

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

Whatcom County Council
Special Surface Water Work Session

October 18, 2005

Council Chair Laurie Caskey-Schreiber called the meeting to order at 10:00 a.m. in the Whatcom County Civic Center Annex, Second Floor Meeting Room, 322 N. Commercial, Bellingham, Washington.

Present:

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

Absent:

Sam Crawford

SURFACE WATER WORK SESSION (AB2005-025)

Bruce Roll, Assistant Director, stated he submitted information on recycled electronics (*on file*) that the Council requested. There is a hotline the County funds that answers the phone during business hours. That's where to call to find out how to recycle things.

1. SALMON RECOVERY

South Fork and Canyon Creek Grants Applications

John Thompson, Senior Planner, stated a memo in the packet is regarding the Salmon Recovery Funding (SRF) Board applications. Short project descriptions are attached. The Canyon Creek assessment and design project is to do sufficient assessment work to get actual designs prepared so they are able to identify what they can do and what financial resources are needed. The second project is the East Acme Farm community restoration project. The Council is aware of the project. It works in tandem with the Lummi Nation and Nooksack Tribe to put logjams on the lower section of Hutchison Creek to improve fish habitat and meet concerns from the community. Both applications were submitted at the end of September through the local entity. Canyon Creek ranked number four out of five and the East Acme Farm ranked number three out of five. The State board will make a funding decision the first of January 2006.

McShane asked if there was work at Canyon Creek this summer. Thompson stated there was not. They had to go through the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration (NOAA) Fisheries Division

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 for project design. However, the project was permitted after the fish began
2 spawning. The resource agencies were not comfortable with them working in the
3 water while the fish were spawning. The permits are in hand for next summer.
4 The work is to install bedrock weirs at that spot. Relocating the channel is a major
5 design and engineering project and requires a higher test of whether the agencies
6 would buy off on it.

7
8 Roll stated relocating is proposed.

9
10 McShane asked if staff submitted the alluvial fan study they had done. He
11 asked if follow up work includes a study to know what is currently occurring on the
12 fan. Thompson stated the fan study will provide specific restoration
13 recommendations and designs. It provides good background information that
14 allows them to prepare designs.

15
16 McShane asked about the East Acme farm. There have been some concerns
17 about the Tribal project. The County Council has no authority over the project. He
18 asked if the Executive approved the project. Thompson stated it is pending the
19 outcome of this process.

20
21 Roll stated it is held up because of the SRF Board, not the County. The SRF
22 Board said it will not allow them to do any more work.

23
24 Thompson stated the SRF Board gave two reasons in its letter to the Lummi
25 Nation. Their first concern was about the community concerns. The biggest
26 concern is the Lummi proposed amendment to the grant agreement to significantly
27 reduce the physical scope of the project, but the same amount of money would be
28 spent. The original proposal was to remove 6,000 linear feet of rock. Practically,
29 they found they weren't able to do that. Also, analysis indicated they weren't ready
30 to do that. When installing large logjams, costs go up.

31
32 Roll stated his goal is a project to expand that, address community concerns,
33 and expand the Lummi project. The expanded portion is in the grant. He hopes
34 both projects move forward next year.

35
36 Brenner asked if negotiations between the County and Lummis would resolve
37 the issue. Thompson stated it doesn't resolve the issue for SRF Board about the
38 scope of the project.

39
40 Brenner asked if anyone tried to work with the Lummis to resolve that
41 change in the scope. Thompson stated that is an issue for the Lummis. Their
42 amendment is with the state SRF Board, not the County.

43
44 Brenner stated she thought the County may be able to help negotiate it the
45 way it was.

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 Roll stated the reason they're up there is because of community concerns
2 that weren't addressed with the original project. The County spent six to eight
3 months working with the community to allow the Lummi project to move forward.
4 They have been talking with the SRF Board on what the County desires for both
5 projects.

6
7 Brenner stated it seems like they get things moving, and then there isn't
8 enough communication with the Lummis about what is going on. Work with the
9 Lummis to get these things resolved in a timely fashion. Cooper stated they will
10 work with them on the cultural aspect.

11
12 Thompson stated the County met with both tribes early on regarding the East
13 Acme Farm project.

14
15 Roll stated both the Lummis and the County are interested in getting the
16 project going.

17
18 Nelson asked about the woody debris technique being used. He asked for
19 examples of where woody debris has stabilized existing logjams and encouraged
20 new wood in meandering rivers. Thompson stated there are examples. He would
21 find the information.

22
23 Nelson stated he is concerned about spending money when there may be
24 future problems. While salmon is important, flood control money is for public
25 safety, not fish habitat.

26
27 Roll stated a lot of the jams are beefed up so they can withstand serious
28 events. There is an aspect to get back to properly functioning conditions and
29 addressing flood needs. When a flood project is proposed, look at what meets the
30 needs of the flood and also the potential gain of the salmon recovery plan. The
31 topic that they'll need to address as they move forward in the salmon recovery plan
32 is the potential risks that will result as they put in more logjams.

33
34 Chris Hatch, Flood Control Zone District Advisory Committee, stated the
35 scope of what the Lummis proposed at the East Acme Park still wasn't acceptable to
36 the community. It required a County reaction. The idea is that the County project
37 will mitigate the community concerns that the Lummi project wasn't able to
38 address.

39
40 McShane asked how the Nooksack Tribe and Lummi Tribe feel about this
41 change to the East Acme Farm project. He hasn't heard from them directly.
42 Thompson stated that in response to community concerns, the Lummis redesigned
43 their project. He's heard their design meets the habitat objectives. In order to
44 deal with evulsion risk through the old Hutchison channel, they are using as much
45 wood and other materials as they would for two or three other logjams that could
46 be placed along the river. To address the flood concerns more fully, they give up
47 two or three habitat structures in the river.

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
2 McShane asked if the main change is on preventing an evulsion on Hutchison
3 Creek. Thompson stated it is that, and also beefing up the structures in the river.
4 The structures are big logjams of the size that were there historically. Lummi is
5 proposing a different logjam design that is more in the breadth of the flow. They
6 are highly engineered structures to withstand a 100-year flood.

7
8 Salmon Recovery Plan Implementation
9

10 Thompson submitted handouts (*on file*). He submitted a draft plan at end of
11 June to Shared Strategy, which submitted a package to the NOAA Fisheries
12 Division. Now, they are waiting for some feedback from federal services to see
13 what they think of the County's portion of the plan. They are in the mode now to
14 begin or continue to implement identified actions in the plan. The handout is from
15 the executive summary. He read through the handout on the eight key actions and
16 the County's involvement for each.

17
18 Action one is looking at the big Chinook passage issues. There are two
19 pieces, the Middle Fork water diversion and Canyon Creek. For the Middle Fork, the
20 County involvement is limited to monitoring instream flows. For Canyon Creek, a
21 high priority is to deal with the overall quality of the habitat and also to deal with
22 the bedrock outcrop barrier. The quality hasn't recovered well from the 1989 and
23 1990 flood events.

24
25 Caskey-Schreiber asked if the barrier is the temporary levee. Thompson
26 stated it is not the levee. When they did the work in 1994 to install the levee,
27 there was an outcrop of sandstone on the left bank that they drilled to put the
28 channel through. Both upstream and downstream, the beds were lower. It initially
29 wasn't a problem for fish. However, now the steps are too big for the fish since the
30 sediment moved out. Depending on which way the boulders move each winter,
31 they may not be able to get fish through it.

32
33 McShane stated the channel needs to be moved, in his opinion. They can't
34 run through that bedrock. The fan is dynamic. The sediment load is reduced for
35 the time being. It's only going to get worse and worse. Don't make this too
36 complicated. There will always be problems in the watershed due to landslides.
37 The damage throughout the Nooksack habitat region is a key component. Be
38 aggressive about getting this thing taken care of. It's been identified since 1995.
39 It's only gotten worse. It's changed significantly in the last few years. Thompson
40 stated they will consider relocating the channel, but they must also (*inaudible*).

41
42 McShane stated the sediment regime is completely different from what it was
43 in 1989. Thompson stated they are now looking at the aftermath of catastrophic
44 events. Those are all things they need to look at to come up with a plan that will
45 be durable through another event like the one in 1989.
46

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 Brenner asked if another option is scalping. Thompson stated the lower area
2 of the creek is moving out more sediment than is coming in. So, taking out gravel
3 wouldn't be as important as giving the channel a shape and gradient to make it
4 more self-maintaining.

5
6 McShane stated the channel is incising deep into the fan. He's not sure they
7 should go after a hard long term fix because it is so dynamic. They may be back to
8 having the whole fan buried in rubble. Thompson stated key considerations are
9 what to do, what it will cost, and how long it will last.

10
11 McShane stated assume it's not going to last long.

12
13 Nelson stated a huge amount of runoff is due to the gradient. The question
14 is how broad a fan is necessary to make it protective. Thompson stated that is a
15 question. Another issue is the flood hazard and risk. From a fish perspective, there
16 are things to do that may or may not address the flood risk perspective. Keep in
17 mind both flood and fish at the same time. Keep in mind the catastrophic events.
18 The results can be damaging.

19
20 Nelson stated the buyout program is to prepare for a catastrophic event.
21 Thompson stated the question is whether to let the dike fail catastrophically,
22 systematically repair it, or dismantle and relocate it.

23
24 Caskey-Schreiber asked how big was the 1989 or 1990 event.

25
26 Paula Cooper, River and Flood Division Manager, stated it was a 200-year
27 debris flow event. Debris flows tend to be two to five times bigger than normal
28 flood events.

29
30 Thompson stated actions two and three go together. Integrate salmon
31 recovery with flood projects. The focus is to ferret out what Chinook and other
32 salmon need in the main stem and other major forks and tributaries. They have
33 ideas. Now, they need to identify the low-hanging fruit to work on, then refine
34 their knowledge of the areas with the greatest restoration potential. Through the
35 flood plan, they know where key and recurrent flood problems are.

36
37 Nelson stated the costs of items two and three are close to \$100 million. He
38 asked what timeliness means. Thompson stated the numbers are not real solid.
39 They need to be refined. These timelines are for the next ten years.

40
41 Roll stated the current financial strategy being proposed by the Salmon
42 Recovery (SRF) board is approximately \$40 million over ten years. Those are
43 federal and SRF Board monies. The current proposal would double or triple the
44 amount coming in now. They are prioritizing different drainages. Now that there is
45 an entire Puget Sound plan, they are prioritizing the areas in the Puget Sound.
46 They propose to realign how existing funding is distributed. The goal is to get as
47 many of the actions done in the ten years as possible. This isn't going to require

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 new funding. This will use things such as mitigation and existing opportunities.
2 The State is also looking at diverting mitigation monies from large projects such as
3 the Guide Meridian project and Seattle area projects.
4

5 Fleetwood asked if it's not anticipated that Whatcom County will have to
6 appropriate significantly more money in the next ten years. Roll stated that's not
7 what he said. The Puget Sound plan anticipates that the basin will receive about
8 \$40 million over ten years for salmon recovery efforts, but it does not propose that
9 communities come up with new funding. It proposes that communities redirect
10 existing funding.
11

12 Jeff Monsen, Public Works Director, stated there is a lot of optimism out
13 there that plans like this will be implemented. To insure that the plan is done, then
14 generate new local money. An alternative is to use the current revenue stream and
15 change the sequence of activities. Those are budget neutral, but not policy neutral.
16

17 Caskey-Schreiber asked if the Public Works Department will put that ranking
18 forward to the Council. Monsen stated they will try, more so from the River and
19 Flood Division and not so much from the Road Division. At this table, begin to look
20 at where to focus the resources to get the biggest benefit, dealing with natural
21 resource, river and flood, and transportation issues. Define a strategy to move
22 toward the same vision. That may require a change in course from what they've
23 done historically, but having the discussion will let them put the full picture on the
24 table.
25

26 Brenner asked if this has two functions, salmon habitat restoration and flood
27 control. She asked if they can use flood money for salmon habitat restoration.
28 Monsen stated the road, flood, and general funds are all available to implement
29 elements of this. However, be careful they don't deplete financial capacity to do
30 other things as well.
31

32 Thompson stated the fourth action item is the critical areas and shoreline
33 updates. They have made sure the salmon recovery plan information was available
34 as they developed those updates. The critical areas ordinance update is complete.
35 The shorelines update is in the works.
36

37 Action five is instream flows. They are working with the Bertrand Creek
38 instream flow pilot project and the Middle Fork instream flow pilot project.
39 Establish a clear methodology and process for addressing instream flows
40 throughout the basin.
41

42 Action item six is the nearshore estuary. When looking at the current
43 strategy used to review SRF Board projects, it says estuary and near shore areas
44 are very important. They haven't detailed which is more important or why. This
45 ties to the shoreline plan update and with the Marine Resources Committee to
46 identify the areas that are working well and the areas that are degraded, the
47 restoration opportunities, and where to get the most benefit from restoration.

1
2 Action seven is the lowland and tributaries. Those areas receive lower
3 priority because they are not used by early Chinook, yet they are significant to
4 other species such as bull trout. This is a place where the County has an important
5 role. The County is completing the culvert inventory. They are coming up with
6 specific designs and priorities for sites to be repaired on private land. The six-year
7 transportation planning process ties into the stormwater program. It also ties into
8 the Conservation District for farm plan development.
9

10 McShane asked about action six. He asked that it be tied to action seven.
11 Stormwater management is to minimize negative impacts on habitat. That could be
12 added, even if it may be duplicative, to the nearshore estuary habitat issue. They
13 are starting to gain an understanding of the impacts to the nearshore habitat from
14 stormwater runoff. Even clean runoff can be a real detriment to the juvenile fish.
15 He is concerned they aren't prepared to have an appropriate stormwater plan for
16 residential development and its interaction with the nearshore habitat.
17

18 Roy asked if Councilmember McShane is suggesting that stormwater issues
19 be addressed in both action items six and seven. She agrees with that.
20

21 Thompson stated Birch Bay planning is a good place to insert that initially.
22

23 The last action is one in which the County is not directly involved. The
24 salmon co-managers are considering a program to use the Skookum Creek
25 hatchery to supplement those populations.
26

27 Nelson stated many actions that will take a lot on the County's part. A
28 concern is the measurement of outcomes. Roll stated the financial plan recognizes
29 that 10 or 15 percent of every project would have to have a long-term monitoring
30 commitment. Of that \$40 million, at least 10 percent is used specifically for
31 monitoring and reporting results.
32

33 Thompson stated the validity is whether they are getting more fish back.
34

35 Nelson stated they won't know which measure gets the fish back. Thompson
36 stated that's part of the challenge of management. That's why a detailed adaptive
37 management plan is in the works. They have to answer those questions on local
38 and State levels.
39

40 Roll stated it takes time to undo 150 years of damage.
41

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

44 Roll continued to state that it is not only a challenge to bring the plan
45 forward, but to get the community culture to understand it's important.
46

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 Nelson stated they hope to see effects at the end of the ten years given the
2 lifecycles. They also want to see how the fish respond to the specific actions, such
3 as if they are using the riparian habitat and if they are using the instream flow.
4 Thompson stated monitoring needs to fit the functions. The question must fit the
5 project. A lot these physical systems may take substantially longer than the
6 lifecycle of the salmon. It will take a while for the systems to settle down. People
7 tend to think in timeframes of two-year or six-year legislative cycles, when they get
8 federal funding. That doesn't really fit the fish or the landscape. Their initial
9 funding for SRF Board was five years. Now they are asking for evidence of
10 increased fish populations. People are trying to educate them that it takes longer
11 than that to see results.

12
13 Brenner asked if there are still a bunch of nets in the river.

14
15 Nelson stated that is in the lower portion, but the Lummis have a right to
16 that.

17
18 Roy stated the Lummis have a right, but only at a certain time in the cycle.

19
20 Thompson stated the Lummi net fishery fishes from Slater Road downstream.
21 They don't open the season until the critical stock of spring Chinook are through the
22 system. The nets are not there all year long. Some derelict nets come into the
23 system, but that is a separate issue.

25 **2. RIVER AND FLOOD ISSUES**

26 Flood Project Mitigation Strategies

27
28
29 Paula Cooper, Flood Division Manager, stated there are two subcommittees of
30 the Flood Control Zone District Advisory Committee. One is a Management and
31 Oversight Subcommittee. The second is the Gravel and Sediment Subcommittee.

32
33 The first discussion is about amount of mitigation they incorporate into the
34 flood projects. With the Everson overflow project, the cost of mitigation was about
35 40 percent of the project cost.

36
37 Art Anderson, Flood Control Zone District Advisory Committee Member,
38 stated it's a good idea to share things with the County Council. Have some mindful
39 thinking and skillful discussion on this issue. He is not against fish, but the
40 question is how much is enough for mitigation. Recently, the Army Corps of
41 Engineers figure five percent for mitigation. He asked the Council to establish a
42 reasonable limit of money spent in each project for mitigation. The advisory
43 committee's basic scope of work is to protect lives and infrastructure.

44
45 Caskey-Schreiber asked for more information on the mitigation fees and how
46 they assess fees.

47

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 Cooper stated mitigation is negotiated through the permit process. A goal is
2 to lessen the project impact. For the Everson overflow project, the mitigation need
3 was raised because of the length of the project. They had to mitigate for the rock
4 that doesn't provide habitat as good as wood, and they also had to provide for lost
5 opportunity of the river to migrate and create fish habitat. Through the process of
6 negotiating with the permitting agencies, the agencies proposed initial mitigation.
7 Some of the mitigation requests, from the tribes and Fisheries, were impossible to
8 do.

9
10 Jeff Monsen, Public Works Director, stated a straight definition of mitigation
11 is difficult. The process of coming up with mitigation is new every time. Mitigation
12 means no net harm, per the State of Washington. To get over the hurdle of the
13 negotiation process and in looking at plans, the agreement with State Department
14 of Fish and Wildlife is to state the agency's minimum requirement, and then the
15 County will agree to do a little more with the minimum. There is no real target for
16 mitigation in legislation. Some entities have set a financial limit, which sometimes
17 kills a project. The conflict in a lot of these projects is that, according to the
18 Endangered Species Act (ESA), someone is supposed to be restoring the fishery.
19 Under a permit however, there is no obligation to restore, only to mitigate. The
20 tribes expect that someone is going to restore the fishery, so that's the position
21 they take. They have a right to that expectation. They won't engage the County of
22 restoration versus mitigation.

23
24 Nelson asked if an example is that the federal government will issue a no go
25 if the cost of mitigation exceeds an agreed upon financial limit for mitigation.
26 Monsen stated that if the County sets a financial limit, there may be projects that
27 cross that limit and the County won't pursue them because they can't get
28 permission to do them at the mitigation level the County has pre-approved.
29 Federal agencies reaction is unknown. There is no boundary as far as what they
30 can ask for.

31
32 Nelson asked if the advisory committee was uncomfortable with the
33 mitigation cost being 40 percent of the entire project.

34
35 Jeff Chalfant, Senior Planner, stated mitigation at best is defined as no net
36 loss of ecological functions. There is a Constitutional issue. The County can't
37 require someone to mitigate to restoration. The County can only require someone
38 to mitigate for impacts directly related to the project. They can't ask for more.
39 From an agency perspective, no one can ask for restoration. The tribes may be
40 able to negotiate for more in the process, but the State and federal agencies can't
41 ask for more.

42
43 Monsen stated they do ask for more, but can't require it.

44
45 Roy asked for an estimate of how many times the County meets the
46 minimum standards versus going over into restoration for every flood project or
47 road project that might affect habitat and fish. She asked where they are with the

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 minimum no net loss versus restoration. Monsen stated it is rare that the County
2 does only the minimum. The reason is because of how long they want to delay
3 work trying to come to the legal definition of what the minimum is.
4

5 Fred Polinder, Flood Control Zone District Advisory Committee Member,
6 stated that after the flood in the 1990's, the Council established the flood tax. This
7 summer, they agonized over approval of two projects. Forty percent on some of
8 these projects is for fish, not flood control. His committee is to take care of
9 damage from floods. Some requirements are totally ridiculous and are not even
10 getting done. The mitigation can be unbelievable. Fisheries waits until the County
11 is in dire straits to get things done.
12

13 McShane asked if the 40 percent mitigation for the Everson project was
14 recommended by the advisory committee. Anderson stated the advisory committee
15 felt that 40 percent was above and beyond what was necessary. He disagrees with
16 Mr. Monsen about giving more to the agencies than they ask for. It's gone so far
17 one way that it's time to swing back. If the taxpayers of Whatcom County knew
18 the value they're getting for their tax dollars, they would be up in arms.
19

20 McShane asked if the Flood Control Zone District Advisory Committee
21 recommended the project. Anderson stated it did not at first, and then did at a
22 later date.
23

24 McShane asked if the main issue is the cost of the mitigation. Anderson
25 stated the cost of the design is the main issue. He approved it because it is the
26 main corridor to go to Sumas. He felt uncomfortable approving it.
27

28 McShane stated they go through a permitting process that is unclear. He
29 understands the requirement for the nexus with the project. He asked if clarity
30 must be achieved through a process other than a permit process, using the court
31 process. Monsen stated that is possible. When he talked about doing more than
32 the minimum, it is at the State regulatory level. They apply that standard when
33 they deal with the North Lynden drainage work. When it comes to a river project
34 and federal issues, he has not made that commitment.
35

36 They may need to define a limit, especially with the decline in the federal
37 money going to the response to the ESA and Clean Water Act. The resource
38 agencies grab a hold of a locally sponsored project to make up the difference. They
39 are not allowed to do their own restoration projects. On the State and federal
40 levels, he has tried to focus on the minimum requirement and then put the
41 arguable amount of money toward where it is really the highest salmon priority.
42 The permitting process is the magnet for restoration. The salmon plan tried to
43 redirect where those resources go to.
44

45 McShane stated he may be interested in going down that road, but not on all
46 projects. There may be costs that aren't worth it. If it's the right kind of project

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 where the mitigation seems absurd, it might not take a lot of studies to
2 demonstrate that. He doesn't know if the Everson project is one of those.

3
4 Nelson stated separate the funding mechanism for projects that have a
5 mitigation impact more than the minimum. He asked if they've discussed it.
6 Monsen stated they have somewhat. It's a matter of applying tools to make that
7 happen. One tool is mitigation banking. Formalizing those relationships is difficult
8 to do. In some cases, there are conflicting goals.

9
10 Nelson stated pursue that before making a decision.

11
12 Caskey-Schreiber stated the critical areas ordinance asks for a mitigation
13 banking program.

14
15 Brenner asked at what point it is mitigation and not restoration. Forty
16 percent mitigation is really restoration. They will soon need to negotiate a formula
17 with the tribes and agencies. She asked how they can use flood money for
18 restoration. Monsen stated that from a legal standpoint, the formation of a flood
19 district has broad powers on which to spend money. The money can be used for
20 salmon restoration. Focus on where resources are going so they don't deplete
21 capacity to do projects that are a priority.

22
23 Polinder stated they agonized over the Everson project. It wasn't a lot of
24 money, but it was the principle. The fish mitigation required was ridiculous.
25 Everson was being blackmailed. If they didn't go through with it, there would have
26 been penalties. Serving on this committee is getting disgusting with the blackmail
27 they're getting on these projects.

28
29 Cooper stated the County didn't negotiate that mitigation.

30
31 Chris Hatch, Flood Control Zone District Advisory Committee Member, asked
32 who defines net loss in the negotiations.

33
34 Chalfant stated achieving no net loss is challenging. That's why some
35 agencies ask for more, because they don't know the impact of the project. It's a
36 way of expediting permit review and issuance. They will agree to do more that
37 they know will cover the impacts of the project, not knowing the exact loss. The
38 definition of loss is anything that drops below the baseline of fish conditions.

39
40 McShane stated that measuring the dip below the baseline is difficult and
41 expensive. He asked if they are talking about a full-blown environmental impact
42 statement (EIS) before each project. Monsen stated that the ESA has a no net loss
43 standard view. If someone is going to commit a take by killing one fish, even if the
44 intent is to put four fish back, that person has to prove that will happen first.

45
46 Roy stated it sounds like an argument can be made that, when confronted
47 with the no net loss issue, it's less expensive just to say they will go a little bit

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 above the baseline rather than go to the expense to measure the loss. It's an
2 economic decision more than a mitigation level decision.

3
4 Brenner stated it seems like, to expedite something that protects people
5 from floods, mitigation is more expensive. Have some kind of negotiated
6 percentage that they won't go above.

7
8 Caskey-Schreiber stated that is contrary to what Mr. Chalfant said. They are
9 bound to mitigate the project impacts. You never know what those impacts will be.

10
11 Nelson stated set aside a certain amount of funding in total to be used for
12 mitigation on all projects. Mosen stated there are legal issues in doing that. They
13 must mitigate the impacts. An agency can't approve a project that doesn't address
14 mitigation.

15
16 Nelson stated this gives agencies monies to do projects. Mosen stated
17 they've put that concept on the table. However, it's not easily accomplished.

18
19 Ron Bronsema, Flood Control Zone District Advisory Committee Member,
20 stated it ties into their cooperation with the Army Corps of Engineers. The advisory
21 committee is frustrated with the Corps' stream bank restoration. They waste a lot
22 of valuable County staff time trying to get permits to do projects that the Corps can
23 do and on mitigation. They can better use staff working on the hydraulic model and
24 other things identified in the Comprehensive Plan. They're still working on the
25 model on reach three. They approved the Comprehensive Plan six years ago. He
26 asked how they can justify spending all this staff time trying to get permits. The
27 problem is not just with the high mitigation costs.

28
29 Brenner stated they are always on the defense. She asked why the County
30 can't say that the agencies have to prove that their proposed mitigation won't
31 compensate for the loss.

32
33 Chalfant stated when securing a permit, the burden of proof is on the
34 applicant to show the project doesn't have impacts. Also, when trying to secure
35 Corps permits, the federal government has a trust relationship with the tribes. The
36 federal government is responsible for making sure their treaty rights aren't
37 affected. If there is an impact to resources, they must meet a de minimus test.

38
39 Caskey-Schreiber stated they've heard that slows down the permit process.

40
41 Nelson asked who is liable if an applicant is denied a permit to take down a
42 dangerous tree, and the tree falls on a house. Chalfant stated the County planning
43 department could potentially have liability.

44
45 Nelson asked who is liable if a flood wipes out Everson, if the County isn't
46 allowed to build the projects needed to protect Everson. Chalfant stated there is

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 exposure for the agencies. An attorney could answer that question. When there
2 are emergencies, permits come rather quickly.

3
4 Cooper stated the County has done two emergency projects in Everson and is
5 working on a third. They have agreed to do mitigation later.

6
7 Anderson stated the committee has articulated its concerns. It needs advice
8 from the Council. Now, the Army Corps of Engineers is doing the heavy lifting for
9 Whatcom County. Be less defensive and more offensive. When projects are held
10 over to the following year, they become more expensive. Think about this and give
11 the committee guidelines about what would be an appropriate level.

12
13 Brenner stated it seems that if they go ahead and issue a blank check, the
14 County can still show information on what the mitigation should be. She asked if
15 they have to show why the County's proof isn't adequate. The County should
16 provide its proof and make the agency prove the County's proof is wrong.

17
18 Roy stated the agencies have the power of the permit. That is the pathway
19 to court, which the County may need to take.

20
21 Hatch stated don't be surprised if there is a project that the Flood Advisory
22 Committee doesn't approve because the mitigation is more than an amount that is
23 a good use of money.

24
25 *(Clerk's Note: End of tape one, side B.)*

26
27 McShane stated the Council can discuss what guidance it wants to give to the
28 advisory committee on the percent of mitigation the County will pay for. The
29 Council can give guidance for the committee to hide behind when it has to say no.
30 Anderson stated none of them want to hide behind anything.

31
32 Nelson stated set a limit on the mitigation percentage for the advisory
33 committee, and anything greater would come to the Council for review.

34
35 Bronsema stated that sounds good.

36
37 Anderson stated he agrees with Councilmember Nelson's idea.

38
39 Hatch stated a lot of staff time goes into a project before coming to the
40 advisory committee for approval. The benefit of Councilmember Nelson's
41 suggestion is that staff will know ahead of time if they are getting into a higher
42 figure. The suggestion is a great approach.

43
44 Roll stated this is a great discussion on the topic of flood plain and salmon
45 integration, and allowing the two to coexist in a mutually beneficial way.

46

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 Monsen stated they would like to get credit for restoration when they choose
2 to put it in.

3
4 Sediment Management Plan
5

6 Anderson stated he is the chair of the subcommittee. He referenced the Kerr
7 Wood Leidal report. This is not a final report. It is a work in progress. The cover
8 page says it is a final report.
9

10 They've talked with many agencies. One element that is missing is on the
11 meeting with the river gravel users, who are people who mined the river in the
12 past. They want to find out why they left and what it would take to get them
13 interested in getting back to river gravel mining. That attachment will be added to
14 the packet. Hopefully, they will come up with a Nooksack River Sediment
15 Management Plan. They all realize that the floor elevation of the river is rising.
16 They don't have capacity, so they have minor flood events.
17

18 Brenner asked if there will be an evaluation that was done on the other
19 rivers. According to what she read, it will take time to find out that they have no
20 net loss. She asked if they would also factor in the additional gravel since they
21 stopped scalping. Cooper stated there is a pilot project to compare a few river bars
22 with topographic mapping of the river. They've learned that the error in that
23 analysis would be too great for the agencies to grant a permit. In the spring, they
24 will do bathymetry for the river. That will provide the basis for more detailed
25 analysis with a small enough error that will allow the agencies to grant a permit.
26

27 Anderson stated the consultant, Kerr Wood Leidel, will be at the meeting on
28 the 27th.
29

30 Caskey-Schreiber stated the report also talks about other measures to deal
31 with if the river fills up. Look at overflow areas and widening certain meander
32 areas. She asked if they are looking at it. Bronsema stated they are looking at it.
33 Channel migration is an aspect of their work, as is the hydraulic model, which is to
34 scientifically identify if these ideas will work. In many ways, the plan is everybody's
35 best guess. Now they have to prove these things scientifically. The gravel is
36 making the river level higher. Identify an overflow area, put water out there, which
37 will lower water level downstream. The model will identify if it will be enough.
38 People live in overflow corridors and it will come down to a cost benefit.
39

40 Caskey-Schreiber stated she read that they recommend removing 200,000 to
41 400,000 cubic yards per year.
42

43 McShane asked if the Nooksack River is referred to as an alluvial fan.
44 Thompson stated it is an alluvial river, which is not the same as an alluvial fan.
45

46 McShane asked if they've come to any conclusions at all about whether it is
47 incising or aggrading. Cooper stated the document lays out what has been done

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 and is a proposed approach for the agencies. They wanted to keep it scientific.
2 They tried to be unbiased going into this.
3

4 McShane asked how much it will cost. There are huge errors with what they
5 currently have. Cooper stated the bathymetry was approved for \$400,000. She
6 hasn't come forward with a final proposal for the bathymetry project yet.
7

8 McShane stated they would have to come back and do it again in ten years,
9 before they have any idea whether or not there is aggradation on a temporary
10 basis. Cooper stated they are now doing a pilot study with the less accurate data
11 that will show some evidence that there is capacity limitations due to gravel bar
12 accumulation in some locations.
13

14 Monsen stated this is one of those areas where they believe it's worthwhile to
15 have a gravel extraction program. It may be one of those test cases where they
16 end up forcing, rather than somehow absolutely proving, no harm, is that they can't
17 study this forever, either.
18

19 Thompson stated one challenge inherent with this kind of work is the scale
20 on which they are working, such as a gravel bar or a longer reach of the river.
21 The committee and Council must struggle with that direction.
22

23 Polindar stated that in 1993 and 1994, when they did the Hannegan project
24 from Lynden to the Pole Road, they scalped two gravel bars. They took out
25 thousands of yards. After the flood of 1995, they were right back to where they
26 were before. Just one flood did that. The gravel is still coming. Capacity keeps
27 getting narrower. Overflows will help, but there will be a lot of contention about it.
28 He agrees with it, especially up toward Everson, but he doesn't know if it will
29 happen.
30

31 Nelson stated he has some questions about the information and what is
32 being used. He likes using science-based information to evaluate this. He read
33 from the summary of the lower Nooksack River approach. He asked if there won't
34 be carte blanche sediment management on the river, but pinpointing specific areas
35 and then doing an evaluation of sediment quantity and ecological impacts.
36 Anderson stated they all realize they aren't going to wholesale remove gravel
37 without the best science they can possibly have. He hopes the end product will
38 have areas defined where they can use. It may be a test model to begin with. It
39 seems they have to prove they are losing capacity. If that's what they have to do
40 to appease the agencies, they will do that.
41

42 McShane stated critical information is on page 2-14 about sediment delivery
43 over time. The amount of aggradation at the Deming Bridge in about 6,000 years
44 is critical information. Nowhere is there information about whether or not the basin
45 is dropping. There is at least one fault line with differential movement across the
46 area below Deming. That's not a lot of aggradation in 6,000 years, if that data is
47 accurate.

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
2 Polindar stated that from 1900 to the 1960's, all cement poured in northern
3 Whatcom County was from the Nooksack River. However, every time they have a
4 high water, the gravel bars were back and people could continue to scalp the gravel
5 bars. That went on for 65 years. Now, they'd think no gravel has come down since
6 the 1960's. That's crazy. The gravel bars are getting higher and the river bed is
7 getting higher. The sediment will continue to come until they do something about
8 it.

9
10 Anderson stated the advisory committee would like to come back and talk to
11 the Council again. This is a good discussion. The advisory committee needs to
12 better prepare the Council for these events. People will want to know what is
13 happening.

14 15 **3. LAKE WHATCOM**

16 Geneva Stormwater Update

17
18
19 Kirk Christensen, Stormwater Engineer Manager, stated there are three parts
20 to the Geneva work, including stormwater retrofits throughout this area to the
21 north of Cable Street, reconstruction of Cable Street, and a transportation traffic
22 study on moving the majority of the traffic from Lake Whatcom Boulevard to Austin
23 Street and Lake Louise roads.

24
25 The area is divided into sub-basins. He indicated the sub-basins on a map.
26 They are looking at alternatives for stormwater treatment, such as rain gardens,
27 bio-retention, and treatment vaults. He indicated the potential locations for those
28 treatments on a map. CH2M Hill has a model of low impact feasibility evaluation.
29 It will estimate how effective these treatments will be to reduce phosphorus,
30 metals, and other sediment loads in the lake.

31
32 Caskey-Schreiber asked if widening ditches is contrary to low impact
33 development (LID). Christensen stated it would create better treatment with the
34 right plans. They are like filter strips. They are also looking at installing some
35 vaults.

36
37 Roy asked if a vault releases the water gradually. Christensen stated a vault
38 would be for treatment. A filter cartridge treats the water better before it runs into
39 the lake. Detention isn't a huge concern in the Lake Whatcom watershed.

40
41 Nelson asked how a vault reacts during a storm event. Christensen stated
42 the vaults treat the water from the smaller events, which is more polluted. The
43 water is fresh off the pavement. The larger events are routed around the vault.
44 They assume the water is cleaner at that point because it is more diluted. The
45 smaller events scrub all the oils off the road first. That is what they're trying to
46 catch.

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 They want to get a couple of the easier projects done next year. The
2 following year do more, in conjunction with the Cable Street construction.

3
4 Another aspect is routing the flows. Now, the flows go straight down Cable
5 Street, without much treatment. They're planning on rerouting the flows so there is
6 more treatment before entering the lake. They will install diversion structures at
7 various locations along Cable Street to change the natural flow path. It will result
8 in more effective treatment.

9
10 Roy asked about rerouting water past homes that have never had full ditches
11 before. Christensen stated they are rerouting the smaller events. The bigger
12 events will still go straight down Cable Street.

13
14 Roy asked if there is a community involvement piece. Christensen stated
15 there is, but they're not there yet.

16
17 Monsen stated the ditches will have to be maintained. They'll have to
18 educate the community about a changing landscape.

19
20 Brenner stated this is great. She asked if they are working with 20/20
21 Engineering or other private professionals who are familiar with this technology.
22 Christensen stated they will be using the same technology that the engineering
23 firms use.

24
25 McShane asked if they have some flexibility in terms of rights-of-way.
26 Christensen stated he is working on getting the rights-of-way organized.

27
28 McShane stated that might also be a public education piece.

29
30 Christensen stated another component is the construction of Cable Street.
31 They're going from Lake View to Lake Whatcom Boulevard. There are big
32 stormwater issues. There are sidewalks. There is road widening from 34 to 36
33 feet. They are going to look at low impact techniques to minimize the amount of
34 impervious surface and figure out how to adequately treat the stormwater. There is
35 an inadequate stormwater system going down Cable Street right now. It's a huge
36 problem.

37
38 Brenner asked if all this stuff will work well when they add the street width
39 by one-third, using impervious surface. Christensen stated they will improve the
40 strips by using low impact development.

41
42 Nelson asked if this is secondary to stormwater management and the sewer
43 system. He asked if this would be before it goes into the stormwater system, as if
44 it were pretreatment. Christensen stated it would be both. There would be
45 treatment before the runoff runs into the system, and there would be more
46 treatment down the line.

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 Nelson stated they characterize this as treatments before major events.
2 When there is a major event, it goes down Cable Street and into the lake. During a
3 major event, the flow is higher. He asked how they keep it from going into the
4 treatment systems designed for smaller events. Christensen stated they can design
5 the control structures accordingly. They take a certain amount of flow out one way.
6 Anything above that goes down the main path. A small amount would still go into
7 the control structures, at an amount they can handle.

8
9 Another aspect is moving traffic from Lake Whatcom Boulevard to Austin
10 Street and Lake Louise Road. Now, they're hiring a consultant to do a study to look
11 at the situation, look at accidents, and look at travel times to figure out if it's
12 feasible to reroute the traffic.

13
14 Nelson stated they had talked at one time about traffic signalization to
15 change the traffic pattern at a certain location. He asked why that never happened.
16 People are looking for the route that saves the most time. If they install a traffic
17 signal, it will slow down the route so people will choose an alternate route.
18 Christensen stated the study will look at the options for traffic flows.

19
20 McShane asked if part of the reason for diverting traffic from the lower end of
21 Cable Street or along Lake Whatcom Boulevard is to provide more opportunities for
22 treatment facilities. Christensen stated that is a possibility.

23
24 McShane asked how important is the actual location of the traffic to
25 phosphorus loading. Christensen stated it is significant.

26
27 Roll stated there was a study a while back about the roadway pollutants.
28 They can bring that information back to the Council.

29
30 Brenner stated she would like to see that information. Fixing the problem by
31 creating more impervious surfaces goes against what she knows.

32
33 Caskey-Schreiber stated they will hear more about the Lake Louise Road
34 design as they develop the design to low impact development standards.

35
36 Monsen stated the design process for Lake Louise Road itself is related.
37 There has to be more discussion on the amount of money they should invest to
38 shift the route. Staff is planning to move ahead with rebuilding Lake Louise Road.
39 That will shift some traffic. How much more traffic they want to shift needs to be
40 discussed.

41
42 Roy stated she agreed that it's uncomfortable to talk about treating
43 stormwater going into the lake and also talk about widening the roads, which is one
44 of the things that they are told is a cause of the problem. Come back with real
45 facts that they can get away with widening the road and treating the runoff better
46 so the net result is less. Also, do pervious bike trails.

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 Mosen stated they are now beginning to make ensure that low impact
2 development techniques in places where there will be a low impact use. Low
3 impact development in locations that have a high use make problems worse, not
4 better.

5
6 Nelson stated the use on Northshore Road isn't as high as they have on Lake
7 Louise Road or Lake Whatcom Boulevard. He asked if that is more of a safety
8 issue. Mosen stated Northshore Road is a safety issue. The reconstruction of
9 Lake Louise Road is heavily dominated by a safety issue. The reconstruction of a
10 Cable Street alignment is a combination of water quality, safety, urbanization.

11
12 Brenner stated they'd be better off by putting a deputy on the road, who
13 would more than pay for himself from the tickets. Also, do the bike paths and
14 sidewalks with porous concrete. She wants to see a significant reduction, not a
15 minimal reduction, with the money they are spending.

16
17 Nelson stated the safety issue isn't just speeding traffic. The safety issue is
18 also with the curves, lighting, bicyclists, and other things the Sheriff doesn't have
19 control over.

20
21 Roll stated staff will be going through an analysis of what a stormwater
22 manual adoption means in the context of phase two.

23
24 *(Clerk's Note: End of tape two, side A.)*

25
26 Roll continued to state that they may want to use certain pieces of the plan
27 in certain areas, or they may want to use the whole thing countywide. There will
28 have to be discussions with the Building Services Division to make sure they
29 understand the requirements for work loads and needed skills.

30
31
32 **ADJOURN**

33
34 The meeting adjourned at 12:20 p.m.

35
36
37 _____
38 Jill Nixon, Minutes Transcription

39
40 The Council approved these minutes on November 22, 2005.

41
42 ATTEST: WHATCOM COUNTY COUNCIL
43 WHATCOM COUNTY, WASHINGTON
44
45
46
47 _____

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 Dana Brown-Davis, Council Clerk

Laurie Caskey-Schreiber, Council Chair