RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
WEDNESDAY, NOVEMBER 20, 2002

Skagit 7:00 a.m. – 8:30 a.m.	Quarterly Breakfast Meeting with Skagit County Farmers (Beary Patch Restaurant – 400 West Rio Vista Avenue, Burlington)
9:00 a.m. – 10:00 a.m.	Appeal No. PL02-0626 Related to the Hearing Examiner's Decision to Terminate Review of Special Use Permit Application No. PL97-0205 – Frailey Mountain Shooting Range
10:30 a.m. – 11:30 a.m.	Appeal No. PL02-0628 Related to the Hearing Examiner's Decision to Deny Habitat Watch's Request to Revoke Special Use Permit SPU92-018 Issued for the Chuckanut Crest Golf Course
1:00 p.m. – 2:00 p.m.	Public Transportation Area Board Meeting (Port of Skagit County)
2:00 p.m. – 3:00 p.m.	Regional Transportation Area Board Meeting (Port of Skagit County)
3:00 p.m. – 4:00 p.m.	Council of Governments Meeting (Port of Skagit County)

The Skagit County Board of Commissioners met in regular session on Wednesday, November 20, 2002, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

APPEAL NO. PL02-0626 RELATED TO THE HEARING EXAMINER'S DECISION TO TERMINATE REVIEW OF SPECIAL USE PERMIT APPLICATION NO. PL97-2025 – FRAILEY MOUNTAIN SHOOTING RANGE.

Dave Hough, Special Projects Consultant for the Planning and Permit Center reviewed the history of the Frailey Mountain Shooting Range. The Skagit County Parks and Recreation Department together with a citizens' advisory group began searching for a shooting range site in the early 1900's. In 1996, the Department filed an application for a shooting range in the Lake McMurray area (Coyote Ridge). A Draft and Final Environmental Impact Statement (EIS) was prepared and issued for the Coyote Ridge site. In an effort to explore alternative sites as part of the public input process, the Frailey Mountain site was examined at the same level of detail as the Coyote Ridge site in a supplemental Draft EIS issued in 1996. A Final EIS on the two alternative sites was issued in May 1997.

The Parks and Recreation Department decided that the Frailey Mountain site was the better of the two sites based on the environmental review process and submitted applications to the Planning and Permit Center on May 19, 1997. On May 22, 1997, the Planning and Permit Center determined that the applications were complete and sufficient for continued processing in accordance with SCC 14.01.033.

Skagit County Hearing Examiner Robert Schofield held four hearings in July and August 1997 and provided a written comment period through August 1997. The Hearing Examiner approved the applications and upheld the adequacy of the environmental review. The decisions were subsequently appealed to the Board of Commissioners. After a closed record public hearing, the Board upheld the Hearing Examiner's decisions on December 22, 1997.

The Shorelines Substantial Development/Variance was appealed to the State Shorelines Hearings Board and a Land Use Petition Act (LUPA) petition, relating to the Special Use Permit, was filed in Snohomish County Superior Court. The Shorelines Hearings Board conducted hearings in November 1998. On March 9, 1999, the Shorelines Hearings Board ordered that the shorelines permit application be remanded to the County for additional detail relating to the access road

together with appropriate review of potential safety impacts on Pilchuck Creek. No argument was presented relating to the LUPA petition on the Special Use Permit. The permit decision was reversed and remanded for further proceedings consistent with the final Order of the Shorelines Hearings Board.

Subsequent to the decision, the Parks and Recreation Department proceeded with necessary preliminary engineering studies relating to the access road and bridge with review of the rifle range configuration and Pilchuck Creek. Based on the additional information, the Planning and Permit Center conducted additional environmental review on the proposal. An Addendum to the Final Environmental Impact Statement was issued in September 2001.

Mr. Hough said since that time, the Hearing Examiner concluded that all of the original applications are still alive and pending; concluded that the vesting issue relating to the Shorelines and Critical Areas applications were irrelevant; and concluded that the Special Use Permit application was complete. The remaining issue before the Hearing Examiner is whether the County can vest a complete application with the standards existing at the time such an application is deemed complete. The County regulations do not differentiate between public and private projects as to standards and requirements. Staff is unaware of any State statutes, rules or case law which establishes different vesting process for public and private projects.

The effect of the Hearing Examiner's decision is that any County project must be reviewed in accordance with new regulations whether the project is under construction or just permitted. This could involve road or bridge construction, solid waste handling facilities, parks, etc... The Parks and Recreation Department has expended a great deal of effort to provide the additional information required by the Shorelines Hearings Board. The project has been subject to a great deal of public scrutiny and will continue proceeding with public review as the Hearing Examiner considers the additional information.

Mr. Hough stated that Staff recommends that the appeal be upheld and that the Hearing Examiner's decision that the County cannot vest, be reversed. The Hearing Examiner concluded that the applications were alive and pending and that they were complete, which meets the criteria for vesting.

Paul Reilly, Attorney for the Prosecutor, is representing the appellant Skagit County Parks and Recreation Department. This is an appeal of an extremely focused issue that is solely an unprecedented decision by the Hearing Examiner to the effect that the common law doctrine of vested rights does not apply to public projects. Speaking of common law rules and equitable doctrines, according to the Citizens to Save Pilchuck Creek's latest filing, the Washington law for vested rights doctrine is not an equitable doctrine, to which Mr. Reilly is in agreement. There are two types of vested rights in Washington. The first, and the type with which this appeal is concerned, is the common law doctrine created by the Washington State Supreme Court in the 1950's, the antecedents of which go back to 1930. It dealt solely with zoning issues. The second type of vested rights is statutory, created by the Legislature to codify the aspects of vested rights in regard to building permits and plat applications.

Mr. Reilly explained that a common law rule is one that is selected by judges. It applies hard and fast rules without regard to extraneous facts that might be brought in as in cases of equity. Equity gives judges the freedom of discretion, to examine the unique facts of each case and the circumstances that surround the particular case, and then arriving at a decision that the judge thinks is fair under the circumstances. Common law requires a strict application of a rule without exceptions of consideration of fairness. Mr. Reilly said it is consistent and it always applies, it always works and it always works in all situations.

Mr. Reilly argued that the error of the Hearing Examiner is that he weighed the factors. He talks about private investment and the reliance of private parties for the basis of the vesting law. That simply isn't the vesting law in the State of Washington. The sole issue of the appeal is when the

application was filed and what the law was at that time. This is an extraordinary ruling and there is no ruling like this anywhere. Had Mr. Eustis' Citizens to Save Pilchuck Creek been able find any jurisprudence in this State that says a public project as opposed to a privately financed project is not protected by the vested rights doctrine, you would have seen it. It is not in his pleadings because there isn't any such ruling.

Mr. Reilly stated that if this ruling by the Hearing Examiner is allowed to stand, it simply constitutes another nail in the coffin of governmental flexibility.

Jeff Eustis, Attorney at Law, is representing the appellant Citizens to Save Pilchuck Creek. He stated that the County Parks Department is arguing that they should not be subject to the zoning that governs these Industrial Forest lands. There was a State Supreme Court decision which stated that recreational uses on lands to be set aside for resource purposes are not appropriate. There is a zoning provision that would have allowed shooting ranges with enclosed facilities to be located on Industrial Forest lands. The Growth Management Hearings Board said these uses needed to be excluded, so the County pulled that requirement out and basically limited shooting clubs to those without enclosed structures. The Parks Department is arguing that they should be exempt from that ruling. Its argument for exemption is that it should gain certain rights under the vested rights rule. The courts have said the government cannot vest against its own laws. If government passes a law it must be bound by that law.

Mr. Eustis said the notion of vested rights doesn't come out of antiquity through the common law. The common law is based upon, in this case, procedural due process. It is the notion that people should not be subject to retroactive legislation. Government should not be able to change the law after they have made a commitment under the lines of the law in a particular State. It's basically a protection against retroactive application of law. The Parks Department feels the Examiner should have gone down the equity track instead of the common law track. Mr. Eustis said that is a false claim and indicated that the Hearing Examiner was very knowledgeable about the law and did not make such a basic mistake as to misunderstand that the State vested rights doctrine really came out of equity instead of common law. The Examiner correctly understood and applied the vested rights rules. Due process protections do not just limit a local government's ability to tighten the vested rights rule. The vested rights rule is part of the due process guarantee to citizens against the retroactive application of legislation. The due process clause serves to protect citizens against its government. It does not protect the government against itself. Government does not need to be protected against its own "fluctuating policies" since it holds within its power the ability to change those policies.

Mr. Eustis said taxpayers aren't in the mood for a project like this. He pointed to the defeat of the sales tax increase for the County 911 Center as a sign that new spending, even on vital services, isn't a good idea. He feels that on a luxury item such as a recreational shooting range, it's an even worse idea.

Commissioner Munks asked if either attorney wished to give a rebuttal. Both declined.

The Commissioners will render their decision on this appeal Tuesday, November 26, 2002 at 11:00 a.m.

MISCELLANEOUS.

The Board approved waiving any objection to Skagit County Prosecuting Attorney Civil Litigator, Paul H. Reilly acting as counsel and advocate for Skagit County Parks and Recreation Department in the matter of the appeal of the Hearing Examiner's Order of September 25, 2002, regarding the Frailey Mountain Shooting Range. This consent acknowledges that, as part of the duties of Mr. Reilly, he from time to time advises the Board and/or acts as their legal counsel in an attorney/client relationship, and that there has been no discussion or contact between Mr. Reilly and any member of the Board regarding the Hearing Examiner's Order, or the content thereof.

The signatories further waive any objection to Mr. Reilly advising the Parks and Recreation Department in this matter despite his having acted as legal advisor to the Board in the past, and my similarly advise the Board in the future.

APPEAL NO. PL02-0628 RELATED TO THE HEARING EXAMINER'S DECISION TO DENY HABITAT WATCH'S REQUEST TO REVOKE SPECIAL USE PERMIT SPU92-018 ISSUED FOR THE CHUCKANUT CREST GOLF COURSE.

Linda Kuller provided the background and procedural history for PL02-0628, Habitat Watch appeal to the Hearing Examiner's denied request to revoke Special Use Permit SPU92-018.

On June 15, 1993, the Skagit County Hearing Examiner granted Special Use Permit No. 92-018 (SUP) to Dr. David Moore for the Chuckanut Crest Golf Course. Habitat Watch was a party that participated in the hearings at that time and opposed the permit. Following an unsuccessful request for reconsideration, Habitat Watch filed an administrative appeal at the time of the Hearing Examiner's decision and the Board of County Commissioners upheld the granting of the SUP to Dr. Moore in Resolution No. 15276 on March 14, 1994.

One of the conditions to SUP92-018 was that, "the project must be started within two years of the date of this order or the Special Use Permit will become void." In 1995, Dr. Moore sought an extension of the permit. Following a public hearing, the Hearing Examiner issued an order on April 21, 1995, granting a two-year extension of that condition, to June 14, 1997. Sometime thereafter, Dr. Moore sold the property to the Port Gardner Timber Company. In early 1997, Port Gardner Timer Company filed a written request with the Hearing Examiner for an additional extension. Without holding any public hearing, or providing any notice of the request or the decision to parties of record, the Hearing Examiner issued an order dated April 23, 1997, granting another two-year extension. On November 4, 1998, apparently in response to an oral request from Port Gardner Timber Company, the Hearing Examiner granted another extension, again without holding a public hearing or providing any notice of the request or the decision to parties of record. This extension granted an extension of "the time to begin the project…for two additional years until June 14, 2002." (The extension "until June 14, 2002" was actually a three-year extension.) In 2000, the Upper Skagit Indian Tribe purchased the property from Port Gardner Timber Company and thereby became the holder of SUP02-018.

On July 10, 2002, Habitat Watch petitioned the Hearing Examiner for revocation of the permit issued for the Chuckanut Crest Golf Course. Habitat Watch's request was based upon the provisions of current Skagit County Code (SCC) section 14.16.900(2)(b)(iii), which gives the Hearing Examiner the authority to order that a Special Use Permit be revoked, suspended, or modified based on a finding that the conditions have not been satisfied by the Applicant. Revocation was requested on three grounds which are listed in the applicant's Notice of Appeal. In summary, those three grounds are: (1) unlawful extension of the second and third extension requests for the SUP by the Hearing Examiner; (2) improper interpretation of the condition on the third extension, which stated that the project must be started by June 14, 2002; and (3) failure to commence the project by the June 14, 2002 date (if this date is considered valid). Following a public hearing, the Hearing Examiner denied Habitat Watch's request to revoke the permit in a Decision and Order dated September 30, 2002. The Hearing Examiner denied Habitat Watch's request for reconsideration on October 8, 2002.

Habitat Watch appeal the Hearing Examiner's September 30, 2002 Decision and Order denying the request for revocation and the Examiner's decision denying the applicant's Motion for Reconsideration to the Board of County Commissioners.

The related Planning and Permit Center staff report provides the essential arguments against Habitat Watch's revocation issues. Primarily, these arguments are supported by the following:

1. Unlawful Extension of the Second and Third Extension Requests for the SUP.

Habitat Watch's petition to review and revoke this permit asserts that several permit extensions were issued without the benefit of proper procedures required by the SCC in effect at the time. Based on a review of the documents available in the file, it appears that the 1997 and 1998 extensions may have been granted without the Hearing Examiner's Office having followed proper procedures. The proper procedures were outlined in former SCC 14.04.150(3)(f) and required the Hearing Examiner to conduct a public hearing before amending a Special Use Permit. The Code in effect at the time of the extensions also allowed for reconsideration of the Hearing Examiner's decision if procedural errors had been made in issuing a decision. However, no request for reconsideration based on procedural errors nor any appeal was submitted by Habitat Watch within the local administrative process timeframe, nor was any petition filed in Superior Court under the Land Use Petition Act (LUPA) within the 21 days of these actions.

The remedies for procedural errors are clearly outlined in Code. Interested parties failed to act at the appropriate time to make claims that the extensions were erroneously issued. Having missed the timeframes for submitted legitimate appeals, staff finds the request to revoke the permit based upon alleged improper procedures in granting the extensions in 1997 and/or 1998 to be untimely under the recent Washington Supreme Court decision of Chelan County v. Nykreim, 146 Wn2d 904 (2002). Current staff reviewing the permit had no reason to research all of the previous extensions and their procedural history. Nor was this issue brought to the attention of the Upper Skagit Indian Tribe at the time of the purchase.

Chelan County v. Nykreim determined that a land use decision is considered final if not appealed in the LUPA 21-day appeal period. The Court's decision supports the permit holder's right to rely on a permit decision, when it has not been appealed in a timely manner under LUPA. In other words, decisions must be deemed final to deliver certainty to the applicant unless timely appeals are filed. This decision further clarifies that LUPA's 21-day time limitation for filing judicial appeals applies to ministerial as well as quasi-judicial decisions. This case also addresses lack of public notice. Even where notice was not provided, the Supreme Court determined that failure to notice is unfortunate, but that the finality of a decision must be a reliable certainty for the applicant.

The Upper Skagit Indian Tribe purchased the property in 2000 and has relied on the Hearing Examiner's decisions regarding the requested extensions and on the County's interpretation of the permit conditions. As indicated in the public hearing testimony, large investments in time, energy and money have been spent on planning, engineering, site clearing and design to initiate the development of the golf course based on those decisions. In retrospect, the permit holder has relied on decisions which have never been appealed in a timely manner according to County Code.

Finally, the Superior Court of Snohomish County has already rejected this argument. Habitat Watch filed a Petition for Review under the Land Use Petition Act and Complaint for Declaratory, Injunctive and Writ Relief in late July 2002, in part alleging that the 1997 and 1998 extensions were improperly issued. On October 25, 2002, Snohomish County Judge Thomas J. Wynne orally ruled that Habitat Watch's claims under LUPA for the 1997 and 1998 extensions were dismissed based upon the fact that the LUPA action was not filed within LUPA's 21-day appeal period from the 1997 and 1998 actions, and based upon language in Chelan County v. Nykreim that LUPA is the sole grounds for appeal of a land use decision appealable under LUPA, that is 21-day time period for appeal is mandatory and was not met by Habitat Watch in this case. Judge Wynne also stated that under Nykreim and the recent Supreme Court case of Samuel's Furniture, Inc.v. DOE, (October 2, 2002), it does not matter that Habitat Watch did not receive notice of the 1997 and 1998 extensions, that LUPA's 21-day appeal periods were mandatory. Judge Wynne additionally ruled that Habitat Watch had failed to exhaust its administrative remedies as required under LUPA because it was still pursuing this appeal, now before this Board. A copy of Judge Wynn's ruling is attached to the Staff Report as Exhibit A.

2. Improper Interpretation of the Condition on the Third Extension that Project Must Be Started by June 14, 2002.

When Skagit County Planning and Permit Center staff met with the project proponent contacts and issued correspondence with the contacts, staff confirmed that the date the project would be considered "started" would be the date the permit holder submitted the first development permit applications related to the construction of the project proposal. This interpretation of "started" has been made for years by the Permit Center staff on permits issued prior to the adoption of new development regulations. This is evidenced by Tom Karsh's memo dated August 26, 2002, which verifies this interpretation. No official definition of "started" or "commenced" was included in the development regulations in place prior to July 24, 2002.

Habitat Watch incorrectly states that the "commencement" determination was made on June 19, 2002, in violation of the SCC. Habitat Watch quotes a current Code section, SCC 14.16.900(2)(d), which is part of the Unified Development Code adopted July 24, 2002. SPU 92-018 is not subject to the current Code, but is instead subject to the Code in effect at the time of issuance of the Special Use Permit on June 15, 1993. This Special Use Permit is subject to a previous version of the Zoning Code (former SCC 14.04.150), which had no regulations regarding the start date of a permit. (Note: SPU92-018 was issued with specific conditions, the original condition used the term "commencement" of the project and, as extensions were rendered, the term was altered to the word "start".)

Also, the applicant provides incorrect information regarding the letter dated July 3, 2002. This letter was in response to Mr. Eustis' comments raised regarding the permit extensions and permit applications. The response letter that he has quoted only states the County's position that the Chuckanut Crest Golf Course project was considered "started". Lastly, the memo notes that the procedure to raise questions about compliance with Special Use Permit conditions is outlined in SCC 14.16.900(2). This is correct. No Code sections addressing appeals were quoted since the appeal time for addressing the permit extensions had long been past and such procedures were not applicable to the extensions. Kendra Smith's letter dated July 16, 2002 correctly indicates that the request to review the Special Use Permit cannot be considered an appeal, because the time frame had passed for appeals of the Special Use Permit and its extensions. The Hearing Examiner does not differ on the appropriate procedural rule. He clearly states that the right to appeal (extensions) was never exercised at the appropriate time and includes that in his decision. Aside from this discussion, it is not Planning and Permit Center's staff's responsibility to interpret the procedural elements of Code to an applicant. It is an applicant's responsibility to read Code, seek professional advice if needed and then submit whatever application they desire. As stated in SCC 14.06.040, unless an official administrative interpretation is requested in writing with regard to a particular permit application, such information is considered counter information and not subject to appeal. Staff is not in a position to "advise" an applicant unless an Official Administrative Interpretation is requested.

3. Failure to Commence the Project by June 14, 2002.

When Skagit County Planning and Permit Center staff met with the project proponent contacts and issued correspondence with the contacts, staff confirmed that the date the project would be considered "started" would be the date the permit holder submitted the first development permit applications related to the construction of the project proposal. This interpretation of "started" has been made for years by the Permit Center staff on permits issued prior to the adoption of new development regulations. This is evidence by Tom Karsh's memo dated August 26, 2002, which verifies this interpretation. No official definition of "started" or "commenced" was included in the development regulations in place prior to July 24, 2002.

The Upper Skagit Indian Tribe submitted certain permit applications related to development of the golf course in 2002. A Forest Practice Conversion application, PL02-0083, was submitted on February 15, 2002. The Critical Areas staff completed environmental reviews on April 3, 2002,

and the Department of Natural Resources issued the Forest Practice Conversion permit on May 13, 2002. Shortly after May 13, 2002, the Tribe initiated site development activities. A grading permit application, BP01-1592 (the BP01-1592 number was created at the time the pre-application meeting was requested) was submitted for review on February 15, 2002, and issued on July 26, 2002.

Based o this review of Code and submittal of permits, staff finds that the County's interpretation of "start" was met by the applicant.

Staff concurs with the Hearing Examiner's decision to deny the request to revoke the permit. Staff recommends that the Board of Commissioners uphold the decision to dismiss the petition to revoke the Chuckanut Crest Golf Course Special Use Permit. None of the applicant's requests for action should be taken. Pursuant to SCC 14.06.170(3), the burden of proof to show that the Hearing Examiner's decision is clearly erroneous has not been met by the applicant. The following bullets summarize major points:

- The staff recommends denial of the appeal since the challenge to the extensions to the Special Use Permit issued by the Hearing Examiner were found to be untimely under the rule of law set forth in the Chelan County v. Nykreim case and SCC. Staff also recommends that the Hearing Examiner find that the permit condition related to the project start date was satisfied by the referenced development permit submittals discussed in the staff report. A memo dated August 26, 2002 from Tom Karsh, Director of the Planning and Permit Center, provides the County interpretation of project "start" date.

- The Hearing Examiner should uphold staff's interpretation of when a project should be considered "started" given the lack of explicit definition in the Code the project application was vested under. This is reasonable and there is no reason for Habitat Watch to consider that construction shall be considered the start of a project just because the requests for extension stated that time and money were spent, but construction of a building was not begun. A project cannot be constructed until the permit is issued. Therefore, submittal of a permit for issuance has been a reasonable and historic interpretation of this word "start".

- Pursuant to SCC 14.16.900(2)(b)(iii), the Hearing Examiner has the authority to revoke, suspend or modify a permit based on a finding that the conditions have not been met. Staff found that the permit conditions were met with the submittal of permits issued to begin construction of the principal use, which in this case is the golf course. The support buildings are considered accessory to the golf course.

- According to SCC 14.16.900(2)(b)(iii), noncompliance with past procedures is not an authorized reason to revoke the permit.

- Habitat Watch failed to properly request reconsideration or appeal of the Hearing Examiner's decisions to extend the permit time frames in a timely manner. Thus, the LUPA appeal period was not complied with.

- Environmental issues raised at the recent review hearing were addressed in the Final Environmental Impact Statement and environmental protections have been addressed in the Special Use Permit conditions.

- The referenced Supreme Court decision, Chelan County v. Nykreim, provides that the 21-day appeal period under LUPA is mandatory for any appeal of a local land use decision subject to appeal under LUPA. LUPA's requirement of certainty to an applicant outweighs any failure to give notice to Habitat Watch of the extensions.

- The project was started directly after May 13, 2002, the date the Forest Practice Conversion permit was issued by the Department of Natural Resources.

Jeff Eustis, the Attorney representing the appellant Habitat Watch, stated that the County concedes and the Tribe does not deny that a mistake was made. In 1997 and 1998, Special Use Permits for this golf course were due to expire. In order to breath another two years into the lives of the permits, it was necessary for the owners to make application for a modification of the Special Use Permit and upon receipt of a completed application, it was necessary to notify all parties including Habitat Watch, including the adjacent property owners, that there was a request for the modification. A public hearing should have been held to consider testimony and evidence of all members of the public that wanted to comment as well as from the applicant requesting modification. At that time, a decision would be rendered based on that evidence and would then be published. These steps were simply not followed but yet the Hearing Examiner approved the extensions. Even though the extension was identified as being for two years it was granted for three years. The County says Habitat Watch failed to take advantage of its procedures by failing to take reconsideration to the Examiner, failure to appeal to the Board of County Commissioners and failure to do a LUPA appeal. All of these rules are set forth in writing, yet Habitat Watch did not receive notification of the decision.

Habitat Watch was and is a party to a quasi-judicial proceeding, a proceeding involving the adjudication among specific, identified parties with particular, identifiable interests. As a party to such a proceeding, Habitat Watch is entitled to actual, direct notice of any requests or actions in conjunction with a Special Use Permit. Habitat Watch was entitled to individualized notice of the 1997 and 1998 extensions. Without that notice, and without compliance with hearing procedures, the approvals issued should be void.

Mr. Eustis said that once Habitat Watch learned that extensions of the Special Use Permit had been granted and that the right to appeal those approvals through the Board of County Commissioners had passed four and five years before, they commenced an action seeking revocation of the Special Use Permit. However, while that proceeding was pending, the Permit Center issued a grading permit to allow work to proceed on site. In order to avoid waiving its remedies, Habitat Watch was obliged to challenge that grading permit in Superior Court and to join with that appeal its challenges to the 1997 and 1998 extensions. The challenges were dismissed as untimely for lack of a LUPA action within 21 days of some County action. However, through this administrative proceeding action, Habitat Watch seeks revocation of those extensions, and it does so on the grounds of due process violations. There is no 21-day limitation on Habitat Watch's ability to seek revocation of the Special Use Permit. The issue of whether the Special Use Permit extensions were granted without observance of required notice, hearing and decision procedures was not before Judge Wynne and therefore, was not ruled upon.

Mr. Eustis believes that based upon the authorities presented within the Notice of Appeal, Special Use Permit extensions were approved in complete disregard of the County rules, which violated Habitat Watch's rights of procedural due process and cannot stand. To allow those approvals to stand would condone all manner of extralegal proceedings where permit and zoning applicants could obtain zoning approvals without notice or recourse by the public. This would create the antithesis of an open accountable government. To correct this wrong, Habitat Watch asks that the Board grant the appeal, reverse the Hearing Examiner, and revoke the Special Use Permit extensions that had been issued for the Chuckanut Crest Golf Course.

LeAnne Bremer, acting as Counsel for the Upper Skagit Indian Tribe, issued her opening remarks. She said the Tribe supports the Hearing Examiner's denial of Habitat Watch's request to revoke Special Use Permit SPU92-018 issued for the Chuckanut Crest Golf Course. Since purchasing the property on September 2000, the Tribe has diligently pursued development of the golf course project. They have spent over $3 million in acquisition development costs to date. The Tribe was repeatedly assured by County staff that the filing of a grading permit application by June 14, 2002 would mean that they met Condition 15 of the Special Use Permit. Based on County staff's

representations that the filing of a technically complete grading permit application would satisfy Condition 15, the Tribe filed a complete grading permit application in February 2002. They also filed a Forest Practices Conversion application with the Department of Natural Resources and received a conversion permit in May 2002.

Ms. Bremer stated that Habitat Watch did not file an appeal of the extension decisions to the Board of County Commissioners within a reasonable time after learning that the project was proceeding. Instead, they filed a request for revocation of the Special Use Permit. On September 30, 2002, the Hearing Examiner denied Habitat Watch's request for revocation. Even though the second and third extensions may not have been issued after compliance with applicable procedures, the Examiner ruled that Habitat Watch failed to file an appeal of the extension decisions within a reasonable amount of time after learning that the project was going forward. Under Washington law, failure to appeal a land use decision in a timely manner precludes a party from collaterally attacking in another proceeding those decisions after the appeal period has run.

Ms. Bremer indicated that the Board need not even decide whether the second and third extensions were validly granted or not because even if they were not, Habitat Watch is too late in challenging their validity. The only basis for revoking a Special Use Permit under the Skagit County Code is if the permit holder has not complied with the conditions of approval. Here, the Tribe has met all conditions of approval, including starting the project by June 14, 2002.

Mr. Eustis said the challenge to the grading permit was filed in Snohomish County and is currently pending. So, staff's suggestion that there was no appeal is false. The Court was ruling on procedural issues and not on the extensions themselves. Just because the Tribe has spent money on the project doesn't change the status that these extensions were never lawfully granted.

Ms. Bremer argued that the Examiner's analysis is sound. The Tribe started the project according to a longstanding County policy of when a project is started. Specifically, the Tribe applied for a grading permit prior to June 14, 2002, which for the purposes of a use such as a golf course, is the same as a compete building permit application for "the principal building which will allow the use." The Examiner's denial of Habitat Watch's request for revocation is not clearly erroneous.

Ms. Kuller clarified the fact that Habitat Watch did not file a local appeal to the grading permit. She also noted that it cannot be determined at what time staff became aware of the issues regarding the approved extensions.

Commissioner Munks indicated that a decision will be rendered for this appeal on Tuesday, November 26, 2002 at 11:15 a.m.

ADJOURNMENT.

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

BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

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Don Munks, Chairman

_____
Kenneth A. Dahlstedt, Commissioner

_____
Ted W. Anderson, Commissioner

ATTEST:

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