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WHATCOM COUNTY COUNCIL
Natural Resources Committee

December 9, 2008

Committee Chair Carl Weimer called the meeting to order at 9:30 a.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

Seth Fleetwood
Bob Kelly

Absent:

None

Also Present:

Barbara Brenner
Sam Crawford

COMMITTEE DISCUSSION

1. OVERVIEW OF SHELLFISH PROTECTION DISTRICTS (AB2008-401A)

Erika Stroebel, Public Works Department, submitted and read from a presentation (*on file*). There are over 30 sampling stations in the Drayton Harbor watershed. There are two elements to water quality standards for fecal coliform. The first is the geometric mean, similar to an average. Most stations meet the geometric mean. The second is the element is the 90th percentile, which measures bacteria spikes. There are many large spikes in bacteria, so they aren't meeting the 90th percentile criteria in many areas, especially in the summer months.

Brenner asked if anyone has done a DNA analysis of the bacteria to find out where it comes from. Stroebel stated they're doing a small pilot study on microbial source tracking. The final report of the first phase of the study isn't complete yet, but should be this week. She will provide a copy to the councilmembers when that is done. They preliminarily found some human sources and also ruminant sources throughout the watershed.

In Drayton Harbor, they tend to see higher bacteria counts during dry months at the freshwater sites. During the wet season, they tend to see lower counts. However that pattern is opposite in the marine stations. They are trying to tie together all these pieces to find out what improvements will be most effective.

Brenner stated it seems most logical that bacteria goes into the streams and creeks, and flows into the harbor. She asked if there is any contamination from outside the harbor. Stroebel stated the State Department of Health looks at the tidal cycles and bacteria counts during different tide patterns. There are some impacts from outside of the harbor as water moves into the harbor system. They hope to work closer with Canadians to determine how water from their freshwater streams enter into the near shore.

Brenner asked if the City of Victoria, British Columbia still dumps its sewage into the water. Stroebel stated the Department of Health recently started sampling bacterial counts at three or four stations outside of Drayton Harbor, which will provide a sense of whether there are sources outside of the harbor that impact the inside of the harbor.

1 Fleetwood asked for graphs that show water quality projections over the last five
2 years. He would like to know whether more attention in the past correlates with water
3 quality improvement. Stroebel stated she can provide that information. Last year at this
4 time, several of the marine stations began to meet water quality standards until the wet
5 season, when they had several high spikes over three months. According to the State
6 Department of Health last month, two critical stations now meet water quality standards.
7 However, they're now moving into the wet season. At times, it seems they are making
8 improvements, but they're still having significant problems during the wet season.
9

10 Kelly asked if most of the wet season spikes are associated with overflows at Blaine's
11 treatment facility. Stroebel stated many of those wet season spikes were historically
12 presumed to be associated with the wastewater treatment plan. The City put in measures
13 to capture overflow a few years ago.
14

15 Kelly stated that backup system has failed a number of times since it was installed.
16

17 Geoff Menzies, Drayton Harbor Shellfish Protection District, stated the City has made
18 heroic efforts to make sure there have not been overflows. There may have been one or
19 two in the last five years. There is no correlation between any problems with their system
20 and these measures.
21

22 Kelly asked the source of the wet season spikes. Stroebel stated they are still trying
23 to determine the source.
24

25 Brenner stated she was told that Drayton Harbor does not flush well naturally. She
26 asked if there is an aerial system that shows where the heat and bacteria come from.
27 Stroebel stated many methods are available. They haven't looked into using that method.
28

29 Brenner stated she's concerned about using a sledgehammer approach, and not
30 concentrating on targeted locations where they should focus. Find out specifically where
31 this stuff is coming from. Stroebel stated she can give a presentation on specific, strategic
32 actions.
33

34 ***The Council concurred.***
35

36 Stroebel continued reading the presentation on Portage Bay and Birch Bay.
37

38 Crawford asked if the reason for the closure at the mouth of Terrell Creek is because
39 the State feels that the bacteria counts are getting worse or just not getting better.
40 Stroebel stated the State feels the counts are getting worse. The State recognized the high
41 counts in Terrell Creek in 1994. Now, the State recognizes that the high counts are
42 substantial enough to result in a closure of that area.
43

44 Crawford stated the Birch Bay Watershed and Aquatic Resource Management
45 (BBWARM) area was done because of storm water issues. These bacteria counts are animal
46 and human waste issues. Stroebel stated that in urban areas, the issue is domestic pets
47 and urban wildlife. Nationwide stormwater results often show elevated bacteria levels in
48 urban areas for these reasons. Rural stormwater runoff can have animal waste, and can
49 impact the effectiveness of septic systems.
50

51 Crawford stated the funding mechanism for the BBWARM is a calculation of
52 impervious surface. Those impervious surfaces don't tend to be the source of bacteria from
53 farm animals and pets. Stroebel stated that in rural areas, impervious surface is linked with

1 increased bacteria levels. They have created a conduit for that bacteria to be carried to the
2 water bodies. If there were natural soils and forested conditions, the stormwater will
3 infiltrate and not run off. She plans to continue discussions with the BBWARM Advisory
4 Committee with this issue. Shellfish is one of its priorities.
5

6 She continued her presentation on Northern Chuckanut Bay.
7

8 Brenner asked about people harvesting in closed areas. Stroebel stated the bacteria
9 they measure aren't necessarily harmful to consume, but they are indicator of the presence
10 of fecal matter and other pathogens in the system that do cause illnesses. There are signs
11 up, and they educate people about the closure. At this point, they don't know the condition
12 of the marine water quality. They are talking with the State Department of Health about
13 assessing that area.
14

15 Brenner asked if there was a connection to failing septic systems. Stroebel stated
16 they found failing systems and water quality problems in that area in the mid 1990's. There
17 is a nationally-established connection between failing septic systems and high bacteria
18 counts.
19

20 Brenner stated she would like to see that information. They ought to have scientific
21 proof.
22

23 Stroebel finished her presentation on other areas to consider.
24

25 Jon Hutchings, Public Works Department, stated they need in-depth discussion about
26 the Birch Bay model and how to go forward in terms of managing the shellfish districts.
27 They propose having a more in-depth topic of discussion at the February 2009 surface water
28 work session.
29

30 **2. UPDATE ON SWIFT CREEK SEDIMENT MANAGEMENT (AB2008-275A)**

31

32 Paul Pittman, Public Works Department, read from the memo beginning on Council
33 packet page four. Item two in the memo should be amended because they do not have
34 federal money in the budget at this time. They are at a point where Swift Creek isn't being
35 physically managed. They will probably experience flooding in the near-term.
36

37 Nelson asked how far they will get to 10-year containment with the \$1 million from
38 Ecology. Pittman stated it won't get them far. They requested \$5.3 million to get started.
39 Over the next ten years, interim management will cost \$20 million.
40

41 Weimer asked if their only hope to get money is to have a disaster out there.
42 Pittman stated that may be.
43

44 Brenner asked if the County could request a waiver of liability since no one has
45 money to do anything. Pittman stated they looked into a waiver. It's complicated. Liability
46 will exist no matter what they do.
47

48 Weimer stated they've heard from Ecology and the State Department of Health that
49 they're not willing to walk away from the health concerns.
50

51 Kelly stated the \$20 million is for a series of setback levees. He asked where the
52 levees will start and end. Pittman stated they would start in the upstream direction of the
53 alluvial fan, toward the apex, and begin working down. They would have to work on

1 property acquisition. They would have to work around a high-pressure gas pipeline, roads
2 and bridges, and wetlands. Even though containment setback levees seem feasible, he's
3 not sure they will be popular with the community and the environmental issues.
4

5 Kelly asked about a targeted water storage system and whether the material will
6 settle to the bottom if it sits long enough. Pittman stated one plan to consider is a deep
7 settling basin. There are questions to that option.
8

9 Kelly asked Canada's opinion on this material dumping into the Fraser River.
10 Pittman stated they don't want the problem.
11

12 Brenner stated the Canadian officials know about the problem.
13

14 Weimer stated their elected officials indicated an interest to meet, but isn't sure if
15 that ever happened.
16

17 *(Clerk's Note: End of tape one, side A.)*
18

19 Fleetwood asked if there are other sources of naturally-occurring asbestos that could
20 contribute to observations in the Fraser River. The Swift Creek source may not necessarily
21 contribute to the Fraser River asbestos. Pittman stated that's correct, but there is asbestos
22 the entire course of the Sumas River to the north.
23

24 Fleetwood asked the difference between a setback levee and a levee. Pittman stated
25 that the stockpiles act as levees right now. The setback levee idea is to move those
26 containment piles back to create more storage rooms. Dredging becomes very expensive
27 over 20 years. They would take on additional liabilities from dredging as the handler.
28

29 Fleetwood asked if any financial assistance they get would go toward containing the
30 river and reducing the likelihood of flooding. He asked if that's the best they can do.
31 Pittman stated \$1 million wouldn't prevent flooding for the entire length of Swift Creek or
32 the Sumas River. They can reduce flooding potential to certain areas.
33

34 Fleetwood asked the County response in addition to containment. Pittman stated
35 that if there were a flood event, and asbestos was released across the landscape, there
36 would be an emergency response effort to close roads and assess the condition. They
37 would pass the information on to State and federal agencies, and hope for assistance from
38 that. Beyond that, the County doesn't have a significant ability to do much. The Health
39 Department has mailed information to the greater community about asbestos.
40

41 Crawford stated the Canadians have the proper response, which is to not worry
42 about it. There has been no epidemiological study showing any increase in mesothelioma or
43 anything. This is a making of the Environmental Protection Agency (EPA), which found
44 something that could be a problem and prohibits the County from doing flood control work.
45 It could just as easily not be a problem, and no one would be any worse.
46

47 Fleetwood asked the amount of staff time is dedicated to Swift Creek response.
48 Pittman stated he was full-time on Swift Creek this past year.
49

50 Fleetwood asked if the decision to make this a concern is a policy decision.
51

52 Crawford stated there are flood issues regardless.
53

1 Pittman stated that if the County receives \$1 million, there will be an expectation
2 that the County will spend dedicated staff time.
3

4 Fleetwood asked if staff would ask the Council at some point to decide whether or
5 not the County should continue to dedicate resources to Swift Creek. Hutchings stated they
6 will have to have that discussion at some point. The County has focused on amplifying this
7 problem with the State and federal governments so they recognize the position in which
8 they've put Whatcom County. It's very clear the County can't afford to deal with this
9 problem, even with help. In the end, it will be incumbent upon the State and federal
10 governments to accomplish anything. Unfortunately, the County is the government closest
11 to those folks who are impacted. Simply disengaging from the problem will work only until
12 this material is released across the landscape and they find themselves in emergency
13 response mode. Staff will do its best to keep the creek from flooding, people informed, and
14 the immediate health and safety of the citizens in mind. They will ask the EPA and Army
15 Corps of Engineers to assist in cleanup.
16

17 Crawford stated no one has died from this situation. There is more probability of
18 death from swimming in Lake Whatcom. It's the EPA's problem. Hutchings stated the
19 Health Department takes this seriously, in terms of recognizing the risk and informing the
20 citizens of that risk. It's not necessarily the County's responsibility to make decisions for
21 the community members who have been made aware of the risk.
22

23 Kelly asked if liability or the risk itself is driving the Health Department's reaction and
24 warnings.
25

26 Crawford stated it is speculation based on experience in other areas.
27

28 **3. DISCUSSION OF POTENTIAL AMENDMENTS TO THE SHORELINE** 29 **MANAGEMENT PROGRAM (AB2008-303A)** 30

31 Peter Gill, Planning and Development Services Department, stated that before talking
32 about the actual proposed amendments, he would talk about the potential process for going
33 forward with proposed amendments. Today he will take the committee's comments and
34 make changes to the Code. The option is to send those changes to the Technical Advisory
35 Committee and the Citizens Advisory Committee for feedback. He will come back to the
36 Natural Resources Committee if there are any substantive changes. The Council would hold
37 a hearing and pass an ordinance or resolution to forward the amendments on to the
38 Department of Ecology. There wouldn't be a formal meeting with those advisory
39 committees.
40

41 ***The Committee concurred with the process.*** 42

43 Fleetwood asked if the committee today will approve the items that go forward in the
44 process. Gill stated that's correct. He summarized the issues beginning on Council packet
45 page seven.
46

47 Crawford stated get clarification from Ecology about when people can and cannot
48 include the driveway area, as referenced in section 23.50.07(K)(2). People should have
49 predictability about when they have to count the driveway.
50

51 Weimer asked to get an illustration of item 23.50.07(K)(2) on Council packet page
52 nine.
53

1 Crawford stated clarify section 23.50.07(K)(2) better.
2

3 Dannon Traxler, 709 DuPont Street, Bellingham, stated she thanks staff for the
4 amendment package. They've done a lot to address concerns. However, many issues
5 haven't been addressed. She read from a memo from Mr. Stalheim to Executive Kremen
6 dated October 9, 2008. The amendment package doesn't address a majority of the issues.
7 Regarding the 2,500 square foot issue, it is a very small house footprint when that also
8 includes driveway and landscaping. The biggest issue is the 150-foot setbacks. They can't
9 put those blanket conditions on development without a nexus of proportionality. Allow
10 case-by-case development. Allow people to locate their homes closer to the shoreline if
11 they can build well environmentally. That will provide an incentive. Get a legal opinion.
12 Expand the public comment period. They must balance private and public interests.
13

14 Stalheim stated they haven't yet gotten to the legal analysis stage.
15

16 Fleetwood stated many people talked about the 150-foot setback. The question was
17 whether it could be enforced generally or on a case-by-case basis. It wasn't included in the
18 staff recommendation for further review. He asked the reason for that. Stalheim stated
19 they focused recommendations on new issues brought up by the Department of Ecology
20 review. The County adopted the 150-foot setback standard in 2007, so they didn't include
21 that on the list. Reviewing that issue right now would be a major policy undertaking for
22 staff. If the Council wants to do that, it can.
23

24 Weimer stated the Council direction was to look at the eight things on the list from
25 Ecology. Stalheim stated it was. The setback was not on that list.
26

27 Traxler stated there is new case law since 2007.
28

29 Stalheim stated he agrees, and raised that issue in the memo.
30

31 Fleetwood stated the question is whether they may add this to the list for
32 consideration by the advisory groups. He asked if staff wants to go down this road, or leave
33 the list as it is. Stalheim stated it's up to the Council. Final adoption of the shoreline
34 program was by the State Department of Ecology, after those cases came out. He would
35 like to presume that the Department of Ecology went through that legal review. This is
36 State law, and they must defend it. He hasn't spoken to Ecology about the issue, but he
37 could.
38

39 Ron Jepson, 222 Grand Avenue, Bellingham, stated there should be more
40 illustrations in the paperwork. Be clear that all impervious surfaces that survived a fire are
41 included. Ordinary high water mark should be defined as the vegetation line.
42

43 Crawford stated they replaced "in-kind" with a reference to 23.60.02, which includes
44 subjective feasibility language that is too open to interpretation. There is still potential for
45 staff to not allow someone to rebuild what they had for 80 years. Stalheim stated they can
46 make the definition more clear. The Council and staff intent is the same. They just need to
47 make sure the language reflects the intent.
48

49 Crawford stated the simple way to do that is to reinstate the language that includes
50 "in-kind" and leave out the language starting "as described."
51

52 **Weimer moved** to recommend staff's recommendation to the full Council, and this
53 comes back to the Council in January for public hearing and decision.

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Motion carried unanimously.

OTHER BUSINESS


There was no other business.

ADJOURN

The meeting adjourned at 11:04 a.m.



Jill Nixon, Minutes Transcription

ATTEST

Bana Brown Davis, Council Clerk

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



Carl Weimer, Committee Chair

