

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Monday, October 5, 1998**

9:00 a.m. – 9:15 a.m.	Public Comment Period.
	CONSENT AGENDA MISCELLANEOUS
10:00 a.m. – 11:00 a.m.	Appeal by Kaaland Mill (Don Kaaland) of Hearing Examiner's Decision Denying 24-Hours a Day Operation at the Kaaland Mill, 3092 So. Healy Road, Sedro Woolley (PL97-464.REC and SLD890001.REC).
11:00 a.m. – Noon	Executive Session – Personnel, Litigation and Land Acquisition.
1:30 p.m. – 2:00 p.m.	Bid Opening – Lumber Material for Skagit County Parks & Recreation Department.
2:00 p.m. – 2:30 p.m.	Discussion and Possible Action – Exchange of Real Property with Skagit Public Utility District No. 1.

The Skagit County Board of Commissioners met in regular session on Monday, October 5, 1998, with Commissioners Robert Hart, Ted W. Anderson, and Harvey Wolden present.

PUBLIC COMMENT PERIOD.

Bill Schmidt, 6939 Gallagher Road, Concrete, commented on the difficulties he has had with particular members of the Planning Department, which consist of misinterpretations of State statutes. He warned the Board that further legal action would be forthcoming.

CONSENT AGENDA.

Commissioner Wolden moved to approve the Consent Agenda for Monday, October 5, 1998, as presented by Staff. Commissioner Anderson seconded the motion, which passed with a unanimous vote.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, September 28, 1998.
2. Supplemental Agreement #1 to Agreement with Skagit County Community Action Agency on February 2, 1998. All provisions remain in effect except as modified by this supplement, with changes as follows: the period of performance as it specifically relates to the provision of services by the Contractor for Volunteers of America Northwest, Inc. **Information and Referral Line** will begin October 1, 1997 and end June 30, 1999. Compensation, Paragraph 2, shall read: The County will pay \$30,000 for provision of services through the Contractor for Oasis Homeless Teen Shelter and \$10,000 for provision of services through the Contractor for Boys and Girls Clubs of Skagit County. The County will pay through Skagit County Mental Health, \$25,000 for management and administration of the Information and Referral Line through a direct service contract through the Volunteers of America Northwest, Inc., with the total amount not to exceed \$25,000. (**Contract #03813**)

ARIS/BEST SELF

3. Interlocal Cooperative Agreement with Anacortes School District whereby Community Mental Health Services and Skagit County will assist in the funding of a Mental Health Specialist working to provide prevention and early intervention services to identified at-risk students K-6 and families referred from the District's administrative designee. Skagit County agrees to contribute \$13,166. Community Mental will contribute

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\$7,680 and Anacortes School District will contribute \$20,846, with any remaining excess costs for this position the responsibility of Mental Health. This Interlocal Agreement will be initiated as of July 1, 1998 and remain in effect up through June 30, 1999. **(Contract No. 04076)**

4. Personal Services Agreement between Skagit County and Catherine B. Wickman to provide individual, group and family therapy to the ARIS Program in the amount of \$60.00 per hour for individual, group and family therapy. An additional \$20.00 per hour will be provided for travel and there will be no reimbursement for no-shows. The agreement will commence on the 1st day of August, 1998 and shall continue through December 31, 1999. **(Contract No. 04077)**
5. Personal Services Agreement between Skagit County and Rosch's Martial Arts America to provide martial arts lessons for the ARIS Program. Services will be provided a maximum of two times per week. The Contractor will be compensated for down payment and uniform at the rate of \$99.00. The Contractor will be paid \$59.50 per month for a maximum of two martial arts lessons per week. Evaluation fees will be in the amount of \$35.00. The agreement shall commence on January 1, 1998 and continue through December 31, 1998. **(Contract No. 04078)**
6. Cooperative Agreement between Skagit Community Mental Health Center Child and Family Treatment Program and Skagit County ARIS for the provision of Individual Treatment Aids to identified at-risk students and their families. ITA services provided by the Center will be billed at the rate of \$16.00 per hour. The Interlocal Agreement will be initiated as of July 1, 1998 and remain in effect up through June 30, 1999. **(Contract No. 04079)**
7. Personal Services Agreement between Skagit County and the Concrete School District Community Education Program to be paid up to \$500.00 per series of classes based upon the classes offered and provided there is sufficient enrollment. The classes will provide after school community/youth activities and classes in Arts and Crafts, Kung Fu, Drama, Poetry, Costume Design, Skating, Gymnastics, Volleyball, and Weightlifting, etc. The yearly amount will not exceed \$2,000. The agreement begins January 1, 1998 and terminates December 31, 1998. **(Contract No. 04080)**
8. Interlocal Cooperative Agreement between Skagit County and La Conner School District to provide use of school facilities for an after school program. The agreement is effective September 1, 1998 through June 20, 1999. **(Contract No. 04081)**

EMERGENCY SERVICES

9. Interlocal Cooperative Agreement for Use of Community Development Block Grant Disaster Recovery Grant Funds between Skagit County and Diking District No. 20 for the use of up to \$7,210.20 in CDBG funds for a floodway project. The agreement is effective August 1, 1998 to August 1, 1999. **(Contract No. 04082)**

FACILITIES MANAGEMENT

10. Easement by Skagit County as the Grantor to the Grantee, Robert and Christina Egerer for a sanitary sewer easement. The Grantee agrees to pay all costs associated with any damage caused to grantor's roadway and all costs associated with the connection to the existing sanitary sewer force main. **(Contract No. 04083)**

HEALTH DEPARTMENT

11. Personal Services Agreement for Dental Hygienist to assist in dental screening and apply dental sealants as well as education to second grade students in Skagit County. Compensation shall be \$1,182.00 per month. The agreement commences on the 1st day of September 1998 and shall continue until terminated. **(Contract No. 04084)**

INFORMATION SERVICES

12. Vendor Services Agreement with Skagit County through the Department of Administrative Services, Information Services Division and Catapult Inc. to provide training for the Microsoft Windows 95 or NT

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environments and other applications as required, to be held, primarily, at Skagit County's training facility. The Contractor will also provide course authoring and/or consultation on computer training activities as required. The cost will be as follows:

- Maximum of \$525 per full day standard class.
- Maximum of \$367.50 per ½ day standard class.
- Maximum of \$765 per day full day "premium" class.
- Maximum of \$535.50 per ½ day "premium class.
- Maximum of \$20 per day per student course guide.
- Maximum of \$85 per hour for consulting services (four-hour minimum).

(Contract No. 04085)

13. Resolution for Transfer of Surplus Computer Equipment to the Skagit Valley Community College, whereas the value of the computer equipment involved is less than \$50,000 and has become obsolete due to upgrades of the County computer network and the advancement of new systems. (Resolution No. 17164)

PARKS, RECREATION AND FAIR

14. Out-of-State Travel Request by Dennis Lind to travel to San Diego California for the Amateur Softball Association/USA Softball National Council Meeting the end of October. Meal allowance of \$125.00 is requested. The balance of costs will be paid by A.S.A. (Approved)

PUBLIC WORKS DEPARTMENT

15. Ordinance Amending Skagit County Code to lower the speed limit on portions of Reservation Road. (Resolution No. 17165)
16. Ordinance Amending Skagit County Code to revise the established maximum speed limit on the entire length of Brunswick Street from 35 miles per hour to 25 miles per hour, reflecting the Boards' action at a public hearing on August 24, 1998. (Ordinance No. 17166)
17. Ordinance Amending Skagit County Code to provide a speed limit reduction on Marine Drive, reflecting the boards' action at a public hearing on August 24, 1998. (Ordinance No. 17167)
18. Vendor Services Agreement between Skagit County and Gregg's Diesel Service, Inc., the second lowest bid, chosen because the lowest bid had to decline because of time restraints. Gregg's Diesel Service, Inc. was used to completely rebuild one Detroit Diesel engine. The Contractor will be compensated by the County not to exceed \$25,000 for the current project. The agreement shall commence on April 1, 1998 and continue until either party terminates by giving 30 days notice. (Contract No. 04086)
19. Professional Services Agreement between Skagit County and Jim Schols, allowing Jim Schols to perform routine maintenance within the Blanchard Sub-Flood Control Zone, at a total compensation not to exceed \$10,000. The agreement shall commence on September 28, 1998 and be effective through December 31, 1998. (Contract No. 04087)
20. Certificate of Commendation in recognition of dedicated public service to Frank Ensley, who worked for the Skagit County Public Works Department from January 10, 1972 to August 31, 1998. (Approved)

RISK MANAGEMENT

21. Personal Services Agreement between Skagit County and Wycoff Agency to create an insurance marketing tool that portrays the spectrum of risk within the County. This will include review of existing policy language and assessment of uninsured exposures, auditing of all exposures to risk. It will also include the assembling of marketing information traditionally requested to place insurance coverage on such things as infrastructure, employee data, contractual exposures, sponsorships, budget and financial statements, fleet, mobile equipment and vessels, bonding information, property (rented, leased, care and control), personnel

procedures. Loss analysis and cost of risk and insurance fund allocations will also be reviewed. Compensation will be at the rate of \$100.00 per hour for the principal, Fred Loffer, and shall not exceed \$3,500.00 for the completed marketing study. This agreement shall commence on October 15, 1998 and continue until terminated. **(Contract No. 04088)**

SHERIFF

22. Vendor Services Agreement between Skagit County and Cass Construction Company to provide services and products necessary to enclose existing space at the Skagit County Sheriff's Office. The County will compensate the Contractor \$6,738.42 at the completion of work provided the work is completed in a satisfactory manner. The agreement shall commence on September 10, 1998 and shall terminate upon completion of the stated work. **(Contract No. 04089)**

TREASURER

23. Personal Services Agreement between Skagit County and Eastman Auction Company to provide auctioneering services as well as provide all the advertising for the auction of October 2, 1998. Commission fees will be 2 1/2% of the gross sales. The agreement shall commence on October 2, 1998 and shall terminate on October 2, 1998. **(Contract No. 04090)**

PLANNING AND PERMIT CENTER

24. Out-of-State Travel Request for Kendra Smith to attend the ASLA National Convention in Portland, Oregon October 2-6 at a cost of \$988.00. **(Approved)**
25. Final Plat Map for signature for Summit Park Estates, Division III. **(Approved)**

MISCELLANEOUS.

1. Vouchers audited and certified by the auditing officer as required by R.C.W. 42.24.080, and those expense reimbursement claims certified as required by R.C.W. 42.24.090, have been recorded on a listing which has been made available to the Board.

As of this date, October 5, 1998, the Board, by a majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Warrants numbered 29176 through 29214 from Clearing Fund 696 in the total dollar amount of \$79,257.91 (Transmittal No. C-67-98); and

Warrants numbered 29215 through 29603 from Clearing Fund 696 in the total dollar amount of \$1,188,664.51 (Transmittal No. C-68-98); and

Payroll warrants numbered 23135 through 23212 in the total dollar amount of \$86,094.80 (Transmittal No. P-48-98); and

Payroll warrants numbered 950302 through 950359 in the total dollar amount of \$68,352.58 (Transmittal No. P-49-98).

APPEAL BY KAALAND MILL (DON KAALAND) OF HEARING EXAMINER'S DECISION DENYING 24-HOURS A DAY OPERATION AT THE KAALAND MILL, 3092 SO. HEALY ROAD, SEDRO WOOLLEY (PL97-464.REC AND SLD890001.REC).

Chairman Hart opened the appeal proceeding.

Grace Roeder, Planning Staff, stated that on June 2 the Board remanded the Special Use Permit modification request to the Hearing Examiner for him to provide additional findings and provide noise mitigation. She advised

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that the most recent decision from the Hearing Examiner was made on August 10, and was subsequently appealed on August 12. The Hearing Examiner simply reaffirmed his denial of the modification request. Ms. Roeder explained that the request by Mr. Kaaland was to allow operation of the mill facility as a 24-hour a day operation.

Ms. Roeder stated that the Board has the following options:

- 1) After examining the written request for appeal, the Board may deny the request and allow the Hearing Examiner's decision to stand;
- 2) To remand the matter back to the Hearing Examiner for further consideration.
- 3) Or, if the Board feels the Hearing Examiner's decision was not supported by substantial evidence, the Board may make their own findings and make a decision based upon the record made before the Hearing Examiner.

David Day, Mount Vernon, attorney for Mr. Kaaland, expressed his consternation at the situation as it presents itself. He stated that when the Board remanded this matter to the Hearing Examiner, the Hearing Examiner was given a specific directive to either flesh out the record to explain the reasons for denial, or to develop specific criteria with respect to the noise mitigation issue.

Mr. Day explained that the Hearing Examiner's previous findings stated in all respects that this application complies with all noise requirements lawfully in place. The staff presentation recommended approval of the request for expanded hours. Mr. Day explained that instead of opening the record to deal with noise mitigation, the Hearing Examiner simply re-wrote the conditions with insubstantial modifications. He indicated that the Hearing Examiner did not tell the Board anything different than what was contained in his original findings and decision of several months ago.

Mr. Day briefly mentioned that he had also filed a request for reconsideration by the Hearing Examiner that was determined to be untimely. Mr. Day did not consider the request for reconsideration untimely.

Mr. Day explained his concern that there has never been an identified set of criteria which his client has failed to meet. There has never been an effort by the County to explain what specific noise mitigation measures could be taken, even given that this proposal already meets all lawful requirements. Mr. Day stated that his client stands ready, willing and able to even exceed the lawful requirements, to assure people in the neighborhood are relieved of their concerns regarding noise.

Mr. Day informed the Board that they are sitting as judges to determine if the Hearing Examiner has proceeded lawfully. As such, he explained, in this quasi-judicial capacity, the only requirement is to determine if the Hearing Examiner acted correctly. Given that the staff found in favor of Mr. Kaaland, that there was no criteria presented to turn down the application, he indicated that the Board must establish their own findings and give Mr. Kaaland the permits he is due. Mr. Day stated that the 24 hour a day operation means additional jobs for the community. He stressed that it is a question of whether or not his client's application meets specific lawful requirements. He urged the Board to adopt the previous staff recommendation for approval and give his client his permits.

A discussion ensued on the necessity of taking testimony from individuals from the audience.

Chairman Hart indicated that Mrs. Koops can clarify anything already in the record, but that the Board cannot consider new testimony.

Cheryl Koops stated that she lives directly across from Kaaland Mill, west about 500 feet. The request, if approved, would allow increased operation of the mill, Monday through Saturday, and would allow 24-hours per day operation. She explained that the neighboring community opposes this request and urged the Board to deny the request with prejudice. She stated that the neighborhood has several valid reasons for requesting a denial of the expanded hours, which were supported in the Hearing Examiner's findings of August 10. Ms. Koops indicated that noise remains an obvious concern. She stated that the Hearing Examiner concluded that the noise emitted is an intrusion on the neighboring community. Impacts on the general health and welfare of the neighbors are significant. The Hearing Examiner acknowledged that the negative impacts on the immediate region are substantial, based on a petition signed by over 70 people. Ms. Koops indicated that Mr. Kaaland has not offered

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any mitigation proposal with this request and that little or nothing has been done to mitigate the effects on the neighborhood. She stated that the burden of proof is on Don Kaaland. She stated further that Mr. Kaaland was given an opportunity to submit evidence and mitigation in support of his request, and that he has not done so. She reviewed the history of the Hearing Examiner's decision.

Ms. Koops stated that the Hearing Examiner has concluded that the land is zoned agricultural and is in a high hazard flood zone and, consequently, is not in conformance with the Skagit County Comprehensive Plan. There have been numerous complaints submitted to the County for investigation. She advised that the Hearing Examiner concluded that Mr. Kaaland has presented little, if any evidence to support the application and need for additional hours of operation. She asked the Board to uphold the Hearing Examiner's decision, and to do this "with prejudice." She thanked the Board for listening to the concerns of the neighboring community.

Commissioner Anderson commented that none of the parties to this matter have been communicating particularly well.

Mr. Day stated that it was a great surprise to receive the Hearing Examiner's findings and order, because it was not clear based upon the resolution that Mr. Kaaland had a duty to come forward with criteria to alleviate concerns in the neighborhood. Mr. Day indicated that, if the intention of the Board was for his client to step up and present to the Hearing Examiner a series of noise mitigation methods, his client was prepared to do so in a public forum. But the resolution, in Mr. Day's opinion, did not place any burden on Mr. Kaaland. Mr. Day stated that the resolution indicated that the Hearing Examiner was directed to develop criteria. Mr. Day pointed out that perhaps this was not contemplated by the Board, but was the case. He commented on the failure of communication.

Commissioner Anderson related his experience with special use permits, and the extra effort he contributed to mitigate the noise concerns of his neighbors.

Chairman Hart stated that he also has experience with special use permits, and that he was never instructed to develop mitigation and noise standards, but that he also made the extra effort to alleviate his neighbor's concerns. He indicated that there has been no change in the Hearing Examiner's decision or direction to the applicant, and that it is not possible for the Board to enter a decision "with prejudice." He stated that he feels that there is no reason to overturn the Hearing Examiner's decision. He indicated that if Mr. Kaaland wants to continue operation of an industrial plant within an agricultural zone, he needs to make sure that he makes it work for the neighborhood.

Commissioner Wolden concurred that the applicant should try to help mitigate the concerns of his neighbors. He indicated that he would have proposed some mitigation measures to the Hearing Examiner for his consideration. Commissioner Wolden stated that it is not appropriate for the Hearing Examiner to suggest mitigation measures to Mr. Kaaland, and Mr. Kaaland did not produce any mitigation alternatives for the Hearing Examiner's consideration.

Commissioner Anderson queried John Moffat, Chief Civil Deputy, on whether there is anything that would prevent Mr. Kaaland from insulating the building and coming forward with another request for modification of his special use permit.

Mr. Moffat indicated that there is nothing in the County Code that allows "denial with prejudice," so Mr. Kaaland would be able to ask for a modification to his permit at any time in the future.

Commissioner Wolden commented that if there was some successful mitigation to the noise concerns of the neighbors, the opposition to expanded hours would be less.

Chairman Hart stated that if the Board upholds the Hearing Examiner's decision, Mr. Kaaland can either take this matter to court, or reapply with a new proposal that may alleviate the noise concerns of the neighbors.

Mr. Day asked to make some items clear for the record. First, the record supports that there never was a noise mitigation issue based on findings of the Hearing Examiner and the staff report. Mr. Day explained that the Hearing Examiner applied the proper criteria, and that it was clear that the operation meets lawful noise criteria. Mr. Day stated that this fact is binding on the Hearing Examiner and the Board. Second, Mr. Day stated that in

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spite of the unlawful concern about noise, i.e., the subjective concerns of the neighborhood, Mr. Kaaland is entitled to modify his permit. Third, the way the remanding Resolution was crafted, there was no duty placed upon his client to come up with any noise mitigation measures.

Commissioner Anderson stated that it was the Board's directive and intent to give Mr. Kaaland an opportunity to submit additional mitigation measures to the Hearing Examiner. He indicated that the issue he has heard over and over is the issue of noise. Commissioner Anderson stated that the argument could continue forever about the legal standards, but the fact is that some of the people in the neighborhood are concerned about increased noise at night. If there is an opportunity or method to put something in place to lessen the noise, more jobs in the upriver area could be created and are sorely needed.

Chairman Hart indicated that his impulse is to uphold the Hearing Examiner and allow the applicant to resubmit a modification request to the Hearing Examiner at another time.

Mr. Moffat explained the actions and findings of the Hearing Examiner.

Commissioner Wolden stated that if the Board were to come up with the proper directive compelling the applicant to come forward with mitigation proposals, that might be appropriate.

Chairman Hart stated that previously the Board gave the Hearing Examiner two choices, and the Board now needs to either uphold him or give him different instructions. He stated that if the Board chooses to remand this matter to the Hearing Examiner, it must be with instructions to hold a public hearing to determine if suitable mitigation can be submitted to alleviate the concerns of the neighbors.

Commissioner Anderson stated that there is nothing in the interim that would prevent Mr. Kaaland from taking some measures to deaden sound at the mill.

Chairman Hart indicated that this would also help the noise situation during the day.

Commissioner Wolden stated that he would be willing to remand this matter to the Hearing Examiner with detailed instructions. He noted that there has to be mitigation provided by the applicant.

Commissioner Anderson moved to remand this matter to the Hearing Examiner, instructing him to hold a public hearing to consider a suitable mitigation plan to be brought forward by the Kaaland Mill to alleviate the concerns of the neighborhood. Commissioner Wolden seconded the motion. The motion passed with a unanimous vote. **(Resolution to be presented by Staff at a Later Date)**

BID OPENING – LUMBER MATERIAL FOR SKAGIT COUNTY PARKS AND RECREATION DEPARTMENT.

Peter Mayer, Skagit County Parks & Recreation, opened the following four bids:

Frontier Industries
2099 Highway 20
Sedro Woolley
\$35,082.43
Bid bond enclosed.

Oso Lumber
1979 Highway 20
Sedro Woolley
\$35,703.36
No bid deposit enclosed.

Hardware Sales
Bellingham
2034 James Street
\$32,909.18
Bid bond enclosed.

Builders Alliance
Bellingham
3801 Hannegan Road
\$35,530.88
Certified bid bond enclosed.

Mr. Mayer advised that the department would review the bids in detail and come back with a bid award within one week.

DISCUSSION AND POSSIBLE ACTION – EXCHANGE OF REAL PROPERTY WITH SKAGIT PUBLIC UTILITY DISTRICT NO. 1.

Dave Fleming, Risk Manager, reviewed the history of the proposed exchange of county-owned real property for PUD property for a reservoir for additional fire flow for Gibraltar School. Mr. Fleming advised that this land swap is in the best interests of the citizens of Skagit County.

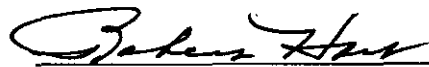
Chairman Hart indicated that this is something that has been discussed for some time.

Commissioner Anderson moved to approve a Resolution Authorizing an Exchange of Real Property with Public Utility District No. 1 of Skagit County as presented by Mr. Fleming. Commissioner Wolden seconded the motion, which passed with a unanimous vote. **(Resolution No. 17168)**

ADJOURNMENT.

Chairman Hart made a motion to adjourn the proceedings. Commissioner Wolden seconded the motion and it passed unanimously.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



Robert Hart, Chairman



Ted W. Anderson, Commissioner



Harvey Wolden, Commissioner



ATTEST:



Patti J. Chambers, Clerk of the Board
Skagit County Board of Commissioners