

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, JUNE 11, 2002**

- 8:30 a.m. – 9:00 a.m. Work Session – Operations Division Manager/Road District Maintenance Supervisors
- *T 9:00 a.m. – 10:00 a.m. Public Works Department – Chal Martin, Director
1. Discussion – Draft Agreement with Channel View, L.L.C.
 2. Signature – Professional Services Agreement with Edge Analytical for Laboratory Analyses of Soil, Water, Sediment, Sludge Samples, etc.
 3. Presentation – “Certificate of Good Practice” to the Skagit County Public Works Department
 4. Miscellaneous
- *T 10:00 a.m. – 11:00 a.m. Planning Permit Center - Tom Karsh, Director
1. Proposed Work Plan – Revision of SCC 14.24.120, Ongoing Agriculture on Agricultural Lands
 2. Review and Discussion – Personal Services Contract Scope of Work with Henderson, Young & Company for Capital Facilities Planning
 3. Review and Discussion – Agricultural Advisory Board Member Selection Process
 4. Review and Discussion – Proposed Revisions to the Washington Office of Community Development Grant, Contract No. 02-63000-157
 5. Miscellaneous
- 2:00 p.m. – 2:30 p.m. Work Session – Abandoned Cars
- 2:30 p.m. – 3:30 p.m. Work Session – Humane Society of Skagit County
- 3:30 p.m. – 4:30 p.m. Work Session – Update on the Skagit River Feasibility Study

The Skagit County Board of Commissioners met in regular session on Tuesday, June 11, 2002, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

PUBLIC WORKS – Chal Martin, Director

1. Discussion – Draft Agreement with Channel View, L.L.C.

Steve Flude, Assistant County Engineer, outlined the proposed draft agreement with Channel View, L.L.C./Mike Fohn, which would allow Skagit County Public Works to provide labor and materials to resurface Channel View Lane and Paradise Lane. Mr. Fohn constructed these roads in conjunction with his long plat, Channel View Estates, located on Guemes Island.

In accordance with Skagit County Road Standards, the developer has the option of surfacing long plat roads with asphalt or two lifts of bituminous surface treatment (BST). Private contractors typically do this work.

Mr. Fohn has proposed that Public Works provide the BST surfacing and he would then be responsible any the financial liability. Since Channel View Lane and Paradise Lane were constructed as part of a long plat, Skagit County will assume responsibility for the roads when they are surfaced and after the developer has provided Public Works “as-built” drawings and a maintenance bond.

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Mr. Flude mentioned that this is something that has never taken place in the past so the department sought legal advice from the Prosecutor's Office. The Civil Deputy, Hilary Thomas, would not sign the agreement due to statutory restrictions. It is her opinion that Public Works should not be in the business of constructing, improving or maintaining private roads.

The Board of Commissioners agreed that it wouldn't be wise to approve requests for paving private roadways, especially since legal counsel has advised against it.

Commissioner Dahlstedt said private roads are supposed to be up to the County's standards before we take control of them.

2. Signature – Professional Services Agreement with Edge Analytical for Laboratory Analyses of Soil, Water, Sediment, Sludge Samples, etc.

Dave Brookings, Public Works Administrator, presented a Professional Services Agreement with Edge Analytical to conduct laboratory analyses of soil, water, sediment, sludge samples and other related services. The rates are comparable to those of the current contract which expired on May 31, 2002.

The scope of work covers analyses required by the Health Department as well as Public Works (Solid Waste and Surface Water Management) for ongoing monitoring projects for a two year period beginning June 11, 2002 and continuing through June 1, 2004. These projects include, but are not limited to, monitoring at suspected and potentially contaminated sites, routine landfill monitoring, the Agriculture Buffer Baseline and Samish Watershed Water Quality monitoring. Estimated costs for the two years are \$170,000. (Surface Water Management: \$70,000; Solid Waste: \$60,000; Health Department: \$40,000.)

Commissioner Dahlstedt moved to approve the Professional Services Agreement between Edge Analytical and Skagit County for laboratory services through June 1, 2004. Commissioner Anderson seconded the motion, which passed unanimously. **(Contract No. C2002)**

3. Presentation – “Certificate of Good Practice” to the Skagit County Public Works Department.

Chairman Munks explained that the County Road Administration Board recently issued a “Certificate of Good Practice” to Skagit County for 2001, which will ensure the continued distribution of Skagit County's monthly State gas tax allotment from the Office of the State Treasurer. He is honored to present the award to the Skagit County Public Works Department.

Commissioner Anderson said maintenance for Skagit County roads are currently the lowest in the State of Washington. These statistics are a tribute to the Public Works Road Department.

Commissioner Dahlstedt made a motion that the “Certificate of Good Practice” be presented to the Skagit County Engineer on behalf of the Skagit County Public Works Department as issued by the County Road Administration Board.

Steve Flude, Assistant Public Works Engineer, accepted the award for the department.

4. Miscellaneous.

Mr. Martin said an inquiry was received last week from Terry Stevens of the Northwest Straits Commission. A Noah Grant has been awarded to the Commission to aid in the cleanup of derelict fishing nets that are sitting off our coastal waters. They are asking for funding assistance to help pay for the disposal of the nets.

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Gary Sorenson, Solid Waste Manager, added that this would be a pilot program. On June 20, 2002, the Department of Natural Resources will provide a boat to assist in the process. It is estimated that approximately two tons of derelict nets would be recovered. The cost to the County would run \$200-\$300.

Mr. Martin offered funds from Salmon Restoration, which is not only for restoration in our rivers and streams but in other areas as well.

The Board approved the request from the Northwest Straits Commission to contribute to their efforts in the removal of the nets.

Mr. Martin gave an update to the Board regarding last week's meeting with the Samish Watershed Planning Unit. In 1996 there were several entities that signed a Memorandum of Agreement (MOA) for instream water use in the Skagit River. In 1998 a second agreement was signed that provided a mechanism for the Swinomish Tribe to join the watershed planning process, which set up the process that is currently underway. A consultant was hired and has put together a draft report on water usage in the Samish River. The 1996 agreement reserved 85 cubic feet per second (cfs) of water for the City of Anacortes, 42.59 cfs for the Public Utilities District, 4.33 cfs for the Swinomish tribe. There was no water specifically allocated for Skagit County. Mr. Martin said there was language in the agreement that addressed exempt wells and how future studies are needed for the wells.

Commissioner Anderson explained that the 1996 agreement specifically spoke of rural wells lying east of the pipeline, which initially was to be from the pipeline on down. The study initially was supposed to be from the pipeline on down. Former Skagit County Commissioner Harvey Wolden was promised that agricultural wells and single family resident wells would be exempt. What wasn't stated in the agreement was that when instream flows were set, a water right to the river was assigned. Washington State Water Law states that you cannot infringe on an existing water right. Based on that information, there is no exemption due to the fact that the minimum instream flows fall below the projected level and as a result there will be interruptible flows on the individual family wells. Therefore, Skagit County would be unable to issue building permits because there must be proof of a water supply in order to obtain a building permit, according to the Growth Management Act and Skagit County Code.

Mr. Martin said in April of 2001, the Department of Ecology set the Skagit Instream Flow Rule. When the Instream Flow Rule is combined with the provisions of the 1996 MOA, it makes future exempt wells subject to interruption. For a period between mid-August to the first of October, on average, the Skagit instream flows would not meet the requirements of water use and therefore new water rights would be interrupted during that time. The County proceeded to follow the 1996 MOA and requested the planning unit to take and estimated 17.2 cfs block of water to cover ground water withdrawal for future rural residential well users. The letter was taken to the Samish Watershed Planning Unit last week and the response received was "this isn't our issue". Part of the 1998 MOA that was signed along with the Tribe states "All parties to this MOA currently acknowledge that any assessment or plan developed under ESHB 2514 can not and shall not conflict with or in any way regulate or diminish the Tribe's reserved water rights under Federal law. In particular, the parties agree not to balance the reserved rights in interest of the Tribe against other competing water user claimants. Further, the parties agree not to supercede or replace the provisions of the 1996 MOA, Utilization of Skagit River Basin Water Resources for Instream/Out-of-Stream Purposes". This statement was brought up at the meeting as the basis for this Samish Watershed Planning Group not to address the issue that the County had with the 1996 agreement. In comments that were provided by the Department of Ecology, Bruce Faller said the 1996 MOA would not have an impact on an exempt well, however, at the last public hearing it was stated that exempt wells would be junior to proceeding water rights. Mr. Faller asked how the Department of Ecology can make exempt wells junior? Their response was "Ecology has not proposed to limit the statutory rights to develop an exempt well. Ecology has made statements in environmental documents and public hearings to clarify that an exempt well

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is only exempt from permit requirements. It becomes a water right when it is drilled and put to beneficial use. It has a priority date, the date it is put to beneficial use, and could be junior to the instream flow.”

Commissioner Anderson said that no specific dialog was discussed when the Department of Ecology brought it forward in 1996. Former Commissioner Wolden was convinced that single family and agricultural wells were exempt during that process and Ecology never made any statements to correct the assumption. A much bigger issue is the out-of-basin allocation for the river. With Anacortes taking water out of the Skagit River Basin and selling it to Oak Harbor and Whidbey Island Navy Base, there is no recharge back into the basin from any of that water.

Commissioner Anderson indicated that at one point, Commissioner Don Munks asked for a work session on instream flows. During the work session, Commissioner Anderson asked questions about interruptible flows and how unfair it would be to people would be unable to build. One of the mayors in attendance remarked that a person could always purchase a water certificate. By purchasing a water certificate from PUD or the cities, it would be controlling a resource that most people think is their right to water. Commissioner Anderson added that it was the County’s mistake for not being involved when the agreement was formulated.

Mr. Martin stated that although the 1998 MOA was signed to set up the Samish Basin Watershed Planning Process, which is funded from an Ecology grant, it isn’t following the 2514 watershed planning process that was passed by the legislature in 1997/1998. The Samish Basin Watershed Planning Process is not a 2514 watershed planning process.

Mr. Martin said he and Mr. Karsh would be attending a Samish Watershed Planning Group meeting this afternoon. The watershed planning process was originally set up to match the water resource inventory areas. The Samish Basin has been removed, which is part of the lower Skagit Water Resource Inventory Area. This process does have stakeholder groups set up and the County will be listening to what they have to say. Mr. Martin advised the Board that they would be involved in this process for the next 7-8 months with an agreement in place by December. If the deadline is not met for a new MOA, the Department of Ecology would then oversee setting the instream flow for the Samish River. Apparently, there will be no water withdrawn out of the Samish Basin for future use.

Commissioner Dahlstedt added that there is insufficient water for existing users let alone for any future use.

Commissioner Anderson said former Skagit County Commissioner Robert Hart was convinced by the Department of Ecology that the three County Commissioners would be able to establish a local conservancy board. He asked Mr. Martin to find out what happened to the conservancy board.

Mr. Martin indicated that it is possible to set up a Water Conservancy Board, however, the Board would have to work with a block of water that is interruptible.

Commissioner Anderson said the word “interruptible” was never mentioned.

Mr. Martin said in 1996 when the MOA was signed, the 2514 planning process wasn’t yet envisioned. No one knew that the agreement would lead to setting an instream flow for the Skagit River, which would be below what was the natural flow to the Skagit River actually is.

PLANNING & PERMIT CENTER – Tom Karsh, Director

1. Proposed Work Plan – Revision of SCC 14.24.120, Ongoing Agriculture on Agricultural Lands.

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Tom Karsh, Director, explained that during the last 17 months, the Planning & Permit Center and Public Works Departments have been working to implement SCC 14.24.120, commonly known as the "Ag Buffer" ordinance. A sense has developed throughout the State, among local governments, some State agencies, and various governmental and nongovernmental stakeholder groups, that the science surrounding the issue of the effect of agriculture on salmon habitat is not well adapted to the specific conditions of the Skagit Valley.

Mr. Karsh said the County's staff have struggled with many of the requirements of the old ordinance, and have found many of the elements of that ordinance exceedingly difficult and controversial to carry out, including attempts to gather meaningful data on the buffer options provided, and use this data to adaptively manage the buffers, if necessary. In effect, the old ordinance required the County to develop new science to support its ordinance, which the County has found to be unworkable. On March 27, 2002, Thurston County Judge Pomeroy ruled that the old ordinance did not meet the requirements of the Growth Management Act and would need to be rewritten.

Staff then developed a concept outline of a new ordinance, which was presented to the public in a meeting attended by over 200 people on May 14, 2002. Comments from citizens attending this meeting made it clear that the draft outline ordinance presented was not acceptable to them. Other elements of the ordinance, not specifically remanded by Judge Pomeroy, are included in a second lawsuit, which is currently pending before him.

Mr. Martin said a public meeting will take place June 25, 2002 to gather input on the new ordinance. The County is under a court order to produce a document in a 125-day period. It is hoped that by February 2003, something will be crafted. There is tremendous concern about the impact of some of our most productive farmland in Skagit County and the impact this ordinance would have on the relatively small agricultural community. That provides the rural character of the Skagit Valley and it isn't just important to those directly involved in farming, but also all of those that live in Skagit County.

Chairman Munks gave approval of the timeframe that has been drafted and wondered if it is realistic. "All of the counties in the State of Washington have until 2005 to figure out where they are going with their critical areas and buffers. This is the time to make sure we take the time to put this together right." He feels that true science is just now starting to come out from tests, results, and experiments that have taken place. "We are just now so we are starting at the ground floor of what is the best science and where it will lead us in this project."

Mr. Karsh said staff will bring a resolution before the Board that would confirm a new direction that coincides with the proposed timeline within the next couple of weeks.

Commissioner Anderson said one advantage to rewriting the ordinance is that the new ordinance, we will be able to reference science that has been developed since the last ordinance was written. It would be advantageous to the process if the latest findings could be incorporated into it.

2. Review and Discussion – Personal Services Contract Scope of Work with Henderson, Young & Company for Capital Facilities Planning.

Gary Christensen, Assistant Planning Director, presented a Personal Services Agreement draft with Henderson, Young & Company for consulting services relating to the update of the County's Capital Facilities Plan (CFP).

Mr. Christensen said the CFP is a process that ensures that certain levels of service standards are met. It is a process that enables transportation, fire service, law enforcement, schools, etc. to keep pace with growth within the County and is used as a budget tool. CFP's have a six-year term associated with them and is updated on an annual basis. The plan coincides with the annual budget process, which typically begins in July and is finished by December. An update was not

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done last year due to the fact that several key people involved with the CFP's left County employment.

Mr. Christensen indicated that the draft contract was prepared based on discussions between the Planning Department and the Budget & Finance Department regarding the County's Capital Facilities Plan obligation under the Growth Management Act. Henderson, Young & Company are a nationally known consulting firm that has done extensive work in the State of Washington associated with CFP's. He added that the proposal is to bring the company on board to help the County through the process with the understanding that it will be an in-house task beginning next year. A Capital Facilities Committee, representing several key County departments, would be formed to complete the task in the future.

Commissioner Anderson said he would like to adopt a similar structure that is being used for County roads so we have the ability to move projects up or down the list. It is also his hope that the County can solicit CFP's from the cities and incorporate a plan together.

Chairman Munks noted that this is not a Skagit County Government plan but a plan for Skagit County. The County is under tremendous pressure from the Growth Management Act to put the plan together in the time allotted.

Commissioner Dahlstedt said the whole drainage infrastructure needs to be taken into consideration as well.

A final contract will be brought forward for approval in two weeks.

3. Review and Discussion – Agricultural Advisory Board member Selection Process.

Mr. Christensen explained that on April 29, 2002, the Board of County Commissioners approved Resolution No. R20020134, which established the Skagit County Agricultural Advisory Board. Shortly thereafter, a news release was issued wherein it indicated that those interested in serving on the Agricultural Advisory Board (AAB) were to submit letters of interest and a statement of qualifications for review and consideration by May 31, 2002. Seventeen applications were received.

Tom Karsh, Rich Doenges and Dyvon Havens will serve as advisory staff to the AAB. Mr. Christensen said a couple of the advisory staff have been approached and asked as to when such appointments will be made, what selection criteria will be used and may additional individuals/organizations be considered for AAB appointments although no letters or statement of qualifications were submitted.

Commissioner Anderson said from his perspective he would like to see individuals that are interested in agricultural issues be appointed instead of having equal representation among the three districts. All interested groups should be represented.

Mr. Christensen said each Commissioner will be able to make three appointments and are not bound to choose applicants from their respective district. Wide diversity and balance is what is needed.

Commissioner Anderson asked how many groups will be represented.

Mr. Christensen indicated that the Farm Bureau, the Cattleman's Association, the Dairy Federation, the Farm Crops Association and Skagitonians to Preserve Farmland would be represented. The voting members of the AAB shall represent the diversity of the agricultural economy, various agricultural operations and demonstrate knowledge, experience, and interest in one or more of the following agricultural areas: soil and water conservation, farming practices,

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food and feed processing, wholesale and retail marketing, produce buying, direct marketing, supply, agricultural real estate/land appraisals and finance.

Mr. Christensen said they would put together a list of the applicants for discussion purposes on June 25, 2002.

4. Review and Discussion – Proposed Revisions to the Washington Office of Community Development Grant, Contract No. 02-63000-157.

Mr. Christensen said earlier this year, Skagit County received a state grant/contract in the amount of \$78,750 for growth management related work. The scope of work included the following four projects or tasks: (1) Develop and Adopt Growth Management Indicators (GMI) Program, (2) Adopt New 20-Year Growth Forecasts and Allocations, (3) Reassess Natural Resource Lands Designations, Policies and Regulations, and (4) Review the Skagit County Comprehensive Plan and development regulations to ensure compliance and consistency with GMA. Later this year the Washington State legislature passed SB 5842 and the Governor signed into law what is commonly referred to as the GMA Update Extension (now codified under the Growth Management Act as R.C.W. 36.70A.130). This GMA amendment allows local government's additional time to complete their comprehensive plan and development regulations updates. For Skagit County and its cities/towns, the new deadline is 2005.

As a result of this new legislation the Washington Office of Community Development (OCD) has provided local governments with an opportunity to amend/revise their state grants/contracts for growth management related work. The Department has had discussions with OCD over the last several weeks about Skagit County initiated proposed amendments to the state grant/contract and has given preliminary approval to the proposal.

Task 1 and Task 2 are unchanged with the exception of modifying the timeline to allow additional public participation and city/town consultation. As a result of the GMA extended deadlines, the Department is proposing to eliminate Task 3 and Task 4. This work will be considered later as part of future calendar year Department budget and work program proposals. The revised scope of work proposes re-allocating \$38,750 of the total state grant monies toward the Bayview Ridge Subarea Planning process. The Department had initially considered allocating \$13,750 toward the Similk Beach LAMIRD project. However, based on discussions with OCD, this already completed work posed State Auditor accounting issues. Therefore, this money is proposed to be rolled over into the Bayview Ridge project.

In summary, the revised state grant/contract scope of work indicates that \$78,750 of state monies will be applied toward Task No. 1, Item #3, which is estimated to cost \$104,000. The balance of approximately \$25,000 will be covered by the Department's Professional Services budget. Skagit County will be providing in-kind services that are estimated to be about \$75,000 through June, 2003.

5. Miscellaneous.

Mr. Karsh said the County is operating under a court ordered interim ordinance currently dealing with a number of settlement issues. It will expire on June 28, 2002 due to a six month shelf life. In order for it to be renewed, a public hearing would need to be held. John Moffat and the other parties to this particular lawsuit settlement process have gotten the courts to allow the extension.

The Board of Skagit County Commissioners approved holding a public hearing on June 25, 2002 at 10:00 a.m.

Ms. Smith briefly gave an update on the Coastal Zone Management Grant and said it should be moving forward very soon.

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MISCELLANEOUS.

Staff presented an Ordinance regarding the redistricting of Commissioners' districts based on Census 2000 population figures. Commissioner Dahlstedt read the ordinance as follows:

WHEREAS, the provisions of R.C.W. 36.32.020 and 29.70.100 require commissioner redistricting after each decennial census according to Census population figures: and

WHEREAS, revisions to Title 6 of the Skagit County Code are necessary in order to balance the Commissioner districts based on 2000 population figures; and

WHEREAS, a revision to the Skagit County Code has been prepared and a public hearing has been held on Tuesday, June 4, 2002 to receive public comment.

NOW, THEREFORE , BE IT RESOLVED AND IT IS HEREBY ORDERED that Chapter 6.12, Commissioners' Districts of the Skagit County Code, is amended to read as set forth in Attachment "A".

WITNESS OUR HANDS AND OFFICIAL SEAL OF OUR OFFICE this 11th day of June, 2002.

Commissioner Dahlstedt made a motion to approve the Resolution as outlined above. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. R2002)**

ADJOURNMENT.

Commissioner Dahlstedt made a motion to adjourn the proceedings. Commissioner Anderson seconded the motion, which passed unanimously.

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Don Munks, Chairman

Kenneth A. Dahlstedt, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

JoAnne Giesbrecht, Clerk of the Board
Skagit County Board of Commissioners

