

July 8, 2003

- 8:30 a.m. – 9:00 a.m. Work Session – Operation Division Manager/ Road District Maintenance Supervisors
- *T 9:00 a.m. – 10:00 a.m. **Public Works Department - Chal Martin, Director**
1. Discussion on the 2004-2009 Transportation Improvement Program (TIP)
 2. Miscellaneous
- *T 10:00 a.m. – 11:00 a.m. **Planning and Permit Center - David W. Blane, Director**
1. Deliberations and Possible Action – Adoption of an Interim Ordinance to Renew Interim Ordinance O20030001 Dealing with Compliance Issues (Conservation and Reserve Development, Rural Marine Industrial, Lot Aggregation) in Western Washington Growth Management Cases 00-2-0046c and 00-2-0049c
 2. Deliberations and Possible Action – Planning Commission’s Recorded Motion re: a Proposed Skagit County Comprehensive Parks and Recreation Plan Amendment for the Northern State Recreation Area Facility
 3. Miscellaneous
- 11:00 a.m. – 11:30 a.m. Public Hearing – Related to the Assessment of the Recently Completed East County Community Resource Center Project, Which was Funded in Part by a Community Development Block Grant (CDBG)
- 11:30 a.m. – 11:45 a.m. Public Hearing – To Consider a Resolution to Amend the 2003 Budget
- 2:00 p.m. – 3:00 p.m. Appeal of Hearing Examiner’s Decision to Approve Special Use Permit No. PL99-0132, Shorelines Substantial Development and Variance No. PL99-0130, Critical Areas Variance No. PL99-0131, regarding Belleville Sand & Gravel Mine
- 3:00 p.m. – 4:15 p.m. Work Session – Draft Solid Waste Management Plan
- The Skagit County Board of Commissioners met in regular session on Tuesday, July 8, 2003, with Commissioners Kenneth A. Dahlstedt, Ted W. Anderson, and Don Munks present.

PUBLIC WORKS DEPARTMENT – CHAL MARTIN, DIRECTOR

1. Discussion on the 2004-209 Transportation Improvement Program (TIP).

Steve Flude, Assistant Public Works Engineer, discussed the following new road projects that have been added to the TIP:

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- South Fork Skagit River Bridge Deck Repair Project
- Best/McLean Intersection Improvement Project
- Sinclair Island Dock Repair Project
- Abandoned Railroad Bridge Removal (at SR9 and South Skagit Highway)
- Mill Creek Bridge
- Drainage Projects at Various Locations
- BNSF Railroad Bridge

On Tuesday, July 8, between 6-8 p.m., there will be a meeting at the Sedro-Woolley Senior Center to receive public input. A public hearing has been scheduled for Tuesday, August 12, 2003 in the Commissioner's Hearing Room at 10:00 a.m.

2. Miscellaneous.

- A. Chal Martin, Director, discussed water rights negotiations for the Samish Basin.
- B. Mr. Martin next discussed debris in the Cascade River. A contract with Rick Tingley is being drafted, which would allow Mr. Tingley to remove the debris for an approximate cost of \$35,000. The work would be done in August.
- C. ER & R rates were reviewed by Mr. Martin. He reported that for the last five years the Department has been under-charging themselves for the equipment being rented out of ER & R. The trend needs to be reversed in order to move the fund balance back to where it is supposed to be. The Board asked about considering leasing programs for vehicles and equipment, perhaps as a cost saving measure. Mr. Martin agreed to look into it.
- D. Dave Brookings, Assistant Administrator, brought before the Board Amendment No. 1 to the State of Washington Interagency Committee for Outdoor Recreation Project Agreement No. 00-1735. Skagit County would like to transfer sponsorship of the Wiseman Creek Feasibility Study Grant to the Skagit Fisheries Enhancement Group (SFEG). The Office of Interagency Committee has provided the required documents to process the transfer, and David Beatty of the SFEG has signed the amendment accepting responsibility as the new sponsor. The value of the grant is \$74,800, which required a County match of \$13,200, for a total of \$88,000. To date, no funds have been billed or received by Skagit County for this grant. If approved, SFEG, in conjunction with Skagit System Cooperative, would undertake the Wiseman Creek Feasibility Study. Mr. Brookings recommended pursuing this transfer. After a lengthy discussion, Chairman Dahlstedt and Commissioner Munks decided they needed more time to study the proposal. Commissioner Anderson said he would never vote for it.
- E. Mr. Martin gave a brief update on the Morris Street Improvement Project.
- F. It was reported that the Guemes Island Ferry is out of the water and in Seattle for repairs. It will be back in service on Saturday, July 19 for the morning run.

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PLANNING & PERMIT CENTER – DAVID BLANE, DIRECTOR

1. Deliberations and Possible Action – Adoption of an Interim Ordinance to Renew Interim Ordinance No. O20030001 Dealing with Compliance Issues (Conservation and Reserve Development, Rural Marine Industrial, Lot Aggregation) in Western Washington Growth Management Case Nos. 00-2-0046c and 00-2-0049c.

Gary Christensen, Assistant Director, stated that the Board of County Commissioners held a public hearing on June 20, 2003, to take comments on the proposed renewal of Interim Ordinance No.)20030001. The ordinance has been modified and reviewed by legal counsel and addresses lot aggregation provisions and also restricts County action on some comprehensive plan amendments. Mr. Christensen also provided a resolution, which, if approved, would allow the effective date of the ordinance to be put into place immediately. The Department recommends approval of the resolution and ordinance as outlined.

Commissioner Anderson motioned to approve a resolution repealing Resolution No. R20030183, which clarified the effective date of Ordinance No. O20030014 relating to Rural Marine Industrial (RMI) and repealing Resolution No. R20030181, which clarified the effective date of Ordinance No. O20030016 relating to Conservation and Reserve Development (CaRD). Commissioner Anderson also motioned to approve an interim ordinance restoring the lot aggregation provisions of former Skagit County Code 14.04.190(5) and restricting County action on some Comprehensive Plan amendments. Commissioner Munks seconded the two motions, which passed with a unanimous vote. **(Resolution No. R20030234 and Ordinance No. O20030022)**

2. Deliberations and Possible Action – Planning Commission’s Recorded Motion Regarding a Proposed Skagit County Comprehensive Parks and Recreation Plan Amendment for the Northern State Recreation Area Facility.

Brandon Black, Planning Department, reported that, following a public hearing on May 22, 2003, the Planning Commission deliberated and recommended approval of certain amendments to the Skagit County Comprehensive Parks and Recreation Plan and the Northern State Recreation Area Facility Master Plan Update, provided that all references to the Cascade Trail were deleted from the documents. Chairman Dahlstedt and Commissioner Anderson disagreed with the Planning Commission’s recommendation to remove the language referring to the Cascade Trail. They felt there are no longer any legal issues associated with the trail. Commissioner Munks disagreed; saying he personally still has a problem with the trail and possible legal actions that could be brought against it in the future.

Commissioner Anderson made a motion to approve the proposed Skagit County Comprehensive Parks and Recreation Plan amendments for the Northern State Recreation Area (NSRA) facility with reference to the Cascade Trail as presented to the public. There are no outstanding legal issues regarding the Cascade Trail and there has been considerable public investment in maintaining and improving the Trail. The Cascade Trail is currently under Federal ownership and is a public recreational asset within Skagit County. By including the reference to the Cascade Trail within the proposed Skagit County Comprehensive Parks and Recreation Plan amendments, Skagit County will remain eligible to receive grant funding for future parks and recreation

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projects. Chairman Dahlstedt seconded the motion, which was carried. Commissioner Munks voted against the proposal.

3. Miscellaneous.

Mr. Christensen stated that a date and time needs to be established to review a Planning Commission Recorded Motion regarding the submittal procedures for comprehensive plan amendments when proposing to amend a municipal urban growth area boundary. Deliberations and possible action will take place on Tuesday, July 22, 2003 at 10:00 a.m.

MISCELLANEOUS.

The Board recognized three Boy Scouts from Bow Hill Troup No. 73 and gave them Skagit County's official pin. They attended the meeting are part of the requirement for the Citizenship in Community merit badge that is needed by Scouts to obtain higher levels.

PUBLIC HEARING – RELATED TO THE ASSESSMENT OF THE RECENTLY COMPLETED EAST COUNTY COMMUNITY RESOURCE CENTER PROJECT, WHICH WAS FUNDED IN PART BY A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG).

Brad Whaley, Finance Director, reported that the East County Community Resource Center is completed and he gave the Board a list of the disbursements as well the billings that were sent to both of the granting agencies, CTED and CDBG grant funding. The CTED grant covered 25% of the expenses and the CDBG grant covered the remaining 75%. In the final billing, \$4,720 was still remaining in the CTED grant. The County managed to use the property acquisition to recoup those funds. Tenants that have moved into the building are the Upper Skagit Library District, Skagit County Community Action Agency, Juvenile Probation, the Health Department and the Skagit County Upriver Services Office.

Chairman Dahlstedt opened the public hearing. Lara Stevens and Chris Kennedy from Youth and Family Services, the ARIS program, each spoke highly of the new facility. There being no further public testimony, Commissioner Anderson motioned to close the public hearing. Commissioner Munks seconded the motion, which passed. The public hearing was closed.

The Commissioners thanked Roger Howard, Facilities Management Director, for all of his hard work on the project, which actually came in under budget. Mr. Howard in turn thanked Chris Stamey for keeping all of the grant funds in order.

PUBLIC HEARING – TO CONSIDER A RESOLUTION TO AMEND THE 2003 BUDGET.

Mr. Whaley next discussed a resolution authorizing a supplemental budget for the 2003 budget for the funds listed below:

Revenues:

Current Expense Fund #001	Treasurer	\$ 300,000
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Expenditures:

Current Expense Fund #001	Water Quality	\$ 671,200
Public Works Fund #117		\$1,350,000

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Land Acquisition Fund #340

\$3,831,433

There being no testimony forthcoming, Commissioner Anderson motioned to close the public hearing. Commissioner Munks seconded the motion and the public hearing was closed.

Commissioner Anderson motioned to approve the resolution as outlined by Mr. Whaley and Commissioner Munks seconded. The motion passed unanimously.

APPEAL OF HEARING EXAMINER'S DECISION TO APPROVE SPECIAL USE PERMIT NO. PL99-0132, SHORELINES SUBSTANTIAL DEVELOPMENT AND VARIANCE NO. PL99-0131, REGARDING BELLEVILLE SAND & GRAVEL MINE.

Chairman Dahlstedt reviewed the rules governing the closed record appeal process.

David Hough, Special Projects Consultant, provided a brief summary and explained the exact location of the proposal in question. He stated that this was a Special Use Permit Application for expansion of an existing surface mine to allow mineral processing and asphalt and concrete production. Also, there was a Shorelines Substantial Development Permit Application to improve the haul route, which includes paving and widening the existing gravel road, to allow passage beneath Interstate 5 and construction of the clear span bridge over the Samish River with a portion of the work being done within the 200 foot Samish River buffer.

The Planning and Permit Center prepared and issued Draft and Final Environmental Impact Statements on the proposal. The Hearing Examiner conducted hearings in January 2003, and issued a decision on April 4, 2003, approving the proposal with conditions. Several Reconsideration Requests were filed. On April 25, 2003, the Hearing Examiner denied all requests with an additional correction of Condition #16.

Mr. Hough advised that pursuant to Skagit County Code 14.06.170, the Board of Commissioners must select one of the following courses of action:

- (a) After examining the written request for appeal, the Board may deny the request and allow the Examiner's decision to stand;
- (b) Remand the matter for reconsideration by the Hearing Examiner;
- (c) If the Board, upon the review of the record, finds that the findings and conclusions of the Hearing Examiner are clearly erroneous, the Board shall adopt its own findings and conclusions based on the record.

Staff recommends denial of the appeal and to allow the Hearing Examiner's decision to stand.

Gerald Steel, 2545 NE 95th Street, Seattle, stated that he is representing Neighbors for Reasonable Mining (NRM). For the record, he mentioned that Dan and Kevin Raser and their wives are not part of NRM. He said that because of the short time schedule allowed for this appeal and the complexity of the project, NRM will incorporate by reference into this presentation all arguments that were put into the Hearing Examiner's record supporting the appeal issues. All of the arguments won't be repeated that are in the transcript and the record.

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Mr. Steel noted that the site was used for mining many years ago and all mining that has been done on the site is dry mining, meaning above the water table. One third of the mining proposed for this project is above the water table and two thirds of the mining is the creation of a lake, which is below the water table. The ordinance requires a Special Use Permit when there is a change of operation in a pre-existing mine. Because there was a change proposed from dry to wet, there should have been an application for a Special Use Permit, but there wasn't.

NRM is strongly concerned about this project because of the impact it would have on the Samish River, which runs along the southeastern boundary of the proposed mining operation. Shoreline and Critical Area Variances are being used to allow substantial car and truck traffic, serving both the mine and the batch plants, to travel parallel to, and approximately five feet away from the river. Mr. Steel said that an alternative haul route was discussed in the EIS that would have no impact on the Samish River. If the Examiner's decision to grant the Critical Areas and Shoreline Variance was reversed, the Belleville Mine could use this alternative route to Bow Hill Road. NRM would not oppose the project if the northern access route was used and mining was kept above the water table. About 3 million cubic yards of mineral extraction is available with mining above the water table. The remaining mineral extraction is proposed to go below the water table and will create a water filled pit 125 feet deep. According to expert testimony, it is considered a near certainty that this water-filled pit will eventually capture the Samish River and cause catastrophic damage to salmon habitat.

Under the Skagit County Shoreline Management Master Program, the proposed Shoreline Variance is not allowed. The mining special use permit was issued in error because the project does not comply with mining special use permit requirements. The Critical Areas Variance criteria are not met in the Examiner's decision. If the project were conditioned on using the alternative haul route, no Critical Areas Variance would be required to mine the subject property. The Critical Areas Variance sets the stage for the wet mining operation that will be detrimental to the public welfare because of impacts to the Samish River.

NRM feels that the three permits granted should not have been granted because the Environmental Impact Statement is inadequate. The properties where variances are being requested are not the applicant's property and these neighboring properties already have a reasonable use without a variance. There is no easement under the freeway adjacent to the Samish River that may be used by the Belleville Mine. The criteria for granting a Shoreline Substantial Development Permit were not met. Also, additional issues of special concern are: a) the inadequate consideration of impacts of contaminants going into the water-filled pit and impacting wells and both the Samish and Skagit Rivers; b) the expectation that substantial well water withdrawal by the project will negatively impact neighborhood wells; c) the impact of surface water withdrawal if ground water withdrawal is not permitted by the Department of Ecology; d) the berm being proposed on the property near the river will cause increased flooding to properties to the south.

Mr. Steel said the appellant requests that the Hearing Examiner's decision be reversed.

Richard Langabeer, Attorney at Law, acting on behalf of Concrete Nor'West, said it is important to keep in mind the provisions of 14.04.126, which are the Mineral Resource Overlay zoning regulations. Section 9A of 14.04.126 provides the basis upon which a Hearing Examiner reviews a Mining Special Use Permit. It says that the Hearing Examiner should recognize that surface mining is an essential economic activity and that it is not possible to extract minerals without producing some environmental impacts. If

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the impacts are mitigatable, the permit shall be issued. The question before the Hearing Examiner in this process was not necessarily the impacts, whether significant or insignificant, but if those impacts would be mitigatable. Mr. Hough and the County were absolutely correct in the interpretation of the ordinance when the application of the Special Use Permit was made. The mining is a pre-existing, non-conforming use and under State law, it holds that all properties within the geographical boundaries, whether above or below, is minimal if there is a pre-existing non-conforming use. The County's position when the applications came forward was that a Special Use Permit was needed for the processing, but one was not needed for the extraction. He said Mr. Steel tries to make the argument on behalf of the appellants that the code provides that an expanded mining operation, expanded beyond the geographical limits, requires a Special Use Permit. This is not a mining operation beyond the geographical limits of the property, nor beyond the approval. His argument is that they needed another DNR permit reclamation. The approval is not the reclamation approval; it is whatever the County's approves. This is recognized as a pre-existing non-conforming use. The more important aspect of that is the Hearing Examiner's position. While recognizing it's a nonconforming use, and there was not a Special Use Permit requirement for the mining operation, he said "this is a distinction without a difference". In finding No. 9, he stated that the mining, processing and hauling operations contemplated are inextricably connected parts of a total project. As a result, all of the environmental consequences that flow from the project as a whole must necessarily be viewed as consequences of the approval of the "associated activities". Accordingly, it is appropriate that the conditions of approval attached to the granting of the Special Use Permit involved be conditions that relate to all aspects of the project. In finding No. 10, the Hearing Examiner states that in effect, this means that the formal lack of need for a Special Use Permit to carry out the continued mining operations in the pit is a distinction without a difference.

Mr. Langabeer brought attention to the Hearing Examiner's finding Nos. 15 and 16 referring to the record assembled being substantial and that the Environmental Checklist included 16 appendices, most of which were technical reports by retained experts. Finding No. 88 says that given the size and duration of this project, it is no surprise that many residents of the surrounding area raised questions. A recurring concern was an asserted lack of study of one thing or another. Looking at the entire record, the Examiner finds that the applicants have fully responded to the issues raised through expert witnesses and technical reports. No persuasive contrary case was made on any matter.

Mr. Langabeer provided copies of the Draft EIS to the Commissioners. He said a traffic analysis was done on six potential routes, and the one being proposed was the favored route.

Mr. Steel stated that Skagit County Code does not provide an appeal process for the inadequacy of the EIS. To challenge the EIS requires a court appeal. When the court appeal occurs, there will be additional evidence submitted. When looking at the testimony about the northern route vs. this route, he thinks you have to look at the resource value to the County. There are a lot of wetland areas in the County; however, on an environmental scale the Samish River should be weighed much higher than the wetlands.

Mr. Langabeer said the Samish River issue and the preferred haul route is a non issue. Fisheries weighed in during the SEPA process along with DOE and DNR and the result was that the likely impact on salmon habitat was negligible.

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Commissioner Anderson made a motion to convene on Monday, July 21, 2003 at 1:30 and render a decision on this matter. Commissioner Munks seconded the motion, which passed unanimously.

Mr. Steel requested that any communication with staff during this period be in writing with copies provided to the appellant and the applicant. This is a quasi-judicial proceeding and he would like to be made aware of any communication between the Board and the staff.

ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Kenneth A. Dahlstedt, Chairman

Ted W. Anderson, Commissioner

Don Munks, Commissioner

ATTEST:

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