated
12 the exemption in subsection (7) is meant to exclude the category IV wetlands that
13 have potentially important functions and values. In this case, if the County didn't
14 allow this exemption, they may regulate things that could be a patch of creeping
15 buttercup that is wet for two weeks out of the growing season. It is a low quality
16 wetland of small size. This section seems to be onerous.

17
18 Nelson asked if property owners would be allowed to remove blackberries
19 that may surround small wetlands. Clancy stated they would. There are provisions
20 that allow removal of invasive species. Depending on the nature of the vegetation
21 clearing activity, notification may be required.

22
23 **McShane moved** to delete 16.16.610(E)(7) as recommended by staff in the
24 memo from Jeff Chalfant to the County Council dated July 26, 2005 regarding
25 recommended amendments to the July 12, 2005 Council Natural Resources
26 Committee Draft Whatcom County Critical Areas Ordinance.

27
28 **Motion carried unanimously.**

29
30 Chalfant referenced section 16.16.630(C). The amendment clarifies that the
31 technical administrator can change land use categories from high intensity to
32 moderate intensity, if applicants can prove they are taking measures to reduce
33 impacts and intensity of the land use.

34
35 Brenner stated she is in favor of the change proposed by staff.

36
37 **McShane moved** to amend section 16.16.630(C) as recommended by staff
38 in the memo from Jeff Chalfant to the County Council dated July 26, 2005 regarding
39 recommended amendments to the July 12, 2005 Council Natural Resources
40 Committee Draft Whatcom County Critical Areas Ordinance.

41
42 **Motion carried unanimously.**

43
44 Chalfant referenced section 16.16.650. He recommends having criteria for
45 buffer averaging that mirror the criteria for the buffer reduction section.

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1 **Brenner moved** to amend sections 16.16.650(D) through (F) as
2 recommended by staff in the memo from Jeff Chalfant to the County Council dated
3 July 26, 2005 regarding recommended amendments to the July 12, 2005 Council
4 Natural Resources Committee Draft Whatcom County Critical Areas Ordinance. This
5 is very clear. She appreciates it. It also gives more flexibility.

6
7 **Motion carried 6-1 with Crawford opposed.**

8
9 Chalfant referenced section 16.16.680(E)(4). Staff asked for flexibility for
10 the technical administrator to adjust the replacement ratios for mitigation when
11 criteria are met. The provision in subsection four actually applies to the entire
12 section. It should not be a numbered item. In order to maintain the no-net loss
13 criterion mandated under the Growth Management Act (GMA), add that the ratio
14 shall not be less than 1:1.

15
16 **McShane moved** to approve amendments to 16.16.680(4) as recommended
17 by staff in the memo from Jeff Chalfant to the County Council dated July 26, 2005
18 regarding recommended amendments to the July 12, 2005 Council Natural
19 Resources Committee Draft Whatcom County Critical Areas Ordinance.

20
21 **Motion carried unanimously.**

22
23 Chalfant referenced section 16.16.680(F). Staff is responding to a concern
24 raised by the Building Industry Association. The amendment clarifies that offsite
25 mitigation can occur outside the same sub-basin or watershed where they end up
26 with the greatest ecological benefit and greatest likelihood of success. A mitigation
27 site inside a residential development may not be as successful as an offsite
28 mitigation bank.

29
30 Clancy stated there are now two criteria. The mitigation must provide the
31 greatest ecological benefit and also must have the greatest likelihood of success.

32
33 **McShane moved** to approve the amendment to section 16.16.680(F) as
34 recommended by staff in the memo from Jeff Chalfant to the County Council dated
35 July 26, 2005 regarding recommended amendments to the July 12, 2005 Council
36 Natural Resources Committee Draft Whatcom County Critical Areas Ordinance,

37
38 **Motion carried unanimously.**

39
40 **Brenner** referenced section 16.16.235(C)(1). She talked to Jeff Chalfant,
41 who said it is a policy decision. She **moved** to amend 16.16.235(C)(1), "The
42 landowner may cut hazard trees from within critical areas and buffers. ~~Such hazard~~
43 ~~trees may be cut prior to....following such action.~~" The Council has already said that
44 people can't cut trees that aren't hazardous without permission. People with hazard
45 trees and who have their own chainsaws won't think about calling the County about
46 removing the hazard tree. If the trees that are cut aren't a hazard, and they don't
47 contact the County, then they are violators. This language will create more

1 paperwork. It is purely complaint driven. Don't get into the minutia about who
2 should do what.

3
4 McShane stated he is against the motion. These trees are within a protected
5 area. The system will be complaint driven. He's concerned about what happens
6 when those complaints come in. When people remove hazard trees, it's too their
7 advantage to notify the technical administrator. Then, the technical administrator
8 is aware of the hazard and can respond to the complaints. It provides protection
9 for the people who remove the trees. Otherwise, there could be debates about
10 whether or not the trees were really hazardous.

11
12 Roy stated the technical administrator has a lot of responsibility. This is yet
13 another task for the technical administrator. It is something the bureaucracy can
14 let go of.

15
16 Brenner stated they can tell whether a tree was a hazard after it is cut down.

17
18 McShane stated they won't know if the rot doesn't go down all the way to the
19 stump.

20
21 Nelson stated he needs to know the definition of a hazard tree.

22
23 McShane stated there is a definition.

24
25 ***Motion to amend carried 6-1 with McShane opposed.***

26
27 Chalfant stated the amendment just passed doesn't achieve their intended
28 purpose. The section needs to be relocated to the exempt activity section.
29 Otherwise, it is still an activity allowed with notification.

30
31 ***Brenner moved*** to relocate section 16.16.235(C)(1) to the exempt section
32 of the code.

33
34 ***Motion carried unanimously.***

35
36 Brenner stated several people testified that the County would lose 40 to 50
37 percent of density in urban growth areas (UGA's). She asked if there is protection
38 in the UGA's to allow the density they want in the UGA's. She asked if this will end
39 up in expanded UGA's. Chalfant stated the type of wetland resources they find in
40 the UGA's are typically not the category I or category II systems. They are really
41 looking at lower grade systems that have smaller buffers. In addition, section
42 16.16.260(E) allows alternative mitigation strategies for planned unit developments
43 (PUD's) and major development permits (MDP's), which are the types of projects
44 that people have when trying to get the density in the urban growth areas.
45 Through the alternative mitigation strategy, people can deviate from the strict
46 standards of this ordinance if they can prove they have the fiscal and organization

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1 capacity to carry out that more robust mitigation plan and really achieve those
2 functions in the long term.

3
4 Brenner asked if this allows the County to work with cities on compatible
5 buffer sizes. Chalfant stated that can be achieved through memoranda of
6 understanding. Also, it will be negotiated with the Bellingham urban fringe plan.
7 There are different ways to achieve that compatibility.

8
9 Roy stated that regarding the supposed 40 percent loss of land use in UGA's
10 that would create sprawl, the first thing the Birch Bay Steering Committee did when
11 creating it's subarea plan was to work with County planners to delineate the
12 wetlands and plan population around the wetlands. It was part of the plan. The
13 population projects can be included in the UGA if the zoning is based on those
14 wetland areas.

15
16 Crawford stated that he hopes that is the case, as they begin to look at the
17 UGA's. However, from the 1995 reviews, there was testimony about how that isn't
18 the case. Don't discount the developers, who have a bad experience with this. It is
19 a real problem.

20
21 Nelson stated Councilmember Roy's work with the Birch Bay community will
22 become obsolete if this ordinance is passed.

23
24 Roy stated it will protect the shorelines and estuary more.

25
26 **Crawford moved** to amend section 16.16.630(D)(1) through (3) to make
27 the maximum buffers 50 feet for all categories and intensities. If the number is
28 less than 50 feet now, leave it at what it is. Staff can do a scrub on the
29 corresponding numbers and the rest of the sections that have formulas based on
30 these three tables.

31
32 McShane asked the best available science and rational to support
33 Councilmember Crawford's motion.

34
35 Crawford referred to a document from Skip Richards and stated the use of
36 diminishing returns analysis is either faulty or nonexistent. In evaluating buffer
37 effectiveness, the consultant examined levels of effectiveness alone, without regard
38 for the various costs to parcel owners, the cumulative impact of those costs on the
39 local economy and community as a whole, and the environment. The available
40 capital for remediation comes from that same economy. A proper diminishing
41 returns analysis takes cost-effectiveness into account, and can't possibly qualify as
42 the best available science. Until they quantify the diminishing returns correctly,
43 there is no reason to go over a 50-foot buffer.

44
45 McShane asked what diminishing returns have to do with best available
46 science.

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1 Roy stated they don't have anything to do with it.

2
3 ***Motion to amend failed 1-6 with Crawford in favor.***

4
5 ***Crawford moved*** to amend section 16.16.680(C)(2) to make all maximum
6 ratios greater than 3:1 to a ratio of 3:1.

7
8 Brenner stated the technical administrator now has flexibility to lower the
9 ratios if necessary. An engineer from Jones Engineer, Inc., said there is a 97
10 percent rate of failure of mitigation. These ratios are okay as they are.

11
12 ***Motion failed 1-6 with Crawford in favor.***

13
14 Brenner referenced section 16.16.290(C)(2). She is concerned about the
15 requirement for verbal notification. She is concerned about requiring that
16 something be verbal because it can end up being one person's word against
17 another person's word. People need to have a written notice. Chalfant stated the
18 amendment is a result of receiving a letter with recommended amendments.

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

21
22 Chalfant stated staff met with George Boggs from the Conservation District
23 and the Department of Ecology to discuss the letter of recommended amendments.
24 It was agreed that something along these lines was appropriate because it clarified
25 how the notice was supposed to be and how notice was to occur.

26
27 Brenner stated it should be clear, but they will have legal problems if
28 someone trespasses on property without notifying the property owners.

29
30 ***Roy*** stated she is more comfortable removing "verbal" and saying they will
31 provide reasonable notice. The technical administrator would know to make a note
32 about a phone call or send a letter. She ***moved*** to delete the word verbal from
33 section 16.16.290(C)(2).

34
35 ***Motion to amend carried 6-1 with McShane opposed.***

36
37 Nelson referenced section 16.16.275(C)(1). He asked if they've talked to the
38 fire marshal about how long it generally takes to get insurance approval. Chalfant
39 stated they have had a lot of experience with those particular issues. A key phrase
40 in that nonconforming use section is that the nonconforming use has to be
41 intentionally abandoned. That overriding concept still applies. It would be fine if
42 they want to reference intentional abandonment.

43
44 Nelson stated he doesn't know how they define intentional abandonment. If
45 a fire destroys his house, he will intentionally abandon it. Chalfant stated owners
46 can demonstrate that they are working with their insurance companies and that

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1 permits are in process, they've demonstrated that reconstruction process has
2 commenced within 18 months.

3
4 Brenner asked about transfers of development rights (TDR's). There isn't
5 anything that provides for administration of a TDR process to transfer development
6 rights from wetland areas to other areas. Chalfant stated that is correct. The
7 language says people can do it, but there is no mechanism for it to happen. There
8 aren't any criteria. The TDR section lays out that process. It's not referenced in
9 that section at all. The process belongs in the TDR section.

10
11 Roy asked if they are going to work on getting some language in Title 20.
12 Chalfant stated Mr. Holbrook would have to comment on that.

13
14 Roy stated they need to take care of that.

15
16 Brenner stated she feels a lot better. She will support this.

17
18 ***Motion to adopt as amended carried 5-2 with Crawford and Nelson***
19 ***opposed.***

20
21 Caskey-Schreiber stated the Council shouldn't have voted. It will have a
22 public hearing on the amended version in September.

23 24 25 **CONSENT AGENDA**

26
27 ***Nelson*** reported for the Finance and Administrative Services Committee and
28 ***moved*** to approve Consent Agenda items one through 22. There is a substitute
29 resolution for Consent Agenda item 16.

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

- 32
33 **1. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
34 **COLLECTIVE BARGAINING AGREEMENT BETWEEN WHATCOM COUNTY**
35 **AND THE INTERNATIONAL FEDERATION OF PROFESSIONAL AND**
36 **TECHNICAL ENGINEERS, LOCAL 17 (AB2005-291)**
37
38 **2. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
39 **PROFESSIONAL SERVICES CONTRACT BETWEEN WHATCOM COUNTY**
40 **HEALTH DEPARTMENT AND BIG BROTHERS BIG SISTERS OF**
41 **NORTHWEST WASHINGTON TO CONDUCT THE "SCHOOL BUDDIES**
42 **PROGRAM" FOR SUBSTANCE ABUSE PREVENTION, IN THE AMOUNT**
43 **OF \$22,500 (AB2005-292)**
44
45 **3. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
46 **PROFESSIONAL SERVICES CONTRACT BETWEEN WHATCOM COUNTY**
47 **AND THE BOYS & GIRLS CLUBS OF WHATCOM COUNTY TO PROVIDE**

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- 1 **SUBSTANCE ABUSE PREVENTION SERVICES FOR ADOLESCENTS, IN**
2 **THE AMOUNT OF \$17,500 (AB2005-293)**
3
- 4 **4. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
5 **CONTRACT AGREEMENT BETWEEN WHATCOM COUNTY AND**
6 **WHATCOM COUNSELING & PSYCHIATRIC CLINIC FOR 2060 REPAIR**
7 **AND RETENTION FUNDING FOR REPAIRS TO 9-UNIT APARTMENT**
8 **FACILITY AT 1604 I STREET, IN THE AMOUNT OF \$19,902 (AB2005-**
9 **294)**
- 10
- 11 **5. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
12 **CONTRACT RENEWAL BETWEEN WHATCOM COUNTY HEALTH**
13 **DEPARTMENT AND WASHINGTON STATE DEPT. OF SOCIAL AND**
14 **HEALTH SERVICES/DIVISION OF ALCOHOL SUBSTANCE ABUSE TO**
15 **PROVIDE SUBSTANCE PREVENTION AND TREATMENT, IN THE**
16 **AMOUNT OF \$3,480,258 (AB2005-295)**
17
- 18 **6. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
19 **CONTRACT AGREEMENT BETWEEN WHATCOM COUNTY HEALTH**
20 **DEPARTMENT AND THE DEPARTMENT OF SOCIAL AND HEALTH**
21 **SERVICES FOR PUBLIC HEALTH NURSES TO PROVIDE HOME VISITS**
22 **TO FAMILIES WITH BABIES AND YOUNG CHILDREN REFERRED BY**
23 **CPS THAT ARE AT RISK FOR CHILD ABUSE AND NEGLECT, IN THE**
24 **AMOUNT OF \$23,434 (AB2005-296)**
25
- 26 **7. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
27 **CONTRACT AGREEMENT BETWEEN WHATCOM COUNTY HEALTH**
28 **DEPARTMENT AND THE DEPARTMENT OF SOCIAL AND HEALTH**
29 **SERVICES TO PROVIDE FOR PUBLIC HEALTH NURSES TO DEVELOP A**
30 **HEALTH "PASSPORT" FOR CHILDREN RESIDING IN OUT-OF-HOME**
31 **CARE AS A TOOL FOR PROMOTING ONGOING HEALTH ASSESSMENTS**
32 **AND APPROPRIATE FOLLOW-UP AND TREATMENT SERVICES FOR THE**
33 **CHILD, IN THE AMOUNT OF \$25,398 (AB2005-297)**
34
- 35 **8. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
36 **CONTRACT AGREEMENT BETWEEN WHATCOM COUNTY AND MILLER'S**
37 **PAINING FOR MISCELLANEOUS PAINTING AT WHATCOM COUNTY**
38 **FACILITIES, IN THE AMOUNT OF \$60,000 (AB2005-298)**
39
- 40 **9. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO AN**
41 **AMENDMENT TO INTERLOCAL AGREEMENT BETWEEN WHATCOM**
42 **COUNTY AND NORTHWEST INDIAN COLLEGE FOR AMBIENT WATER**
43 **QUALITY MONITORING UNDER CENTENNIAL CLEAN WATER FUND**
44 **GRANT, IN THE AMOUNT OF \$57,435, FOR A TOTAL AMENDED**
45 **CONTRACT IN THE AMOUNT OF \$124,234 (AB2005-299)**
46

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- 1 **10. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
2 **GRANT AGREEMENT BETWEEN WHATCOM COUNTY AND**
3 **WASHINGTON STATE DEPARTMENT OF ECOLOGY FOR THE**
4 **NORTHWEST STRAITS: MRC YEAR 6 ADMINISTRATION AND ACTION**
5 **PROJECT, IN THE AMOUNT OF \$157,800 (AB2005-300)**
6
- 7 **11. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
8 **COOPERATIVE AGREEMENT BETWEEN WHATCOM COUNTY AND THE**
9 **ARMY CORPS OF ENGINEERS FOR LEVEE REHABILITATION WORK ON**
10 **THE VANDERPOL LEVEE LOCATED ON THE LEFT BANK OF THE**
11 **NOOKSACK RIVER NEAR LYNDEN, IN THE AMOUNT OF \$252,000,**
12 **WITH THE COUNTY'S COST SHARE IN THE AMOUNT OF \$50,400**
13 **(AB2005-301)**
14
- 15 **12. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
16 **COOPERATIVE AGREEMENT BETWEEN WHATCOM COUNTY AND THE**
17 **ARMY CORPS OF ENGINEERS FOR LEVEE REHABILITATION WORK ON**
18 **THE TWIN VIEW LEVEE LOCATED ON THE LEFT BANK OF THE**
19 **NOOKSACK RIVER NEAR EVERSON, IN THE AMOUNT OF \$275,000,**
20 **WITH THE COUNTY'S COST SHARE IN THE AMOUNT OF \$55,000**
21 **(AB2005-302)**
22
- 23 **13. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
24 **CONTRACT AGREEMENT BETWEEN WHATCOM COUNTY AND THE IBI**
25 **GROUP FOR A FEASIBILITY STUDY FOR OFF-BOAT TICKET SALES FOR**
26 **THE LUMMI ISLAND FERRY, IN THE AMOUNT OF \$19,280 (AB2005-**
27 **303)**
28
- 29 **14. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
30 **PROFESSIONAL SERVICES AGREEMENT BETWEEN WHATCOM COUNTY**
31 **AND RH2 ENGINEERING GROUP, INC. FOR LUMMI NATION**
32 **RESERVATION-WIDE TRAFFIC STUDY, IN THE AMOUNT OF \$75,000**
33 **(AB2005-304)**
34
- 35 **15. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A**
36 **PROFESSIONAL SERVICES AGREEMENT BETWEEN WHATCOM COUNTY**
37 **AND CH2M HILL, INC. FOR CABLE STREET STORMWATER OUTFALL**
38 **POLLUTANT REDUCTION OPPORTUNITIES, IN THE AMOUNT OF**
39 **\$75,000 (AB2005-305)**
40
- 41 **16. RESOLUTION AND REQUEST FOR AUTHORIZATION FOR THE**
42 **EXECUTIVE TO SUBMIT A GRANT APPLICATION TO THE**
43 **INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION FOR THE**
44 **PLANTATION RANGE TARGET CARRIER UPGRADE IN THE AMOUNT OF**
45 **\$85,000, WITH THE COUNTY'S SHARE OF THE PROJECT IN THE**
46 **AMOUNT OF \$42,500 (AB2005-306)**
47

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- 1 17. RESOLUTION ESTABLISHING COUNTY ROAD PROJECT NO. 900902
2 FOR THE LAKE WHATCOM BLVD. HIGH BRIDGE #115 REPLACEMENT,
3 AND REQUEST AUTHORIZATION FOR THE EXECUTIVE TO AWARD
4 CONTRACT TO MOWAT CONSTRUCTION CO. AS LOW BIDDER IN THE
5 AMOUNT OF \$4,525,465 (AB2005-307)
6
- 7 18. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO AWARD BID #05-
8 51 FOR SECURITY SERVICES AT GOOSEBERRY POINT PARKING AREA
9 TO THE LOW BIDDER, GREG RUSTAND INC. DBA SSP, IN THE
10 APPROXIMATE AMOUNT OF \$55,000 (AB2005-308)
11
- 12 19. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO AWARD BID #05-
13 58 FOR ANNUAL DRYDOCK REPAIRS AND MAINTENANCE TO THE
14 WHATCOM CHIEF FERRY TO THE LOW BIDDER, FOSS SHIPYARD, IN
15 THE AMOUNT OF \$155,697 (AB2005-309)
16
- 17 20. RESOLUTION IN THE MATTER OF THE SALE OF WHATCOM COUNTY
18 SURPLUS PROPERTY AND THE SETTING OF A DATE FOR PUBLIC
19 HEARING (AB2005-310)
20
- 21 21. REQUEST AUTHORIZATION FOR THE EXECUTIVE TO ENTER INTO A
22 SUB-RECIPIENT AGREEMENT BETWEEN THE WHATCOM COUNTY
23 SHERIFF'S OFFICE , DIVISION OF EMERGENCY MANAGEMENT, AND
24 THE CITY OF BELLINGHAM (AB2005-311)
25
- 26 22. RESOLUTION TO ELECT EXPENDITURE OF NATIONAL FOREST
27 RELATED SAFETY-NET PAYMENTS UNDER PL106-93 (AB2005-312)
28
29

30 OTHER ITEMS

- 31
- 32 1. ORDINANCE ESTABLISHING A HOMELESS HOUSING FUND (AB2005-
33 284)
34

35 *Nelson* reported for the Finance and Administrative Services Committee and
36 *moved* to adopt the ordinance.
37

38 *Motion carried unanimously.*
39

- 40 2. ORDINANCE ESTABLISHING A TRIAL COURT IMPROVEMENT FUND
41 (AB2005-285)
42

43 *Nelson* reported for the Finance and Administrative Services Committee and
44 *moved* to adopt the ordinance.
45

46 *Motion carried unanimously.*
47

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1 **3. ORDINANCE AMENDING THE 2005 WHATCOM COUNTY BUDGET,**
2 **SEVENTH REQUEST (AB2005-286)**

3
4 *Nelson* reported for the Finance and Administrative Services Committee and
5 *moved* to adopt the ordinance. There is a substitute page with updated costs.

6
7 *Motion to adopt the ordinance with substitute costs carried*
8 *unanimously.*

9
10 **4. COUNCIL REVIEW OF RECOMMENDED EMERGENCY MEDICAL**
11 **SERVICES PLAN AND POSSIBLE APPROVAL OF A RESOLUTION**
12 **RELATED TO IMPLEMENTATION (AB2005-155B)**

13
14 *Nelson* reported for the Finance and Administrative Services Committee and
15 *moved* to approve the substitute resolution.

16
17 Crawford stated he supports this plan conditionally. They need to continue
18 to look at how this funding mechanism is going to work. It is enabled by State
19 legislation that allows them to do this. He is still interested in looking at doing two-
20 tenths or three-tenths of one percent so the community can realistically get funding
21 for emergency medical service (EMS) out of the general fund. However, this has
22 been a product of considerable amount of negotiation and compromise by the City
23 of Bellingham, Whatcom County, fire districts, and the small cities. It's worthy of
24 the Council's support at this time.

25
26 Caskey-Schreiber stated this is necessary. They should approve this.
27 Otherwise, that service can't continue with supplemental funding.

28
29 Brenner stated she hopes the word can get out about how much the
30 administration did to reduce the necessary funding. This is not the same proposal
31 that was out last year. She hopes there is enough time to get the message out
32 about this lesser cost.

33
34 McShane stated the administration did a good job. This proposal will be less
35 for County government. There is a significant commitment from each of the fire
36 districts and small cities. This proposal is appealing because it involves them as
37 well.

38
39 Nelson stated the County will maintain its support at the current level.

40
41 *Motion carried unanimously.*

42
43 **5. PURCHASE AND SALE AGREEMENT BETWEEN WHATCOM COUNTY AND**
44 **ROBERT J. BRANDT FOR RIGHT-OF-WAY AND ASSOCIATED ROAD**
45 **IMPROVEMENTS (AB2005-313)**

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1 **Brenner** reported for the Public Works and Safety Committee and *moved* to
2 approve the agreement.

3
4 **Motion carried unanimously.**

5
6 **6. REPORT ON COMMITTEE DISCUSSION REGARDING A PROPOSED**
7 **PIONEER PARK MALL PROJECT IN FERNDALE (AB2005-287)**

8
9 Fleetwood reported for the Planning and Development Committee.

10
11 **Brenner moved** to approve the resolution opposing the proposed regional-
12 type mall in Ferndale.

13
14 **Brenner moved** to amend page three:

15
16 "NOW, THEREFORE, BE IT RESOLVED, that the Whatcom County
17 Council opposes the development of Ferndale's proposed regional-type
18 retail mall; ~~and,~~

19
20 ~~BE IT FURTHER RESOLVED, that the Whatcom County~~ because
21 ~~the~~ Council believes Ferndale's proposed regional-type retail mall ~~it~~ is
22 out of scale with the Ferndale community and is not in the best
23 interest of the Whatcom County community at large; and

24
25 BE IT FINALLY **FURTHER** RESOLVED, the County Council believes
26 only through collaborative efforts with other jurisdictions will Ferndale
27 be able to avoid creating negative county-wide impacts."

28
29 Roy stated it's a regional issue. The development is out of scale with the
30 community. The transportation issues are horrendous. She is not comfortable with
31 the first resolved statement. She agrees that they need to work together
32 collaboratively with Ferndale. At one point in the resolution, they're saying they're
33 totally opposed, and next they're saying they will work collaboratively. Stick to the
34 issues. She hasn't even seen the application for the development, so she can't say
35 yet that she is absolutely opposed.

36
37 **McShane** stated he is comfortable with the second resolved statement. It
38 really lays out their concern. He *suggested a friendly amendment* to add
39 another resolved statement, "BE IT FINALLY RESOLVED, ~~the county council believes~~
40 ~~only through collaborative efforts with other jurisdictions will Ferndale be able to~~
41 ~~avoid creating negative countywide impacts~~ that the Whatcom County Council
42 supports a very thorough review of traffic impacts to County roads, state highway
43 systems, and transportation systems, and coordination of critical area and
44 protection of natural resources."

45
46 **Brenner** stated the project has been touted as a regional-type mall to serve
47 all of lower British Columbia to Skagit County. They used the term "regional-type"

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1 mall. The question is whether this type of mall is in the community's interest. She
2 **amended her motion:**

3
4 "NOW, THEREFORE, BE IT RESOLVED, that the Whatcom County
5 Council ~~opposes the development of~~ believes Ferndale's proposed
6 regional-type retail mall; ~~and,~~

7
8 ~~BE IT FURTHER RESOLVED, that the Whatcom County Council~~
9 ~~believes Ferndale's proposed regional-type retail mall~~ is out of scale
10 with the Ferndale community and is not in the best interest of the
11 Whatcom County community at large; and

12
13 BE IT ~~FINALLY~~ FURTHER RESOLVED, the County Council believes
14 only through collaborative efforts with other jurisdictions will Ferndale
15 be able to avoid creating negative county-wide impacts."

16
17 *(Clerk's Note: This motion was not voted on.)*

18
19 **Roy moved** to remove the first resolved statement.

20
21 Fleetwood stated he would support Councilmember Roy's motion. At this
22 time, he is uncomfortable opposing the development. However, this is something
23 that will come to the County Council formally. The County Council will have an
24 opportunity to analyze the project, which it has not yet done at this point in time.
25 At this time, he is more comfortable expressing the concerns they've expressed,
26 with the deletion of outright opposition. Later, after thorough review, it is outright
27 opposition, the Council can express that with a strengthened resolution at that
28 time.

29
30 Brenner stated she is concerned that the councilmembers believe they
31 wouldn't support the concept of a regional-type mall, but will wait for the plan. She
32 hoped this resolution will have some effect on the Ferndale City Council. Once the
33 plan is accepted, the plan is vested. The County Council doesn't have much direct
34 authority. This is a statement that they don't approve of any regional malls in
35 Whatcom County. They don't have to specify Ferndale's project. It's very
36 important at this point to make a statement that is clear. The Council should say
37 something now, before the project is vested.

38
39 Nelson stated the process for discussion is through the State Environmental
40 Protection Act (SEPA) process, which would address things such as habitat
41 protection, traffic impacts, and mitigation. This is the process for expressing the
42 concept of whether or not they want a regional mall. He is not opposed to Ferndale
43 having a mall. However, the County needs to be more involved, especially when it
44 is located on the edge of the urban growth area, which will impact county traffic.
45 He questions whether more malls in the Whatcom County region are necessary.
46 Don't build up businesses for Canada. He questions whether any dollars will be
47 available after the 2010 Olympics. The project is probably intended to benefit from

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1 the traffic generated by the 2010 Olympics. He questions what will happen to the
2 mall after that event. There needs to be that discussion to avoid adverse impacts
3 to Whatcom County and Ferndale.
4

5 Fleetwood stated this resolution isn't going to influence the process of
6 whether or not the project will be vested. That argument is a moot point. It's a
7 question of whether they want to state outright opposition. There is a question of
8 fairness when they haven't seen any application or supporting documents. He is
9 comfortable saying something softer now, and stronger at a later time.
10

11 **Brenner** stated the Council hasn't seen anything because neither the
12 developer nor the Ferndale City Council has shown anything to the County Council.
13 She went to the meetings and saw the proposal. She asked the Governor about
14 State transportation dollars being used for projects that don't have community
15 support. The Governor said that she would not support using State transportation
16 dollars on a proposal that isn't integrated with the community at-large. She
17 **suggested a friendly amendment** to Councilmember Roy's motion to remove the
18 reference to Ferndale instead of deleting the entire statement.
19

20 **Roy accepted** the friendly amendment and restated her motion, "NOW,
21 THEREFORE, BE IT RESOLVED, that the Whatcom County Council opposes the
22 development of Ferndale's ~~proposed~~ regional-type retail mall; and...." She is
23 uncomfortable with the in-your-face attitude toward the City of Ferndale. She
24 would rather just say the Council is opposed to a mall.
25

26 Crawford stated he has no idea why the Whatcom County Council would be
27 opposed to a mall.
28

29 Caskey-Schreiber stated the committee had an in-depth discussion about it.
30 A question is who is looking out for the traffic pattern of Interstate 5. There is a
31 bottleneck of traffic everywhere there is a large-scale mall. That is likely to happen
32 if this mall were developed. The State Department of Transportation can't ask for
33 impact fees from the developer. It's not likely that any developer will invest in the
34 infrastructure needed for this type of thing.
35

36 Her bigger concern is that a large regional mall brings in large, corporate
37 stores. That will close down Mom and Pop businesses in the county. She asked
38 how the Ferndale downtown and Bellingham downtown stores will compete. They
39 don't have a chance. All the stores in the Alderwood Mall are corporate stores.
40 Those profits go elsewhere. Those are enough reasons for alarm. Traffic would
41 affect the County roads. The project may impact Ferndale's sales tax revenue, but
42 at the expense of lost jobs and a new retail service sector.
43

44 Brenner stated the Council worked on the Comprehensive Plan to go an
45 entirely different direction, which is to have in-scale, community-sized commercial
46 areas for small communities. Instead, developers should restore the downtown

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1 area of Ferndale. It would be a boon for everyone. Developers aren't doing it
2 because they want to draw people in from other areas.
3

4 McShane stated focus on the issue, which is captured in the second resolved
5 statement. They can make the point softly. He is uncomfortable saying that
6 regional malls are off the table. He would rather strike the entire first resolved
7 statement. They already have a regional mall that may need to expand at some
8 point, or there may be a regional mall in a downtown core. The concern is about
9 regional malls in this area.

10
11 Brenner stated this is about their vision. She disagrees that a regional mall
12 has a place. They're trying to make sure they are dealing with communities with
13 retail at scale.
14

15 Fleetwood stated the problem is that the Council is pretending that it knows
16 precisely what all regional-type retail malls are. It's a mistake to make a blanket
17 statement when they don't know what someone's concept of a regional-type mall
18 might be. Perhaps someone might have a notion of a retail mall that's entirely
19 different from what they're thinking of today. Making a blanket statement that
20 they're opposed to all conceptions of regional-type retail malls is a mistake. The
21 second resolved statement is a true statement. He can live with that.
22

23 ***Motion to approve Councilmember Roy's amendment failed 2-5 with***
24 ***Brenner and Roy in favor.***

25 ***Fleetwood moved*** to delete the first resolved statement.
26
27

28 ***Motion carried 4-3 with Roy, Nelson, and Brenner opposed.***
29

30 ***McShane moved*** to amend the last resolved statement, "BE IT FINALLY
31 RESOLVED, ~~the county council believes only through collaborative efforts with other~~
32 ~~jurisdictions will Ferndale be able to avoid creating negative countywide impacts~~
33 that the Whatcom County Council supports a very thorough review of traffic
34 impacts to County roads, state highway systems, and transportation systems, and
35 the coordination of critical area evaluation and the protection of natural resources."
36 The SEPA process of evaluating the impacts of the project is where the County has
37 some potential authority, if the City of Ferndale approves the project.
38

39 Brenner asked if Councilmember McShane wanted to keep the last resolved
40 statement, and add his language as a new resolved statement to be placed at the
41 end.
42

43 ***McShane*** stated he did. The ***motion*** is "BE IT FINALLY **FURTHER**
44 RESOLVED, the county council believes only through collaborative efforts with other
45 jurisdictions will Ferndale be able to avoid creating negative countywide impacts;
46 **and,**
47

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1 BE IT FINALLY RESOLVED, that the Whatcom County Council supports a very
2 thorough review of traffic impacts to County roads, state highway systems, and
3 transportation systems, and the coordination of critical area evaluation and the
4 protection of natural resources."

5
6 *Motion carried unanimously.*

7
8 *Motion to approve the resolution as amended carried 6-1 with*
9 *Crawford opposed.*

10
11 **7. 2005 CHARTER REVIEW COMMISSION PROPOSED AMENDMENTS –**
12 **OFFICIAL FILING WITH THE COUNTY AUDITOR (AB2005-289)**

13
14 *Crawford moved* to forward the amendments to the Auditor to be included
15 on the November general election ballot.

16
17 *Motion carried unanimously.*

18
19 Crawford stated he is opposed to charter amendment five. He had suggested
20 some language that would more accurately reflect what it is that the Council does
21 in terms of meetings. Somehow, it got turned into the language as proposed. He
22 thinks the amendment as it is is ineffective in terms of saying this is what should be
23 in the charter to promote good government.

24
25 Dana Brown-Davis, Clerk of the Council, stated (*inaudible*).

26
27 Brenner stated the Council meets much more often than 22 times per year.

28
29
30 **INTRODUCTION ITEMS**

31
32 *Brenner moved* to accept the Introduction Items.

33
34 Nelson stated the motion includes the amended critical areas ordinance.

35
36 *Motion carried unanimously.*

37
38 **1. ORDINANCE AMENDING THE 2005 WHATCOM COUNTY BUDGET,**
39 **REQUEST #8 (AB2005-314)**

40
41 **2. ORDINANCE DECLARING INTENT TO ACCEPT A NEW SECTION OF**
42 **DELTA LINE ROAD AS A WHATCOM COUNTY ROAD (AB2005-315)**

43
44 **3. RESOLUTION AUTHORIZING THE SALE OF WHATCOM COUNTY**
45 **SURPLUS PROPERTY (AB2005-310A)**

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

1 4. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY ZONING
2 CODE, CHAPTER 20.80.800 – LIVESTOCK REGULATIONS (AB2005-
3 316)

4
5 5. ORDINANCE AMENDING WHATCOM COUNTY CODE 20.71 – WATER
6 PROTECTION OVERLAY DISTRICT (ON AN INTERIM BASIS), TO
7 PROVIDE ADDITIONAL REGULATORY PROTECTION FOR THE LAKE
8 WHATCOM WATERSHED (AB2005-072C)

9
10 *(Note from Clerk of the Council on Introduction Item 5: "...consider it*
11 *introduced, as they do talk about the need to introduce the new version...during the*
12 *discussion following the public hearing on this item.")*

13
14
15 **OTHER BUSINESS**

16
17 Crawford stated the Council didn't adopt the critical areas ordinance tonight,
18 but the Council is deeply indebted to Mr. Chalfant and the staff for his work.

19
20 Fleetwood stated Mr. Chalfant's fluency, competency, and knowledge in this
21 subject matter is impressive.

22
23
24 **REPORTS AND OTHER ITEMS FROM COUNCILMEMBERS**

25
26 There were no reports or other items.

27
28
29 **ADJOURN**

30
31 The meeting adjourned at 11:49 p.m.

32
33
34 _____
35 Jill Nixon, Minutes Transcription

36
37 The Council approved these minutes on September 13, 2005.

38
39 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

40
41
42
43
44 _____
45 Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair