

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
MONDAY, MAY 24, 2004**

The Skagit County Board of Commissioners met in regular session on Monday, May 24, 2004 with Commissioners Ted W. Anderson, Don Munks and Kenneth A. Dahlstedt present.

- 8:00 a.m. – 8:45 a.m. Work Session – Commissioners
- 8:45 a.m. – 9:30 a.m. Work Session – County Administrator
- *T 9:30 a.m. – 10:15 a.m. Public Works Department – Chal Martin, Director
1. Presentation – Certificate of Good Practice by the County Road Administration Board
 2. Discussion – Project Update
 3. Discussion – Baker FERC License Update
 4. Discussion – Skagit Basin Water Rights
 5. Miscellaneous
- *T 10:15 a.m. – 11:00 a.m. Planning and Permit Center – Lou Haff, Interim Director
1. CTED GMA 2005 Grant Application
 2. Miscellaneous
- 11:00 a.m. – 11:15 a.m. Consent Agenda and Miscellaneous Items
- 11:15 a.m. – 11:30 a.m. Discussion – Recommendations of the Public Facilities Project Review Committee for Public Facility Project Funding
- 11:30 a.m. – 11:45 a.m. Public Comment Period
- *T 11:45 a.m. – 12:00 p.m. Recognition – ARIS Intervention Specialist, Lisa Gray
- 1:30 p.m. – 2:30 p.m. Closed Record Appeal of the Hearing Examiner's Decision No. PL04-0255 Regarding the Placement of a 180-Foot Monopole Cell Tower at Rexville Grange
- 2:30 p.m. – 4:30 p.m. Executive Session – Personnel, Litigation and Land Acquisition

PUBLIC WORKS DEPARTMENT – CHAL MARTIN, DIRECTOR

1. Presentation – Certificate of Good Practice by the County Road Administration Board.

Director Chal Martin stated that the County Road Administration Board awards the Certificate of Good Practice in recognition that the department has met the administration requirements and is eligible for continued grant funding. Commissioner Munks read the Certificate of Good Practice and moved to present the award to Skagit County Engineer Steve Flude. Commissioner Dahlstedt seconded the motion, which carried unanimously.

2. Discussion – Project Update.

Mr. Martin gave an update on the status of ongoing Public Works projects as follows: the Baker River Bridge is expected to be complete in mid-August; the ribbon cutting ceremony for Morris Street in LaConner will be held on June 10 at 10:30 a.m.; there are draining problems with a paving project in Edison which will need to be addressed; Guemes Ferry Parking lot construction will begin the first part of July; the design work is proceeding for the Helmick Road project; the grant was not funded for the Red Creek restoration, but it may be funded in the future; a bid opening has been scheduled for Main Street in

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Concrete; the painting of the Dalles and North Fork Bridges will begin in late summer, and Goldenrod Bridge work will begin the first part of July.

Commissioner Anderson noted concerns about possible speeding problems on Helmick Road once that project is complete and requested traffic emphasis. He also mentioned concerns from Town of Concrete merchants regarding paving of the pull-off area by the bridge on Main Street.

3. Discussion – Baker FERC License Update.

Mr. Martin provided handouts relating to the Puget Sound Energy (PSE) Baker FERC relicensing process. He said that the parties involved had reached a “handshake” agreement, but it doesn’t adequately address flood storage or improvements at Lake Shannon. He provided a summary comparing the costs with Seattle City Light’s 1991 agreement. A meeting is scheduled on June 11 with PSE.

The Commissioners each commented on the amount of funds that are being spent by PSE on salmon restoration and cultural activities with no support and funding for flood storage. They all felt that the rate payers are not receiving adequate flood protection.

Mr. Martin said that the licensing team is not willing to look at the County’s point of view. He also spoke about the fact that Lake Shannon is the largest lake in the County, and no money has been allocated to upgrade the roads or to build a campground or restrooms. He added that this is a 30-year license and usage of that lake is bound to increase during that time.

4. Discussion – Skagit Basin Water Rights.

Mr. Martin shared a letter from the Department of Ecology (DOE) regarding the Samish water rights negotiation process. Timelines are laid out for publishing a new instream flow rule; however, DOE is already behind on the timeline. The preliminary indication is that DOE will put out a draft rule that follows the Washington State Department of Fish and Wildlife recommendations. Mr. Martin stated that he would like to hire a professional consultant to review the instream flow study of the Samish Basin since that work was never peer-reviewed properly. The County has been unsuccessful in finding back-up documentation to substantiate the Fish and Wildlife study and recommendations.

Commissioner Anderson and Commissioner Dahlstedt commented on the fact that the study on the Skagit River has been ignored even though it is substantiated. They felt that the DOE has not been consistent in the application of the rules and that the Samish study was embraced since it was in line with DOE’s position on water rights. Commissioner Dahlstedt confirmed that the purpose of an instream flow study is to determine how much water can be used without causing harm to fish. If additional water is available it can be used by homes and businesses.

Commissioner Anderson felt that the Commissioners will need to make their case in front of the FERC Board during the hearings and Mr. Martin agreed.

The Board authorized Public Works to pursue hiring a consultant to review the Samish study and wanted to be advised before someone was hired.

5. Miscellaneous.

Mr. Martin spoke to the Board regarding a property owner on the Sauk River whose home is on the verge of falling into the river. He stated this was similar to Mrs. Doty’s situation; however, she has flood insurance that can be used to move her home. He advised the Board that it may be possible to offer assistance through the Drainage Utility Fund if her insurance money does not cover the costs, depending on the circumstances. The federal hazard mitigation program discounts these types of situations and doesn’t enable funding for them. A grant package was submitted for elevating seven residences, but to receive funding to move a house or deal with erosion is difficult.

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Commissioner Munks commented that the federal government should deal with this issue. Commissioner Anderson said that approximately 150 acres was lost in the Sauk River Basin in just one year.

PLANNING AND PERMIT CENTER – LOU HAFF, INTERIM DIRECTOR

1. CTED GMA 2005 Grant Application.

Assistant Director Gary Christensen presented a draft grant application to the Washington State Department of Trade and Economic Development (CTED). The State Legislature appropriated \$50,000, pending the approval of the grant, to assist with costs associated with the state-mandated 2005 Growth Management Act (GMA) Update. Commissioner Munks moved approval of the \$50,000 grant application to CTED as outlined. Commissioner Dahlstedt seconded the motion, which carried unanimously.

2. Miscellaneous.

Associate Planner Guy McNally reported on the 2005 GMA Update Steering Committee. He shared a schematic design of the Public Outreach Network that he created. There are 15 seats on the committee. Twelve seats represent Comprehensive Plan goals and three seats are “at large” for each of the Commissioner Districts.

Commissioner Anderson stressed the importance of getting proper advertising and posting of this information.

Commissioner Dahlstedt stated that he wanted to insure that the representatives on the committee are those that will be affected by the Plan.

Mr. McNally gave a progress report on the Master Planned Resort development regulations. The consultant for this project, Mark Personius, has completed a first draft of the development regulations. The Citizen’s Advisory Committee (CAC) has worked very hard with the consultant, and these regulations are the product of only two meetings. The Committee will meet this week to review the first draft. A draft is expected to be available for public review in late June.

Commissioner Anderson requested a copy of the draft development regulations.

Commissioner Dahlstedt mentioned that several citizens had contacted him regarding the potential of a subarea plan in the Big Lake area.

Mr. McNally reported that the department is in phase 2 of the Forest Natural Resource Lands designation policies. The consultant, Skagit Surveyors and Engineers is working on the analysis. The CAC met earlier in the year and identified the areas of concerns and the policy and technical matters that need to be considered. A meeting was also scheduled between the consultant and members of the GMA Update consultant team so that their activities could be coordinated.

Mr. Christensen gave an update on the Fidalgo Subarea Plan. The CAC selected Berryman and Heniger to assist with the plan. This is an advantage since this firm is also assisting with the County’s Comprehensive Plan and they are aware of the issues.

Commissioner Munks stated that it had been conveyed to him by members of the Committee that they were pleased with this particular firm’s timeline compared to the other consults who responded to the RFP’s.

Mr. Christensen also provided a status report on the Bayview Ridge project. A public hearing was held with the Planning in Commission in April. The public comment was completed on May 10. The department is in the process of reviewing the comments, public hearing testimony, and written correspondence. Several meetings will be held with the Planning Commission in June and July. If no substantive changes are made a recommendation could be forthcoming in early fall. If there are

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significant changes another public hearing would need to be held. Mr. Christensen said that each subarea plan has its own issues, but the knowledge that is gained in the process can be applied to other efforts.

Lou Haff gave an update on efforts to deal with the high volume of permit activity. Initiative is being taken to keep the line down. Employees are working overtime and a couple of retired individuals might come in and assist with processing the permits. The department is attempting to deal with the lot aggregation issues that can readily answered first in order to keep them moving forward.

Commissioner Anderson asked Mr. Christensen for a date when the Koozer Egg Farm application in Sedro-Woolley will be addressed. Mr. Christensen said that he will check into the matter and get back to him with a date.

Lou Haff and Gary Christensen recognized Guy McNally for creation of the GMA diagram and his work on the various Citizen Advisory Committees.

CONSENT AGENDA.

Commissioner Munks motioned to approve the Consent Agenda for Monday, May 24, 2004, items 1 through 14 and items 16 through 19. Commissioner Dahlstedt seconded the motion, which passed unanimously. Item 15 was removed pending further discussion.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, May 17, 2004. **(Approved)**
2. Record of the Proceedings for Tuesday, May 18, 2004. **(Approved)**

ADMINISTRATIVE SERVICES:

3. Resolution authorizing a call for public hearing regarding an application to Washington State Community Trade and Economic Development for "planning only" program grants to assist with community facilities planning, flood impact mitigation and relocation of the Town of Hamilton and surrounding unincorporated areas. The public hearing is scheduled for June 14, 2004 at 1:30 p.m. **(Resolution No. R20040174)**
4. Interlocal Cooperative Agreement, per Resolution No. R20030154, between Skagit County and Northwest Regional Council to provide support to the Skagit County Law and Justice Council. The agreement shall commence on April 1, 2004 and continue through December 31, 2004. Compensation shall be paid at the rate of \$53 per hour with a not-to-exceed amount of \$28,310. **(Contract No. C20040233)**
5. Addendum No. 2 to Interlocal Cooperative Agreement **No. C20030200** with the Northwest Regional Council to provide support to the Skagit County Law and Justice Council. The amendment will increase compensation through March 31, 2004 by \$6,292.50 for a new total of \$14,230.50. All other terms and conditions shall remain in effect. **(Amendment No. A20040099)**

BUDGET AND FINANCE:

6. Amendment No. 1 to Interlocal Cooperative Agreement **No. C20020303** with Public Utility District No. 1 for the Public Facility Project titled Marblemount Public Water System. The amendment extends the agreement from August 19, 2002 to March 31, 2005. All other terms and conditions shall remain in effect. **(Amendment No. A20040100)**

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FACILITY MANAGEMENT:

7. Standard Form of Agreement between Skagit County and Hytech Roofing, Inc. to re-roof buildings at 121 Broadway Street and 320 Pacific Place in Mount Vernon. The agreement shall commence upon the date of signature and continue 75 days from the start date. Compensation shall total \$59,200. **(Contract No. C20040234)**

HEALTH DEPARTMENT:

8. Amendment No. 1 to Interlocal Cooperative Agreement **No. C20040121** with Skagit Valley Hospital for services relating to the Obesity Prevention – Mount Vernon Healthy Communities Project. The amendment adds an additional \$10,000 to the contract for a new compensation total of \$47,500. The effective date of the amendment is January 1, 2004. All other terms and conditions shall remain in effect. **(Amendment No. A20040101)**

PARKS & RECREATION:

9. Amendment No. 2 to the Washington State Parks and Recreation Commission Snowmobile and Winter Recreation Programs Cooperative/Collection Agreement **No. C20030464** for snowmobile trail grooming. The amendment increases the compensation amount an additional \$9,906 for a new total of \$44,184. All other terms and conditions shall remain in effect. **(Amendment No. A20040102)**
10. Personal Services Agreement with Michael A. Patterson, Attorney at Law, of Lee, Smart, Cook, Martin & Patterson, P.S., Inc. to provide legal consultation, representation and services relating to the case of Galbraith v. Skagit County, et al., Skagit County Cause No. 04-2-00553-4. The agreement shall commence on April 12, 2004 and continue until December 31, 2004. Compensation is variable. **(Contract No. C20040235)**

YOUTH & FAMILY SERVICES:

11. Personal Services Agreement with The Language Exchange, Inc. to provide interpretation services for clients referred by the County on an as needed prearranged basis. The agreement shall commence on July 1, 2004 and continue through June 30, 2006. Compensation is not to exceed a total of \$10,000 annually. **(Contract No. C20040236)**
12. Personal Services Agreement with Julian Byrd to provide specialized child, adolescent, adult and/or family assessment, evaluation, and treatment to clients referred by the County. The agreement shall commence on July 1, 2004 and continue through June 30, 2006. Compensation is not to exceed a total of \$10,000 annually. **(Contract No. C20040237)**

PUBLIC WORKS:

13. Resolution amending the Guemes Island Ferry Passage Fare Schedule. **(Resolution No. R20040175)**
14. Resolution calling for bids for the Main Street Reconstruction Project. The bid opening will be held on Monday, June 14, 2004 at 9:30 a.m. **(Resolution No. R20040176)**
15. Resolution requesting qualifications for a Solid Waste Operations Efficiency and System Rate Study. **(This item was removed for further discussion)**
16. Order vacating a County Right-of-Way known as Spruce Avenue and an alley as petitioned by Todd and April Williams. **(Resolution No. R20040177)**

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17. Order vacating a County Right-of-Way located off of North Green Street in the vicinity of Similk Beach as petitioned by Craig Ford. **(Resolution No. R20040178)**
18. Vendor Services Agreement with Clyde/West, Inc. to provide rental equipment for various projects. The agreement shall commence on April 1, 2004 and continue through March 31, 2005. Compensation varies depending on the equipment being rented. **(Contract No. C20040238)**
19. Vendor Services Agreement with Mettler-Toledo Northwest, LLC to provide maintenance and licensing calibration on the scales at the Skagit County Recycling and Transfer Facility and at the Sauk Transfer Station every six months. The agreement shall commence on April 1, 2004 and continue through March 31, 2006. Compensation is not to exceed a maximum amount of \$5,000. **(Contract No. C20040239)**

MISCELLANEOUS.

1. Staff presented a Resolution for Declaration of Emergency at the Guemes Ferry Transfer Span #40142. Commissioner Munks moved approval; Commissioner Dahlstedt seconded the motion, which carried unanimously. **(Resolution No. R20040179)**
2. 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, May 24, 2004, the Board by majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Purchase Card Electronic Payment to JP MORGAN CHASE from Clearing Fund 696 in the total dollar amount of \$36,435.13 (Transmittal No. C-63-04) **(This transmittal number is out of sequence).**

Warrants numbered 170720 through 171176 from Clearing Fund 696 in the total dollar amount of \$1,240,365.43 (Transmittal No. C-68-04).

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$90,707.21 (Transmittal No. C-69-04).

Warrants numbered 171177 through 171232 from Clearing Fund 696 in the total dollar amount of \$107,973.85 (Transmittal No. C-70-04).

Payroll warrants numbered 145581 through 146365 in the total dollar amount of \$885,760.61 (Transmittal No. P-19-04).

Payroll warrants numbered 962892 through 962039 in the total dollar amount of \$166,775.54 (Transmittal No. P 20-04).

3. Commissioner Munks read a proclamation declaring June 5, 2004 as National Trails Day. He then motioned for approval, which was seconded by Commissioner Dahlstedt and carried unanimously.

DISCUSSION – RECOMMENDATIONS OF THE PUBLIC FACILITIES PROJECT REVIEW COMMITTEE FOR PUBLIC FACILITY PROJECT FUNDING.

County Administrator Gary Rowe presented a Resolution to accept a list of projects that were recommended for funding by the Economic Development Public Facilities Project Advisory Committee from the Rural Distressed County sales tax. Thirteen project proposals were submitted and ten of those projects are being recommended for funding. The Board discussed the three proposals that were not

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funded. The Regional Live Fire Training Facility request did not meet the requirements for funding; however, the other two applicants (The Port of Skagit County and Skagit PUD) may reapply. The Port of Skagit County will need to wait until the fiber optics issue has been resolved.

Commissioner Dahlstedt asked if there was money that had been previously allocated which has not been spent. Budget and Finance Administrator Trisha Logue said that she will check and see if there are unused funds that could be made available.

Commissioner Munks moved and Commissioner Dahlstedt seconded the motion to approve the Resolution to accept the recommended projects. The motion carried unanimously. **(Resolution No. R20040180)**

PUBLIC COMMENT PERIOD.

There was no one present to speak.

RECOGNITION – ARIS INTERVENTION SPECIALIST, LISA GRAY.

Ms. Gray was not present.

CLOSED RECORD APPEAL OF THE HEARING EXAMINER'S DECISION NO. PL04-0255 REGARDING THE PLACEMENT OF A 180-FOOT MONOPOLE CELL TOWER AT REXVILLE GRANGE.

Associate Planner Marge Swint provided background information of Closed Record Appeal PL-04-0255 of the Hearing Examiner's decision to uphold the Planning and Permit Center's Administrative Officials Decision relating to the placement of a 180-foot monopole cell tower at Rexville Grange. The Planning and Permit Center had granted an Administrative Reduction of Setback and an Administrative Special Use Permit. Ms. Swint projected a map of the proposed site. The property is zoned agriculture and is approximately 5.4 acres containing the Rexville Grange Hall. It is located at the northeast intersection of Rexville Grange Road and Summers Drive.

John Meister, 19254 Rexville Grange Road, spoke on behalf of the petitioners in this matter. He stated that he is a biologist and business-person in the area. Mr. Meister said that the neighborhood has been opposed to this project from the beginning, and almost everyone has written a letter to that affect. They feel this project would be injurious to the neighborhood based on visual impacts, home values, historical character of the neighborhood, public safety, eco-tourism and the cumulative effects of putting the cell tower at this site. The appellants feel the process was skewed. They found several areas they believed to be incorrect on the checklist. They feel that the County is a beginner in their relationship in dealing with cell towers. The appellants do not believe the cell tower met the Code and the process has not met the Code, and they addressed these items with the Hearing Examiner at the time of the hearing.

Mr. Meister spoke about the compliance letter, which stated that the applicant would comply with Skagit County Codes, but it did not specify Section 14.16.720, which addresses cell towers. He added that the applicant did not meet the photo simulation and site plan requirements. If the site plan requirements had been met, he felt a geo hazard study would have been done, due to the slope of the property. Had a geo hazard study been conducted, it would have revealed that this property lies on the Devil Mountain fault. Mr. Meister then addressed the setback requirement of 100% of the tower height from all property lines. The applicant appealed this requirement asking for a variance. The appellants do not believe the applicant had a right to the variance and that the most restrictive setback requirements should apply since it is a residential neighborhood.

Regarding the Findings of Fact, the petitioners believe that the SEPA requirements were not met. The department determined all the environmental impacts were addressed. The petitioners are questioning the validity of the wildlife study since that area is an important migratory area for several species of birds. Mr. Meister provided a report from the Sheriff's office of incidents in that area that he believes illustrates

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that the tower would be a public health and safety issue. He said that the market study that was provided was very limited and it did not appear that permission for use was given.

Attorney George Kresovich spoke on behalf of T-Mobile. He said that this matter is a land use conflict created by technological change. As cell phone usage increases, the need for cell towers increases. Skagit County has developed a detailed set of rules and regulations for siting cell towers. He said that cell towers bring a tremendous public benefit as demonstrated by the public's acceptance of cell usage. However, cell towers also create impacts. Mr. Kresovich said that rules and regulations were developed to balance the impacts and provide mitigation for the impacts associated with providing the benefits of cell phones. He believes that Skagit County followed the prescribed rules and regulations and that the staff spent an inordinate amount of time reviewing the application and taking into account the comments that were filed by the residents. The staff asked for additional studies and information, and then issued their opinion.

Appeals were filed and a hearing was held in January. The Hearing Examiner then made his decision. Mr. Kresovich addressed some of the conclusions in the decision. The Hearing Examiner stated that the appellants did not carry their burden to show that issuance of the MDNS was improper. They did not prove that the disclosure was inadequate to evaluate the environmental impacts. They did not show those impacts, as mitigated by the conditions imposed; will more likely than not rise to the level of "significance." The appellants did not demonstrate that the project fails to confirm to the siting and other criteria of Skagit County Code 14.16.720. They did not demonstrate that the project is inconsistent with the criteria of Skagit County Code 14.16.900. Regarding setbacks, the Hearing Examiner stated that there is nothing in the language of Skagit County Code 14.16.720(4) to suggest that it eliminates the availability of a variance from a substantive standard once the appropriate substantive standard is selected. Regarding issues about birds, the Hearing Examiner found that the appellants did show that there are eagles in the area and snow geese and trumpeter swans regularly fly over the area. The Wildlife and Habitat study was attacked as superficial by the appellants, but it was not shown that the analysis of the applicant's wildlife biologist was incorrect, and no evidence was presented to show that the tower will probably be harmful to birds or that its presence will change their habits.

Mr. Kresovich concluded that the rules were followed and the process was met, and he believes that the Hearing Examiner's impartial decision should be upheld. He said that these types of decisions will be faced in the future and it is important for the County to have consistent regulations. He provided a summary letter of his presentation.

Commissioner Dahlstedt asked about 911 service requirements and areas in the vicinity that were not receiving good reception. Mr. Kresovich said that this tower would assist in providing enhanced 911 as well as additional services. This tower is one of five that are planned for this area.

Mr. Meister said that it was learned at the hearing that the tower was being taken down on Devil's Mountain. He suggested the possibility of placing two shorter towers on top of telephone poles or other alternatives. He said that his family purchased a T-Mobile phone and they were able to receive coverage in the entire area. Mr. Meister said that the County was not aware that the Devil's Mountain tower was being taken down until the hearing. He added that the Rexville residents do not trust the information that was given by T-Mobile in this process, and that the County should have dug deeper rather than taking T-Mobile's word.

Commissioner Dahlstedt confirmed that the neighbors do not want the tower in their neighborhood, and Mr. Meister said that they felt it was injurious to their neighborhood character.

Commissioner Anderson asked if Fish and Wildlife was notified about the study. Ms. Swint said that the study was sent to them and they did not respond. Commissioner Anderson asked if there were concerns would Fish and Wildlife normally respond, and Ms. Swint indicated that was the case.

Commissioner Munks moved to make a decision on the closed record appeal on Monday, June 7, at 1:00 p.m. Commissioner Dahlstedt seconded the motion, which carried unanimously.

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ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W. Anderson, Chairman

Don Munks, Commissioner

Kenneth A. Dahlstedt, Commissioner

ATTEST:

Shirley Knapp, Acting Clerk of the Board