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WHATCOM COUNTY COUNCIL
Special Natural Resources Committee

July 7, 2005

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

Present:

Seth Fleetwood
Dan McShane

Absent:

None

Also Present:

Barbara Brenner

1. ORDINANCE AMENDING THE OFFICIAL WHATCOM COUNTY CRITICAL AREAS ORDINANCE, WCC CHAPTER 16.16 – CRITICAL AREAS AND ASSOCIATED PROVISIONS OF WCC TITLE 2, CHAPTER 2.33, AND WCC TITLE 20 (AB2005-226)

David Davidson, City of Sumas City Administrator, submitted information (*on file*). The City of Sumas supports this draft of the critical areas ordinance (CAO). This version satisfies his concerns regarding wellhead protection areas.

Jeff Chalfant, Senior Planner, submitted a memo to the Natural Resources Committee dated June 28, 2005 regarding the conservation program on agricultural lands (CPAL).

(Clerk's Note: Due to a disruption in the sound system, approximately three minutes of the meeting were not audiotaped.)

George Boggs, Conservation District, stated that in the 1997 CAO, the concept was that agriculture was a built-out activity, and that other activities immediately adjacent to and farther away from critical areas could have impacts. There are a number of critical areas of consequence, including groundwater recharge areas, wetlands, and fish-bearing streams. One doesn't have to near a fish-bearing stream to have an impact on it. Drainage is essential for Whatcom County farmers. There are about 14,000 acres that are artificially drained with tile. There are many ditches along side the roads that carry water and ditches that feed into that drainage system. There are as much as 50,000 acres that are artificially drained. They may not be fish-bearing, but they can be avenues of transport of sediment, nutrients, and bacteria that can impact critical areas. In 1997, the concept was to protect critical areas with specified buffers, which aren't the solution in all instances.

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1 Farmers were allowed relaxation of those buffers if they adopted a farm plan
2 to deal with potential impacts from agricultural activities. In the past several years,
3 they learned that there are more commercial and non-commercial agricultural
4 activities in Whatcom County than the Conservation District can service. It's too
5 expensive to give every operation a farm plan. Funding wasn't consistent to
6 provide staffing and resources to deliver all the farm plans requested. Citizens
7 were upset that this option was illusionary.

8
9 To accommodate the requests, they reviewed the workload. They divided
10 the workload into three groups, based on the potential impact on the agricultural
11 activity due to the magnitude of the operation: low impact, moderate impact, and
12 high impact. Hobby farms are low impact operations that deal with mud, manure,
13 managed pasture, and possibly a riparian area. With hobby farms, very rote
14 prescriptions are typically applied through a standard conservation plan that is done
15 with a checklist. It is straightforward and accessible. The farmer with less than
16 one animal unit per acre can pick up a packet and work through it. The
17 Conservation District can host workshops for farmers throughout the year. The
18 solutions will be straightforward and readily available. The level of one animal unit
19 per acre is a safe level for nutrient loading. It is a level most folks seem to
20 understand.

21
22 On the other end, there are high impact activities. Both the federal and
23 State governments monitor and manage those sorts of operations. The dairy
24 Nutrient Management Act has been extended to apply to all commercial livestock
25 operations. If folks must have a dairy nutrient management plan or a permit under
26 the National Pollution Discharge Elimination System (NPDES), it will be accepted for
27 the local process.

28
29 The third category is the moderate impact activities. The new proposal is to
30 have a self-assessment workbook with a series of questions to determine
31 compliance. Workshops will aid the producer to go through the self-assessment.
32 The producer may hire a consultant if they want. The individual with a farm that
33 has a potential impact is the individual who will do the assessment and come up
34 with solutions.

35
36 The Conservation District doesn't have the resources to do all plans. It will
37 give farmers the ability to develop their own plans, especially the smaller farms.
38 They will take advantage of planners in the local private industry. Therefore, they
39 will be able to achieve higher protection of critical areas.

40
41 Roy asked if the operation with a moderate potential impact has a level of
42 activity over one animal unit per acre. Boggs stated that if the operation has
43 livestock, the level is over one animal unit per acre. The operation is also not
44 subject to the Dairy Nutrient Management Act. It includes the crop farmers as well.

45
46 Roy stated the workshops are a great approach. She asked if the
47 Conservation District will work with anyone on the workshops and if other agencies

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1 are involved. Boggs stated the Conservation District wants to work with the County
2 Planning and Development Services Department, which is now the responsible
3 entity for review and enforcement of these plans. The County will be the lead
4 agency. The Conservation District will provide expertise on certain status reviews
5 and workshops. The Conservation District is putting together the workbook.
6

7 Roy asked if this is going to impact staff. Chalfant stated the department can
8 rely on consultants to help provide services to folks, for a fee. If staff provides the
9 service as a courtesy to property owners, it will affect the staff level.

10 Roy asked the fee to the individuals. Chalfant stated he believes the fee for
11 a plan is less than \$1,000.
12

13
14 *(Clerk's Note: The committee took a ten-minute break.)*
15

16 Boggs stated there is an opportunity cost associated with respecting buffers
17 as the only solution. That adds up to acres of land not used around the county.
18 Landowners lose the ability to farm that area. There is a cost associated with that
19 loss. However, the difference between an agricultural activity and a residential use
20 is that a residential structure doesn't have a continuing potential for pollution like
21 an agricultural activity does. Therefore, the agricultural users need to incorporate
22 annual, continual protection all year long. That is something that they need to do,
23 as a business, to meet the critical area requirements.
24

25 The Conservation Program on Agricultural Lands (CPAL) provides flexibility.
26 If the farmers are good stewards, they can make a business judgment on providing
27 protection. The County is offering that flexibility of alternatives. There are costs to
28 CPAL. There must be inspectors who are conversant in planning and best
29 management practices. They will need to provide some community education. The
30 Conservation District typically gets resources from the Conservation Commission.
31

32 Typically the major consumers of the State's budget are the social programs
33 and education. There is just a little left for everything else. Natural resources
34 consumes only seven percent of the State budget. The State of Washington hasn't
35 addressed the growth in education and social services at a level of 12 percent per
36 year. Given the constitutional cap on increasing revenue sources, revenue grows at
37 only six percent. Therefore, there is continuing pressure on natural resources
38 services. The County needs to find a long-term solution for funding environmental
39 sources. The district will continue to have some resources. The minimum they can
40 do is have regulators to make sure people comply with the plans. They don't have
41 to have an educational program or other things. However, have a discussion on
42 whether the County feels this is important.
43

44 Fleetwood referenced section 16.16.290(C)(5) regarding the confidentiality of
45 the conservation plan contents. Boggs stated that in dealing with folks, they want
46 their business matters kept private. Certain aspects should be confidential. Beef
47 operators are concerned about others knowing how they feed. Confidentiality cuts

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1 the balance between a need to know there is a plan and that it's being followed.
2 Balance the need for oversight with privacy rights. Confidentiality rights are
3 paramount statewide. The County is only retrieving summary information about
4 location of the operation and best management practices (BMP's), as opposed to
5 the entire conservation plan. When the Conservation District does inventories for
6 complex operations, they go through everything, much of which isn't germane to
7 protection of critical areas.

8
9 Roy asked if the Agricultural Advisory Committee has been involved in this
10 process. Chalfant stated it reviewed this section of the code. The committee
11 supports it as it's written.

12
13 McShane stated the Natural Resources Committee passed an amendment
14 that he voted against, on section 16.16.270(A)(2)(a). Boggs stated agriculture
15 should be identified as a reasonable use. In fact, they are at odds with the notion
16 that the only reasonable use of a property is to build a dwelling. That notion is
17 fostering the conversion of land from agriculture to residential use. Farmland
18 should stay farmland. If they take the use out of agricultural use, the agricultural
19 land will be converted to residential. Agriculture should be a reasonable use as an
20 option.

21
22 Chalfant stated that taking out the term "including agricultural use" doesn't
23 mean agricultural isn't a reasonable use, it just doesn't note agricultural use
24 specifically. They don't specifically call out single-family residential use either.

25
26 McShane stated he liked that term because it's a philosophical viewpoint that
27 agriculture is important, and they should give deferential treatment to agriculture.
28 Agricultural use might cause harm to the ecosystem, but it's also significant to
29 keeping them alive.

30
31 Boggs stated Lewis County recently concluded that no agricultural lands have
32 long-term significance due to continuous erosion. That notion was struck down on
33 appeal. However, he can foresee that the notion that agricultural use is not an
34 economic use would be argued for before the Hearing Examiner. Give agricultural
35 use the dignity of being identified specifically. Recognize it has to be something
36 that has been ongoing for five years, or else it terminates. Calling it out in this
37 section would provide greater protection for the continuation of agriculture.

38
39 Fleetwood stated this section doesn't afford greater or less protection, as far
40 as the force of law goes. Boggs stated that if the term isn't included, people will
41 argue that agricultural use isn't an economic use. By stating it, agricultural use is
42 something that should be respected. An agricultural use is something that must be
43 ongoing.

44
45 ***Fleetwood moved*** to amend subsection .270(A)(2)(a), "...reasonable
46 economic use, including agricultural use or continuation of legal non-conforming
47 uses;."

1
2 ***Motion carried unanimously.***
3

4 ***McShane moved*** to accept the suggested changes in the memo from Mr.
5 Chalfant to the Natural Resources Committee, through Hal Hart, dated June 28,
6 2005 regarding the conservation program on agricultural lands (CPAL) (*on file*).
7 Amend 16.16.290 and the definition of "ongoing agriculture" in Article 8.
8

9 Roy stated the major reasons for adopting this is Mr. Boggs's explanation and
10 also the fact that the Agricultural Advisory Committee looked at this. She doesn't
11 want to pass something that makes the entire agricultural community upset. Mr.
12 Boggs and the agricultural community know this best. If this works better and
13 provides more education, people will have flexibility to be in charge of their own
14 plans. Through workshops, people will become conscientious stewards of the land.
15

16 ***Motion carried unanimously.***
17

18 Chalfant stated the State Department of Ecology (Ecology) expressed issues
19 to the Council in a letter to the Council Chair dated May 24, 2005 (*on file*). Staff
20 addressed all those issues except three items in appendix A. The first item is a
21 change to appendix A, page A-3, section two, item one, to remove drainage
22 improvement districts as a moderate impact operation. Staff doesn't agree. It
23 allows multiple avenues for farm operators to achieve drainage maintenance
24 activities on their property. It also works nicely with programmatic hydraulic
25 project approvals for the North County. Leave the language as it is.
26

27 The second issue is a change to appendix A, page A-4, section two, item six,
28 to remove reference to a federal manual. Ecology is concerned about reference to
29 the Natural Resource Conservation Service (NRCS) provisions for dealing with
30 wetlands. Ecology feels this is a Growth Management Act (GMA) implementation,
31 and the GMA definition of wetlands should be used. The fundamental issue is
32 whether or not the ordinance recognizes prior converted croplands as actual
33 wetlands or as applicable for ongoing agricultural activities.
34

35 Margaret Clancy, Parametrix, stated the federal agencies do not regulate
36 prior converted croplands as wetlands. The State regulations, including the GMA,
37 do not exempt or except prior converted cropland. Ecology suggests that, because
38 the County is implementing State law through the CAO regulations, the ordinance
39 should keep the State definition of wetlands instead of referencing the NRCS
40 definition.
41

42 McShane stated this appendix applies to agricultural operations only. He's
43 fine with the way it is.
44

45 Boggs stated recognize that this section only applies to active agricultural
46 activities. The implication is that the county will lose thousands of acres of
47 farmland if the ordinance goes with the State definition. The State definition should

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1 reconcile with actual farmlands. Federal regulations has said since 1975 that the
2 farm can continue to operate unless it stops for five years. If that happens, the
3 farm area will go back to a wetland designation. An ongoing challenge for
4 agricultural activities is that it is as built-out as the City of Bellingham and the Port.
5 However, the regulations don't ask the City and Port to undo what's been done.
6 Saying an area can go back to wetland designation if left alone could apply to
7 everyone. Go with the NRCS designation.

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

10
11 Chalfant stated the last issue with Ecology is to appendix A, page A-4,
12 section two, item seven, regarding flood proofing of all stored chemicals as a
13 requirement of the farm plan. The concern is that the conservation program should
14 address storage of these types of chemicals, which this section isn't concerned with.
15 Strike the term "storage and." The farm plans would address storage of materials,
16 as needed. There could be additional oversight of storage.

17
18 Boggs stated the farmstead map would identify a storage shed, which would
19 aid in emergency response.

20
21 **McShane moved** to amend Appendix A(2)(7), "Custom farm conservation
22 plans need not address the application, mixing, ~~storage~~ and/or loading of
23 insecticides...."

24
25 **Motion carried unanimously.**

26
27 Chalfant referenced section 16.16.350(C)(1). The issue was the desire to
28 allow other qualified officials to weigh in on the development of a time travel
29 analysis for a lahar hazard when locating special occupancy structures. To address
30 the concern, amend the section, "professional **or state or federal agency** the
31 amount ..."

32
33 **McShane moved** to amend 16.61.350(C)(1)), "professional **or state or**
34 **federal agency** the amount of time that is..."

35
36 Fleetwood asked how to mitigate against risks in the context of something
37 like Mt. Saint Helens.

38
39 McShane stated the section deals with lahars. Subsection (C) is specific to
40 the special occupancy structures of 1,000 people. That facility must have a plan for
41 getting 1,000 people out of the hazard area. The lahar may flow down the
42 Nooksack River from Mt. Baker.

43
44 Clancy stated the preamble to 16.16.350 is standard language in each
45 section. It's a statement of intent. The only reasonable measures are to provide
46 for evacuation and specific mitigation for locating certain types of facilities.

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1 ***Motion carried unanimously.***
2

3 Roy stated structures holding 1,000 or more people would not include any
4 school. She asked if they are assuming they won't build a school in that area. The
5 occupancy threshold seems high. There should be evacuation plans for any
6 building with a couple of hundred people.
7

8 Brenner asked why they would not specify schools. She asked if a school is
9 something they really want in that area. Clancy stated section 16.16.320 includes
10 the general standards that apply to all geologically hazard areas. Subsection
11 .320(B) includes schools and emergency response facilities. Those are not to be
12 located in geological hazard areas.
13

14 Roy asked the reason for setting the threshold at 1,000 people. Clancy
15 stated that threshold may be part of the definition of a special occupancy structure.
16

17 Roy stated the regulation is to hire someone to do an analysis for an
18 evacuation plan. She asked if that is too much of a burden for a structure for an
19 individual or family. Clancy stated typically those travel time analyses are done by
20 an agency such as the U.S. Geological Survey (USGS), which has done studies for
21 Mt. Rainier and Mt. Saint Helens. She doesn't know if the study has been done yet
22 for Mt. Baker. The travel time study is an elaborate study. It may be some time
23 before that information is readily available.
24

25 ***McShane*** stated that might be the case. If that's the case, the facility needs
26 to find another location. He is concerned with subsection (B). He is concerned that
27 people would argue there are no feasible alternatives, and structures could be
28 allowed in those areas because the alternatives are too expensive. That's an
29 acceptable argument for something like locating a school. However, there should
30 be a plan to get out of harms way. Until the time travel study is done, think
31 carefully about allowing significant structures and large populations being put in a
32 risky area, with no way out. He ***moved*** to amend 16.16.350(C), "Special
33 occupancy structures of ~~4,000~~ **50** or more persons...."
34

35 Fleetwood stated the community hall in Welcome would have to comply.
36

37 Brenner stated there is not a definition of special occupancy structure. She
38 asked why it's called that. Chalfant stated that title is a remnant of the definition of
39 a critical facility, which was changed due to changes in the international building
40 code (IBC).
41

42 Clancy stated they intended it to be a subset of critical facilities, which they
43 may want to reference.
44

45 McShane stated a structure like the Welcome Grange would need an
46 evacuation plan, which may be as simple as walking up the hill.
47

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1 **Roy** stated she is concerned that people in the hazard areas be aware and
2 have a simple plan for emergencies. She **suggested a friendly amendment** to
3 amend 16.16.350(C), "Special ~~o~~Occupancy structures of 1,000 50 or more
4 persons...."

5
6 **McShane accepted** the friendly amendment.
7

8 **Fleetwood** stated it's vague, as written. The language doesn't say if the
9 structure must hold or must simply have the potential to hold the occupants. He
10 **suggested a friendly amendment** to amend 16.16.350(C), "Special ~~o~~Occupancy
11 structures with a potential to hold of 1,000 50 or more persons...."

12
13 **McShane accepted** the friendly amendment.
14

15 Brenner stated a house has the potential to hold 50 people.
16

17 Fleetwood stated that is his point. The language is vague.
18

19 Roy stated the intent is that the building is expected to hold 50 or more
20 people. Use some common sense.
21

22 **Fleetwood withdrew his friendly amendment.**
23

24 Chalfant stated a solution is to refer to the definition of critical facilities in
25 Article 8. Part A of the definition clearly defines what those structures are.
26

27 **McShane amended his motion** to amend 16.16.350(C), "Special
28 occupancy structures Critical facilities, as defined in Article 8, the definition of
29 critical facilities, subsection (A), of 1,000 50 or more persons...."
30

31 **Motion carried unanimously.**
32

33 Chalfant stated he recommends amending 16.16.350(C), "...or more persons
34 and covered assemblies as defined in WCC 16.16.800(A) may be permitted..." That
35 term is also a remnant of the old critical facilities definition.
36

37 **Roy moved** to amend 16.16.350(C), "...or more persons and covered
38 assemblies as defined in WCC 16.16.800(A) may be permitted..."
39

40 **Motion carried unanimously.**
41

42 Fleetwood asked if people in the geological sciences make predictions about
43 when a lahar may happen.
44

45 McShane stated there is speculation. The time interval is long. The odds of
46 a lahar happening in this lifetime is small, but the consequences are high. They can
47 avoid putting a lot of people at risk some time in the future.

1
2 Fleetwood asked definition of "active."

3
4 McShane stated an active area has had any activity in the past 10,000 years,
5 post ice age.

6
7 Chalfant stated staff has a presentation on channel migration zones.

8
9 Paul Pittman, Senior Planner, read the presentation on the methodologies
10 used on and status of work done on channel migration zones. The Ecology
11 guidelines help communities delineate channel migration zones. The guidelines is a
12 compilation of the historic migration area, the erosion hazard zone, evulsion hazard
13 area, and the detached migration zone. He showed maps of the migration zone.
14 Some erosion and evulsion has taken the channel migration zone outside the
15 historic area. At the confluence of the North Fork and South Fork, this channel has
16 historically been all over the place.

17
18 Staff looked at the geology of areas and assigned different erosion values to
19 different geologic materials. They anticipated what a potential erosion hazard zone
20 might look like. He indicated the areas on a map of the North Fork. Areas that
21 have features such as road features were excluded from the channel migration
22 zone.

23
24 The Public Works Department, Planning Department, Nooksack Tribe, and
25 Lummi Natural Resources have worked collaboratively to come up with erosion
26 hazard zones and evulsion hazard zones. The historic migration zones are already
27 mapped. They started on the North Fork of the Nooksack River. They've gone as
28 far as they can with the technical information. They are still working on the
29 detached migration zone. They've done preliminary mapping of the middle fork and
30 south fork of the Nooksack River. So far, only minimal effort has gone into the
31 upper and lower portions of the main stem of the river.

32
33 Paula Cooper, River and Flood Division Manager, stated the Flood Control
34 Zone District Advisory Committee has worked through the North Fork example and
35 come up with preliminary boundaries. They wanted input from the community
36 since there isn't a representative from the North Fork community on the advisory
37 committee. The advisory committee wanted community input that may exist on
38 any potential evulsion pathways that cross infrastructure. She asked if the
39 councilmembers were comfortable with gathering that information from the
40 community.

41
42 Roy stated it's better to get that input up front. Cooper stated the advisory
43 committee will take in that input, and put together a formal recommendation for
44 boundaries.

45
46 Chalfant stated that if the Council adopted an interim channel migration
47 zone, it could be this, as shown on the map, or some version of this map. They

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1 must come up with the final channel migration zone after going through a public
2 process.

3
4 McShane stated go with the current language. The Council can choose to
5 adopt an interim channel migration zone, separate from this CAO process.

6
7 Roy asked if the recommendations were developed independent of the
8 information on the channel migration zone. Chalfant stated the current CAO
9 doesn't address erosion hazard areas. This section is all new. There were areas in
10 the existing CAO that had some overlap on this issue. This ordinance clarifies the
11 County's responsibilities for addressing erosion hazard areas.

12
13 Fleetwood asked the reason for including erosion hazard areas in the update.
14 Chalfant stated the Growth Management Act requires the County to address erosion
15 hazard areas.

16
17 **McShane moved** to amend 16.16.350(C)(2), "...professional **or state or**
18 **federal agency** showing..."

19
20 ***Motion carried unanimously.***

21
22 McShane referenced 16.16.320(C). He asked whether this prohibits people
23 from subdividing in an alluvial fan hazard area. Chalfant stated it does, unless
24 there are buildable areas outside the hazard area.

25
26 McShane asked the implication of this section and how much discussion
27 occurred. People in Acme will not be able to subdivide any land at all. Clancy
28 stated the intent of this provisions, which is in the existing regulations, is to try to
29 avoid creating new lots of land that are unbuildable because of critical area
30 limitations.

31
32 McShane stated there are also designated flood hazard areas on alluvial fans.
33 There is no place where various hazards associated with alluvial fans are called out.
34 He asked if people can say they will either alter the hazard so it no longer exists or
35 will mitigate for it, the way this language is written. Chalfant stated that language
36 doesn't exist.

37
38 McShane stated it may not be a good idea to develop in these areas at all
39 because ongoing maintenance is required, even when there is mitigation.

40
41 *(Clerk's Note: End of tape one, side B.)*

42
43 Clancy stated there are provisions to allow building in certain areas if owners
44 demonstrate they've mitigated the hazard. Subsection (C) just prevents the
45 creation of an unbuildable lot. The intent is not to apply subsection (C) to lots with
46 sufficient buildable areas.

47

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1 McShane stated they can mitigate in the alluvial fan hazard zones.

2
3 Brenner asked what that mitigation would be. If the hazard area can be
4 mitigated, building should be allowed.

5
6 McShane stated his concern is just with alluvial fans.

7
8 Roy asked if some alluvial fans are more hazardous than others.

9
10 McShane stated all fans are different, and hazards differ based on where
11 people are located on the fan.

12
13 Clancy stated the ordinance designates the hazard areas that have the
14 potential to be significantly hazardous to the community. They don't designate the
15 portion of the fan that is not significantly hazardous.

16
17 McShane stated the language seems to say that land, in areas the County is
18 committed to protect because of existing infrastructure, can't be subdivided. Some
19 day, there will be significant mitigation done to protect that built environment and
20 those lands that could be subdivided. Chalfant stated the committee could amend
21 the definition of alluvial fan hazard areas to remove areas that are protected by
22 permanent flood protection measures.

23
24 McShane stated he is not sure how those mitigation will be maintained over
25 time. He asked the discussion on this issue. Chalfant stated the Technical Advisory
26 Committee discussed the alluvial fan hazards in general. An example that was
27 discussed was the dike at The Logs resort. There was thought that it's very difficult
28 to protect people in these instances.

29
30 McShane stated the mitigation necessary at The Logs was so expensive that
31 the owners couldn't do it. In other locations, permit requests sometimes slip
32 through the crack and a building gets permitted that shouldn't be. Mitigation
33 systems sometimes fail.

34
35 McShane asked staff to figure out the language about alluvial fans and create
36 another subsection specific to alluvial fan hazards.

37
38 Fleetwood stated consider language for an exception if mitigation is feasible.
39 He would consider it for all hazard areas, "unless mitigation is feasible as
40 determined by the technical administrator."

41
42 Roy stated she is not comfortable with the vague notion of mitigation in
43 hazard areas. She is inclined to look at the alluvial fan hazard areas in more detail
44 later. She is disinclined to determine whether or not mitigation is appropriate to
45 alleviate a hazard.

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1 Fleetwood stated it's a policy discussion of how far government goes to
2 protect people. The government notifies the people that they're in a critical area
3 and goes to great lengths to say people can't build in those areas because the
4 government must protect those people. At some point, people have the right to go
5 forward with something that may be foolish.

6
7 Roy stated that if the County starts blessing the mitigation those people do
8 as appropriate, it becomes partly the County's responsibility. She doesn't want the
9 County to approve mitigation plans unless the County knows enough to do that.

10
11 Cooper stated the County has studied different fans in different levels of
12 detail. It warrants further discussion. An issue is whether mitigation is
13 appropriate. It's difficult for the County to take that on without getting into trouble.
14 However, there are places where two feet of elevation could be adequate
15 mitigation.

16
17 Chalfant stated that in some circumstances, mitigation could be very
18 expensive, and maintenance may be neglected over time. The County may
19 eventually be asked to take over the maintenance.

20
21 Fleetwood stated review this section and come back to it.

22
23 The committee concurred.

24
25 McShane referenced 16.16.330(C). Rewrite the section so that the
26 regulation isn't based on dynamic and static conditions. The burden to
27 demonstrate that condition could be significant. Instead, say "The development will
28 not increase the slope stability on adjacent properties. The development shall not
29 increase the risk or frequency of landslides." That's a straightforward thing to do
30 without doing dynamic and static analysis. Don't increase the frequency or risk of a
31 landslide. He asked where that condition came from. Clancy stated a number of
32 jurisdictions used dynamic and static conditions as safety limits. This section is
33 similar to Pierce County code. The model code published by the State also
34 suggests a similar provision as a more precise and measurable way to get at the
35 standard, which is to not increase the frequency or risk of landslide.

36
37 **McShane** stated his professional opinion is to not go with that standard. A
38 question is why people would need to demonstrate that condition if they commit to
39 not increasing the hazard, if they are building within 300 feet of an active landslide
40 area. He **moved** to replace 16.16.320(C) so it would say, "The development will
41 not decrease slope stability on adjacent properties. The development shall not
42 increase the frequency or risk of landslides."

43
44 Roy asked if it is possible for people to challenge the assertion that the slope
45 stability is not decreased. She asked if people would use this formula to
46 demonstrate whether the slope stability was decreased. Clancy stated the factor

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1 safety limits would be one way that someone would assess whether the standard
2 has been met.

3
4 Roy asked if there are other ways to determine whether the slope stability
5 has been decreased, besides this formula.

6
7 McShane stated the bluffs at Birch Bay and Semiahmoo will fail this standard.
8 They are already unstable. The development should be such to not increase the
9 frequency of the slide. The goal is to prevent the development from making the
10 slope worse than it already is. The dynamic and static standards haven't worked in
11 the past.

12
13 ***Motion carried unanimously.***

14
15 **McShane** referenced section 16.16.330(D). The wet season issue may be
16 too broad. He ***moved*** to amend the subsection, "...of the approved development
17 ~~and shall not be allowed in the wet season.~~" If vegetation shouldn't be removed
18 during the wet season, it shouldn't be removed at all in that location. The issue is
19 covered already in subsection .330(A).

20
21 Fleetwood stated people will ask the reason the County prohibits removing
22 vegetation at Lake Whatcom during the wet season.

23
24 McShane stated the prohibition is to reduce phosphorus.

25
26 Roy stated they are also specifically talking about areas within 300 feet of an
27 active landslide area. She would like to see the standard remain, however,
28 Councilmember McShane's argument is logical. They're talking about 300 feet of a
29 landslide area, not the entire county.

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

32
33 McShane suggested amending 16.16.330(H), "Where avoidance is not
34 possible, structures and improvements...."

35
36 Clancy stated all of these measures presume that avoidance is not possible.
37 They felt the words were not essential to the meaning of subsection (H).

38
39 McShane stated the language talks about doing things such as changing
40 slope contours to make the slope stable and to build the structure, instead of
41 avoiding the risk. Instead, the goal should be to keep people off the areas. If they
42 can't because of the layout of the lot, then the water should be collected.

43
44 Clancy stated the first step is to avoid the area. They are supposed to direct
45 development to non-hazardous portions of the parcels. A number of standards
46 already set up avoidance as a first measure. The Planning Commission felt that
47 people should take measures to minimize alterations to the slope contour and

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1 impervious lot coverage, whether or not they can avoid a hazardous area. The
2 intent was that those standards should apply in all cases.

3
4 McShane stated this whole section applies to the active landslide hazard
5 area. He asked what is meant as "active." Clancy stated it is defined in section
6 16.16.310(C)(1)(b)(i).

7
8 McShane asked if they should define "in the near future." Define it as 100
9 years. That is the life of a structure. Slides could sit and be stable for some time,
10 but eventually go.

11
12 Roy asked if Councilmember McShane is saying that if they don't think it
13 won't happen for 100 years, it may be okay because the average house lasts only
14 100 years. She would rather it not be done in the first place.

15
16 Clancy stated there was some debate by the Technical Advisory Committee.
17 There were different views on what the time interval should be. This determination
18 depends on site-specific geological evaluation. It would be that professional's
19 determination to say when the site is likely to fail. Then, the technical
20 administrator would determine the standards to apply.

21
22 **McShane** stated that's where the Council should provide guidance. He
23 **moved** to amend section 16.16.310(C)(1)(b)(i), "...likely to fail ~~in the near future~~
24 **within the next 100 years.**"

25
26 Fleetwood stated don't have language that is vague. He supports the
27 suggestion.

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

30
31 McShane referenced 16.16.340. Soil liquefaction was a concern. He asked if
32 the intent was that the County would require some building development that
33 would follow the international building code (IBC) or leave it up to the engineer and
34 architects if the development occurs in an area seismic hazard area where
35 liquefaction would occur. Chalfant stated the entire county is a seismic hazard
36 zone. Use IBC provisions that are consistent with existing standards. They won't
37 address soil liquefaction any more thoroughly. Some level of geotechnical analysis
38 based on soil stability is required for certain structures.

39
40 Brenner stated it seems the County should allow for adequate mitigation
41 according to experts if all areas of the county are seismic hazard areas and the
42 County is going to allow people to build. It should be included in the alluvial fan
43 section, also.

44
45 Roy stated there are many standards for what people need to do to build in
46 earthquake-prone areas. The County is ascribing to those standards and expects

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1 people to build to those standards. She asked if it is left as an engineering best
2 practice. Chalfant stated it is, subject to review by the County geologist.

3
4 **McShane** referenced 16.16.345(C). He reviewed the Jones Creek and
5 Canyon Creek alluvial fan studies. He **moved** to amend, "...qualified professional
6 that identifies the risks associated with a 500-year return period debris flow or the
7 maximum credible event that could impact the alluvial fan." That's what they
8 asked for at Jones Creek and possible at Canyon Creek.

9
10 Fleetwood asked the reason for a 500-year return period, and not something
11 else.

12
13 McShane stated 500 years is what was recommended by the County's
14 consultant on the Jones Creek alluvial fan. That has been an approach they've
15 taken in British Columbia for alluvial fan hazards there, which are similar.

16
17 Fleetwood asked the guidelines a professional might follow, and if there is a
18 concern that they might not get close to that standard.

19
20 McShane stated it gives the professional standards to shoot for. The
21 language, the way it is currently written, was troublesome for the Hearing Examiner
22 in The Logs case. It referenced the largest known event. However, they frequently
23 don't know how large these events could be until they are studied. The largest
24 known event may not be the appropriate event to design for. The consultant
25 recommended the 500-year event to provide a good factor of safety. Another
26 option is to go with the maximum credible event, which is to evaluate and define
27 how bad the alluvial fan is, and whether a house can be built in a certain location.

28
29 Roy stated it would be helpful to provide guidelines.

30
31 Fleetwood stated the present language does provide some guidelines.

32
33 ***Motion carried unanimously.***

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

36
37 Clancy referenced Article 4 regarding frequently flooded areas. There are not
38 many changes. Development in flood plans and frequently flooded area is
39 regulated through Whatcom County Code (WCC) Title 17. The existing CAO defers
40 any additional provisions to Title 17. Staff have made some suggested changes to
41 Title 16. Purpose statements were added to achieve avoiding impacts to fish and
42 wildlife habitat and to protect the beneficial functions that floodplains provide.

43
44 Existing regulation relies on Federal Emergency Management Agency (FEMA)
45 flood maps. The change identifies the areas through the ongoing River and Flood
46 Division identification process that includes areas outside the FEMA flood plain.

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1 Another change is to require developments to include mitigation for flood
2 issues and ecological impacts of floodplain development. The report standards are
3 modified to require the technical reports to address ecological issues as well as
4 flood safety issues and to require the River and Flood Division to coordinate with
5 the County permitting staff during these development reviews, for consistency with
6 Title 17.

7
8 Fleetwood asked if the County is able to disclaim liability by including a
9 sentence in 16.16.410(B), "This chapter shall not create liability on the part of
10 Whatcom County, any officer or employee thereof...."

11
12 Brenner stated that if people see that language, they may be less apt to do
13 certain things.

14
15 Fleetwood stated the sentence shouldn't be in the ordinance if it has no force
16 of law.

17
18 Brenner stated that if something is found to be invalid in an ordinance, it
19 doesn't nullify the rest of the ordinance.

20
21 McShane stated the committee approves of Article Four.

22
23 ***Roy moved*** to recommend approval of Article Four to the full Council.

24
25 ***Motion carried unanimously.***

26
27 Clancy referenced Article 5 regarding critical aquifer recharge areas. An
28 additional purpose statement was added to prevent impacts that could deplete
29 aquifer storage or recharge. Another statement was added to establish consistent
30 review practices and procedures for developments in these areas.

31
32 The existing CAO defines highly susceptible areas based on soil type,
33 occurrence of the Sumas outwash unit, the Nooksack flood plain, areas within ½
34 mile of wells, and varies with permeable soils. The classification system designates
35 low, moderate, and highly susceptible aquifer recharge areas. They determine the
36 occurrence and extent of those areas using criteria and methodology from an
37 Ecology guidance document. Also included in the designation are wellhead
38 protection areas, encompassing the one-, five-, and ten-year time of travel zones
39 adjacent to wellheads.

40
41 Fleetwood referenced section .520. There is not a definition of "adverse
42 effect." Given the growth and demands on the existing water supply, incremental
43 negative effects are happening throughout the county on a regular basis. Nothing
44 in this language would stop that incremental development that is occurring and the
45 negative effect. However, it constitutes an adverse effect. These rules aren't
46 meant to stop that sort of development. Define an adverse effect. Clancy stated
47 the term refers to recharging of the aquifer. This statement prohibits a

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1 development that clearly lessens the rate or amount of aquifer recharge that
2 occurs. That is an issue with all the regulation. There are multiple goals of GMA,
3 some to do with growth and some to do with protecting critical areas. At some
4 point, those two things conflict. This is meant for individual developments that will
5 have a clear affect on the groundwater recharge.
6

7 Fleetwood stated one could demonstrate that the existence of any new
8 structure that has an affect on aquifer recharge could stop the project, without a
9 definition of "adverse affect." People may come forward with that argument when
10 seeking permitting.
11

12 Brenner stated they could add the word "significant." Clancy stated adverse
13 affects always have to be at the threshold of significant. That threshold may be
14 appropriate in this section.
15

16 Fleetwood asked if the general concept that a new building that draws water
17 will have some incremental effect on an aquifer recharge area is right or wrong. If
18 that's the case, the questions is whether that is something that would be regarded
19 as an adverse effect. Clancy stated it would be difficult to show that any one house
20 or building would adversely affect the recharge. It is hard to show a cause and
21 effect for an individual building. However, there may be some sort of cumulative
22 affect with each development, over time.
23

24 **Roy moved** to amend 16.16.520(A), "...and will not significantly adversely
25 effect affect the recharging of the aquifer." However, the word "significantly" is not
26 that precise.
27

28 ***Motion carried 2-1 with McShane opposed.***
29

30 Bob Wiesen, 3314 Douglas Road, stated he's watched this go on for years.
31 They are ignoring all the goals of the GMA. They are not weighing the other factors
32 of the GMA. There is no map showing what part of the county is a volcanic hazard
33 zone. Consider the effect of an unbuildable land supply and what it does to the
34 availability of land. Consider the economic impact of the rules. Don't treat
35 agricultural lands differently from other rural lands. It looks like they want to
36 protect the lifestyle of the urban people, not the rural people. Rural people are so
37 because they don't want people around all the time. They may have hobbies that
38 are a bit noisy. The use of his land is nonconforming now, but it didn't used to be.
39 Keep it simple, fair, reasonable, and do unto others.
40

41 Fleetwood asked if Mr. Wiesen is including everyone when he says they are
42 ignoring the GMA. Wiesen stated he is including the entire process. They don't
43 have a good land supply in this county, partially because of the City of Bellingham's
44 attitude. They are supposed to put stuff near the town. Not everyone wants to live
45 in an apartment or condo. They are not supposed to force everyone into an
46 apartment or condo. He submitted information (*on file*).
47

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1 **Fleetwood moved** to recess until after lunch.

2
3 *(Clerk's Note: The motion was not voted on. The committee took a break*
4 *from 11:57 a.m. to 12:40 p.m.)*

5
6 Clancy stated new standards were added to the critical aquifer recharge
7 areas. The existing ordinance strictly handles development in an aquifer recharge
8 area only via the State Environmental Protection Act (SEPA) review process. All the
9 standards in .520 and .525 are new. She read the new standards. Essentially,
10 there is no change in how critical aquifer recharge areas are handled, except if
11 there is a specific use that can affect groundwater quality through contamination.

12
13 **McShane moved** to recommend approval of Article 5 as it is to the full
14 Council.

15
16 **Motion carried 2-0 with Fleetwood absent.**

17
18 Clancy referenced Article 6 regarding wetlands. There are a number of
19 changes. Language was added to the purpose statement to regulate developments
20 to avoid adverse impacts on wetlands. They added a purpose statement regarding
21 consistent review practices.

22
23 The existing code defines wetlands as meeting the current State and federal
24 requirements for soils, vegetation, and hydrology. It specifically exempts isolated
25 wetlands that are one-third of an acre in size or less. There is currently no
26 categorization system for wetlands. The proposed changes include having a four
27 tiered system for categorizing wetlands using Ecology's new rating system for
28 wetlands in Western Washington. The regulations would change the size threshold
29 for exempt wetlands from one-third of an acre to 2,500 square feet. In addition,
30 those wetlands also have to meet other criteria before being considered exempt
31 from the regulations. The delineation procedures must match the State manual,
32 which GMA requires.

33
34 In the regulation section, the existing code allows no activities without
35 mitigation. Cluster developments are required to avoid impacts to wetlands.
36 Currently, there is a 100-foot buffer required for all wetlands. There is no
37 differentiation on size and quality of wetland. There are provisions for buffer
38 averaging and buffer reduction. There is no minimum threshold for those buffer
39 widths. Now, the technical administrator may require buffers larger than 100 feet.
40 There is currently an allowance to discharge stormwater to wetlands if it won't
41 adversely affect the wetland, not to exceed a six-to-one replacement. She read the
42 changes to the current standards. Specific activities allowed in wetlands are
43 specified. The buffer provisions have changed. The buffer is based on the wetland
44 category, determined from the rating system. The buffer size ranges from 25 to
45 300 feet. The intensity of the adjacent land use is considered when determining
46 the buffer size. Buffer averaging and reduction are still allowed. There are
47 minimum thresholds, below which the buffer can't be averaged or reduced. The

1 mitigation standards are more clearly defined. Requirements for mitigation plans
2 and the minimum report standards for critical area assessment reports are clearer.
3

4 McShane referenced subsection 16.16.610(E). Go back to the one-tenth of
5 an acre threshold in combination with a set of criteria to be added. One criterion is
6 that the wetland not be located in a special water management area or stormwater
7 management area. He asked staff if that makes sense. Clancy stated that would
8 be an appropriate change.
9

10 **McShane moved** to amend 16.16.610(E):

- 11 • "...wetlands less than ~~2,500 square feet~~ **one-tenth (.1) acre or 4,356**
12 **square feet** shall be exempt..." and
- 13 • **"(7) The wetland is not located in a water resource protection overlay**
14 **district, water resource special management area, or stormwater**
15 **special district."**
16

17 Roy stated either threshold seems arbitrary. She asked if they know how
18 many level IV areas there are. Clancy stated they don't. They rely on the map
19 from the national wetland inventory. That inventory tends to underestimate the
20 small wetlands because it relies on aerial photography, which doesn't show the
21 small wetlands. They propose to use this new categorization system. There has
22 been no effort yet in the County to determine the areas.
23

24 Brenner stated Councilmember Nelson has said they should treat every part
25 of the county the same, especially with stormwater management. She agrees. The
26 whole county will end up in the special stormwater district area by the time the
27 Council is done with stormwater.
28

29 McShane stated he disagrees to a degree. Protecting insignificant wetlands
30 in the areas around the two lakes is more important than in other watersheds
31 because phosphorus is an issue in those lakes. Phosphorus is not as much of an
32 issue in a river or stream. In Drayton Harbor, there are marine environment
33 issues.
34

35 Roy stated she agrees with Councilmember Nelson's approach of being even-
36 handed across the area, especially when they are talking about stormwater. They
37 all live in some watershed in the county. Some areas drain into a system that can
38 be more affected than other areas. At this point, it's wise to point out those areas.
39

40 **Motion carried 2-0 with Fleetwood absent.**
41

42 Brenner referenced section 16.16.610(A). Amend the language, "Wetlands
43 are those **natural or intentionally created** areas...." People may do things to change
44 the flow and create ditches. Be specific about what they're talking about.
45

46 *(Clerk's Note: End of tape two, side B.)*
47

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1 Chalfant stated areas that were unintentionally created after July 1, 1990 are
2 already excluded.

3
4 Brenner referenced section 16.16.610(E). She asked if that section also
5 covers unintentionally created wetlands. Clancy stated they are regulating the
6 wetlands that meet the State and federal definitions for wetlands.

7
8 Chalfant stated the exclusion is specifically for wetlands created due to
9 construction of roads, highways, or streets. It doesn't exclude something
10 unintentionally created another way.

11
12 Clancy stated there are cases where activity nearby changes conditions and
13 wetlands appear where they didn't exist before. Those are difficult cases to
14 address. It's difficult to determine what was or wasn't intentional and when to
15 draw the line on wetlands that were created yesterday versus wetlands that were
16 created years ago. The State and federal regulations don't necessarily exempt
17 wetlands that were unintentionally created as a result of activities, except in the
18 case of road construction.

19
20 Chalfant stated the County doesn't have the latitude to change the definition
21 of a wetland, which comes from the GMA.

22
23 Brenner stated there should be a more flexible allowance if people
24 unintentionally cause wetlands to appear on a neighboring properties.

25
26 Roy stated the function is what matters. If a wetland is created, the function
27 may be necessary regardless of whether or not creating the wetland was
28 intentional.

29
30 Brenner stated the definition of function is too broad.

31
32 Roy asked if the County can't change the definition from the State and
33 federal government, if there is no distinction between intentional and unintentional
34 wetlands, and the timeframe. Clancy stated the timeframe is related to wetlands
35 that were unintentionally created as a result of road construction after July 1, 1990.
36 They don't have the tools to figure out what is a natural wetland, whether it was
37 created intentionally or unintentionally. It's very difficult to administer something
38 like that.

39
40 Brenner stated make it the property owner's responsibility to prove that the
41 wetland wasn't there. If the property owner can make that case, there should be
42 an allowance for it. Chalfant stated that other provisions in law address this
43 situation. There is a way to pursue recourse civilly.

44
45 McShane stated if people unintentionally cause a manmade wetland on
46 neighboring property, the neighbors should address it before it becomes a wetland.

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1 If a neighbor floods someone, action should be taken civilly to make sure the water
2 doesn't remain in that location.

3
4 Brenner stated the landowner might not notice it right away.

5
6 McShane stated an amendment doesn't change anything for the property
7 owner. The property owner still has to address the problem by documenting the
8 unintentional wetland. A change in the language just passes the problem on to the
9 CAO.

10
11 Brenner referenced 16.16.620(H)(1) and asked what a forested buffer
12 community is. Clancy stated people can put a stormwater facility in a wetland
13 buffer, but not if it means clearing the trees to site the facility. If the buffer is
14 currently pasture grasses, however, the facility can be located there.

15
16 **Roy moved** to amend 16.16.620(H)(1), "...a forested buffer community."

17
18 **Motion carried 2-0 with Fleetwood absent.**

19
20 McShane stated staff did a good job on this article. It reflects a lot of hard
21 work and expertise from staff and the consultant.

22
23 Roy asked if this is going to make the CAO clearer and easier to administer
24 for the public and the County. Chalfant stated it would.

25
26 Frances Jones, 515 Whitecap Road, referenced the mitigation ratios in
27 16.16.680(C). As an example, a category II wetland that requires mitigation for .8
28 acres, with rehabilitation, would require 5.5 acres. With a 150 foot buffer, 14.4
29 acres would be required. Therefore, to mitigate .8 acres would require 14.4 acres.
30 The ratios are higher to ensure success. The regulation also requires monitoring in
31 excess of ten years, plus a performance bond. To require that much mitigation and
32 that the project be bonded is overkill. It will have a direct impact on land supply.
33 Require just the bond.

34
35 Roy stated the technical administrator has latitude on buffers. She asked if
36 there is latitude to address the scenario given. She asked if this hypothetical case
37 has options. Clancy stated there are options. These ratios are based on the
38 guidelines that Ecology put forward. In most cases, if filling a wetland, people are
39 required to get a permit from the State and federal governments, which will require
40 similar ratios. There are some provisions in subsection .680(E) to replace lost
41 wetlands. The rest of the ratio can be achieved in a variety ways, such as
42 enhancement.

43
44 Brenner stated some are a bit excessive. Guidelines are not regulations.
45 The County doesn't need to go with guidelines. The State should have to explain its
46 excessive guidelines.

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1 Roy stated she's not sure these guidelines are excessive. They're talking
2 about total loss of wetlands. Money isn't the issue. The issue is the function of the
3 wetlands. These ratios may be based on what really needs to happen to replace
4 the wetlands. In that case, they aren't excessive.

5
6 Clancy stated the guidelines came from studies of best available science.
7 There has been a low success rate for mitigation projects, especially wetland
8 enhancement projects. The ratios are intended to account for some level of failure
9 and the time it takes to replace the function of the lost wetlands.

10
11 Bob Tull, 709 DuPont, Bellingham, stated they have worked on the issue of
12 wetland mitigation for 17 or 18 years. As Ms. Clancy said, the ratios account for
13 the potential failures. When they do that in addition to a performance bond, it's too
14 extraordinary. In the urban parts of the community, they may want to do it
15 differently. Consider that the State Department of Community, Trade, and
16 Economic Development (CTED) points out that they may want to do things
17 differently in urban areas versus rural areas. Where buildable land supply around
18 cities is or will become an issue, they may want to rely more on one method than
19 the other. Another area of concern is Cherry Point, where they may have lots of
20 room in some situations. The ratios plus the performance guarantees is very
21 consumptive.

22
23 McShane stated the ratios take into account time and spatial considerations,
24 as well. When a wetland is created, it won't have the whole function at first.
25 Clancy stated that's true. The attempt to compensate for the temporal loss is also
26 included in the ratio. The ratios in this proposed section are a bit lower than what
27 Ecology recommends, especially in the enhancement category.

28
29 Brenner stated they are not ending up with the same buffer widths around
30 critical areas wetlands as the cities are. In the urban growth areas (UGA's), that
31 creates a big problem. If the County requires larger buffers than the cities require,
32 things will get built according to those larger buffers, which may make annexation
33 and density difficult. The County is not coordinating with the cities. She asked
34 when that would happen. Chalfant stated all the cities participated in the update of
35 this ordinance. The City of Bellingham CAO is coming out and is very similar to the
36 County's CAO. The small cities have not expressed any concern with buffer widths
37 in the UGA's.

38
39 Brenner stated she heard differently. She doesn't understand how one
40 person can represent all the small cities. Not all the small cities are participating.
41 They should agree on UGA's.

42
43 Roy stated the Council needs to make its decisions based on staff
44 recommendations and best management practices. More communication is needed,
45 but the County can't force the cities to listen.

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1 McShane stated the cities will be different because they have so much built
2 environment when these didn't apply. In the future, the ratios will let the land
3 speak and growth should be directed accordingly. Take these into account when
4 looking at the buildable land supply, instead of having UGA's extending into areas
5 that are 50 percent swampland. Adjust the UGA's to avoid the wetlands. As cities
6 expand into a UGA, they can recognize that the wetland areas need to be
7 protected. There may be problems with stand-alone UGA's that aren't connected to
8 a city. Don't resolve every problem in the county by making blanket changes.
9

10 Roy asked if they could do either a performance bond or include the failure
11 rate into the ratio without doing both. Clancy stated that in many cases, there may
12 not be a complete failure, but a need for adaptive management, adjustments, or
13 additional planting. The bond would cover that expense. One of the reasons that
14 mitigation isn't as successful as they would like is because of the lack of follow-
15 through, monitoring, and adaptive management. There is a need for a two-
16 pronged regulation. That was the rationale for having both requirements. The
17 bonding requirements are currently in place.
18

19 Roy stated they are trying to send the message that they need to look at
20 other locations instead of filling in wetlands. That may be an unpopular view. Part
21 of what they're trying to do is say this is so critical and important to the overall
22 health of the system. They need to discourage, not encourage, destruction of the
23 critical areas. If they are going to be destroyed, there is a price to pay.
24

25 Clancy stated there is an additional point of flexibility in the buffer
26 requirement. In the example given by Ms. Jones, there is a provision for the
27 technical administrator to approve a smaller buffer when there are site constraints
28 or limitations, if the mitigation otherwise has adequate protection.
29

30 A category II wetland is a highly functional and valuable system. The criteria
31 a wetland has to meet to be qualify as a category II include significant habitat
32 attributes, water storage functions, and water quality functions, such as mature
33 forested wetlands, estuarine wetlands, and other wetlands that are difficult to
34 replace. If they do replace them, it takes a long time for the functions to become
35 established. That is the rationale for the higher ratio of category II wetlands. It is
36 very hard to replicate those systems.
37

38 ***Roy moved*** to recommend approval of article six to the full Council.
39

40 McShane stated they must let the public know what these wetland categories
41 mean.
42

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

45 Clancy referenced article seven regarding habitat conservation areas (HCA's).
46 She read the changes.
47

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

3 Clancy continued to read the additions to article seven. The regulation
4 section is very similar to the wetland section.
5

6 Fleetwood stated reference was made in an email from Wendy Steffensen
7 proposing an additional article in .710. He asked if the proposed language is most
8 appropriate for subsection .710. Clancy stated the language is not appropriate in
9 any section in the ordinance. It commits the County to doing a study of habitat
10 connectivity. The purpose of this ordinance is not to direct the County's planning
11 activities, but to regulate development. The suggestion is not appropriate for the
12 code. In fact, the County is doing an evaluation right now as part of the shoreline
13 master program update process. The County is looking at landscape processes,
14 including habitat connectivity. The County is involved in doing Ms. Steffensen's
15 suggestion, but don't put that wording in the code. This code is to direct others'
16 development activities, not the County's activities.
17

18 Fleetwood stated an overall purpose is to maintain connectivity. He asked if
19 that overall statement is sufficient for the ordinance, but they should address
20 elsewhere how and where connectivity is achieved. Clancy stated the County has
21 already addressed connectivity with these regulations. The Chuckanut corridor
22 designation as a locally important habitat area was done specifically in response to
23 the information they obtained from the Department of Fish and Wildlife (WDFW)
24 information on eco-regional assessments, which looks at habitat connectivity. One
25 purpose of that designation is to allow maintenance of habitat that does provide
26 connectivity.
27

28 There are stringent riparian buffer requirements. The riparian buffer is
29 measured from the outer edge of the channel migration zone. Those are important
30 areas for wildlife movement and migration. By virtue of those actions, connectivity
31 is achieved. There is case-by-case review of buffer requirements for individual
32 species and habitats. The code specifically addresses wildlife connectivity in a
33 number of places. The shoreline effort will provide additional results.
34

35 Wendy Steffensen, North Sound Bay Keeper with RESources, stated the
36 Chuckanut wildlife corridor provides connectivity for that area. The riparian channel
37 migration zone is good, but does not assure connectivity of all the riparian zones.
38 They are protecting chunks of land, but those chunks are not connected. Look at
39 connectivity on a case-by-case basis. This may not be the right place to review
40 connectivity. If it is not, then indicate when it should be considered.
41

42 Clancy stated piece-by-piece regulation is difficult. The landscape analysis as
43 part of the shoreline update does what Ms. Steffensen suggests.
44

45 Roy stated that both the critical areas ordinance and shoreline program are
46 directed to the same audience. She asked why the suggestion is okay for the
47 shoreline program and not for the CAO. Clancy stated the difference is that they're

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1 required in the shoreline update to evaluate ecosystem processes and how the
2 ecosystems function outside the jurisdiction of the shoreline permit program.
3 Through the shoreline update, the County must prepare a countywide restoration
4 program to improve functions and values of habitats beyond a permit and
5 mitigation program. There is an extra piece to the shoreline update that isn't in the
6 CAO.

7
8 Fleetwood asked if the scope is the same. In the shoreline program, they
9 review things along the shoreline, not the entire county. However, connectivity is
10 done throughout the whole county. Chalfant stated the regulatory provisions apply
11 to the ordinary high water mark. However, voluntary restoration for the entire
12 county is under that same statute. The restoration plan is for the entire county.

13
14 Fleetwood asked if they would achieve the goal of connectivity, as expressed
15 in the CAO, in the parallel shoreline process. Chalfant stated the CAO is one piece
16 of the connectivity puzzle. The entire riparian corridor and channel migration zone
17 are associated with the Nooksack River, which is a vital migration corridor and
18 probably the most critical link in connectivity. They've also designated as a locally
19 important habitat area the only habitat that came up on the WDFW eco-regional
20 assessments. They are already protecting areas with scientific evidence as
21 important areas to protect for habitat connectivity standpoint.

22
23 Clancy stated that adding connectivity to the purpose statement allows the
24 technical administrator to take connectivity into account when reviewing a given
25 development proposal. They want to apply connectivity at the development review
26 stage.

27
28 Fleetwood asked if it would be redundant to undertake a concurrent planning
29 effort for connectivity since it is being studied in the shoreline process. Chalfant
30 stated it's inappropriate to put such a study in the ordinance, which is for regulating
31 development, not for directing the County agency to do a study.

32
33 Clancy stated the Council could pass a resolution to undertake that study
34 instead of putting it in this ordinance.

35
36 McShane stated the County has identified Chuckanut wildlife area for a
37 corridor. He asked how that area was designated. Chalfant stated the WDFW did
38 an eco-regional assessment that looked at the Puget trough and important areas
39 for wildlife migration on an eco-regional basis. It was the only area identified in
40 Whatcom County, west of the national forest area.

41
42 McShane stated there may need to be more assessment of local species for
43 local corridors. They could amend the map, and would not have to amend the
44 code. Chalfant stated that is correct. The code has provisions for adopting those
45 areas as they are identified.

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1 McShane stated there is a lot of local information on how local species, such
2 as herons, move around.
3

4 Clancy stated those considerations would be factored into the buffers
5 required for that species when a development is proposed. The buffers would be
6 based on WDFW management criteria or other best available science information.
7 If they know of a zone frequented by a species, it could be the basis for
8 determining a buffer size.
9

10 Fleetwood stated the question is whether the Council wants to adopt a policy
11 to begin a process to identify corridors and how to protect the corridors. If the
12 answer is yes, they need to identify when to do that. Have a discussion on
13 connectivity and decide where and when to express that policy.
14

15 Roy stated the committee could ask staff to prepare an ordinance on
16 connectivity. The process of a connectivity review will be very large. All of
17 Whatcom County will be important habitat area for one species or another.
18

19 Fleetwood stated the committee can discuss connectivity at its next meeting.
20

21 **McShane moved** to amend:

- 22 • 16.16.710(D), "In addition to the species, ~~and~~ habitat, ~~and~~ wildlife
23 corridors identified...County may designate additional species, ~~and/or~~
24 habitats, ~~or~~ wildlife corridors of local importance..." and
- 25 • 16.16.710(D)(1), "...nominate an area, ~~or a~~ species, ~~or~~ corridor to the
26 category..." and
- 27 • 16.16.710(D)(1)(a), "~~iv.~~ Maintenance of connectivity between habitat
28 areas;"
- 29 • 16.16.710(D)(1)(a)(iii), "...other special value, ~~such as public appeal,~~
30 ~~or~~"
31

32 Tull stated the habitat issue is a sweeping change. In the past, landowners
33 didn't have to find a new home for the critters they displaced. One of the dangers
34 of this ordinance is that they are now saying those who didn't change their property
35 are supposed to accommodate the critters that have been displaced. Subsection
36 .710(D)(1)(c)(c) says to identify the effects on property ownership and use.
37 However, it's not clear what is supposed to happen. Be careful at what point the
38 regulation of land use starts to become government taking away property for
39 wildlife. Be careful about preserving these areas in a way that is very fair.
40 Subsection (c) doesn't say whether or not they are supposed to weigh equity or
41 what to do if there is a devastating effect on someone. When they superimpose a
42 corridor on private land, consider what it will do to the landowners. Contemplate
43 the effect of changing every shoreline setback in Whatcom County from where it is
44 today to 150 feet. It will have to be a tool used with great sensitivity.
45

46 McShane stated that to bring forward a new species or corridor, there are a
47 number of things that must be demonstrated. One has to show that this is

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1 important to designate an area, create a corridor, or identify a species. The
2 regulation only requires identifying the effect. In subsection (D)(1)(c), create
3 subsections on how those issues can be dealt with. Think about what is already on
4 the ground when doing this. In some cases, it might not work.

5
6 Tull stated staff has been careful with the corridor concept, but when it
7 becomes a public nomination process, it carries regulatory consequences. Be much
8 more thorough. The real problem is identifying what would happen in a particular
9 corridor, through examples. Reserve this issue for a future date. This ordinance
10 can be amended at a later date. The County Charter has a provision to protect
11 property rights. Have more answers before unleashing corridor opportunities. This
12 is a tough issue.

13
14 McShane stated they may need more guidance in subsection (D)(1)(c).

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

17
18 Chalfant suggested amending .710(D)(3), "...intent of this chapter, the
19 Whatcom County Comprehensive Plan, and the Growth Management Act, the
20 County Council will...." That would put forward the intent to consider all the various
21 goals and objectives.

22
23 **McShane accepted the suggestion** as a friendly amendment and restated
24 his motion:

- 25 • 16.16.710(D), "In addition to the species, ~~and~~ habitat, ~~and~~ wildlife
26 corridors identified...County may designate additional species, ~~and/or~~
27 habitats, ~~or~~ wildlife corridors of local importance ..." and
- 28 • 16.16.710(D)(1), "...nominate an area, ~~or a~~ species, ~~or~~ corridor to the
29 category..." and
- 30 • 16.16.710(D)(1)(a), "iv. Maintenance of connectivity between habitat
31 areas;"
- 32 • 16.16.710(D)(1)(a)(iii), "...other special value, ~~such as public appeal,~~
33 ~~or~~"
- 34 • (D)(3), "...intent of this chapter ~~and the various goals and objectives of~~
35 ~~the Whatcom County Comprehensive Plan and the Growth~~
36 ~~Management Act, the County Council will...locally important habitats,~~
37 ~~or~~ species, ~~or~~ corridors and will be subject to...."

38
39 Roy stated that given the huge implications, she won't support the changes
40 just now.

41
42 Clancy stated a number of areas in the ordinance point out the implications.
43 The first is in section 16.16.730. Alterations will be evaluated on a case-by-case
44 basis. The technical administrator can require assessment of the effects of
45 alteration and may require mitigation. Also, section 16.16.740, the buffer table
46 regarding locally important habitat areas identifies the buffers.

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1 Ellen Gray, Futurewise, stated the committee should stay with this issue.
2 The CAO is the mechanism by which they protect wildlife. She appreciates the
3 changes on nominating change for the locally important species and areas, but it
4 defers planning to organizations that want to nominate them. However, the
5 organization may not have the countywide perspective. The County must
6 understand connectivity. Designating connectivity can be done with an overlay. It
7 doesn't have to prohibit development, just add an extra step to enable the animal
8 to move through a development. It might be as simple as providing undisturbed
9 cover to enable creatures to move through the plat. That should be done up front.
10 It would be helpful to ask staff to prepare a proposal in the CAO that would refer to
11 the planning process that is going on and should be going on with the CAO. The
12 CAO really is the place to do it.

13
14 Roy stated she is concerned they are not looking at the big picture. She is
15 also concerned the CAO isn't the right place to direct staff to look at it.

16
17 Fleetwood stated he would support the motion for now, but wants to
18 continue consideration. He would like to know the appropriate place to address
19 connectivity, if not in the CAO.

20
21 Roy asked if the County has a wildlife biologist on staff. Chalfant stated the
22 County has a forester with a wildlife background.

23
24 Roy stated looking at the areas related to all these species is a huge task.
25 She's not sure it is something the committee should do without getting opinions
26 from people who have expertise.

27
28 McShane stated the County should have a Natural Heritage Division
29 somewhere within the County structure.

30
31 ***Motion carried 2-1 with Roy opposed.***

32
33 Roy stated the committee would like to further discuss the corridor and
34 species of local significance. In addition, the committee would like to further
35 discuss subdivisions on alluvial fans.

36
37 Chalfant referenced subsections 16.16.710(C)(10)(b)(i) and (iv) to
38 incorporate the Whatcom County Critical Areas: New Locally Important Habitat
39 Designations map into and reference appendix E.

40
41 ***Fleetwood moved*** to amend subsections 16.16.710(C)(10)(b)(i) and (iv),
42 "(i)...but not otherwise exempt from this chapter. **See Appendix E.**" and
43 "(iv)...continues to the shores of Puget Sound. **See Appendix E.**"

44
45 ***Motion carried unanimously.***

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1 Chalfant submitted a memo to the Natural Resources Committee dated July
2 7, 2005 on recommended amendments to the April 27, 2005 draft Whatcom County
3 Critical Areas Ordinance (*on file*). He referenced the first recommendation in the
4 memo.
5

6 **McShane moved** to amend 16.16.225(B), "6. Alteration is associated with
7 an alternative mitigation plan approved pursuant to 16.16.260.E." This is in
8 response to concerns raised by Mr. Tull and Mr. Spencer. Clarify that the County
9 allows for alternative mitigation approaches. It might involve alterations to critical
10 areas that may not be allowed otherwise. They want to allow creative solutions to
11 those who have the fiscal and organizational capacity to carry out such a plan
12

13 Fleetwood asked the type of commercial activity that could be allowed.
14 Chalfant stated it would allow a larger landowner with a variety of different land
15 types that can be successfully enhanced, organized, and implemented.
16

17 Roy stated she would like to hold this memo until next week to give people a
18 chance to look at it.
19

20 **McShane withdrew his motion.**
21

22 Chalfant read through each of the items in the memo.
23

24 Fleetwood stated they should allow local agencies to provide travel time
25 analyses, as shown in sections 16.16.350(C)(1) and (2). Chalfant agreed. He
26 continued to read each of the items in the memo.
27

28 He will clean up the memo, make extra changes, and get a final copy to the
29 Council.
30

31 (*Clerk's Note: End of tape four, side A.*)
32
33

34 **OTHER BUSINESS**

35
36 There was no other business.
37
38

39 **ADJOURN**

40
41 The meeting adjourned at 3:24 p.m.
42
43

44 _____
45 Jill Nixon, Minutes Transcription
46
47

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1 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

2

3

4

5

6

7 _____
Dana Brown-Davis, Council Clerk

Sharon Roy, Committee Chair