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WHATCOM COUNTY COUNCIL
Special Committee Of The Whole

March 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 12:40 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. DISCUSSION WITH CHIEF CIVIL DEPUTY PROSECUTOR DANIEL GIBSON REGARDING PENDING LITIGATION, SWIFT CREEK (AB2017-018)

Attorney Present: Daniel Gibson

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 1:15 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Mann moved to go into executive session until no later than 1:15 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Sidhu, Brenner, Buchanan, Mann, Donovan and Weimer (6)

Nays: None (0)

Absent: Browne (out of the room) (1)

OTHER BUSINESS

ADJOURN

The meeting adjourned at 1:00 p.m.

The Council approved these minutes on _____ 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

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Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

March 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 2:20 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION

1. CONTINUATION OF COUNCIL'S REVIEW OF THE 2016 CRITICAL AREAS ORDINANCE UPDATE (AB2016-276K)

Mark Personius, Planning and Development Services Department, introduced the discussion. He answered questions throughout the presentation.

Review of additional staff proposed amendments (post-Planning Commission recommendation) related to: Article 6 - Wetlands, Article 7 - Habitat Conservation Areas, Article 3 - Geologically Hazardous Areas (tsunami hazard areas), and Article 9 - Definitions

Ryan Ericson, Planning and Development Services Department, gave a staff report on the list of issues and additional proposed amendments, beginning on Council packet page 152, and answered questions.

Brenner stated the proposed changes in Issue 1 should include a reference to the Planning Unit, which represents all watershed users, and **moved** to amend Whatcom County Code (WCC) sections 16.16.263(A.3), .680(A.6), .720(B) and (M), and .760(A.6) in this issue on Council packet page 152, "...**Watershed Management** Salmon Recovery Board habitat project list, **including the Planning Unit** or by the Washington State..."

The motion was seconded.

Councilmembers discussed references to the Planning Unit throughout the sections in Issue 1, on Council packet page 152, and these sections addressing the project list of the board.

The motion to amend failed by the following vote:

Ayes: Brenner (1)

Nays: Sidhu, Browne, Buchanan, Donovan, and Weimer (5)

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1 **Absent:** Mann (out of the room) (1)
2

3 Ericson continued the staff report on the list of issues and additional proposed
4 amendments, beginning on Council packet page 152.
5

6 **Brenner moved** to amend WCC 16.16.230(D), "Low impact activities **when the**
7 **activity does not cause adverse impacts**, such as hiking, canoeing, viewing, nature study,
8 photography, hunting, fishing, education or scientific research."
9

10 The motion was seconded.

11 The motion to amend carried by the following vote:

12 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, and Donovan (6)

13 **Nays:** None (0)

14 **Absent:** Weimer (out of the room) (1)
15
16

17 Ericson continued the staff report on Issues 3, 4, and 5. He submitted a substitute
18 for proposed language on Issue 5 to WCC 16.16.620(K) and .720(U), "**Whatcom County**
19 **improved voluntary water quality improvement program best management practices may be**
20 **installed in wetland buffers to treat runoff from existing development.**"
21

22 Councilmembers discussed the process for going forward, the process for making
23 these staff proposed amendments, and holding a public hearing. Staff will make all the
24 changes prior to a public hearing.
25

26 Ericson continued the staff report on Issue 6 and 7.
27

28 Councilmembers discussed resident fish and identifying ditches that are considered
29 fish streams.
30

31 **Brenner moved** to amend 16.16.710(A)(1)(b), "ii. The waterway is used by
32 anadromous or resident salmonid or other **resident** fish populations; or...."
33

34 The motion was seconded.
35

36 The motion to amend carried by the following vote:

37 **Ayes:** Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)

38 **Nays:** None (0)

39 **Absent:** Mann (out of the room) (1)
40

41 Ericson continued the staff report on Issues 8 through 11.
42

43 Councilmembers discussed an appropriate definition for "reasonable use."
44

45 Ericson continued the staff report on Issues 12 through 14.
46

47 Brenner stated amend the definition of streams, "...and/or the waterway is used by
48 anadromous fish ~~or other fish populations~~, **resident fish**, or flows directly into..."
49

50 **The Committee concurred.**

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1
2 Councilmembers discussed who decided on the current list of species of local
3 importance. Ericson stated any changes to the list must be approved by the County Council
4 as an attachment.
5

6 Ericson continued the staff report on Issues 15 and 16.
7

8 **Brenner moved** to amend Issue 16, section 16.16.750(B), "The technical
9 administrator shall ~~have the authority to~~ waive the report requirement when he/she...."
10

11 The motion was seconded.
12

13 Councilmembers discussed whether the technical advisor has the option to not waive
14 the requirements and under what circumstances the technical administrator would choose to
15 not waive the requirements.
16

17 **Brenner amended her motion and moved** to delete .750(B).
18

19 The amended motion was seconded.
20

21 The motion to amend carried by the following vote:

22 **Ayes:** Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)

23 **Nays:** None (0)

24 **Absent:** Mann (out of the room) (1)
25

26 Ericson continued the staff report on Issue 17.
27

28 Review of certain questions, comments, and suggestions by Councilmembers related to:
29 Overall (shall v. may), Article 1 - Purpose , Article 2 - Administrative Provisions, and Article
30 7 - Habitat Conservation Areas
31

32 Ericson continued the staff report with the list of issues regarding questions,
33 comments, and suggestions by councilmembers, beginning on Council packet page 159. He
34 reported on Issue 18.
35

36 Councilmembers discussed the level of flexibility and authority provided to the
37 applicant and to inexperienced staff.
38

39 **Brenner moved** to amend language from "shall" to "may" and to "shall have the
40 authority to" throughout the sections listed in Issue 18 on Council packet pages 159 and
41 160.
42

43 The motion was seconded.
44

45 **Browne suggested a friendly amendment** to first vote on the first three sections
46 on Council packet page 159, sections .255, 260(C)(1), and .270(4), separate from the last
47 three sections on Council packet page 160.
48

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1 **Brenner accepted** the friendly amendment to divide the motion **and amended** her
2 motion to amend 16.16.255, .260(C)(1), and .270(4), "shall have the authority to" on
3 Council packet page 159.

4
5 The motion to amend carried by the following vote:

6 **Ayes:** Brenner, Weimer, Sidhu, Browne, Buchanan, and Donovan (6)

7 **Nays:** None (0)

8 **Absent:** Mann (out of the room) (1)

9
10 **Brenner moved** to amend section .255(E), "shall **may**" on Council packet page 160.

11
12 The motion was seconded.

13
14 The Councilmembers discussed whether a revision should be required if an
15 assessment is inaccurate or incomplete.

16
17 The motion to amend failed by the following vote:

18 **Ayes:** Brenner (1)

19 **Nays:** Weimer, Browne, Mann, Sidhu, Buchanan, and Donovan (6)

20
21 **Brenner moved** to amend section .680(A) on Council packet page 160, "shall **may**."

22
23 The motion was seconded.

24
25 Councilmembers discussed whether the technical administration should be required
26 to consider all the items listed in subsections (1) through (6).

27
28 The motion to amend carried by the following vote:

29 **Ayes:** Brenner, Browne, Buchanan, and Donovan (4)

30 **Nays:** Weimer and Mann (2)

31 **Absent:** Sidhu (out of the room) (1)

32
33 Ericson continued the staff report on Issues 19 and 20.

34
35 Councilmembers discussed whether the Washington Administrative Code (WAC)
36 requires protection of ecosystems in the critical areas ordinance.

37
38 Buchanan stated that this item will be held in Committee to the next meeting in
39 March.

40
41 **2. DISCUSSION OF PROPOSED COMPREHENSIVE PLAN AMENDMENTS**
42 **RELATING TO THE CHERRY POINT URBAN GROWTH AREA (ORDINANCE**
43 **SCHEDULED FOR INTRODUCTION THIS EVENING) (AB2017-063)**

44
45 **Brenner** referenced the staff memo on Council packet page 171 and **moved** to
46 replace the Planning Commission proposal with Alternative 1, beginning on Council packet
47 page 185.

48
49 The motion was seconded.

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1 Councilmembers discussed Councilmember Brenner's alternative version compared
2 to the Planning Commission version. **Councilmembers concurred** to work from the
3 Planning Commission version of the ordinance.

4
5 **Brenner withdrew** her motion.
6

7 **Weimer moved** to amend page 4 of the ordinance, lines 38-41, "Whatcom County
8 does not enforce the Magnuson Amendment through the local permitting process. However,
9 the County ~~can~~ **does** encourage federal agencies to enforce the Magnuson Amendment and
10 **will strive to consult with federal agencies on whether proposed development at Cherry**
11 **Point may conflict with the Magnuson Amendment before issuing local permits when**
12 **possible** may, ~~if necessary, seek to enforce the Magnuson Amendment through the court~~
13 ~~system.~~ (see Policy 2CC-15)."
14

15 The motion was seconded.

16
17 Councilmembers discussed including a reference to the Magnuson Amendment.

18
19 The motion to amend carried by the following vote:

20 **Ayes:** Sidhu, Mann, Browne, Buchanan, Weimer and Donovan (6)

21 **Nays:** Brenner (1)
22

23 **Weimer moved** to amend page 7 of the ordinance, lines 25-29, "These industries
24 need to be protected from the inappropriate encroachment of incompatible uses;
25 particularly residential uses that could affect their ability to expand, at the same time, the
26 expansion of these industries needs to be done in ways that do not significantly impact the
27 ecology of the Salish Sea **or encourage expanded export of unrefined fossil fuels.**"
28

29 The motion was seconded.

30
31 **Browne suggested a friendly amendment** to substitute "export" with
32 "transshipment."
33

34 Weimer referenced and the councilmembers discussed the definition of
35 transshipment, which is the shipment of goods or containers to an intermediate destination
36 and then another destination, and the County's lack of authority to regulate exports or
37 interstate commerce.
38

39 **Weimer did not accept** the friendly.
40

41 **Browne moved** to amend the amendment to substitute "export" with
42 "transshipment."
43

44 The motion was seconded.

45
46 The motion to amend the amendment carried by the following vote:

47 **Ayes:** Sidhu, Mann, Browne, Buchanan, and Donovan (5)

48 **Nays:** Weimer and Brenner (2)
49

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1 **Brenner moved** to amend the amendment to page 7 of the ordinance, lines 25-29,
2 "These industries need to be protected from the inappropriate encroachment of incompatible
3 uses; particularly residential uses that could affect their ability to expand, at the same time,
4 the expansion of these industries needs to be done in ways that do not significantly impact
5 the ecology of the Salish Sea **or encourage expanded transshipment of unrefined fossil fuels**
6 **off the North American Coast.**"

7
8 The motion was seconded.

9
10 Councilmembers discussed a company's need to send unrefined fossil fuel to other
11 locales during improvements or cleanup work and making sure shipments can go to other
12 facilities on the North American coast.

13
14 The motion to amend the amendment failed by the following vote:

15 **Ayes:** Brenner and Sidhu (2)

16 **Nays:** Mann, Browne, Buchanan, Donovan, and Weimer, (5)

17
18 The main motion to amend, as amended, carried by the following vote:

19 **Ayes:** Sidhu, Mann, Browne, Buchanan, and Donovan (5)

20 **Nays:** Weimer and Brenner (2)

21
22 **Donovan moved** to amend page 8 of the ordinance, Policy 2CC-2, "Ensure that
23 developments in the Cherry Point UGA maintain **and operate under** management plans to
24 accomplish the goals of the Aquatic Reserve Management Plan."

25
26 The motion was seconded.

27
28 Councilmembers discussed whether existing refineries need to operate under a
29 management plan, whether they are part of the aquatic reserve, who would enforce the
30 regulations, Planning Commission finding 29 regarding the Department of Natural Resources
31 (DNR) not altering the terms and conditions of existing leases and easements,

32
33 Matt Aamot, Planning and Development Services Department, answered questions.

34
35 **Sidhu suggested a friendly amendment,** "~~Ensure that~~ Developments in the
36 Cherry Point UGA **should** maintain **and operate under** management plans ~~to accomplish the~~
37 ~~goals of~~ **in compliance with** the Aquatic Reserve Management Plan."

38
39 **Donovan accepted** the friendly amendment.

40
41 Pete Sim, BP Cherry Point, answered questions. The DNR has determined that their
42 aquatic reserve is consistent with the uses in the Cherry Point area. Existing management
43 plans accomplish the goals.

44
45 **Donovan amended** his motion , "~~Ensure that~~ Encourage developments in the
46 Cherry Point UGA **to** maintain **and operate under** management plans ~~to accomplish the goals~~
47 ~~of~~ **consistent with** the Aquatic Reserve Management Plan."

48
49 The motion to amend carried by the following vote:

50 **Ayes:** Brenner, Mann, Browne, Buchanan, Sidhu, Weimer and Donovan (7)

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Nays: None (0)

Buchanan stated this item will be held in committee for two weeks.

COMMITTEE DISCUSSION AND RECOMMENDATIONS TO COUNCIL

1. RESOLUTION INITIATING PROPOSED COMPREHENSIVE PLAN AND ZONING AMENDMENTS (AB2017-083)

This item was not discussed.

OTHER BUSINESS

There was no other business.

ADJOURN

The meeting adjourned at 4:30 p.m.

The Council approved these minutes on _____, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Regular County Council Meeting

March 7, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 6:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

FLAG SALUTE

ANNOUNCEMENTS

SPECIAL PRESENTATION

1. VIDEO PRESENTATION TO PROVIDE INFORMATION RELATED TO THE SUPREME COURT'S HIRST DECISION, FOLLOWED BY TIME FOR COUNCILMEMBERS TO ASK QUESTIONS OF STATE AND LOCAL WATER EXPERTS (AB2016-309E)

Forrest Longman, Council Legislative Analyst, introduced the video presentation.

(Clerk's Note: Council played the video presentation, which can be found on the County's YouTube page at <https://www.youtube.com/watch?v=cTb-kcm10rQ&feature=youtu.be&t=921>)

The following panel experts answered councilmember questions:

- Tadas Kasalius, Attorney
- Bob Carmichael, Attorney
- Chuck Lindsay, Hydrogeologist
- Steve Jilk, Public Utility District (PUD) #1 Manager

Councilmembers asked questions from the panel members and discussed the following topics:

- There needs to be a discussion on the basis for the Nooksack Basin instream flow rule, which is simply a median average historical flow.
- The Court agreed with the instream flow rule, but ignored the part of the rule that allows exempt wells.

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- 1 • Ecology didn't conduct a maximum net benefit analysis when it set the minimum
2 instream flow.
- 3 • The legislature could fix the situation.
- 4 • Locally, they can come up with mitigation programs and create a task force to get at
5 some of these problems.
- 6 • The types of mitigation could open options right now.
- 7 • About 20 percent of 500 gallons of single family home indoor water use is
8 consumptive.
- 9 • An option for mitigation is the Ecology rainwater catchment program that would
10 remove someone from this issue by using it for drinking water or mitigation water.
- 11 • Another option for mitigation is getting water from a nearby water purveyor.
- 12 • Drawing water lowers the instream flow, but Whatcom County has a large
13 uninhabited area for surface water and a lot of rainfall available for aquifer recharge.
- 14 • The Supreme Court case law standard is that one molecule of impact to surface
15 water is considered impairment.
- 16 • The County must comply with Supreme Court decisions.
- 17 • The timing of the moratorium is legally debatable.
- 18 • Invalidity is worse than noncompliance, which allows time to become compliant
19 before a compliance hearing, which is scheduled in May.
- 20 • Whatcom County, as the named party to the case, is in a different position from all
21 the other counties.
- 22 • The decision referenced what the County must do when processing building
23 applications and subdivision applications, which influences the decision-making
24 process.
- 25 • The moratorium provided the County time to come into compliance.
- 26 • The Court concluded that it's the County's job to assess whether water is available
27 when issuing a building permit.
- 28 • Issuing a building permit doesn't prevent conflict between a senior water right holder
29 and junior water right holder.
- 30 • The consumptive use formula from the U.S. Geological Survey (USGS) is between 10
31 and 20 percent of daily use.
- 32 • Water use needs to be defensible in a permit applicant's mitigation plan.
- 33 • No state law indicates rainwater catchment is legal, but exempt wells are illegal.
- 34 • Department of Ecology Policy 1017 says rainwater catchment is a viable option for
35 mitigation and for drinking water.
- 36 • The total number of gallons that must be mitigated by remaining undeveloped lots in
37 the county could be millions of gallons per day.
- 38 • The instream flow rule applies to most tributaries, not just the main stem of the
39 Nooksack River.
- 40 • Begin reviewing all the water that enters the county and manage it as an entire
41 system.
- 42 • Current water law doesn't allow the PUD to move its available water around the
43 county.
- 44 • The necessity of a water bank.
- 45 • There is uncertainty due to senior water rights that haven't been adjudicated.
- 46 • The County could make an effort to look at what the municipalities, water districts,
47 and water associations have through some kind of work group, referencing the
48 Coordinated Water System Plan.

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- 1 • The Lower Nooksack Strategy included a component to identify water sources and
2 uses according to use, and tie the information to land management, but that
3 component was not funded or completed.
- 4 • The PUD is informally engaging in groundwater modeling, drought contingency
5 planning, and other water planning efforts.
- 6 • A challenge to creating a water bank is that mitigation must be at point of use.
- 7 • Creating a water bank using City of Bellingham water rights would be legally
8 possible, if there is the will to create it, since it's all in the same river system.
- 9 • Deep water aquifer that doesn't impact surface water can be used for mitigation.
- 10 • Barriers include the cost of infrastructure and water right holders who are hesitant to
11 open up their water rights to reallocation for fear of the rights being relinquished.
- 12 • The County has discretion in taking action on compliance.
- 13 • Counties not subject to this rule have taken the same action Whatcom County has
14 taken.
- 15 • Sharing water rights won't be a quick solution for anyone.
- 16 • Support efforts to have enough information on groundwater and surface water
17 resources, interconnectivity, and habitat needs to satisfy tribal claims and instream
18 flow habitat before new Ecology instream flow rules or a determination on tribal
19 water rights.
- 20 • The Lummi have two water rights: 1. A right from the Winters Doctrine for out-of-
21 stream consumptive right, and 2. A right to fish, which will drive the instream flow
22 requirements.
- 23 • Be proactive about determining the instream flow needs for fish.
- 24 • Include private well owners and the Planning Unit in any planning efforts.
- 25 • It would be tough for an attorney to successfully sue the County on behalf of a
26 client, given everything they know and if the client signed a waiver and had time to
27 consult an attorney.
- 28 • There seems to be a lack of trust among the stakeholders.

PUBLIC HEARINGS

1. ORDINANCE ADOPTING INTERIM AMENDMENTS TO THE WHATCOM COUNTY COMPREHENSIVE PLAN AND WHATCOM COUNTY CODE TITLE 15 (BUILDINGS AND CONSTRUCTION), TITLE 20 (ZONING), TITLE 21 (LAND DIVISION REGULATIONS), AND TITLE 24 (HEALTH CODE), RELATING TO WATER RESOURCES (AB2016-309D)

39 Mark Personius, Planning and Development Services Department, gave a staff report
40 on the format changes.

42 Buchanan opened the public hearing, and the following people spoke:

44 Dave Onkels submitted and read from his testimony (*on file*) and described the story
45 of a recent building applicant in performing a hydrogeologist review and the impact of the
46 Hirst decision.

48 Linda Twitchell, Building Industry Association of Whatcom County, stated she is
49 opposed to the interim ordinance because the County staff can overrule a hydrogeologist's
50 report. Define the qualified technical review staff team who can throw out the study done

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1 by a licensed professional report. The County should absorb the cost if it denies the
2 qualified study. Department of Ecology determined that 90 percent of water used from a
3 well is returned to the system.
4

5 Mary Kay Robinson, Whatcom County Association of Realtors, stated take care of the
6 people who are halfway through the process and have spent thousands of dollars on their
7 project. Don't restrict someone from enlarging their home by 50 percent. Identify what is
8 the financial assurance required by the mitigation plan, which is a problem for most people
9 who have to finance their projects.
10

11 Jim Hansen stated he is indifferent to this ordinance. State legislative action won't
12 add water to the streams. Begin developing options to make it easier for people to use the
13 water they have, do water conservation, and benefit farmers. The County should make
14 inspections mandatory, but provide a funding subsidy for financial hardship. Provide low-
15 and no-interest loans to pay for failing septic systems. Impose stormwater impact fees for
16 new construction.
17

18 Laura Sanderson stated the video presentation was biased. She spoke about a
19 recent building applicant who submitted a hydrogeologist review that was rejected and the
20 impact of the Hirst decision. Create the ability to transfer water rights.
21

22 Roger Almskaar, Citizens' Alliance for Property Rights, submitted and read from his
23 testimony (*on file*) and stated instream flow standards are not best available science. Allow
24 more housing to use groundwater for beneficial uses at reasonable rates as long as there is
25 adequate instream flow in tributaries for anadromous fish during migration. Put gauges in
26 the tributaries.
27

28 Zach Nutting spoke about his experiences trying to finish building his home without
29 the ability to get water. There is no loss of water according to Newton's Law. Water is
30 never consumptively used. It is transferred. The County legislators are supposed to guard
31 the safety of the citizens. The Council could have given citizens time to get their permits in
32 immediately. The County should fight the State decisions.
33

34 Karlee Deatherage, ReSources for Sustainable Communities, stated she is indifferent
35 to the interim ordinance. If the science were improved, the rule would be more stringent.
36 She supports relief for those such as Mr. Nutting who are caught in the middle of the
37 process. It's an undue hardship. Create a comprehensive water budget for the Nooksack
38 basin.
39

40 Jay Markarian, Y-Squalicum Water Association Board Member, stated there is a
41 recalcitrant position of no growth in the county. The duty to provide service is being
42 squashed. His Board is willing to be a test case for allowing service with the right science to
43 support it.
44

45 Natalie McClendon stated she hasn't heard any information on the number of the
46 planned permit holders whose projects stalled because of the Hirst decision.
47

48 Jerry Peterson stated it's necessary to drill to prove adequate water supply. The well
49 site will have already been chosen before the County does a site visit. He is recommending

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1 that his clients get a site approved before anything else. Rainwater catchment systems
2 should be allowed.

3
4 Patrick Alesse stated the goal is growth management, not water control.

5
6 Wendy Harris stated the Hirst decision simply upheld the law that already existed.
7 They must consider the rights of senior water right users and not allow junior water users to
8 take water from those senior users. There are inherent risks when buying property when
9 it's necessary to drill a well. Climate change affects the amount of available water. Focus
10 on ecosystem function and values. They must have a water budget and conservation.

11
12 Sue Croft stated banks won't loan on a rain catchment system because it's not a
13 reliable source of water.

14
15 Ed Kilduff stated variation in instream flow is mostly due to precipitation. When the
16 instream flow isn't met, they're expecting groundwater to make up for a fluctuation in
17 precipitation. The Postema decision indicates a conflict between modeling data and actual
18 field measurements. The Superior Court said the better set of data is the modeling data.

19
20 Hearing no one else, Buchanan closed the public hearing.

21
22 ***Browne moved*** to adopt the ordinance. The motion was seconded.

23
24 Mark Personius, Planning and Development Services Department, answered
25 questions about the number of people who were in the middle of a process to build a single
26 family home and the number of undeveloped parcels subject to the Hirst decision.

27
28 ***Brenner moved*** to add language to allow the several hundred people, who are in
29 the middle of the process and have gone to the County to apply for a permit exempt well, to
30 sign a waiver, not be affected by the Hirst decision, and finish their single family residence.

31
32 The motion was seconded.

33
34 Councilmembers and staff discussed the implication of such an amendment; why
35 they need a second hydrologist to verify the findings of the first hydrologist; defining the
36 steps in the process and the levels of work an applicant has done, so everyone is treated
37 equally; creating a threshold for challenging the decision of a licensed hydrogeologist; using
38 Donovan's proposed language from January to begin defining the process; whether
39 applicants have qualified under the new conditions; new applications submitted after the
40 Hirst decision are subject to the decision; flexibility for people who already have an existing
41 withdrawal; building permit applicants who have submitted their critical areas assessment
42 were vested to pre-Hirst; the difference between building permit vesting and subdivision
43 vesting; for subdivision projects filed prior to Hirst, a building permit submitted at a later
44 date still has to be reviewed pursuant to Revised Code of Washington 19.27.097 as
45 interpreted by the Court; and how they determine which projects and applicants are
46 considered "in the process."

47
48 ***Brenner amended her motion*** to adopt an emergency ordinance regarding
49 Whatcom County Code 24.11.060(A)(5) to add a new subsection (c):

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1 c. A record that the project was substantively and recently active, prior to October
2 26, 2016.

3
4 i. Evidence that a project was substantively and recently active prior to October
5 26, 2016 shall include: The applicant paid fees to Whatcom County directly
6 related to advancing the project (including land disturbance permit fees,
7 project permit, etc.) prior to October 26, 2016; OR the applicant invested
8 funds on consultant services related to the proposal, OR the applicant has
9 records of meetings with Whatcom County PDS staff related to the project
10 within two years prior to October 26, 2016,

11
12 ii. Evidence that a project was substantively and recently active prior to October
13 26, 2016 shall ALSO include some combination of the following:

14
15 1. The applicant has a designed, approved septic system installed on the
16 property prior to October 26, 2016;

17 2. The applicant has installed a functioning well on the property prior to
18 October 26, 2016;

19 3. The applicant has established that the well water is potable prior to
20 October 26, 2016;

21 4. The applicant has established a state approved private water system to
22 serve the property (and no more than 4 total properties) prior to October
23 26, 2016;

24 5. The applicant has completed a wetlands study for the property prior to
25 October 26, 2016;

26 6. The applicant has delineated wetlands and buffers prior to October 26,
27 2016;

28 7. The applicant hired an archaeological consultant and completed a study of
29 the property prior to October 26, 2016;

30 8. The applicant has completed a natural resource assessment.

31
32 iii. These permits apply only to applications for residential developments of no
33 more than [four] total properties that use, on annual average, no more than
34 200 gallons of water per day, per property.

35
36 iv. A permit issued under this section is conditional; The applicant may be
37 required to mitigate water use so as not to impair rights that are senior.
38 Mitigation may include water conservation, the use of low flow plumbing
39 fixtures, and other conservation methods.

40
41 v. A permit issued under this section does not grant the applicant water rights.

42
43 Brenner stated that if anyone has done any of the things in subsections (i) – (v),
44 then they are vested and can move ahead with their project.

45
46 Councilmembers discussed allowing people to decide whether or not they want to
47 take on the risk, the appropriate process for including this language in an ordinance,
48 whether or not an emergency exists to justify an emergency ordinance or emergency
49 amendment, not putting homeowners and landowners in the position of having to stop their

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1 project mid-construction, make sure County changes are consistent with State legislative
2 changes, and defense of the County's approach.
3

4 **Weimer moved** to call the question on Councilmember Brenner's proposed
5 emergency ordinance. The motion was second.
6

7 The motion carried by the following vote:

8 **Ayes:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

9 **Nays:** Brenner (1)
10

11 **Brenner amended and restated her motion** to adopt an emergency ordinance
12 that states:

13 Anyone who has a single family residential project activated prior to October 26,
14 2016 will be allowed to continue and finish the project and evidence that a project was
15 substantively and recently active prior to October 26, 2016 shall include:

- 16 • The applicant paid fees to Whatcom County directly related to advancing the project
17 (including land disturbance permit fees, project permit, etc.) prior to October 26,
18 2016; OR
- 19 • The applicant invested funds on consultant services related to the proposal, OR
- 20 • The applicant has records of meetings with Whatcom County PDS staff related to the
21 project within two years prior to October 26, 2016.
22

23 The motion failed by the following vote:

24 **Ayes:** Brenner (1)

25 **Nays:** Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (6)
26

27 **Browne moved** to amend the length of the interim ordinance to six weeks from the
28 effective date of the ordinance.
29

30 The motion was seconded.

31 Councilmembers discussed making changes within the next six weeks.
32
33

34 The motion carried by the following vote:

35 **Ayes:** Mann, Sidhu, Browne, Buchanan, Brenner and Donovan (6)

36 **Nays:** Weimer (1)
37

38 **Brenner moved** to amend this ordinance, section 24.11.060(A)(5), to add
39 language:

40 Anyone who has a single family residential project activated prior to October 26,
41 2016 will be allowed to continue and finish the project and evidence that a project was
42 substantively and recently active prior to October 26, 2016 shall include:

- 43 • The applicant paid fees to Whatcom County directly related to advancing the project
44 (including land disturbance permit fees, project permit, etc.) prior to October 26,
45 2016; OR
- 46 • The applicant invested funds on consultant services related to the proposal, OR
- 47 • The applicant has records of meetings with Whatcom County PDS staff related to the
48 project within two years prior to October 26, 2016.
49

50 The motion was seconded.

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The motion to amend failed by the following vote:
Ayes: Brenner and Mann (2)
Nays: Sidhu, Browne, Buchanan, Weimer and Donovan (5)

Staff answered questions on the consequence of not adopting the interim ordinance.

The motion to adopt as amended carried by the following vote:
Ayes: Sidhu, Browne, Buchanan, and Donovan (4)
Nays: Brenner, Mann, and Weimer (3)

2. ORDINANCE ESTABLISHING CHARGES/FEEES FOR PROVIDING ADVANCED LIFE SUPPORT (ALS) AMBULANCE TRANSPORT SERVICES IN WHATCOM COUNTY (AB2017-086)

Buchanan opened the public hearing, and the following person spoke:

Karen Brown stated ambulance fees are excessive.

Hearing no one else, Buchanan closed the public hearing.

Mann moved to adopt the ordinance.

The motion was seconded.

Councilmembers discussed advanced life support services.

The motion carried by the following vote:
Ayes: Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)
Nays: None (0)

3. RESOLUTION TO SELL TAX-TITLE PROPERTY BY PUBLIC AUCTION, REQUEST #TR2017-01 (AB2017-087A)

Steve Oliver, Treasurer, gave a staff report and answered questions on whether there is an urgency to sell the property and if owning the property incurs costs to the County.

Mike McFarlane, Parks and Recreation Department Director, answered questions about whether this is useful for building the Kendall Trail.

Buchanan opened the public hearing, and the following person spoke:

Zack Nutting described the history of the parcel and stated the site is currently a dump site, trees are leaning and threatening his property, and he would like to purchase the property.

Hearing no one else, Buchanan closed the public hearing.

Brenner moved to approve the resolution. The motion was seconded.

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1
2 The motion carried by the following vote:

3 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

4 **Nays:** None (0)
5
6

7 **OPEN SESSION**
8

9 The following people spoke:

- 10 • Kris Halterman submitted a handout (*on file*) and spoke about the proposed
- 11 changes to the Cherry Point urban growth area in the Comprehensive Plan.
- 12 • Patrick Alesse spoke about the County purchasing a property in Birch Bay that
- 13 should be for public parking.
- 14 • Carole Perry spoke about the critical areas ordinance.
- 15 • Eddy Ury, Resources for Sustainable Communities, spoke about the proposed
- 16 changes to the Cherry Point urban growth area in the Comprehensive Plan
- 17 and the ordinance adopting interim amendments to the Whatcom County
- 18 Comprehensive Plan and Whatcom County Code relating to water resources.
19

20
21 **OTHER ITEMS**
22

23 **1. REQUEST AUTHORIZATION TO GRANT THE WASHINGTON STATE**
24 **DEPARTMENT OF FISH AND WILDLIFE AN EASEMENT ON PARK PROPERTY**
25 **LOCATED ON THE SOUTH END OF LAKE WHATCOM FOR THE PURPOSE OF**
26 **CONSTRUCTION AND MAINTENANCE OF A FISH HATCHERY AND STREAM**
27 **BANK ON BRANNIAN CREEK (AB2017-091)**
28

29 *Donovan* reported for the Natural Resources Committee and *moved* to approve the
30 request.
31

32 The motion carried by the following vote:

33 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

34 **Nays:** None (0)
35

36 **2. REQUEST APPROVAL FOR THE COUNTY EXECUTIVE TO ENTER IN TO A**
37 **CONTRACT BETWEEN WHATCOM COUNTY AND COMMODITY CREDIT**
38 **CORPORATION FOR A 50% COST SHARE FOR FOUR PURCHASE OF**
39 **DEVELOPMENT RIGHTS EASEMENTS THROUGH THE AGRICULTURAL**
40 **CONSERVATION EASEMENT GRANT PROGRAM, IN THE AMOUNT OF \$593,020**
41 **(AB2017-092)**
42

43 *Browne* reported for the Finance and Administrative Services Committee and
44 *moved* to approve the request.
45

46 The motion carried by the following vote:

47 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

48 **Nays:** None (0)
49

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1 **3. RESOLUTION INITIATING PROPOSED COMPREHENSIVE PLAN AND ZONING**
2 **AMENDMENTS (AB2017-083)**
3

4 Buchanan reported for the Special Committee of the Whole meeting and stated this
5 item is held in committee.
6

7
8 **COUNCIL APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**
9

10 **1. APPOINTMENT TO PORTAGE BAY SHELLFISH PROTECTION DISTRICT**
11 **ADVISORY COMMITTEE, APPLICANT: MICHAEL SHEPARD (AB2017-072)**
12

13 *Brenner moved* to appoint Michael Shepard.
14

15 The motion was seconded.
16

17 The motion carried by the following vote:

18 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

19 **Nays:** None (0)
20

21
22 **EXECUTIVE APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES**
23

24 **1. REQUEST CONFIRMATION OF COUNTY EXECUTIVE'S APPOINTMENT OF**
25 **SONJA MAX TO FILL THE DISTRICT AT-LARGE POSITION ON THE PARKS**
26 **AND RECREATION COMMISSION (AB2017-093)**
27

28 *Brenner moved* to confirm the appointment. The motion was seconded.
29

30 The motion carried by the following vote:

31 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

32 **Nays:** None (0)
33

34 **2. REQUEST CONFIRMATION OF COUNTY EXECUTIVE'S APPOINTMENT OF**
35 **KRISTI ROBERTS AND MATTHEW MCDERMOTT TO THE WHATCOM COUNTY**
36 **AGRICULTURAL ADVISORY COMMITTEE (AB2017-094)**
37

38 *Brenner moved* to confirm the appointment. The motion was seconded.
39

40 The motion carried by the following vote:

41 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

42 **Nays:** None (0)
43

44
45 **INTRODUCTION ITEMS**
46

47 *Mann moved* to accept Introduction Items two through nine. Item one is held in
48 committee. There is a substitute for Introduction Item two.
49

50 The motion was seconded.

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1
2 The motion carried by the following vote:

3 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

4 **Nays:** None (0)

5
6 **1. ORDINANCE AMENDING THE COMPREHENSIVE PLAN RELATING TO THE**
7 **CHERRY POINT URBAN GROWTH AREA (AB2017-063)**

8
9 This item is held in committee.

10
11 **2. ORDINANCE AMENDING WHATCOM COUNTY CODE CHAPTER 2.27A TO**
12 **PREVENT THE RELEASE AND SPREAD OF AQUATIC INVASIVE SPECIES**
13 **(AB2017-084)**

14
15 **3. ORDINANCE AMENDING THE WHATCOM COUNTY UNIFIED FEE SCHEDULE**
16 **(AB2017-085)**

17
18 **4. ORDINANCE AMENDING ORDINANCE 2014-075 (ESTABLISHMENT OF THE**
19 **COURTHOUSE BUILDING ENVELOPE FUND AND BUDGET) TO INCLUDE**
20 **ADDITIONAL FUNDING OF \$2,427,809 TO COVER THE COST OF SCHEDULED**
21 **MAINTENANCE AND REPAIRS (AB2017-095)**

22
23 **5. ORDINANCE AMENDING THE 2017 WHATCOM COUNTY BUDGET, THIRD**
24 **REQUEST, IN THE AMOUNT OF \$2,104,121 (AB2017-096)**

25
26 **6. RESOLUTION AND REQUEST FOR A PUBLIC HEARING REGARDING**
27 **COMMUNITY DEVELOPMENT BLOCK GRANT FUNDING APPLICATIONS**
28 **(AB2017-097)**

29
30 **7. ORDINANCE AUTHORIZING INTERFUND LOANS TO FINANCE CASH FLOW**
31 **FOR STORMWATER CAPITAL PROJECT BUDGETS (AB2017-098)**

32
33 **8. ORDINANCE AMENDING WHATCOM COUNTY CODE 24.05, ON-SITE SEWAGE**
34 **SYSTEM REGULATIONS (AB2017-053A)**

35
36 **9. ORDINANCE IMPOSING AN INTERIM MORATORIUM ON THE ACCEPTANCE**
37 **AND PROCESSING OF APPLICATIONS AND PERMITS FOR NEW OR**
38 **EXPANDED FACILITIES IN THE CHERRY POINT URBAN GROWTH AREA, THE**
39 **PRIMARY PURPOSE OF WHICH WOULD BE THE SHIPMENT OF UNREFINED**
40 **FOSSIL FUELS NOT TO BE PROCESSED AT CHERRY POINT (AB2016-256B)**

41
42
43 **COMMITTEE REPORTS, OTHER ITEMS, AND COUNCILMEMBER UPDATES**

44
45 Donovan reported for the Natural Resources Committee.

46
47 Browne reported for the Finance and Administrative Services Committee on the
48 following item:

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1 **1. PORT OF BELLINGHAM/ASSOCIATE DEVELOPMENT ORGANIZATION (ADO)**
2 **ECONOMIC DEVELOPMENT UPDATE (AB2017-069)**
3

4 ***Browne moved*** to request that the administration create a request for proposals
5 (RFP) for the designated Associate Development Organization (ADO) contract, given
6 changes to the Comprehensive Plan regarding economic development.
7

8 The motion was seconded.
9

10 Tyler Schroeder, Executive's Office, gave a staff report on the ADO designation
11 process and invited councilmembers to attend an Economic Development Investment (EDI)
12 Board meeting in which these questions will be discussed.
13

14 The motion carried by the following vote:

15 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

16 **Nays:** None (0)
17

18 Browne moved to request that the Executive delay signing the letter that establishes
19 the ADO until the Council has determined the ADO agency for the next contract.
20

21 Schroeder answered questions about any ramifications from a delay in signing the
22 letter. He will have a conversation with the Council before making that decision.
23

24 Browne withdrew his motion.
25

26 Brenner reported for the Public Works, Health, and Safety Committee.
27

28 **Resolution condemning the recent hate crimes in Washington and other**
29 **states (AB2017-102)**
30

31 ***Sidhu moved*** to approve the resolution.
32

33 The motion was seconded.
34

35 Browne moved to amend to add "Whereas members of some religious groups in
36 Whatcom County have felt under pressure to not practice their faith."
37

38 Councilmembers discussed keeping the language more generic.
39

40 Browne withdrew his motion to amend.
41

42 The motion carried by the following vote:

43 **Ayes:** Brenner, Mann, Sidhu, Browne, Buchanan, Weimer and Donovan (7)

44 **Nays:** None (0)
45

46 Councilmembers gave updates on recent activities and upcoming events.
47
48

49 **ADJOURN**
50

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The meeting adjourned at 11:02 p.m.

The County Council approved these minutes on _____, 2017.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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Whatcom County Council
Surface Water Work Session

March 14, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:30 a.m. in the Civic Center Garden Level Conference Room, 322 Commercial Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer
Absent: None

SURFACE WATER WORK SESSION (AB2017-024)

1. WATER PLANNING UPDATE

Gary Stoyka, Public Works Department, stated the last Planning Unit meeting was February 22, and the next is March 22, when there will be a presentation on water use efficiency and the results of Phase 2 and 3 of the groundwater modeling. Also, the City of Bellingham representative will talk about middle fork diversion. Geneva consulting will present an implementation strategy report.

The first meeting of the new Management Board is March 30. They are closing out the account for the old Joint Board, and must identify a funding source for administrative costs of the new Board. Staff is working with the Whatcom local integrating organization (LIO) for the Puget Sound Partnership to do an ecosystem recovery plan that encompasses all local efforts to recover Puget Sound under one document.

A supplemental budget has been approved for phase 4 of the groundwater model. They are awaiting a Puget Sound Partnership grant for part of the cost. They are working on ongoing monitoring of the groundwater modeling well network.

Stoyka answered questions on how they monitor all the creeks with the U.S. Geological Survey (USGS) and on using new technology, when the County will receive the Puget Sound Partnership grant, and average instream flow levels versus necessary instream flow levels.

2. 2016 ANNUAL REPORT AND 2017 NPDES PLANNED ACTIVITIES

Cathy Craver, Public Works Department, submitted and read from a presentation (*on file*) on the annual update for the national pollution discharge and elimination system (NPDES) permit. This report is open for public comment before being submitted to the Department of Ecology. She answered questions on the frequency of tasks the County must undertake as an NPDES permit holder; what triggers an area as being subject to the

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1 permit; diverting plastics pollution; coordinating with the municipalities that are subject to
2 the permit; funding from the Birch Bay Watershed and Aquatic Resources Management
3 (BBWARM) District for construction and capital projects; staffing and contracts for catch
4 basin inspections; increased scheduling of sustainable landscape community classes;
5 whether large industrial facilities are subject to this permit; and lack of access on property
6 without an easement.
7

8 Rob Ney, Public Works Department, answered questions on equipment purchases to
9 complete NPDES tasks and going beyond permit requirements to help people find solutions.
10 They want to identify the existing status of all infrastructure, including catch basins and
11 outfalls. Now they've moved on to the outfalls. Once they have a complete picture, the
12 Council will be involved in the decisions on programming and expenses.
13

14 Craver continued the presentation on the final stretch of this permit cycle, which
15 ends at the end of 2018. She answered questions about the number of properties on Lake
16 Whatcom that have voluntarily implemented low impact development.
17

18 Gary Stoyka, Public Works Department, stated one person on the lake went through
19 the homeowner incentive program.
20

21 Craver concluded the presentation on the upcoming permit cycle.
22

23 Councilmembers discussed other homeowners that have used the homeowner
24 incentive program, but not on the lakefront; what happens when plastic enters the system
25 and how to remove it before it reaches the ocean; micro plastics getting into the food chain;
26 and whether there are bacteria that can eat plastics.
27

28 **3. OVERVIEW OF WATER SUPPLY PLANNING ACTIVITIES**

29

30 Gary Stoyka, Public Works Department, submitted and read from a presentation (*on*
31 *file*). He answered questions on desalination, posting past studies on the watershed
32 management plan website, whether the Public Utility District (PUD) conducted out-of-stream
33 user plans for agricultural needs, and private water districts that can't provide infrastructure
34 and extend services.
35

36 Steve Jilk, PUD #1, stated they applied to the State Department of Health to respond
37 to the State request to support the local water associations in meeting their capacities.
38 With the PUD's two-year grant, they are identifying water associations that are underwater
39 in infrastructure and future planning needs. In the last few months, they are also
40 responding to the Hirst Decision and helping people manage their resources. They've hired
41 a contractor to work cooperatively with water associations. They are also engaging County
42 flood staff to identify flood management projects to create off-stream storage and
43 potentially tie it to a nearby water association or irrigation district to augment water needs.
44

45 **ADJOURN**

46

47
48 The meeting adjourned at 12:01 p.m.

49
50 The Council approved these minutes on _____, 2017.

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ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee Of The Whole

March 14, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 3:30 p.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. **DISCUSSION WITH SENIOR DEPUTY PROSECUTOR KAREN FRAKES REGARDING PENDING LITIGATION, HIRST ET AL V. WHATCOM COUNTY, GMHB CASE NO. 12-2-0013 (AB2017-018)**

Attorney Present: Karen Frakes and Tadas Kisielius

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.110 (1)(i). Executive session will conclude no later than 4:30 p.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Browne moved to go into executive session until no later than 4:30 p.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

Nays: None (0)

At 4:30, Buchanan announced that the executive session is extended to no later than 5:00 p.m.

OTHER BUSINESS

ADJOURN

The meeting adjourned at 4:40 p.m.

The Council approved these minutes on _____ 2017.

ATTEST:

WHATCOM COUNTY COUNCIL

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WHATCOM COUNTY, WASHINGTON

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Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee of the Whole

March 14, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 1:00 p.m. in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Ken Mann, Satpal Sidhu, Carl Weimer, Todd Donovan, Rud Browne and Barry Buchanan.

Absent: None.

COMMITTEE DISCUSSION

1. DISCUSSION OF PROPOSED COMPREHENSIVE PLAN AMENDMENTS RELATING TO THE CHERRY POINT URBAN GROWTH AREA (AB2017-063)

Brenner moved to amend page two of Exhibit A, lines 37-39, "Since adoption of earlier versions of this Comprehensive Plan, governments have increased their recognition of the observed and projected effects that fossil fuel extraction, transportation and use have on human health and the environment. ~~The Cherry Point UGA contains the second largest emitter of carbon pollutants (primarily CO₂, which was ruled air pollution by the US Supreme Court in 2007) in Washington State (Ecology, June 2016).~~"

The motion was seconded.

Councilmembers spoke about the Ecology study.

The motion carried by the following vote:

Ayes: Brenner, Sidhu, Browne, Buchanan, Weimer and Donovan (6)

Nays: None (0)

Absent: Mann (1)

Brenner moved to amend ordinance page two of Exhibit A, page three, lines 19-21, " In December 2010,...northern border of the Lummi Indian Nation Reservation. **The site excludes three existing aquatic land leases (BP, Intalco, Phillips 66 shipping piers) and one proposed aquatic land lease.**"

Matt Aamot, Planning and Development Services Department, answered questions about the reason the Planning Commission removed the language, which lists the specific leases in the language earlier in that section; the inaccuracy of the statement regarding the

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1 proposed aquatic land lease; and how the Commissioner of Lands can exempt something
2 from a rule.

3
4 **Brenner withdrew** her motion.

5
6 **Brenner moved** to amend ordinance page three of Exhibit A, lines 32-44, "**The
7 Management Plan acknowledges that the existing industries, complying with laws and
8 regulations, do not conflict with the Aquatic Reserve.** Much of the Aquatic Reserve shoreline
9 is in substantially natural riparian vegetation and bluff processes proceed without
10 interference. Existing shoreline and upland stream and wetland functions and values are of
11 continuing importance to the recovery and protection of species identified in the Aquatic
12 Reserve Management Plan. The area includes undeveloped intertidal wetlands with
13 importance to juvenile salmon and other species. Existing industries can serve the Aquatic
14 Reserve's objectives so long as they are managed according to the Plan and so long as the
15 lessees actively work to further goals for the Reserve (CPAR MP p. 2)."

16
17 The motion was seconded.

18
19 Amot answered questions about and councilmembers discussed the tone of the
20 statement, inherent conflict with the aquatic reserve, the difference between being legally
21 compliant and compliant with the aquatic reserve, and whether the Council should make a
22 stated determination about compliance of an applicant.

23
24 **Brenner amended her motion** to amend ordinance page three of Exhibit A, lines
25 32-44, "**The Management Plan acknowledges that the existing industries comply with
26 existing laws and regulations.** Much of the..."

27
28 The amended motion was seconded.

29
30 **Browne moved** to call the question.

31
32 The motion to call the question was seconded.

33
34 The motion to call the question carried by the following vote:

35 **Ayes:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

36 **Nays:** Brenner (1)

37 **Absent:** Mann (1)

38
39 The motion to amend failed by the following vote:

40 **Ayes:** Brenner (1)

41 **Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

42 **Absent:** Mann (1)

43
44 **Brenner moved** to amend ordinance page four of Exhibit A, lines 3-20, "The County
45 and industrial users have long recognized that the Cherry Point area exhibits a unique set of
46 characteristics that makes land there not only locally but regionally important for the siting
47 of major industrial developments. **The county supports a limit, which allows the construction
48 of one additional dock or pier at Cherry Point, due to environmental and treaty right
49 concerns.** ~~Based on the public record developed during this plan review and best available
50 science in the record, the County supports a limit on the construction of additional export~~

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1 ~~docks or piers at Cherry Point due to environmental and treaty right concerns related to: (a)~~
2 ~~physical interference with shoreline functions and values; (b) physical interference with~~
3 ~~traditional, historic and commercial fishing and shellfish harvesting at the Cherry Point~~
4 ~~shoreline; and (c) the increased risk of catastrophic and cumulative small oil and fuel spills~~
5 ~~from increased large vessel traffic, potential collisions with tankers and other vessels~~
6 ~~serving the existing three piers at Cherry Point, and related barge traffic and support~~
7 ~~vessels (see Policy 2CC-11):~~ Deep water access for shipping is a critical locational factor.
8 These characteristics were articulated in the Overall Economic Development Plan (OEDP) for
9 Whatcom County adopted by the Whatcom County Council of Governments in May, 1993, in
10 the 1997 Property Counselors Report on supply and demand for industrial land in Whatcom
11 County and at Cherry Point, the 2002 Greater Whatcom Comprehensive Economic
12 Development Strategy, the 2003 Whatcom County Industrial Land Study, and the 2015
13 Whatcom County Comprehensive Economic Development Strategy."

14
15 The motion was seconded.

16
17 Councilmembers discussed putting policy statements in a different section.

18
19 **Brenner amended her motion** to amend ordinance page four of Exhibit A, lines 3-
20 20, "The County and industrial users have long recognized that the Cherry Point area
21 exhibits a unique set of characteristics that makes land there not only locally but regionally
22 important for the siting of major industrial developments. ~~Based on the public record~~
23 ~~developed during this plan review and best available science in the record, the County~~
24 ~~supports a limit on the construction of additional export docks or piers at Cherry Point due~~
25 ~~to environmental and treaty right concerns related to: (a) physical interference with~~
26 ~~shoreline functions and values; (b) physical interference with traditional, historic and~~
27 ~~commercial fishing and shellfish harvesting at the Cherry Point shoreline; and (c) the~~
28 ~~increased risk of catastrophic and cumulative small oil and fuel spills from increased large~~
29 ~~vessel traffic, potential collisions with tankers and other vessels serving the existing three~~
30 ~~piers at Cherry Point, and related barge traffic and support vessels (see Policy 2CC-11):~~
31 Deep water access for shipping is a critical locational factor. These characteristics were
32 articulated in the Overall Economic Development Plan (OEDP) for Whatcom County adopted
33 by the Whatcom County Council of Governments in May, 1993, in the 1997 Property
34 Counselors Report on supply and demand for industrial land in Whatcom County and at
35 Cherry Point, the 2002 Greater Whatcom Comprehensive Economic Development Strategy,
36 the 2003 Whatcom County Industrial Land Study, and the 2015 Whatcom County
37 Comprehensive Economic Development Strategy."

38
39 Councilmembers discussed Councilmember Browne's alternate proposed language.

40
41 The motion carried by the following vote:

42 **Ayes:** Sidhu, Browne, Buchanan, Brenner, and Donovan (5)

43 **Nays:** Weimer (1)

44 **Absent:** Mann (1)

45
46 **Brenner moved** to amend ordinance page four of Exhibit A, to delete lines 22-41,
47 "The United States Congress approved the ~~"Magnuson Amendment" in 1977...seek to~~
48 ~~enforce the Magnuson Amendment through the court system (See Policy 2CC-15)."~~

49
50 The motion was seconded.

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1
2 Councilmembers discussed whether statements about compliance with federal, state,
3 and local laws makes this section unnecessary; that the Committee added this language at
4 the previous meeting; explaining the Magnuson Amendment for informational purposes; a
5 reference to the Magnuson Amendment doesn't negate it or the industry; and the chance of
6 catastrophic events with dealing with crude or refined oil products.

7
8 The motion to amend failed by the following vote:

9 **Ayes:** Brenner (1)

10 **Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

11 **Absent:** Mann (1)

12
13 **Weimer moved** to amend ordinance page eight of Exhibit A, Policy 2CC-3, bullet
14 three, "Archeological review **done in cooperation with the Lummi Nation**; and"

15
16 The motion was seconded.

17
18 Councilmembers discussed whether the Lummi Nation would choose to cooperate.

19
20 **Weimer withdrew** his motion.

21
22 **Donovan moved** to amend ordinance page eight of Exhibit A, Policy 2CC-3, new
23 bullet five, "**Enhance existing and future industries.**"

24
25 The motion was seconded.

26
27 Councilmembers discussed the meaning of "enhanced."

28
29 **Browne suggested a friendly amendment** to also amend the first bullet point in
30 Policy 2CC-3, "Clean and low **reduced** carbon emitting technology."

31
32 **Donovan accepted** the friendly amendment.

33
34 The motion carried by the following vote:

35 **Ayes:** Sidhu, Browne, Buchanan, Brenner, Weimer, and Donovan (6)

36 **Nays:** None (0)

37 **Absent:** Mann (1)

38
39 **Weimer moved** to amend ordinance Policy 2CC-11:

40
41 "It is the ~~continuing~~ policy of Whatcom County to ~~support a limit on~~
42 the number of industrial piers at Cherry Point **to the existing three**
43 **piers, taking into account the need to,** ~~consistent with:~~

- 44
45 • **Honor any** existing vested rights, ~~approvals or agreements~~
46 ~~granted under Whatcom County's Shoreline Master Program;~~
47 • **Update the Whatcom County Shoreline Master Program to**
48 **conform with this policy;**
49 • **Encourage the** continued agency use of best available science;

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- Support and remain consistent with the state Department of Natural Resources' withdrawal of Cherry Point tidelands and bedlands from the general leasing program and the species recovery goals of the Cherry Point Aquatic Reserve designation and Management Plan;
- Recognize federal actions upholding treaty rights;
- Protect traditional commercial and tribal fishing;
- Prevent conflicts with vessel shipment operations of existing refineries that could lead to catastrophic oil or fuel spills;
- ~~Whatcom County's application of the Shoreline Management Act, the Whatcom County Shoreline Master Program, Whatcom County Comprehensive Plan, Whatcom County Critical Areas Ordinance and other applicable local plans, laws and regulations including, without limit, the fire, mechanical and electrical codes adopted by Whatcom County;~~
- ~~state agencies' application of state laws and regulations including without limit the State Environmental Policy Act, Washington Indian Graves and Records Act, the Washington Archaeological Sites and Resources Act, the state Energy Facility Site Location Act, limitations imposed by the Cherry Point Aquatic Reserve Management Plan; and the federal Clean Water Act as delegated to the State of Washington; and~~
- ~~federal agencies' application of federal laws, regulations, and treaties including without limit the National Historic Preservation Act, Clean Water Act, Clean Air Act, Endangered Species Act, U.S. Coast Guard regulations regarding vessel operations, and the Magnuson Amendment to the Marine Mammal Protection Act."~~

The motion was seconded.

The following staff answered questions:

- Royce Buckingham, Prosecutor's Office
- Karen Frakes, Prosecutor's Office

Staff answered questions and Councilmembers discussed language about projects that may or may not be vested; honoring vested rights; the study to be completed should answer questions for future councils regarding legal commitments; getting clarity on the status of existing permits and rights; the possible need to update the Shoreline Master Plan; and staff developing an opinion to the vested rights of Pacific International Terminal.

Weimer accepted as friendly amendments suggestions to change the amendment from staff and councilmembers.

Brenner moved to amend the motion to amend to add language, "Update the Whatcom County Shoreline Master Program to conform with this policy. Such an update shall not interfere with policies, settlements, or other legal agreements in place prior to the update."

The motion was seconded.

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1
2 Staff and councilmembers discussed the Magnuson Amendment and amendments to
3 the Shoreline Master Plan that have to go to the Department of Ecology.

4
5 Brenner's motion failed by the following vote:

6 **Ayes:** Brenner (1)

7 **Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

8 **Absent:** Mann (1)

9
10 Forest Longman, Council Legislative Analyst, *restated the amended motion* to
11 amend ordinance Policy 2CC-11:

12
13 "It is the ~~continuing~~ policy of Whatcom County to ~~support a limit on~~
14 the number of industrial piers at Cherry Point **to the existing three**
15 **piers, taking into account the need to,** consistent with:

- 16 • **Honor any existing vested rights or other legally enforceable**
17 **agreements for an additional dock/ pier, approvals or**
18 **agreements granted under Whatcom County's Shoreline Master**
19 **Program;**
- 20 • **Update the Whatcom County Shoreline Master Program to**
21 **conform with this policy;**
- 22 • Encourage the continued agency use of best available science;
- 23 • **Support and remain consistent with the state Department of**
24 **Natural Resources' withdrawal of Cherry Point tidelands and**
25 **bedlands from the general leasing program and the species**
26 **recovery goals of the Cherry Point Aquatic Reserve designation**
27 **and Management Plan;**
- 28 • **Recognize federal actions upholding treaty rights;**
- 29 • **Protect traditional commercial and tribal fishing;**
- 30 • **Prevent conflicts with vessel shipment operations of existing**
31 **refineries that could lead to catastrophic oil or fuel spills;**
- 32 • ~~Whatcom County's application of the Shoreline Management~~
33 ~~Act, the Whatcom County Shoreline Master Program, Whatcom~~
34 ~~County Comprehensive Plan, Whatcom County Critical Areas~~
35 ~~Ordinance and other applicable local plans, laws and regulations~~
36 ~~including, without limit, the fire, mechanical and electrical~~
37 ~~codes adopted by Whatcom County;~~
- 38 • ~~state agencies' application of state laws and regulations~~
39 ~~including without limit the State Environmental Policy Act,~~
40 ~~Washington Indian Graves and Records Act, the Washington~~
41 ~~Archaeological Sites and Resources Act, the state Energy~~
42 ~~Facility Site Location Act, limitations imposed by the Cherry~~
43 ~~Point Aquatic Reserve Management Plan; and the federal Clean~~
44 ~~Water Act as delegated to the State of Washington; and~~
- 45 • ~~federal agencies' application of federal laws, regulations, and~~
46 ~~treaties including without limit the National Historic~~
47 ~~Preservation Act, Clean Water Act, Clean Air Act, Endangered~~
48 ~~Species Act, U.S. Coast Guard regulations regarding vessel~~
49

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1 operations, and the Magnuson Amendment to the Marine
2 Mammal Protection Act."
3

4 **Brenner moved** to amend ordinance page nine of Exhibit A, Policy 2CC-11, "It is
5 the continuing policy of Whatcom County to support a limit on the number of industrial piers
6 at Cherry Point, consistent with federal, state, and local laws. Any moratorium shall not
7 affect, nor otherwise apply to, any proposed pier that Whatcom County approved under its
8 Shoreline Management Program prior to adoption of the moratorium."
9

10 Sidhu stated they've already covered it.

11 **Brenner withdrew** her motion.
12

13 **Weimer moved** to amend ordinance page ten of Exhibit A, Policy 2CC-15,
14 "Whatcom County will encourage federal agencies, including the U.S. Army Corps of
15 Engineers, to enforce the provisions of the Magnuson Amendment (33 USC Sec. 476). To
16 accomplish this the County will make appropriate seek consultation with appropriate federal
17 agencies if aware of applications for development permits that are submitted to the County
18 that staff thinks may conflict with the Magnuson Amendment. If necessary, Whatcom
19 County may initiate legal action to enforce the provisions of the Magnuson Amendment."
20

21 The motion was seconded.
22

23 **Brenner moved** to substitute by deleting the entire Policy 2CC-15.
24

25 The motion was seconded.
26

27 Brenner's motion to substitute failed by the following vote:

28 **Ayes:** Brenner (1)

29 **Nays:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

30 **Absent:** Mann (1)
31

32 The main motion carried by the following vote:

33 **Ayes:** Sidhu, Browne, Buchanan, Weimer, and Donovan (5)

34 **Nays:** Brenner (1)

35 **Absent:** Mann (1)
36

37 **Weimer moved** to amend ordinance page ten of Exhibit A, Policy 2CC-16, "The
38 County shall undertake a study to be completed if possible by December of 2018 2017 to
39 examine existing County laws, including those related to public health, safety, development,
40 building, zoning, permitting, electrical, nuisance, and fire codes, and develop
41 recommendations for legal ways the County may choose can work to limit the public safety
42 and environmental impacts from crude oil, coal, liquefied petroleum gases and natural gas
43 exports from the Cherry Point UGA above levels in existence as of March 1, 2017. July 5,
44 2016, and attract and support clean and low carbon industry. The study shall review and
45 analyze any legal advice freely submitted to the County by legal experts on behalf of a
46 variety of stakeholder interests, and make that advice public as part of the study report."
47

48 The motion was seconded.
49
50

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1 Councilmembers discussed including transportation impacts; whether or not there is
2 intent to shut down these uses; not shifting the demand; certain gases replacing coal, which
3 is much worse; whether the intent is to limit what's being shipped from Cherry Point versus
4 what's being exported from Cherry Point; the purpose of the study to get more information
5 on the local government's legal powers, the community's obligation to consider the cost of
6 first response and other costs in an emergency, because those costs are on public entities;
7 public safety, environmental hazards, and the local community that must pay the cost of an
8 accident; companies that will make decisions based on the best investment, without regard
9 to impacts to employees and local communities; creating unbiased language for future
10 councils; "transshipment" versus "export"; broadening the scope of the study to issues
11 other than shipment; vesting status of the fourth pier; define what they mean by and the
12 purpose of limiting exports; and preserving and expanding jobs and economic advantages
13 and ensuring environmental impacts are minimized.

14
15 **Browne moved** to substitute the motion to amend:

16
17 "The County shall undertake a study to be completed **if possible** by
18 December of ~~2018~~ **2017** to examine existing County laws, including those
19 related to public health, safety, development, building, zoning, permitting,
20 electrical, nuisance, and fire codes and develop recommendations for legal
21 ways the County ~~can work~~ **may choose** to limit **the public safety,**
22 **transportation, economic impact, deterioration of the job base, and**
23 **environmental impacts from** crude oil, coal, **liquefied petroleum gases,** and
24 natural gas **transshipments** or exports from the Cherry Point UGA above
25 levels in existence as of ~~July 5, 2016~~ March 1, 2017, ~~and attract and support~~
26 ~~clean and low carbon industry~~. Additionally the study should seek to identify
27 ways to increase the economic strength of the UGA.

28
29 **To provide clear guidance to current and future county councils on the**
30 **County's legal rights, responsibilities and limitations regarding interpretation**
31 **and application of project evaluation under Section 20.88.130 (Major Projects**
32 **Permits) of the Whatcom County Code.**

33
34 **Weimer accepted as friendly amendments** the motion from Councilmember
35 Browne and suggestions to change the amendment from councilmembers.

36
37 *(Clerk's Note: Councilmember Mann arrived at the meeting.)*

38
39 Councilmembers discussed creating a definition of transshipment, saving and
40 increasing the job base and economic benefits to the community, and enhancing public
41 safety and environmental protection.

42
43 **Browne moved** to call the question.

44
45 The motion was seconded.

46
47 **Browne withdrew** his motion to call the question.

48
49 **Sidhu moved** to add language to the motion, "The County shall limit the public
50 safety, transportation, **negative economic and environmental impacts** from...."

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1
2 The motion was seconded.

3
4 Councilmembers continued to discuss the language.

5
6 **Sidhu withdrew** his motion.

7
8 **Browne moved** to call the question.

9
10 The motion was seconded.

11 The motion to call the question carried by the following vote:

12 **Ayes:** Sidhu, Mann, Browne, Buchanan, and Weimer (5)

13 **Nays:** Brenner and Donovan (2)

14
15
16 Buchanan read the motion into the record.

17
18 "The County shall undertake a study to be completed **if possible** by
19 December of ~~2018~~ **2017** to examine existing County laws, including those
20 related to public health, safety, development, building, zoning, permitting,
21 electrical, nuisance, and fire codes and develop recommendations for legal
22 ways the County ~~can work~~ **may choose** to limit **the public safety,**
23 **transportation, economic and environmental impacts** from crude oil, coal,
24 **liquefied petroleum gases,** and natural gas **transshipments or** exports from
25 the Cherry Point UGA above levels in existence as of ~~July 5, 2016~~ March 1,
26 2017, ~~and attract and support clean and low carbon industry.~~

27
28 **To provide clear guidance to current and future county councils on the**
29 **County's legal rights, responsibilities and limitations regarding interpretation**
30 **and application of project evaluation under Section 20.88.130 (Major Projects**
31 **Permits) of the Whatcom County Code."**

32
33 The main motion carried by the following vote:

34 **Ayes:** Sidhu, Mann, Browne, Buchanan, and Weimer (5)

35 **Nays:** Brenner and Donovan (2)

36
37 **Donovan moved** to amend to add a new policy, **"2CC-17: Policy 2CC-16 shall not**
38 **limit existing uses, nor limit the expansion of existing facilities, nor limit maintenance and**
39 **operation of existing facilities, nor limit the development of new facilities consistent with the**
40 **existing uses as of March 1, 2017."**

41
42 The motion was seconded.

43
44 Councilmembers discussed and refined the sentence structure of the motion, the
45 refinery management's consideration of its employees, which facilities could be expanded,
46 and defining what the study does versus what it doesn't do.

47
48 **Browne suggested** a friendly amendment to substitute the motion, **"2CC-17:**
49 **Policy 2CC-16 shall not limit the compliant expansion of existing uses, maintenance of**

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1 existing facilities, and the development of new facilities, consistent with the existing uses as
2 of March 1, 2017.”
3

4 **Donovan accepted** the friendly amendment.
5

6 **Brenner moved** to hold in Committee. The motion was seconded.
7

8 The motion to hold in Committee carried by the following vote:

9 **Ayes:** Weimer, Mann, Buchanan, and Brenner (4)

10 **Nays:** Browne, Sidhu, and Donovan (3)
11

12
13 **OTHER BUSINESS**

14 There was no other business.
15
16

17
18 **ADJOURN**

19 The meeting adjourned at 3:20 p.m.
20

21 The Council approved these minutes on _____, 2017.
22

23
24 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

25
26
27
28
29 _____
30 Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

31
32
33
34 _____
35 Jill Nixon, Minutes Transcription

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WHATCOM COUNTY COUNCIL
Special Committee Of The Whole

March 21, 2017

CALL TO ORDER

Council Chair Barry Buchanan called the meeting to order at 10:35 a.m. in the Council Conference Room, 311 Grand Avenue, Bellingham, Washington.

ROLL CALL

Present: Barbara Brenner, Satpal Sidhu, Rud Browne, Barry Buchanan, Ken Mann, Todd Donovan and Carl Weimer

Absent: None

COMMITTEE DISCUSSION

1. UPDATE ON NEGOTIATIONS AND DISCUSSION OF STRATEGY PLANNING REGARDING COLLECTIVE BARGAINING (AB2017-018H)
Attorney Present: None

Buchanan stated that discussion of agenda item one may take place in executive session pursuant to RCW42.30.140 (4)(a). Executive session will conclude no later than 11:00 a.m. If the meeting extends beyond the stated conclusion time, he will step out of the meeting to make a public announcement.

Sidhu moved to go into executive session until no later than 11:00 a.m. to discuss the agenda items pursuant to RCW citations as announced by the Council Chair. The motion was seconded.

The motion carried by the following vote:

Ayes: Sidhu, Brenner, Browne, Buchanan, Mann, Donovan and Weimer (7)

Nays: None (0)

At 11:00 a.m., Buchanan announced that the executive session is extended to no later than 11:15 a.m.

OTHER BUSINESS

ADJOURN

The meeting adjourned at 11:10 a.m.

The Council approved these minutes on _____ 2017.

ATTEST:

WHATCOM COUNTY COUNCIL

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WHATCOM COUNTY, WASHINGTON

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Dana Brown-Davis, Council Clerk

Barry Buchanan, Council Chair

Jill Nixon, Minutes Transcription