

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Monday, January 25, 1999**

8:30 a.m. – 8:45 a.m. Public Comment Period.

**CONSENT AGENDA.
MISCELLANEOUS.**

9:00 a.m. – 10:00 a.m. Planning & Permit Center – Tom Karsh, Director.

- 1) Continuance of the Discussion and Possible Adoption of an Interim Ordinance Extending the Interim Short Conservation and Reserve Development (CaRD) Ordinance No. 17206.
- 2) Set a Date for Hearing the Planning Commission's Recorded Motion on Amendments to the Critical Areas Ordinance, specifically the Definition of Agriculture Land and On-Going Agriculture.
- 3) Signature – Ordinance Relating to the 1997 Annual Amendments to the Skagit County Comprehensive Plan.
- 4) Establish Date to Review and Possibly Take Action on Planning Commission Recommendations to Amend the Skagit County Comprehensive Plan by: (A) Revising Urban Growth Areas for Mount Vernon, Sedro Woolley and Hamilton, and (B) Defining the Legal Lot of Record.
- 5) Miscellaneous.

10:00 a.m. – 11:00 a.m. Appeal by Leo Wolden of the Hearing Examiner's Decisions re: the Application of Western Wireless PCS for a Variance for Personal Wireless Service Facility on Burlington Hill (PL 98-0194.ORD) and Application of Western Wireless PCS for a Special Use Permit for a Personal Wireless Service Facility on Burlington Hill (PL 98-0193.ORD).

The Skagit County Board of Commissioners met in special session on Monday, January 25, 1999, with Commissioners Ted W. Anderson, Harvey Wolden and Robert Hart present.

PUBLIC COMMENT PERIOD.

Tom Solberg, 19019 Minnie Road, Alger, spoke regarding the Rundgren Property and the Mount Vernon Urban Growth Area. He commented on the Rundgren's intent to sell the property in order to supplement their retirement income. Mr. Solberg urged the Board to consider all of the relevant facts and resolve this issue once and for all.

CONSENT AGENDA.

Commissioner Wolden moved to approve the Consent Agenda for January 25, 1999. Commissioner Hart seconded the motion, and the motion passed unanimously.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings of Tuesday, January 19, 1999.
2. Record of the Proceedings of Wednesday, January 20, 1999.
3. Memorandum of Agreement regarding Tribal Participation in Washington State Water Resources and Water Management Program identifying the Swinomish Tribe as an initiating government under ESHB 2514.. **(Contract No. 04223)**

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ASSIGNED COUNSEL:

4. Personal Services Agreement with Robert S. Jones to provide professional legal services in performing all Superior Court, District court, and Juvenile Court cases that are considered to be conflict of interest cases for the Skagit County Public Defender's Office and have been determined to be within the scope of indigent defense. The contract begins on January 1, 1999 and will continue until terminated and is subject to the compensation as detailed in Exhibit "B" for specific types of cases. **(Contract No. 04224)**

ASSESSOR:

5. Amendment to Vendor Services Agreement with S.A. Newman, Forest Engineers, Inc. changing compensation from \$8,800 to \$9,100. **(Contract No. 02689)**

ARIS:

6. Personal Services Agreement with Keith Anderson, Ed.D., to provide individual therapy, couple and family therapy and group counseling at the rate of \$80 per 50-minute session, with maximum compensation not-to-exceed \$10,000. The Agreement is effective January 1, 1999 through December 31, 1999. **(Contract No. 04225)**

EMERGENCY MANAGEMENT:

7. Amendment C to Personal Services Agreement with Skagit Business Services to extend the contract period through January 31, 1999. **(Contract No. 03099)**

PROSECUTING ATTORNEY:

8. Personal Services Agreement with Rebecca M. Clark to represent the Skagit County Prosecuting Attorney's Office at mental health and involuntary commitment hearings as calendared by the Superior Court Clerk's Office. The Agreement term is January 1, 1999 through June 30, 1999, for a not-to-exceed amount of \$9,600. **(Contract No. 04226)**
9. Addendum No. 1 to Personal Services Agreement with Eugene Knapp and Lane, Powell, Spears, Lubersky clarifying that the compensation rate shall not exceed the rate of \$125 per billable hour. All other terms and conditions of the Agreement remain in full force and effect. **(Contract No. 03747)**

PARKS, RECREATION & FAIR:

10. Vendor Services Agreement with Bel-Aire Heating & Air Conditioning, Inc. for removal and disposal of existing furnace and related activities for a not-to-exceed amount of \$2,227.15. The contract commenced December 18, 1998 and will continue until terminated. **(Contract No. 04227)**
11. Resolution providing Authorization to Allocate Dedicated Funds and to Approve Change Order for Skagit Valley Dream Field Bleacher Pad. **(Resolution No. 17291)**

PLANNING & PERMIT CENTER:

12. Real Estate Purchase and Sale Agreement with Jerelene Armstead for the County's purchase of property pursuant to the Hazard Mitigation Grant. The purchase price is \$33,498. **(Contract No. 04228)**

CONSERVATION FUTURES/FARMLAND LEGACY PROGRAM:

13. Grand Deed of Conservation Easement with Ralph M. Zoberst and June L. Zoberst for property located in a portion of the Southeast quarter of the Southwest quarter of section 6, Township 34N, Range 4E, W.M. Payment totals \$55,161.84 for this easement. **(Contract No. 04229)**

PUBLIC WORKS DEPARTMENT:

14. Resolution regarding a Request for Proposals for Procurement of Maintenance Materials with the proposals to be opened on March 3, 1999, at 2:00 p.m. (**Resolution No. 17292**)
15. Personal Services Agreement with James W. Potts to provide lobbying representation in Olympia during legislative sessions in addition to that provided by the Washington State Association of Counties. Compensation is not to exceed \$7,750 and the terms is to remain effective through December 31, 2000. (**Contract No. 04230**)
16. Resolution Writing Off Uncollectible Accounts Receivable for the Solid Waste and Operations (Ferry) Divisions of Skagit County Public Works as detailed in Attachment "A" thereto, totaling \$944.57. (**Resolution No. 17293**)
17. Consultant Agreement with David Evans and Associates, Inc. for on-call right-of-way services for the period January 1, 1999 through December 31, 2000. The contract has a not-to-exceed amount of \$115,000. (**Contract No. 04231**)

INFORMATION SERVICES:

18. Personal Services Agreement with Balanced Action (Steve Kleinbart) to provide data processing planning and programming services, systems programming support, systems installation support, and related activities pertaining to Cashtax Plus and Investment Manager applications. The contract will begin on January 1, 1999 and will terminate on December 31, 1999. Compensation shall not exceed \$100 per hour. (**Contract No. 04232**)

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, January 25, 1999, 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 37176 and 37869 from Clearing Fund 696 for the total dollar amount of \$1,626,975.68 (Transmittal No. C-05-99); and

Payroll warrants numbered 27980 through 28676 in the total dollar amount of \$660,421.67 (Transmittal No. P-03-99).

Payroll warrants numbered 950789 through 950885 in the total dollar amount of \$80,683.63 (Transmittal No. P-04-99).

2. Staff presented a Timber Sales Agreement with LB&R Logging Company for the sale of timber located on parks lands, for a total sales price of \$192,500. Commissioner Wolden moved to approve the Timber Sales Agreement as presented by Staff. Commissioner Hart seconded the motion, which passed with a unanimous vote. (**Contract No. 04222**)
3. Staff presented, on behalf of ARIS, a Personal Services Agreement with Rosemary MacGregor, RN, to provide individual and family counseling. She will be compensated at a rate of \$125 for each initial visit and \$80 for each subsequent visit. The contract begins on January 1, 1999 and will continue until terminated. Commissioner Hart moved to approve the Agreement as presented by Staff, and Commissioner Wolden seconded the motion. The motion passed with a unanimous vote. (**Contract No. 04233**)

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4. Staff presented, on behalf of the Public Works Department, an Agreement for On-Call Appraisal Services with Mccaulay & Associates. The total compensation for this contract is \$78,000, with the contract expiring on December 31, 2000. Commissioner Wolden moved to approve the Agreement as presented by Staff. Commissioner Hart seconded the motion, and it passed unanimously. **(Contract No. 04234)**

PLANNING & PERMIT CENTER – Tom Karsh, Director.

1. Continuance of the Discussion and Possible Adoption of an Interim Ordinance Extending the Interim Short Conservation and Reserve Development (CaRD) Ordinance No. 17205).

Ms. Smith reviewed this Ordinance as previously distributed to the Board and she highlighted the specific changes being proposed. She explained that a letter received from the Friends of Skagit County ("Friends") had been reviewed in regards to this proposed ordinance, and that Friends are basically in agreement with the proposed changes. She discussed recreational uses in resource lands, and indicated that this Ordinance allows recreational uses in resource lands as providing in the Skagit County Zoning Ordinance 14.04, and the Comprehensive Plan.

Commissioner Anderson stated that he did not like the language regarding recreational uses in Resource Lands, and commented that this is confusing to the people trying to understand the proposed Ordinance.

Tom Karsh, Director, discussed a pending rule before the House that would amend the Growth Management Act (GMA) regulations to specifically allow recreational options in resource lands. He stated that this is a big enough issue in other jurisdictions that the Legislature is stepping forward to review this matter.

Commissioner Wolden indicated that the Ordinance as presented has now been explained to his satisfaction.

Commissioner Anderson commented on the inability to have even passive recreation approved in agricultural land, and stressed the need to have latitude to use the land for economic benefit and to adapt to opportunities for such activities.

Mr. Karsh indicated that this Ordinance will be rolled into the draft Development Code and will therefore be subject to public scrutiny and review. Therefore, it will have the opportunity to be revised as needed after applying it to various land-use situations.

Commissioner Hart moved for approval of the adoption of the Short CaRD Ordinance was presented by Ms. Smith. Commissioner Wolden seconded the motion. The motion passed with a unanimous vote. **(Ordinance to be provided by Staff at a Later Date)**

2. Set a Date for Hearing the Planning Commission's Recorded Motion on Amendments to the Critical Areas Ordinance, specifically the Definition of Agriculture Land and On-Going Agriculture.

Ms. Smith asked the Board to set a meeting date for hearing the Planning Commission's Recorded Motion on Amendments to the Critical Areas Ordinance, specifically the definition of Agriculture Land and On-Going Agriculture. She reviewed the three options to the Board: 1) to adopt the recorded motion as requested by the Planning Commission; 2) to remand the matter back to the Planning Commissioner for further study and review; or 3) to hold the Board's own public hearing to take further testimony.

Commissioner Hart moved to consider this matter during tomorrow's set agenda, January 26, 1999, at 10:00 a.m. The motion was seconded by Commissioner Wolden, and passed with a unanimous vote.

3. Signature – Ordinance Relating to the 1997 Annual Amendments to the Skagit County Comprehensive Plan.

Gary Christensen, Assistant Director, reviewed a memorandum and the proposed ordinance relating to the 1997 Annual Amendments to the Skagit County Comprehensive Plan. Commissioner Hart moved to approve the Ordinance as presented by Mr. Christensen. Commissioner Wolden seconded the motion, which passed with a unanimous vote. **(Ordinance No. 17294)**

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4. Establish Date to Review and Possibly Take Action on Planning Commission Recommendations to Amend the Skagit County Comprehensive Plan by: (A) Revising Urban Growth Areas for Mount Vernon, Sedro Woolley and Hamilton, and (B) Defining the Legal Lot of Record.

Mr. Christensen distributed to the Board a transmittal memorandum regarding the Planning Commission's recommendations on revisions to the Mount Vernon, Sedro Woolley and Hamilton Urban Growth Areas (UGAs) and the definition of legal lot of record.

He first discussed the proposed revisions to the Mount Vernon Urban Growth Area. He stated that the proposal would remove from the Mount Vernon Urban Growth Area the "Rundgren/Pederson" properties, which have been discussed at length in the past. Such action would remove the properties from the UGA and redesignate them as agricultural natural resource lands. This would, in turn, conform to the Western Washington Growth Management Hearings Board (WWGMHB) and would remove the invalidity order concerning these properties. Mr. Christensen advised that the vote by the Planning Commission was 4-4, so the Planning Commission had concluded that this is a matter best resolved by the Board.

Mr. Christensen next reviewed the properties north of the Mount Vernon City Limits and the specifics of the Planning Commission's recommendation.

The next matter was a proposed revision to the Sedro Woolley UGA, including the following :

- A) 13 acres of open space property south of the City Limits.
- B) 274 Acres of Open Space at the Southern City Limits.
- C) 33 Acres of Open Space Property Between the Southern City Limits and Riverfront Park.
- D) Northern State Property.

Mr. Christensen next discussed the details of the proposed changes to the Hamilton UGA. He stated that the proposal would pull back the Hamilton UGA boundary to the city limits and redesignate lands within as either Rural Resource-NRL or Rural Intermediate under the Skagit County Comprehensive Plan. The Town of Hamilton intends to re-establish a UGA upon completion of a sub-area plan with the goal of moving portions of the town to areas outside of the floodway.

Mr. Christensen briefly discussed the definition of a legal lot of record, informing the Board that the proposal would establish consistency between the Comprehensive Plan and the Skagit County Code.

Commissioner moved to set next Monday, February 1, at 9:00 a.m., as the time for reviewing these recommendations from the Planning Commission. Commissioner Wolden seconded the motion, which passed unanimously.

5. Miscellaneous.

Mr. Karsh commented briefly on the progress being made on the Development Code.

APPEAL BY LEO WOLDEN OF THE HEARING EXAMINER'S DECISIONS RE: THE APPLICATION OF WESTERN WIRELESS PCS FOR A VARIANCE FOR PERSONAL WIRELESS SERVICE FACILITY ON BURLINGTON HILL (PL 98-0194.ORD) AND APPLICATION OF WESTERN WIRELESS PCS FOR A SPECIAL USE PERMIT FOR A PERSONAL WIRELESS SERVICE FACILITY ON BURLINGTON HILL (PL 98-0193.ORD).

Commissioner Wolden excused himself from this session, indicating that Leo Wolden is his brother, and therefore this presents a conflict.

Marge Swint, Assistant Planner, reviewed the site plan of the proposed tower facility. She indicated that this was a request for a 150' tower with the option for two co-locations.

She reviewed the procedures for a closed record appeal, and listed the options for the Board. These include:

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- (1) After examining the written request for appeal, the Board may deny the request and allow the Examiner's decision to stand;
- (2) Remand the matter for reconsideration by the Hearing Examiner pursuant to Section (15) above; or
- (3) If the Board believes the Hearing Examiner's decision is not supported by substantial evidence, the Board may adopt its own findings, conclusions and decision based upon the record made before the Hearing Examiner.

Ms. Swint commented on some of the issues brought forward by the appellant's appeal. These included comments regarding an optionee vs. a property owner and the standard practice of the County not to make a distinction between an application and property owner as far as whether variance and/or special criteria apply or not apply. She discussed Skagit County Code Section 14.04.153(5) regarding the location of the subject property within the classification of view sheds and corridors, which is number 7 on the priority list. She stated that the application was reviewed on that basis. She discussed the definition of co-location as the use of a personal wireless service facility, cell site or other structure by more than one wireless services provider, together with the definition of a cell site. Ms. Swint stated that the proposed location of the tower is within an Urban Growth Area and not a Rural area, and therefore the siting is consistent with the Land Use Element of the Comprehensive Plan. She next briefly touched on the issues of noise impact, lighting, the actions of the applicant, and that no special privilege is bestowed on the applicant as this proposed plan will utilize the property in the best manner.

Commissioner Anderson clarified with Ms. Swint that the land in question on Burlington Hill is zoned Residential Reserve. Commissioner Hart asked if this property had, in fact, recently been annexed by the City of Burlington. Ms. Swint responded that the annexation is in process, but that the County is still the proper jurisdiction for this matter.

Dave Hough, Planning Staff, explained that the permit by the Hearing Examiner was issued prior to the annexation as was the subject appeal. As such, under various case laws, it has been identified that an applicant or property owner retained certain rights under a special use permit, even though the underlying property had been annexed. He stated that it is important that this appeal process be completed in order to determine whether or not the applicant has a vested right under the applicable City of Burlington codes.

Philip Serka, 400 No. Commercial Street, Bellingham, attorney for the appellant, stated that the main issue is whether or not the criteria had been met. He reviewed that the request is for a 150' tower to be located on residential property. He explained that Mr. Wolden owns property on the north, south and west of the subject property. Further, an existing 50' tower is located on the property, but it certainly does not have the same effect on the surround property as a 150' tower has. He explained the necessity for the variance due to the size of the tower, and he reviewed the County's adoption of regulations to deal with such location of towers. In this regard, he detailed the priority list for the location of towers, and stated that this is not the appropriate place for such a tower to be located. He stated that the location proposed violates all of the requirements the County has set forth.

Mr. Serka explained that without the variance, the applicant could still construct a cell tower, but it would be limited to 40 feet. He stated that the applicant does not have to build a tower at this location, noting that there are other things that could be done with this property. He stated that the "reasonable use of the land" has nothing to do with granting a variance in this case as there are already three towers located on the property. He stated that denying this variance would not deny any rights to the property owner, as they could still construct a tower of lower height. He next stated that the hardship to the applicant was created by the applicant, therefore they are creating a need for a variance and do not conform to the requirements or the criteria for granting such a variance. He explained that there are no topographical reasons, which necessitate approval of the variance.

Mr. Serka stated that there are no special conditions, which would allow this special request. The request for a 150' tower is not peculiar to this portion of land. The fact that there are non-conforming structures on a piece of property is not a good basis for this use. He further indicated that the granting of the variance would confirm a special privilege on Western Wireless, and the purpose of the existing Ordinance would be ignored and have no effect. He noted the lack of vesting as Western Wireless could locate such a tower on other property.

Mr. Serka next spoke to the application for a Special Use Permit, stating that the 150' tower is not compatible to the area and would have a definite visual impact on the neighborhood. He again noted that there is no right or

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privilege to locate a tower at this site. He briefly commented in intrusion of privacy issues, and the resultant impact on the character of a residential area. He reviewed the conflicts with the priority listing for location as set forth in the existing ordinance.

Mr. Serka stated that Mr. Wolden is entitled to protection from this intrusion, and that Western Wireless cannot prove that they have any right or basis to be granted a variance or special use permit. He asked the Board to deny the variance and the special use permit.

Craig Trueblood, Preston, Gates & Ellis, 701 Fifth Avenue, Seattle, representing the applicant, Western Wireless, made some comments regarding the process of annexation with the City of Burlington, and agreed that this is the right forum to consider this matter.

He explained that Western Wireless has a new wireless network in the Pacific Northwest to address coverage issues, and reviewed the specifics of their plan to add a 150' tower to Burlington Hill. He noted that the applicant is proposing to put the new tower within 50' of the existing four towers, therefore adhering to the clustering requirements of the ordinance. He stated that the original intent was to place a 130' tower, but it was determined to go to 150' to accommodate two other locators to adhere to the ordinance in allowing other providers to co-locate. He stated that the proposed location allows the new tower to cluster with the existing towers, but minimizes the amount of variance needed from the property that the appellant owns. He stated that under the County's zoning code, wireless facilities are allowed in every designation. The applicant is required to be in conformance with the Comprehensive Plan, to attempt to cluster or co-locate, and to provide adequate setbacks. Mr. Trueblood stated that the Hearing Examiner made conclusions on all of these items, and that there is evidence in the record that supported his decision. Mr. Trueblood asked that the appeal be denied.

He commented on the co-location of sites, and that it is difficult to say that this proposal is not putting a tower in the same area as other towers. He indicated that the noise issue has been addressed. He commented on the impacts on the surrounding neighborhood and region, saying that a 150' tower will definitely have a visual impact, but that such a tower is necessary to have effective line-of-sight communication. He stated that impacts have been minimized, and that by setting this tower back on the property and clustering it with other towers, the visual, privacy and noise impacts have been lessened. He commented on precedence for locating wireless facilities in Skagit County by clustering.

Mr. Trueblood spoke to the one-size-fits-all County Code that cannot anticipate all of the different lot sizes and variables. He stated that strange topography and unique size dictate the need for variances and special use permits. He stated that the special condition peculiar to this land and using the property in a manner similar to existing usages, make the conditions unique to this property. Consequently, the applicant does not gain a particular special privilege by the granting of the variance or special use permit. He again noted the substantial evidence in the record that justifies the granting of these requests.

Mr. Trueblood emphasized the fact that the number one priority is the co-location on or near an existing structure. He stated that if Western Wireless could co-locate, they would not be requesting this variance. He again reviewed the types of properties preferred for the location of towers. He further commented that the fact that the appellant "could" build a house on the property is not a factor.

A discussion ensued among the Board and Staff regarding the co-location of additional antennas on a existing tower and the impacts of tower location in residential zoning. Ms. Swint confirmed that this is an Urban Growth Area, but that the underlying zoning is Residential Reserve.

Commissioner Anderson stated that it is his contention that special use permits mean that under special conditions an applicant can use the property for other than what it was originally intended. He cautioned against losing sight of the fact that location of these towers should be in specific areas. He acknowledged that wireless service is valuable and should be accommodated, but the property owners adjacent to such sites lose considerable value to their property, especially in a residential area. He stated that if the County is going to convey a special privilege, the impacts to the property values adjoining must be carefully considered.

Commissioner Hart expressed his concern over Staff's interpretation of co-location, as he felt co-location met multiple use of a single tower, rather than the clustering of several towers. He noted the need to stop the proliferation of towers in residential areas.

Ms. Swint stated that the applicant did try to co-locate and was not able to do so. Mr. Trueblood confirmed this fact.

Chairman Anderson stated his belief that a special use permit is designed to convey a special privilege when certain criteria is met. He stated that it is not fair to impact property owners in a residential area who will have negative impacts on their property values. He commented on the visual impact to surrounding properties, and the need to locate such towers in Industrial Forest zones.

Commissioner Hart concurred with Chairman Anderson's remarks, adding that he is not convinced that the record and findings support the variance. Further, he noted that the Hearing Examiner's findings were weak.

Chairman Anderson indicated his desire to overturn the Hearing Examiner as location of cell towers in a residential area does not meet the established criteria, and that such a special use permit would bestow a special privilege on the applicant. Further, the requirement of co-location was intended to encourage co-location on existing towers. He stated that the Hearing Examiner's decision would grant such a special privilege with adverse affects on adjoining property owners.

Commissioner Hart moved to overturn the Hearing Examiner's decision and deny the special use permit, finding that there is an impact on adjoining property owners and that the criteria for preference on the site is the lowest priority rather than co-location on an existing tower. Chairman Anderson seconded the motion, which passed with a unanimous vote. Commissioner Hart further moved to overturn the Hearing Examiner's decision approving the requested variance, due to the inadequate setbacks that would have negative impact on the surrounding property owners, causing visual and noise impacts that would have a noticeable affect on the adjoining allowed property uses. The motion was seconded by Commissioner Anderson, and passed with a unanimous vote. **(Resolution to be provided by Staff at a later date)**

ADJOURNMENT.

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

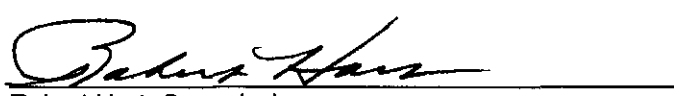
**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**



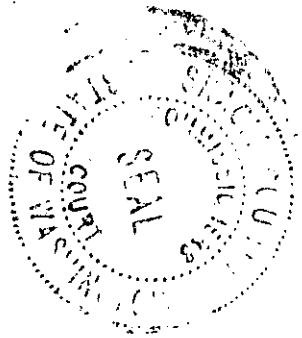
Ted W. Anderson, Chairman




Harvey Wolden, Commissioner



Robert Hart, Commissioner



ATTEST:



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