

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
Tuesday, February 8, 2000**

7:30 a.m. – 8:30 a.m.	Commissioners' Staff Meeting.
8:30 a.m. – 9:00 a.m.	Work Session – Operations Division Manager/District Maintenance Supervisors.
*T 9:00 a.m. – 10:00 a.m.	<u>Public Works Department – Chal Martin, Director.</u> <ol style="list-style-type: none">1) Presentation – Certificate of Commendation on the Retirement of Jim Jones, Transfer Station Mechanic.2) Signature – Professional Services Agreement with Green Solutions to provide an Update of the Skagit County Comprehensive Solid Waste Management Plan.3) Signature – Resolution Establishing County Road Project (CRP) No. 33000-5, Josh Wilson Road – Drainage Ditch and Culvert Installation.4) Miscellaneous.
10:00 a.m. – 11:00 a.m.	<u>Planning & Permit Center – Tom Karsh, Director.</u> <ol style="list-style-type: none">1) Discussion and Possible Adoption – Resolution to Remand Dena Blatt's Administrative Appeal #AP99-0288 and the Hearing Examiner's Decision in that Appeal back to the Hearing Examiner for Further Consideration.2) Deliberation and Possible Action – Extending Interim Ordinance No. 17535, which addresses expansion opportunities and changes of use for existing commercial and industrial business outside of Urban Growth Areas (UGAs), pending adoption of a new and/or expanded Ordinance as part of the Unified Development Code.3) Miscellaneous.
11:00 a.m. – Noon	Executive Session – Personnel, Litigation and Land Acquisition.
1:30 p.m. – 2:00 p.m.	Bid Opening – One New Latest Model Three-Axle Vac Truck/Jet Rodder.
*T 2:00 p.m. – 3:00 p.m.	Department of Ecology Water Rights Presentation.
3:00 p.m. – 4:00 p.m.	Appeal by Don Clark of the Hearing Examiner's Decision re: an Administrative Interpretation on Conditional Use Permit #170 re: Clark's Skagit River Campground (PL99-0690).

The Skagit County Board of Commissioners met in regular session on Tuesday, February 8, 2000, with Commissioners Harvey Wolden, Robert Hart and Ted W. Anderson present.

PUBLIC WORKS DEPARTMENT – Chal Martin, Director.

Commissioner Anderson was absent for this part of the agenda.

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1. Presentation – Certificate of Commendation on the Retirement of Jim Jones, Transfer Station Mechanic.

Robin LaRue, Solid Waste Division Manager, expressed his appreciation to Jim Jones (“JJ”) for his 33 years of service. He stated that JJ had been a great help in establishing a preventative maintenance program at the Transfer Station facility.

The Board presented Mr. Jones with a Certificate of Commendation.

Commissioner Hart added his thanks, and spoke to Mr. Jones’ devotion and innovative ideas over the years.

2. Signature – Professional Services Agreement with Green Solutions to provide an Update of the Skagit County Comprehensive Solid Waste Management Plan.

Mr. LaRue reviewed the proposed contract with Green Solutions for an update to the Skagit County Comprehensive Solid Waste Management Plan. He reviewed the various tasks to be performed by Green Solutions, as well as the schedule for the performance of this contract. The contract is effective as of the date of signature, and compensation is proposed to be \$43,868. Commissioner Hart confirmed that this amount was included in the budgetary process.

Commissioner Hart moved to approve a Professional Services Agreement with Green Solutions as described by Mr. LaRue. Chairman Wolden seconded the motion, which passed with a unanimous vote. **(Contract No. 04753)**

3. Signature – Resolution Establishing County Road Project (CRP) No. 33000-5, Josh Wilson Road – Drainage Ditch and Culvert Installation.

Sky Miller, Surface Water Management Division Manager, reviewed the exact location of the drainage concerns along Josh Wilson Road. He explained that the fix involves the replacement of several culverts, at an estimated cost of \$130,000.

Mr. Martin stated that the Department had budgeted for this work.

Commissioner Hart moved to establish County Road Project No. 33000-5, Josh Wilson Road – Drainage Ditch and Culvert Installation. Chairman Anderson seconded the motion, which passed unanimously. **(Resolution No. 17761)**

4. Miscellaneous.

A. Robin LaRue, Solid Waste Division Manager, reviewed with the Board the need to replace a cylinder in the compactor. During normal maintenance, it was discovered that there were stress fractures on the cylinder. Mr. LaRue explained that stated that this was not budgeted, but was included in the Transfer Station’s long range plan, with replacement slated for next year. He stated that there are funds available in the solid waste fund reserve account. Mr. LaRue indicated that the replacement would be a sole source item, that the Department is in the process of obtaining final quotes, and that the estimated replacement cost would be approximately \$80,000. The Board confirmed that this would involve replacing the entire cylinder. Commissioner Hart moved to authorize replacement of the cylinder as described by Mr. LaRue. Commissioner Wolden seconded the motion, and it passed with unanimous approval.

B. Steve Flude, Assistant County Engineer, presented a Professional Services Agreement with Alta Transportation Consulting for the development of a county-wide non-motorized transportation plan. He advised that the total proposed amount of the contract is \$45,000.

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Upon query from the Board, Dave Baltz, Public Works Department Staff, reviewed the history of the non-motorized plan and the coordination with the cities.

A discussion ensued regarding the parameters of the work to be performed, and the facilitation of the cities' involvement, together with the tight timeline for this project.

Commissioner Anderson was present at this point in the proceedings.

Commissioner Hart moved to approve the contract with Alta Transportation Consulting, with a not-to-exceed amount of \$45,000. Commissioner Anderson seconded the motion, and it carried unanimously. **(Contract No. 04754)**

- C. Mr. Flude reviewed details on the Cook Road Reconstruction Project, advising that this project went out to bid yesterday, with the bids scheduled to be opened on March 8th. He indicated that construction would begin on April 3rd, and will proceed and be completed on or before August 15th. He detailed the two proposed detour routes. The Board discussed other detour routes that could be utilized.

Commissioner Anderson stated that the clearing and grubbing is going well along the side of the roadway. He commented that he liked the way the project is proceeding.

PLANNING & PERMIT CENTER – Tom Karsh, Director.

1. Discussion and Possible Adoption – Resolution to Remand Dena Blatt's Administrative Appeal #AP99-0288 and the Hearing Examiner's Decision in that Appeal back to the Hearing Examiner for Further Consideration.

Corey Schmidt, Assistant Director, presented a Resolution to Remand Dena Blatt's Administrative Appeal back to the Hearing Examiner for further consideration. He indicated that the Hearing Examiner would be able to receive new information that has been accumulated since the original hearing.

Commissioner Anderson moved to approve the Resolution Remanding Dena Blatt's Administrative Appeal back to the Hearing Examiner for further consideration. Commissioner Hart seconded the motion, which passed with a unanimous vote. **(Resolution No. 17759)**

2. Deliberation and Possible Action – Extending Interim Ordinance No. 17535, which addresses expansion opportunities and changes of use for existing commercial and industrial business outside of Urban Growth Areas (UGAs), pending adoption of a new and/or expanded Ordinance as part of the Unified Development Code.

Tom Karsh, Director, spoke of the need to extend Interim Ordinance No. 17535 on Commercial and Industrial Uses outside of urban growth areas.

Kirk Johnson, Associate Planner, reviewed his February 2, 2000 memorandum, addressing commercial and industrial uses outside of urban growth areas. He reviewed particular issues that were raised during the public hearing and in written correspondence. He explained that both Department Staff and Legal Counsel would address the various issues raised through the Unified Development Code update now proceeding through the Planning Commission. He added that the Department has added a finding in response to one of the comments received, but that no changes are being proposed to the provisions of the Ordinance at this time. He indicated that the Department and Legal Counsel recommend the adoption of the proposed Ordinance extending these interim controls for another six months or until such time as the Unified Development Code and Comprehensive Plan amendments are adopted, whichever is sooner.

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Commissioner Hart moved to adopt the Interim Ordinance extending the provisions of Interim Ordinance No. 17535 as explained by Staff. Commissioner Anderson seconded the motion, which passed unanimously. **(Ordinance No. 17760)**

3. Miscellaneous.

Mr. Karsh updated the Board on the Planning Commission Growth Management Act compliance matters.

BID OPENING – ONE NEW LATEST MODEL THREE-AXLE VAC TRUCK/JET RODDER.

Steve Cox, ER&R Coordinator, opened the following bids:

Clyde West
9615 West Marginal Way So.
Seattle, WA 98108
Declined to bid.

Pacific Utility Equipment Company
PO Box 24387
Seattle, WA 98124
\$255,532.54
Bid Bond Enclosed

Enviro Clean Equipment
PO Box 1619
Estacada, OR 97023
\$225,638.07
Options - \$33,894.51
Bid Bond Enclosed

Ben-Ko-Matic Brush & Equipment Co.
848 Third Avenue South
Kent, WA 98032
\$242,715.57
Options - \$25,292.94
Bid Bond Enclosed

Motor Trucks, Inc.
1684 Henson Road
Mount Vernon, WA 98273
\$223,895.96
Options: Not totaled but bid: \$862; \$13,492, \$6,142; \$5,739; \$8,608
Bid Bond Enclosed.
Sales Tax was included.

Motor Trucks, Inc.
1684 Henson Road
Mount Vernon, WA 98273
\$252,242 – second package bid
Options: Not totaled but bid: \$862; \$15,020; \$20,498; \$3,537; \$4,403

Mr. Cox advised that he would review the bids and come back with a recommendation as soon as possible.

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DEPARTMENT OF ECOLOGY WATER RIGHTS PRESENTATION.

Lorna Parent, Environmental Health Specialist, introduced Keith Phillips from the Department of Ecology, who had been invited to discuss water rights procedures.

Keith Phillips, Water Resources Project Manager at the Department of Ecology, reviewed the history of the current surface water code, which was originally adopted in 1917. The code was last updated in 1971.

Mr. Phillips reviewed the numbers concerning endangered fish, population growth, and water rights applications. He discussed the critical need of restoring instream flows to aid with salmon recovery. He stated that at the same time there are people standing in line for water rights decisions. Currently there are over 7,000 water right applications pending, as well as 1,600 pending changes. Mr. Phillips stated that the confused situation regarding salmon recovery has compounded the complexities of such water rights applications.

He reviewed water use in Washington, including irrigation, industrial and municipal use. Mr. Phillips stated that the water challenge can be summarized in how do you foster rural economic development while managing population growth and restoring salmon runs? He indicated that the mission is to meet current and future water needs for people, farms and fish, noting that the current code does not refer to the Growth Management Act or the Endangered Species Act.

Mr. Phillips discussed the water resources vision based on information management and shared governance. To this end, there is the need for monitoring of surface and ground water conditions, measurement and reporting of all water use, and clearly defined water rights. These must be tempered sufficiently to meet esthetic, recreational and other human needs. He spoke to the importance of identifying and maintaining watersheds and supporting such watersheds locally.

Mr. Phillips spoke at length on the importance of watershed management and the potential for creating a Conservancy Board. He discussed exempt wells, and other potential water legislation that is being considered or proposed.

In summary, he reviewed the features of the future, including a water code that recognizes growth, changing economy and salmon recovery. Watershed plans need to be adopted in compliance with state and local rules. Further, an administrative system with state and local governance roles and a streamlined judicial system needs to be developed. He emphasized the need for an effective and sustained public education program with adequate funding for new infrastructure. He reported that a billion dollars would be needed for the next ten years.

Mr. Phillips next opened the floor for questions.

Commissioner Hart stated that the County executed a Memorandum of Understanding among water purveyors, the Tribe, County and others, and that once the instream flow was determined that the Department would be issuing water rights that had been applied for. He asked what has happened on this at this point?

Mr. Phillips stated that DOE is meeting next week with signatories to the agreement, acknowledging that the signatories have completed their part of the agreement, and now it is time for the Department to do their part. He stated that it is time to establish a rule through the public process. He reviewed the public process involved.

Rod Sakrison, DOE Liaison for Skagit County, commented on the Skagit instream-flow study.

Commissioner Anderson expressed his concerns for the City of Hamilton and the desired siting of a mill by Crown Pacific, adding 100 good jobs to the local economy. He discussed the lack of priority in the granting of water rights, and the need to add economic vitality as directed by Governor Locke and his rural economic development programs. He spoke about the need to focus on such opportunities for rural counties.

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Mr. Phillips reviewed the number of new employees that have been added to the water rights division to assist in the processing of same.

Commissioner Anderson emphasized that he is struggling mightily to find jobs in his district, and that the lack of prioritization in processing water rights has been a detriment to such efforts.

Commissioner Hart asked about identifying storage rather than water rights for fire flow usage.

Mr. Phillips stated that a Conservancy Board could make these types of localized decisions. He indicated that at this time, unfortunately, there is not a system in place to deliver what Skagit County needs.

Tom Solberg, 19019 Minnie Road in Alger, spoke about the history of water rights on his farm, which he purchased in the 1980's.

Mr. Sakrison discussed the need to develop a record on the water rights in the Samish basin.

Ian Munce, City of Anacortes, indicated that the City of Anacortes is a party to the Memorandum of Understanding, and supported the County's efforts based on the understanding that once the in-stream flow levels were set, that the process for water rights could be expedited. He indicated the City's interest in batching, with the possibility of paying in advance so that the applications could proceed.

Mr. Phillips stated that DOE is committed to the agreement, and has every reason to believe that public water systems can be pulled to the front of the line. He stated that if new legislation does pass, there would be an option to pay for the processing of new water rights in advance. He indicated that there is much debate about who implements these plans, as well as much discussion about future governance. He stated that perhaps Conservancy Boards should issue new water rights in the future.

Commissioner Wolden commented on the in-stream study that was previously completed.

Mr. Sakrison reported that the previous study was based on over 50 years of data on the flows of the Skagit River, so that it is known what to expect.

A discussion ensued on the year-to-year varying of instream flows and the ability to change the water rights from year-to-year based on the flows recorded.

Commissioner Anderson stated that during the formation of the MOU, he raised an issue because he represents a large rural district, and questioned how the MOU would effect them. Now, he pointed out, he is being told that those wells were exempt anyway. He asked if once the river study is completed, and a flow is determined for the maintenance of fish habitat, and combined water rights of these utilities pull past the number that you deem acceptable levels, then are the people in the outlying areas going to be able to drill wells.

Mr. Phillips indicated that the law and the legal debate is unsettled. He explained that under traditional law, just because an exempt well does not need a permit, drilling such a well in a closed basin is not automatically allowed. He reiterated that this scenario is unsettled in current water use law.

Carole Ehlers, West Fidalgo Island, asked about the review of water system plans by the Department of Health.

Mr. Phillips responded that water systems that serve over 1,000 must have their plans reviewed. Further, systems expanding also must develop a water system plan. He discussed the conflicts of the Departments of Health and Ecology in this regard.

Commissioner Anderson spoke specifically to the case of Wilderness Village, and the application for water rights, which has been in process for quite some time. Consequently, the funding available for the project may expire

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and the development stalled because no water right has been issued. He explained the financial burden of Mr. George Theodoratus and discussed the legal ramifications of the delay in issuing such a water right.

Commissioner Hart suggested that any kind of long term development needs to have the water rights determined at the same time construction begins.

APPEAL BY DON CLARK OF THE HEARING EXAMINER'S DECISION RE: AN ADMINISTRATIVE INTERPRETATION ON CONDITIONAL USE PERMIT #170 RE: CLARK'S SKAGIT RIVER CAMPGROUND PL99-0690)

Chairman Wolden advised that during an appeal hearing last week, Commissioner Anderson had been asked by the appellant, Washington Environmental Council, et al., to recuse himself from the proceedings due to perceived conflicts of interest with Mr. Clark. Chairman Wolden asked the parties if they had any objection to Commissioner Anderson taking part in today's appeal.

Michael Rossotto, attorney for the Washington Environmental Council, restated his objections to Commissioner Anderson participating in today's proceedings, and asked that he again recuse himself.

Commissioner Anderson agreed to step aside so as not to prejudice Mr. Clark's arguments.

Tom Karsh, Skagit County Planning & Permit Center, advised that this appeal of the Hearing Examiner's decision was based on an initial Administrative Official Interpretation that had been developed for answering specific questions that Mr. Clark had directed to the Planning & Permit Center. Mr. Karsh stated that this matter has quite a lengthy history, and he briefly framed the issues at hand. He stated that after the Hearing Examiner issued his decision, the Clark's requested a reconsideration. The reconsideration was denied with one exception in that the Hearing Examiner agreed that there had been error in his initial decision concerning the Mitigated Determination of Non-Significance. This fact has been changed, but the remainder of the Hearing Examiner's decision is intact.

Mr. Karsh reported that upon receiving the reconsideration denial, Mr. Clark filed a timely appeal. The appeal consists of a number of pages, copies of which have been provided to the Board.

Mr. Karsh advised that the Board had the following options for handling this appeal:

- (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.

Don Clark, Appellant, spoke regarding the particulars of the long process involving Conditional Use Permit #170 and the many tasks he has been asked to perform by the Planning Department. He referred to the Hearing Examiner's characterization that this process has proceeded at "glacial speed." He discussed the illegal downzone during the life of the subject vested permits. He stated that the County is violating his vested rights, breaking state law, and violating the County's own Mission Statement. He commented that it is inappropriate to allow the intervention of the Washington Environmental Council. He stated that the Administrative Official Interpretation was contrary to law, but was issued anyway.

Mr. Clark explained that if Conditional Use Permit (CUP) #170 is vested and valid, then the question arises as to what can be done under the permit. He indicated that CUP #170 is a mixed use permit, is general in its wording, and contains little restrictive use language. He emphasized that CUP #170 should have been determined to be a mixed use permit, and meets all reasonable criteria. He commented that cabins and RV sites are very compatible and needed in the area. He stated that he should not be before the Board discussing what can be done on the

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subject property. He indicated that the previous appeal by Washington Environmental Council is 26 years too late.

Mr. Clark stated that with regard to the Development Agreement, he suggested that the Board immediately restore the momentum to the original draft version. He also suggested that in regards to the vested and completed permits, that the Board immediately restore their integrity and issue them in accordance with the terms of their original issuance.

Mr. Clark reported that the Hearing Examiner had consolidated and reviewed the entire file. Mr. Clark advised that, with this appeal, he has exhausted all of his administrative remedies. The next step will be lengthy court hearings, and Mr. Clark advised that the County would lose in court because Staff believes that CUP #170 is not vested. Mr. Clark commented that Staff also asserts that CUP #170 is not a mixed-use permit, that no cabins are allowed, and that the County's interpretation of vested rights is contrary to case law. He emphasized that there has been no diligence on the part of the County in processing his permit.

Mr. Rossotto stated that that it must be acknowledged that Mr. Clark's appeal is based on a fundamental misunderstanding of Washington's vested rights doctrine. He stated that the vested rights doctrine is not nearly as broad as Mr. Clark believes. He spoke to the major safeguards listed in the invested rights doctrine, including that the developer must make substantial investment in his plan, including submitting detailed plans to support his development proposals. Projects are required to be completed within a specified time, and the vested rights doctrine only applies to what is actually proposed in an application. Mr. Rossotto stated that the vested rights doctrine protects developers against fluctuating regulations, but it also protects the public and permitting agencies against fluctuating proposals by developers. Mr. Rossotto stated that Mr. Clark wants to enjoy all of the benefits, but does not want to acknowledge the responsibilities that go along with such benefits.

Mr. Rossotto cited the Noble Manor case, and others, stating that the court has made it clear that only what is sought in the application is vested. He stated that the word "resort" was never used in the application for CUP #170. He affirmed that the Administrative Official's Interpretation and the Hearing Examiner's decision were correct in that the project proposed consisted of a tent and RV campground with a few basic support facilities on the site plan. He proceeded to review the issues of the greenbelt, and Shorelines Act, noting that the Administrative Interpretation and Hearing Examiner's decision were correct in their rulings in this regard. Mr. Rossotto indicated that the vested rights doctrine does not exempt Mr. Clark from future permits. He further noted that any activities that were taken on the property without the benefit of a Shorelines Permit were in violation of the conditions of CUP #170, and are basically illegal and enjoined from protection under the law.

Mr. Rossotto stated that he has spent much time reviewing the record, and that his impression in doing such is that Mr. Clark's problems are essentially of his own making. He stated that the information provided by Mr. Clark has been cursory and inaccurate. He stated that there are letters in the record from the Planning Department asking for additional information, not onerous requests, and Mr. Clark responds with angry and accusatory correspondence. He stated that the only reason for this appeal is that Mr. Clark is not willing to complete an Environmental Impact Statement for this large project. He stated that the site plan for the project is vague and the sites are not detailed, with no scale to the map. He stated that Mr. Clark has not given the County the detailed plans for this project and has not pursued the project with due diligence. The Hearing Examiner is supported by substantial evidence, and no errors in law are cited by Mr. Clark, nor any case law cited. He asked the Board to uphold the decision of the Hearing Examiner.

Mr. Clark rebutted by discussing the contract rezone and conditional use permit as applied for. He reaffirmed his belief that the proposed cabins would come under the provisions of the conditional use permit. He reviewed details of the Shorelines Act of 1971, which he stated are applicable. Mr. Clark reminded the Board that they cannot change the conditions of the permit, unless such conditions are found to be adverse to the public health, safety and general welfare. He stated the law clearly states that the conditions of the permit must be followed.

Mr. Rossotto replied that everything Mr. Clark has stated is irrelevant, and that no finding of a threat to health, safety and general welfare is needed

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The Board advised they would make their decision in this matter at 9:30 a.m. on Monday morning, February 14.

ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Harvey Wolden, Chairman

Robert Hart, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

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