

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
TUESDAY, NOVEMBER 26, 2002**

- 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. **Public Works Department – Chal Martin, Director**
1. Public Hearing – Regarding Consideration of Vacation of Unopened County Right-of-Way Along Channel Drive, No. 43830
 2. Update – Skagit River Flood Protection/Salmon Restoration Project
 3. Miscellaneous
- ***T** 10:00 a.m. – 11:00 a.m. **Planning & Permit Center – Tom Karsh, Director**
1. Discussion and Possible Action – 2002 Framework Agreement Among Skagit County, The City of Burlington, The City of Mount Vernon, The City of Anacortes, The City of Sedro-Woolley, and The Town of La Conner, Regarding Coordinated Planning, Urban Services, and Countywide Planning Policies
 2. Deliberations – Planning Commission Recorded Motion and Findings of Fact Recommending Amending Chapter 14.34, Flood Damage Prevention, and 14.04, Definitions of the Skagit County Code
 3. Deliberations – Planning Commission Recorded Motion Recommending Adoption of Interim Ordinance No. O20020001 as a Permanent Ordinance, Which Amends SCC 14.32.040, the Drainage Ordinance, For Forest Practice Conversions and Conversion Option Harvest Plans (CoHPs) and SCC 14.04, the Definition of Development
 4. Discussion – Growth Management Indicators Program
 5. Miscellaneous
- 11:00 a.m. – 11:15 a.m. Decision – 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
- 11:15 a.m. – 11:30 a.m. Decision – 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. Celebration of Skagit County’s 119th Birthday (Mount Vernon Senior Center – 1401 Cleveland, Mount Vernon)

The Skagit County Board of Commissioners met in regular session on Tuesday, November 26, 2002, with Commissioners Don Munks, Kenneth A. Dahlstedt, and Ted W. Anderson present.

PUBLIC WORKS DEPARTMENT – Chal Martin, Director

1. Public Hearing – Regarding Consideration of Vacation of Unopened County Right-of-Way Along Channel Drive, No. 43830.

Dave Sheridan, Public Works Engineer, reviewed the exact location of the proposed vacation of the unopened County right-of-way along Channel Drive. The Department recommended that the

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vacation of the unopened right-of-way be approved as presented. He showed a photograph of the area in question.

There being no public testimony forthcoming, Commissioner Anderson moved to close the public hearing. Commissioner Dahlstedt seconded the motion, and it carried unanimously. The public hearing was closed.

Commissioner Anderson moved to concur with Public Works Department recommendation and allow the vacation of the unopened County Right-of-Way along Channel Drive. The motion was seconded by Commissioner Dahlstedt and passed unanimously. **(Resolution to be provided by Staff at a later date)**

2. Skagit River Flood Protection/Salmon Restoration Project Update.

Don Dixon provided an update to the Board with regard to the Skagit River Flood Protection/Salmon Restoration Project. He stated that early last week there was a coordination meeting with Batelle Labs, Skagit Systems Cooperative and the County regarding data availability and processing for the Batelle Padilla Bay studies. Some of the data from Skagit Systems is raw data and therefore, work will continue with the Corps of Engineers to take that information a step further.

During an executive meeting held in Seattle, the main topic of discussion was the Corps legal opinion on the standing of the Padilla Bay Estuary Reserve. They concluded there were no automatic show stoppers, although it must be shown that the diversion channel will not change the nature of the reserve or interfere with the scientific studies.

Mr. Dixon indicated that the consultant has finished with Phase 1 of the sediment and erosion studies, which are currently under review. He also mentioned that the US Army Corps of Engineers are still operating under continuing resolutions until at least the end of January. The Revised Project Management Plan is still in progress and the County must now decide how much work it wants to take on. The total cost is expected to be approximately \$7.5 million, including the \$4 million that has already been spent.

Commissioner Anderson said that when he agreed to support moving forward with the Feasibility Study, it was agreed upon that the dry option would also be considered. He hasn't seen any information and feels that every presentation that is made dwells on the bypass. If the dry option is not considered on equal grounds, Commissioner Anderson said he would not support moving forward.

Mr. Martin assured Commissioner Anderson that they are indeed looking at the dry option.

3. Miscellaneous.

A. Concerning the McElroy Slough/Edison Slough issue, Mr. Martin said they have been looking at the possibility of cutting a deal to put in a McElroy Salmon Restoration Flood Project in Blanchard in exchange for the Department of Fish & Wildlife to change the configuration of the SRT back to a tide gate. Progress continues to be made.

B. Mr. Martin said the Samish Watershed 2514 process has basically collapsed. Nothing has been done on the process for approximately three months. Engineering and Environmental Services have put forward a proposal to enter into a contract with the County to further facilitate the process, with the basic concept being reorganization. Mr. Martin indicated that the cost of the proposal is estimated to be about \$70,000, which is an unbudgeted item that would have to be paid for out of the general fund. He feels that without a knowledgeable facilitator, the 2514 process will not work.

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C. Mr. Martin next discussed the Skagit process update. He presented a short memo for the Board after which a lengthy discussion ensued.

D. Mr. Martin said a letter was received from Governor Gary Locke in connection with the Virginia Doty property, which said the State is unable to provide any solution to the problem at this time. Mrs. Doty's son has been trying to make contact with a representative in Congressman Larson's office to try and find some kind of an answer to this difficult issue.

E. Mr. Martin told the Board that the Guemes Ferry parking lot problem is right back where it started. They are in the process of justifying why another piece of property cannot be purchased.

PLANNING & PERMIT CENTER – Tom Karsh, Director

1. Discussion and Possible Action – 2002 Framework Agreement Among Skagit County, The City of Burlington, The City of Mount Vernon, The City of Anacortes, The City of Sedro-Woolley, and The Town of La Conner, Regarding Coordinated Planning, Urban Services, and Countywide Planning Policies.

Mr. Karsh gave a brief history of the proposed 2002 Framework Agreement among the Cities of Burlington, Mount Vernon, Anacortes, Sedro-Woolley and the Town of La Conner. All of the Cities as well as the Town of La Conner have reviewed and approved the agreement.

Commissioner Dahlstedt motioned to approve the 2002 Framework Agreement as outlined by Mr. Karsh. Commissioner Anderson seconded the motion, which passed unanimously. **(Contract No. C20020423)**

2. Deliberations – Planning Commission Recorded Motion and Findings of Fact Recommending Amending Chapter 14.34, Flood Damage Prevention, and 14.04, Definitions of the Skagit County Code.

Mr. Karsh said the Federal Emergency Management Agency has mandated changes to certain sections of the Skagit County's Flood Damage Prevention Ordinance. A public hearing was held before the Planning Commission on October 22, 2002, at which time they voted to accept the recommended amendments.

Commissioner Anderson made a motion to approve the Planning Commission's recommendations. Commissioner Dahlstedt seconded the motion, which was unanimously carried. **(Ordinance No. O20020010)**

3. Deliberations – Planning Commission Recorded Motion Recommending Adoption of Interim Ordinance No. O20020001 as a Permanent Ordinance, Which Amends SCC 14.32.040, the Drainage Ordinance, For Forest Practice Conversions and Conversion Option Harvest Plans (CoHPs) and SCC 14.04, the Definition of Development.

Kendra Smith, Assistant Director, stated that the Planning Commission held a public hearing within the required 60 days on Interim Ordinance No. O20020001, Amendments to the Drainage Ordinance regarding Forest Practice Conversions and Conversion Option Harvest Plans (CoHPs). The Planning Commission deliberated following the public hearing and made the following findings:

1. Drainage is both a water quality and water quantity issue.

2. The Tribes and Washington Department of Fish & Wildlife were actively involved in the rigorous TFW process that resulted in an agreed upon outcome providing protective water quality and water quantity regulations.
3. The current County Codes provide sufficient measures of regulation to ensure water quality protections.
4. The County can condition any forest practice conversion or CoHP through SEPA review or the CAO review and can require necessary measures to be taken.
5. It makes no sense to place an additional financial burden on property owners by requiring an additional engineered drainage plan if the County Code already provides adequate regulations.
6. The CaRD is a land division tool that requires a minimum of 80% of the original parcel to be placed into an open space designation so an engineered drainage plan is unnecessary.
7. The CaRD land division may have the open space area designated as a natural resource land and replanted as a Class III forest practices application, in which case the applicant would be following all of the DNR reforestation requirements.
8. CoHPs require a decision to be made within 3 years after a harvest as to what land use will occur on the site, the changing real estate market and financing. This is not sufficient time to make such a decision, and therefore the cost of a moratorium or the six-year delay may be devastating to many small landowners.
9. Engineered drainage plans are required at the time of development.
10. The type and amount of development is not always known at the time of a forest practice harvest. If an application changes, a second engineered drainage plan would be required, thus adding an additional financial burden to the property owners.
11. BAS demonstrates that there are numerous variables, which affect water quantity, such as climate, topography, or geology. A forest practice harvest does not necessarily result in water quality or quantity problems.
12. Landslides are a result of numerous factors and not solely caused by forest harvests. Skagit County is currently regulating Class IV general conversions and CoHPs beyond what is required or done in other jurisdictions where similar circumstances exist.

Ms. Smith said the Planning Commission voted unanimously to recommend the Interim Ordinance be adopted as a permanent Ordinance.

Commissioner Anderson motioned to approve the Planning Commission's Recorded Motion as outlined by Ms. Smith. Commissioner Dahlstedt seconded the motion, which passed unanimously.

4. Discussion – Growth Management Indicators Program.

Gary Christensen, Assistant Director, stated that the Growth Management Indicators report is almost ready for public review. The Skagit County Comprehensive Plan calls for establishing a Growth Management Indicators Program to: (1) analyze land use development trends, and (2) evaluate policy implementation. Furthermore, the development, and subsequent adoption of the Growth Management Indicators Program is being undertaken in response to a Western Washington Growth Management Hearings Board ruling. Mr. Christensen indicated that the report will be issued on Wednesday, November 27, 2002. The report will be available at the Planning and Permit Center, the Concrete satellite office as well as the County's website. Reference copies were also sent to the libraries in Skagit County.

He also mentioned that the Planning and Permit Center will be hosting an Open House on December 12, 2002 from 5:00 p.m. to 7:00 p.m. It will include a presentation by consultant Mark Personius, visual displays and will provide opportunities for public participation. Mr. Christensen went on to thank the many people that helped with the report.

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Mark Personius provided an overview of the Report as well as an explanation of the public participation and adoption procedures.

5. Miscellaneous.

Mr. Karsh indicated that a previous work session was scheduled with the Board at which time his Department was directed to develop an interim ordinance that would allow the Department to consider land divisions that are smaller than what the minimum lot size currently is, within a number of our different zoning districts, in order to accommodate future public safety facilities. Their proposal is to amend our County zoning ordinance that would allow the creation of lots that are undersized. This would be accomplished either by boundary adjustments or by land division, which would accommodate future public facility buildings, primarily fire districts as well as others.

**DECISION – 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.**

Commissioner Anderson said he feels the Hearing Examiner has not cited any legal authority to support his decision that the common law vested rights doctrine does not apply to government, or specifically apply to the County. A strong rationale for the common law vested rights doctrine was long ago analyzed and articulated by the Washington Supreme Court in *Hull v. Hunt*. The Supreme Court’s decision and analysis in *Hull v. Hunt* has never been overruled.

In *Hull v. Hunt*, the Washington Supreme Court expressly ruled that it prefers to have a date certain upon which rights vest. The Court said it preferred not to adopt a rule which forces the Court to search through the moves and countermoves of parties by way of passing ordinances and bringing actions for injunctions, the stalling or acceleration of administrative action in issuance of permits – to find the date upon which the substantial change of position is made, which finally vests the right. The Court in *Hull v. Hunt* found that the more practical rule to administer was a birth line rule that the right vests when the party applies for the building permit.

There are strong public policy reasons for applying vested rights to government applicants. Contrary to the implication in the Hearing Examiner’s decision, “government” is not nonolithic. For example, local government projects are subject to the same myriad of complex local, state and federal ordinances, statutes, rules and regulations as are government projects. These regulations are often administered by different agencies, each with its own mandate, and each with its own jurisdiction.

In the present case, the project has been ongoing since at least 1996. The applications were filed in 1997. The County changed its zoning regulations applicable to the project in 2000, as directed by a decision of the Growth Management Hearings Board. The permits were previously appealed to the Commissioners and litigated before the Shoreline Hearings Board. Failure to apply the vesting rights doctrine to the application by County Parks will result in the squandering of public resources.

Commissioner Anderson said that for all of these reasons, he votes to remand this matter back to the Hearing Examiner for further proceedings on the permit applications.

Commissioner Dahlstedt said he agreed and further stated that he had thoroughly looked through both presentations of both parties. One of the things that was also important to him in reading *Hull v. Hunt* that they repeatedly refer to party seeking permits and no where does it suggest that the doctrine would be limited to natural persons or private corporations. In this particular situation, where the Parks Department is representing the taxpayer and the taxpayer’s funds have been expended in trying to move the project forward, there is no reason why that wouldn’t also protect their vesting rights.

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Chairman Munks said he also spent a considerable amount of time reading through the records of both cases on both points. In making his decision, there were three points that were extremely important to him and that clearly stood out. They are as follows:

1. The Hearing Examiner has not cited any legal authority to support his decision that the common law vested rights doctrine does not apply to government or to the County.
2. Washington Supreme Court rule in Hull v. Hunt that the right vests when the parties apply for the building permit. This has also been expanded to include shoreline permits, conditional use permits, and grading permits.
3. This project started with applications in 1997 and was changed in 2000 by a decision of the Growth Management Hearings Board. However, the vested right goes back to 1997.

Therefore, it is Chairman Munks' opinion that the Hearing Examiner erred and that this project is a common law vested right that extends to the County as it would to any individual.

Chairman Munks stated that he would recommend that the decision be remanded back to the Hearing Examiner for further proceedings on the permit applications. Commissioner Anderson seconded and the decision passed with a unanimous vote. **(Resolution to be provided by Staff at a later date)**

Jack Cross, the present president of CSPC, asked for justification of the executive meeting that was held yesterday. He cautioned that CSPC objects to deliberations being held in private.

Attorney Robert Carmichael said the purpose of executive session was to confer with counsel and that there were no deliberations that took place in the executive meeting yesterday.

**DECISION – 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.**

Commissioner Anderson asked if someone could speak to the water issue for this project. He asked if the project would call for well water or a municipal water supply.

Doreen Maloney, General Manager of the Upper Skagit Indian Tribe, said they have two permits with the Department of Ecology for two wells that are located on the property. They are cognizant to the fact that the Samish Basin is tied to those wells.

Commissioner Anderson said there has been a lot of concern by those who have wells and are living in the Bow Hill area.

Ms. Maloney said the tribe understands that as they are also a part of the Samish planning process and will be looking at the water issue.

Commissioner Dahlstedt said one of the concerns from Habitat Watch was they felt they had not been notified by the County of many of the actions that had taken place. In this particular case, the actual action was a request for the revocation of the special use permit. When Habitat Watch finally had knowledge of this action, they certainly would have had an opportunity to challenge it. He doesn't see any particular reasoning at this point that doesn't affect the fact of whether we should continue to let the Special Use Permit to go forward. Commissioner Dahlstedt then moved to uphold the decision of the Hearing Examiner.

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Commissioner Anderson seconded the motion, however, feels the water issue needs to be worked out in that area because of availability of supply.

Chairman Munks said he agreed with both Commissioners and said he wants to make sure the water issue is addressed adequately. He also feels there was a timely manner that wasn't preceded with the appeal. With a motion on the floor and a second, the decision passed with a unanimous vote. **(Resolution to be provided by Staff at a later date)**

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, November 26, 2002, the Board by majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Warrant number 133166 from Clearing Fund 696 in the total dollar amount of \$9,452.20 (Transmittal No. C-101-02).

2. The Board approved the Record of Proceedings for Wednesday, November 20, 2002.
3. Staff presented a Resolution to approve the authorization of and Interagency Agreement with the Washington State Department of Agriculture. The Interagency Agreement will allow the transfer of funds to finance a one-day seminar on Forages as an Alternative Rotation Crop to Produce Grass-Fed Beef. Commissioner Dahlstedt motioned to approve the Resolution and Interagency Agreement as outlined. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. R20020403 AND Contract No. C20020424)**

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

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ATTEST:

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