

**RECORD OF THE PROCEEDINGS
SKAGIT COUNTY BOARD OF COMMISSIONERS
MONDAY, JULY 26, 2004**

- 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. – 10:00 a.m. Visitation – High School Students from Northern Ireland
- *T 10:00 a.m. – 11:00 a.m. Board of Health – Peter Browning, Director
1. Public Hearing - Revised Skagit County Code (SCC) 12.16, Solid Waste Handling Facilities
2. Miscellaneous
- 11:00 a.m. – 11:25 a.m. Consent Agenda and Miscellaneous Items
- *T 11:25 a.m. – 11:30 a.m. Proclamation – Community Action Day, July 29, 2004
- 11:30 a.m. – 11:45 a.m. Public Comment Period
- 1:00 p.m. – 2:00 p.m. Closed Record Appeal No. PL04-0296 of the Hearing Examiner's Decision for Charles and Lorraine Saunders
- *T 2:00 p.m. – 3:00 p.m. Planning & Permit Center – Lou Haff, Interim Director
1. Public Hearing – To Consider Public Testimony Regarding the Adoption of New Permit and Development Fees as Proposed by the Skagit County Departments of Planning & Permit Center, Public Works and Public Health
2. Miscellaneous
- *T 3:00 p.m. – 4:00 p.m. Public Works – Chal Martin, Director
1. Signature – Resolution and Interlocal Cooperative Agreement with the Skagit Conservation District
2. Discussion/Possible Signature – Letter of Partnership in Support of the Upper Skagit Indian Tribe
3. Discussion – Water Rights Planning Negotiations
4. Discussion – FERC Baker Relicensing Update
5. Discussion – Partnership Transportation Projects
6. Miscellaneous
- 4:00 p.m. – 4:30 p.m. Work Session – Operations Division Manager/Road District Maintenance Supervisors

The Skagit County Board of Commissioners met in regular session on Monday, July 26, 2004 with Commissioners Don Munks and Kenneth A. Dahlstedt present. Commissioner Ted W. Anderson's absence was excused.

VISITATION – HIGH SCHOOL STUDENTS FROM NORTHERN IRELAND.

Brian Hurst, Community Liaison with Cascades Job Corps, introduced high school students and their advisor, Trish Hagen, who are visiting the area from Northern Ireland. The young people are part of the Spirit of Enniskillen Exchange Program, which encourages young people to visit other countries to learn firsthand about how people from a variety of cultures and religions live together. The students introduced themselves, spoke about their reasons for joining the group and reflected upon their experiences while visiting the United States.

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BOARD OF HEALTH – PETER BROWNING, DIRECTOR

1. Public Hearing – Revised Skagit County Code (SCC) 12.16, Solid Waste Handling Facilities.

Acting Chairman, Don Munks, advised the audience that today's meeting is to render a decision, not a public hearing.

Environmental Health Supervisor, Corinne Story, thanked Polly Dubbel and Britt Pfaff-Dunton for their efforts in creating the comparative document. This was an extensive rewrite as the format had to be completely restructured; however, there were no major changes to the content.

Commissioner Dahlstedt noted that Skagit County has recently published a quarterly newspaper to alert the public about what is happening within County government. He suggested that perhaps these types of rules and issues can be covered in that publication from time to time.

Ms. Pfaff-Dunton said the old code was very confusing and the intent with this document is to make it clear to read and understand.

Commissioner Dahlstedt motioned to adopt the revised Skagit County Code 12.16, Solid Waste Handling Facilities, as presented. Commissioner Munks seconded the motion, which was carried. The ordinance will appear on the Consent Agenda for Monday, August 2, 2004.

2. Miscellaneous.

Director, Peter Browning, announced that Public Health employee, Steve Olson, would be leaving to accept a position at Island Hospital in Anacortes. He will be a Clinic Coordinator for their Home Health Care Program. A fairly large net will be cast to find his replacement.

CONSENT AGENDA.

Commissioner Dahlstedt motioned to approve the Consent Agenda for Monday, July 26, 2004, items 1 through 42. Commissioner Munks seconded the motion, which was carried.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, July 12, 2004.
2. Record of the Proceedings for Tuesday, July 13, 2004.
3. Record of the Proceedings for Wednesday, July 14, 2004.

ASSIGNED COUNCIL:

4. Personal Services Agreement with Colleen Kenimond, Attorney at Law, to provide indigent defense representation for conflict of interest cases. The agreement shall commence on July 1, 2004 and continue through July 31, 2005. Compensation shall vary from \$55 to \$75 per hour, depending on the services being performed. **(Contract No. C20040319)**
5. Personal Services Agreement with Lynn Miner, Attorney at Law, to provide indigent defense representation for conflict of interest cases. This agreement shall commence on July 1, 2004 and continue through July 31, 2005. Compensation shall vary from \$55 to \$75 per hour, depending on the services being performed. **(Contract No. C20040320)**

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BUDGET & FINANCE:

6. Interlocal Cooperative Agreement, per Resolution No. R20040180, with the Town of Concrete to provide funding from the Rural Distressed County sales tax in the amount of \$190,000 for the Telecommunications Infrastructure project. The agreement shall commence on the date of execution and continue for approximately 24 months thereafter. **(Contract No. C20040321)**
7. Interlocal Cooperative Agreement, per Resolution No. R20040180, with the Town of Concrete to provide funding from the Rural Distressed County sales tax in the amount of \$150,000 for the Main Street Reconstruction project. The agreement shall commence on the date of execution and continue for approximately 24 months thereafter. **(Contract No. C20040322)**
8. Interlocal Cooperative Agreement, per Resolution No. R20040180, with Skagit Public Utility District No. 1 to provide funding from the Rural Distressed County sales tax in the amount of \$116,000 for the Domestic Drinking Water project. The agreement shall commence on the date of execution and continue for approximately 24 months thereafter. **(Contract No. C20040323)**
9. Amendment No. 1 to Community Development Block Grant Program Contract **No. C20040002**, issued to Skagit County by the Department of Community, Trade and Economic Development. This amendment provides an additional \$70,850 to aid homeless families impacted by the 2003 flooding in eastern Skagit County bringing the total to \$192,985. **(Amendment No. A20040135)**

COOPERATIVE EXTENSION

10. Resolution AND Interlocal Agreement between Skagit County and Washington State University Extension to provide educational services to the citizens of Skagit County in agriculture, natural resources, forestry, family living, community resource development and 4-H development. The agreement is effective January 1, 2004 and shall continue through December 31, 2004. Compensation shall total \$80,760. **(Resolution No. R20040246 AND Contract No. C20040324)**

FACILITIES MANAGEMENT:

11. Resolution awarding the bid for the Skagit County Hearing Room Audio/Video Equipment and Installation at the Continental Place Building to Dimensional Communications, Inc. in the amount of \$101,992. **(Resolution No. R20040247)**
12. Resolution awarding the bid for the Skagit County Courthouse/Administration Building HVAC Improvements to Ebenal General, Inc. for the low bid of \$149,000. **(Resolution No. R20040248)**

HUMAN RESOURCES:

13. Resolution authorizing the purchase of annual commercial insurance from various agencies. **(Resolution No. R20040249)**

HUMAN SERVICES:

14. Resolution appointing Joe Younker to the Substance Abuse Board for a three-year term effective July 9, 2004 through July 8, 2007. **(Resolution No. R20040250)**
15. County Program Agreement with the State of Washington Department of Social and Health Services to provide a working cash advance of \$53,000 for Fund 115 (Division of Alcohol & Substance Abuse) and \$52,345 for Fund 116-02 (Division of Developmental Disabilities) to cover

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monthly payments to sub-contractors for their services. The agreement shall commence on July 1, 2004 and continue through June 30, 2005. **(Contract No. C20040325)**

16. Amendment No. 2 to Personal Services Agreement **No. C20030324** with Chinook Enterprises, which deletes reference to "Intensive Significant Needs" from the Scope of Work and amends the "Individual Client Minimum Direct Service Level" to reflect that there are now two categories instead of three. The amendment shall become effective July 1, 2004. All other terms and conditions of the original contract, including Amendment No. 1, shall remain in effect. **(Amendment No. A20040136)**
17. Amendment No. 1 to Personal Services Agreement **No. C20030463** with Chinook Enterprises, which amends "Contractor Reimbursement Methods" to allow for flexible reimbursement for Developmental Disabilities Person to Person services. The amendment shall become effective July 1, 2004. All other terms and conditions of the original agreement shall remain in effect. **(Amendment No. A20040137)**
18. Personal Services Agreement with SKIFORALL to provide an adaptive canoeing event on July 25, 2004 at Heart Lake in Anacortes to a minimum of twelve people and an adaptive cycling event at Mount Erie Elementary School in Anacortes with the same minimum of people, followed by a report on those participants. The agreement shall commence on June 1, 2004 and continue until December 31, 2004. Compensation is not to exceed \$1,200 for the custom events. **(Contract No. C20040326)**

NOXIOUS WEEDS:

19. Professional Services Agreement between the Skagit County Noxious Weed Control Board and the Skagit Fisheries Enhancement Group to provide Spartina control in the Skagit and Padilla Bays. The agreement shall commence on June 1, 2004 and continue through December 31, 2005. Compensation shall not exceed \$9,000. **(Contract No. C20040327)**

PARKS & RECREATION:

20. Resolution authorizing a Request for Qualifications for the design and engineering of softball field lights on Custer Field at the Skagit Valley Playfields. **(Resolution No. R20040251)**
21. Vendor Services Agreement with Washington Fence Company to provide materials and installation of a softball field backstop at Custer Field at the Skagit Valley Playfields. The agreement shall commence on June 1, 2004 and continue through December 31, 2004. Compensation shall not exceed a maximum of \$10,500. **(Contract No. C20040328)**
22. Amendment No. 2 to Vendor Services Agreement **No. C20030027** with The Wizard of Ooze, which will increase compensation an additional \$12,227.50 during the term extension of February 6, 2004 through February 6, 2005. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20040138)**

PEST AND DISEASE CONTROL:

23. Vendor Services Agreement with Haines Tree and Spray Service, Inc. to provide spraying of insecticides services for apple maggot and codling moth control. The agreement shall commence on July 1, 2004 and continue until December 31, 2004. Compensation is not to exceed a total of \$2,500. **(Contract No. C20040329)**

PLANNING & PERMIT CENTER:

24. Ordinance amending Chapter 15.04 of the Skagit County Code relating to the adoption of the most current edition of the International Building, Residential and related codes and amending

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the sections noted on Attachment 1, and adoption of Table 1-A fee schedule as Attachment 2.
(Ordinance No. O20040013)

25. Resolution AND Interlocal Cooperative Agreement with the Town of La Conner to provide administration and enforcement of the Washington State Building Codes. The County shall collect permit fees from permit applicants in accordance with the County's adopted fee schedule as compensation for this service. It shall be a perpetual agreement effective June 22, 2004.
(Resolution No. R20040252 AND Contract No. C20040330)

SENIOR SERVICES:

26. Letter of Intent to Propose Form, which allows Northwest Regional Council to begin its Request for Proposal process for contracting congregate and home-delivered nutrition services for 2005.
(Approved)
27. Amendment No. 1 to #2004-NUTREMP-09 Contract **No. C20040008** with Northwest Regional Council to provide Congregate/Home-Delivered Meals and Title V Senior Employment services. The amendment adds "Special Project" funds in the amount not to exceed \$37,300 for Stop-gap funding – Nutrition. It also specifies that the contract no longer includes the COPES Home Delivered Meal and Recipient Training Services. The effective date of the amendment is April 30, 2004. **(Amendment No. A20040139)**
28. Amendment No. 2 to #2004-NUTREMP-09 Contract **No. C20040008** with Northwest Regional Council, which describes the approved Senior Farmer's Market Nutrition Program allocation, resulting revisions to contract budget and instructions. Additional one-time-only funds in the amount not to exceed \$4,500 are added to this contract for the purchase of produce from local farmers or Farmer's Markets to distribute to low-income home-delivered meal participants and to allow for pick up at congregate meal sites by low-income seniors. Additional one-time funds in the amount not to exceed \$1,166 are added to provide administrative support of the Farmer's Market program. Also, one-time funds in the amount not to exceed \$167 are added to this contract to provide Nutrition Education. **(Amendment No. A20040140)**

PUBLIC WORKS DEPARTMENT:

29. Resolution amending Resolution **No. R20030066**, increasing the amount of the Imprest Cash Fund for Solid Waste Fund No. 401. **(Resolution No. R20040253)**
30. Resolution authorizing the initiation of County Road Project No. ES71000-1, Anderson/LaVenture Road Extension and funds for said project in the amount of \$370,000. Skagit County, through an Interlocal Agreement with the City of Mount Vernon, will provide preliminary engineering services for environmental, surveying, permitting, and plans, specifications and estimates. **(Resolution No. R20040254)**
31. Resolution authorizing the initiation of County Road Project No. ES30910-1, Samish Island Road Dike Repair and funds for said project in the amount of \$50,000. **(Resolution No. R20040255)**
32. Resolution authorizing the initiation of County Road Project ES42410-4, La Conner Whitney Road Pedestrian Bridge and funds for said project in the amount of \$150,000. **(Resolution No. R20040256)**
33. Resolution awarding the bid for the 2004 Painters Maintenance Cleaning and Painting Project ES40037-4 and ES40090-1 to Intrastate Painting Corporation for the low bid of \$526,000. **(Resolution No. R20040257)**

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34. Amendment No. 7 to Contract **No. 04581**, Salmon Project Agreement, between the Salmon Recovery Funding Board and Skagit County. This allows for the transfer of \$112,192 of remaining unused grant monies from the County to the Whatcom Land Trust for the acquisition of about 50 acres of key salmon habitat in the Samish River watershed (also known as the Ennis Creek/Peterson Protection Project). All other terms and conditions of the original contract, including amendments, shall remain in effect. **(Amendment No. A20040141)**
35. Amendment No. 8 to Contract **No. 04581**, Salmon Project Agreement, between the Salmon Recovery Funding Board and Skagit County. This allows for the transfer of \$50,452 of unused grant monies from the County to the Skagit Land Trust for the purpose of acquiring 18 acres of mainstream and off-channel key salmon habitat in the middle of the Skagit River adjacent to the Town of Lyman (also known as the Bumgarner Habitat Protection Project). All other terms and conditions of the original contract, including amendments, shall remain in effect. **(Amendment No. A20040142)**
36. Amendment No. 2 to Personal Services Agreement **No. C20040028** with David Wright Tremaine, LLP, which increases the compensation amount to allow Attorney Dennis Reynolds to perform work at the rate of \$290 per hour, effective June 1, 2004. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20040143)**
37. Centennial Clean Water Fund Grant Agreement between the State of Washington Department of Ecology and Skagit County in the amount of \$500,000 regarding the Flowers/Maddox Creek Stream restoration project. The purpose of this project is to restore the stream channel and riparian habitat where a current culvert exists, thereby establishing and maintaining a healthier corridor. **(Contract No. C20040331)**
38. Resolution AND Interlocal Cooperative Agreement between Dike District #4 and Skagit County, which would allow the Public Works Department to assist with permitting projects, and provide materials, equipment rental and perform work on a reimbursable basis for five years, beginning August 1, 2004 through December 31, 2008. **(Resolution No. R20040258 AND Contract No. C20040332)**
39. Grant Agreement between the Washington State Department of Ecology and Skagit County on behalf of the Skagit Marine Resources Committee. The grant will be used for general administrative costs, including costs associated with the monthly meetings, reports, work plan development, maintenance, public outreach and for members attending Northwest Straits Commission meetings. The agreement shall become effective July 1, 2004 and continue through June 30, 2005. The no-match grant amount is \$10,000. **(Contract No. C20040333)**
40. Supplemental Agreement No. 1 to Local Agency Standard Consultant Agreement **No. C20030224** with Widener & Associates to provide additional environmental services needed for the Skagit County Bridge Program. In addition, Project No. 3, Cascade River Debris Removal, is deleted and replaced with Project No. 4, South Fork Deck Overlay Repair. The contract amount shall be increased by \$15,000 for a maximum amount payable of \$95,000. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20040144)**
41. Amendment No. 1 to Interlocal Cooperative Agreement **No. C20040268** between Skagit County and the Samish Nation, which will include additional Skagit Marine Resources Committee related work to the original agreement, which will enable continued monitoring and researching of experimental Olympia Oyster reefs in order to determine the best substrate for their survival and growth. The Samish Indian Nation will assist in the preparation, monitoring, maintenance and necessary documentation of the oyster reef habitat. Payment for these services is not to exceed \$4,000. **(Amendment No. A20040145)**
42. Amendment No. 1 to Personal Services Agreement with The Language Exchange, Inc. to provide interpreting services for the Skagit County Victim Impact Panel Program. The amendment

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extends the termination date to July 31, 2006 and incorporates a new fee schedule. All other terms and conditions of the original contract shall remain in effect. **(Amendment No. A20040146)**

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, July 26, 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 \$31,213.06 (Transmittal No. C-92-04); and

ACH Transfer Request Form and Certification to Xpress Flex from Clearing Fund 696 in the total dollar amount of \$220.00 (Transmittal No. C-93-04); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$83,303.80 (Transmittal No. C-94-04); and

Warrants numbered 175226 through 175484 from Clearing Fund 696 in the total dollar amount of \$768,757.97 (Transmittal No. C-95-04); and

Warrants numbered 175485 through 175917 from Clearing Fund 696 in the total dollar amount of \$884,117.19 (Transmittal No. C-96-04); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$70,566.42 (Transmittal No. C-97-04); and

Payroll warrants numbered 148973 through 150002 in the total dollar amount of \$1,497,610.26 (Transmittal No. C-27-04); and

Payroll warrants numbered 963501 through 963650 in the total dollar amount of \$174,901.21 (Transmittal No. P-28-04).

2. The Board approved a letter drafted in support of the Northwest Educational Service District 189 Early Childhood Education Systems Committee to develop and submit an application to the Administration on Children, Youth and Families, Child Care Bureau in response to a funding opportunity. According to Public Health Supervisor, Jennifer Sass-Walton, the Welcome Baby Program would receive approximately \$20,000 if this grant is awarded.
3. Staff presented a Resolution calling for bids for the Guemes Island Ferry Terminal Repair Project, ESMP 1-3. The project includes removal and replacement of four pile dolphins and other work for the Guemes Island Ferry Terminals on Guemes Island and in Anacortes.

Commissioner Dahlstedt made a motion to approve the Resolution as presented. Commissioner Munks seconded the motion, which carried. **(Resolution No. R20040259)** The bid opening will take place on Monday, August 9, 2004, at 9:45 a.m.

4. Staff presented a Resolution authorizing the sum of \$40,000 to be transferred to the Revolving Fund to be used to conduct the Skagit County Fair.

Commissioner Dahlstedt motioned to approve the Resolution as presented, which was seconded by Commissioner Munks. The motion carried. **(Resolution No. R20040260)**

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PROCLAMATION – COMMUNITY ACTION DAY, JULY 29, 2004.

Skagit County Community Action Director, Bill Shuler, stated that his agency has been in business for 25 years and they have appreciated being a part of the community. He announced that a celebration would be held this Thursday, July 29, 2004, at 11:30 at the agency, located at 330 Pacific Place in Mount Vernon.

Mr. Shuler introduced Jerry Kaufman, one of the founders of the organization, along with Mayor Bud Norris and Anacortes City Attorney, Ian Munce. He feels that when people are committed to working together and partnering, good things happen in the County.

Commissioner Dahlstedt read the proclamation proclaiming July 29, 2004 as Community Action Day in Skagit County.

Mr. Shuler presented a picture to the Board entitled "Working Together" with the inscription "Coming Together is a Beginning, Keeping Together is Progress, Working Together is Success." He asked that it serve as a reminder to everyone that this is the way it works in Skagit County.

Commissioner Munks said the County is very fortunate to have an organization like Community Action. He and Commissioner Dahlstedt thanked Mr. Shuler, Mr. Kaufman and Karen Parnell and said it has been a privilege serving on the Skagit County Community Action Agency Board with them.

PUBLIC COMMENT PERIOD.

Leonard Halvorsen, 1158 Sterling Road, Sedro-Woolley, addressed ongoing concerns he has with the debris cleanout presently being conducted on the south side of the Highway 9 Bridge in Sedro-Woolley. He also spoke of a delay regarding a fish restoration project on Hart Island and appealed to the Board to expedite the process.

CLOSED RECORD APPEAL NO. PL04-0296 OF THE HEARING EXAMINER'S DECISION FOR CHARLES AND LORRAINE SAUNDERS.

Planning & Permit Center Director, Lou Haff, announced that Chief Civil Prosecuting Attorney, Don L. Anderson, cannot be present today. Therefore, if the Board has any legal questions or concerns, they would have to be addressed at a later date.

Commissioner Munks stated that he had met with the Saunders on a couple of occasions regarding the Hearing Examiner's decision. He contacted the Planning & Permit Center and related information back to the Saunders.

Mr. Taylor said he had no objection to allowing Commissioner Munks to continue to hear the appeal.

Grace Roeder, Associate Planner, stated that this hearing is a closed record appeal of the Hearing Examiner's decision to uphold the Planning & Permit Center's Administrative Official's decision to require aggregation of two substandard parcels located in the Rural Intermediate zoning district (PL04-0036). The initial application was a Lot of Record Certification Request. The subject property, Lot 6, is a Lot of Record. However, Lot 6 is required to be aggregated with an adjacent substandard parcel under the same ownership. The Lot of Record decision was appealed to the Hearing Examiner who in turn upheld the Planning & Permit Center decision.

The applicants, Mr. & Mrs. Saunders, through their attorney, Paul Taylor, submitted a Lot of Record Certification application on December 4, 2003. The application was approved, recognizing Lot 6, Kincaid Addition, as a substandard Lot of Record. At the same time as recognizing Lot 6 as a Lot of Record, a letter was sent noting that Mr. & Mrs. Saunders owned an adjacent, substandard parcel with an existing residence. The letter explained that although each lot is a Lot of Record, based on the January 2002 Court Order issued by Judge Allendoefer, because the parcels are substandard they are required to be aggregated for development purposes.

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On January 21, 2004, an appeal of the Lot of Record determination was made to the Hearing Examiner. A portion of the appeal addressed the "unconstitutionality of aggregation." The Hearing Examiner ruled that he could not address constitutionality; therefore, upholding the decision of the Planning & Permit Center regarding the aggregating of Lots 5 and 6.

Ms. Roeder said it is indicated that the applicants purchased Lot 5 in December 1997 and Lot 6 in October 1999. In June 1997, the County adopted a countywide zone change. Skagit County Code 14.04.190(5) was in effect in October 1999, and at the time of purchase of Lot 6, Lots 5 and 6 were automatically aggregated by Code. With the adoption of the Unified Development Code in July 2000, "aggregation" was no longer part of the Skagit County Code. At that time, the applicant would have been able to develop or sell either parcel at his choice.

In 2001, a lawsuit was filed and the County was ruled out of compliance with the Growth Management Act. In January 2002, Skagit County was ordered to re-instate the previous Skagit County Code 14.04.190(5), Aggregation.

Ms. Roeder indicated that, based on the record, the Planning & Permit Center would recommend that the Board of County Commissioner's deny the appeal and uphold the Hearing Examiner's decision regarding aggregation of Lots 5 and 6 of Kincaid Addition to Fidalgo City, as required by the January 2002 Court Order.

Attorney, Paul Taylor, said that he is here today representing Mr. and Mrs. Saunders as well as new owners, Jon and Lynn Putnam, who submitted a letter authorizing the Saunders to continue with their appeal. Mr. and Mrs. Putnum wish to proceed with the appeal as co-appellants with the Saunders.

Mr. Taylor said the need for drafting new ordinances, and amending lot certification and boundary adjustment ordinances, was created originally in the early 1990's by the County's failure to inventory Skagit County property prior to developing countywide planning policies, zoning and development ordinances, and a Comprehensive Plan, which are all required by the Growth Management Act (GMA). Had the County accomplished a comprehensive survey of lands subject to its jurisdiction, the planning policies, ensuing development ordinances and Comprehensive Plan, would have been realistic, as opposed to the fictions created without such an inventory.

The fundamental flow of the current zoning and development ordinances, and Comprehensive Plan, involve the down-zoning of much of the rural areas of Skagit County without any analysis or regard to the fact that much of Skagit County's developable land lies within the 100-year flood plain, including major portions of several cities. This failure created significant pressure to convert farmland from agriculture to other uses. Skagit County is essentially a river valley and delta flood plain. The east Skagit River valley narrows into steep mountainous hillsides that are not suited for any development. The most likely area for rural residential development, keeping in mind the two geographic realities, the floodplain and steep hillsides, are areas of low hills lying outside the flood plain and outside the current cities, to wit – rural Skagit County. Planning and zoning should therefore make sense. Expanding existing cities into the 100-year flood plan/agricultural land does not make sense. Yet that is precisely what the countywide planning policies formulated in response to the GMA requirement. GMA was allegedly intended to manage growth; however, that is not what happened. GMA, as implemented by the Planning staff and reviewed by the Western Washington Growth Management Hearings Board (WWMHB) and appealed by Friends of Skagit County, has forced Skagit County into insupportable and unreasonable growth patterns that created suburban sprawl and undesirable growth into the flood plain and agriculture zones.

Mr. Taylor said of all the land in Skagit County only 6% is designated as rural, which is what is left after accounting for Urban Growth Areas (UGAs), critical areas and resource lands. Most of the County is already preserved, as 411,135 acres is owned by the County, State and Federal governments. That comprises 37% of Skagit County. When you exclude open space (10%), incorporated cities (2%), agricultural land (9%), forest land (21%), and pre-existing rural residential and industrial (5%), that leaves barely 16% of Skagit County in rural areas without consideration of critical areas. In summary, less than 8% of Skagit County is being regulated by Skagit County and this was the area that was down-zoned.

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Upon examination of the data contained in Skagit County's final Environmental Impact Statement (EIS), the maximum amount of new residences allowed under current growth policies (80% urban/ 20% rural) would allow for 28,750 people. Unfortunately, Table 5, page 21 of the County's EIS indicates 44,951 people already lived in the rural area in 1994. Historically, Skagit County has experienced a slow but steady growth for the past 100 years. For the past 50 years, new growth has been roughly split equally by the incorporated and unincorporated areas of Skagit County.

Mr. Taylor stated that without knowing whether a real problem existed with respect to the actual number of developable lots, now being defined as lots of record, the County passed the notorious "Aggregation Ordinance" SCC 14.04.190(5), adopted by Ordinance 16291. The Aggregation Ordinance contained many constitutional infirmities, including but not limited to issues involving equal protection, substantive and procedural due process and regulatory taking. The classic example is a land owner who buys a residence on a lot and later buys an adjacent property either for investment or to build a home for a family member, only to discover that the adjacent lot is aggregated with the residential lot and cannot be developed. However, if anyone else had purchased the adjacent lot, that person would be allowed to build on the parcel.

Mr. Taylor said the Plat of Kincaid Addition to Fidalgo City was approved by Skagit County and recorded on September 9, 1954. At that time, Lot 6 was a legal lot of record in accordance with SCC 14.16.850(a) that provides exception to the minimum dimensional requirements of the zoning district, a lot which has been previously certified as a legal lot of record. A lot of record is defined under SCC 14.04.06 as any lot platted or legally created platted and recorded with the Auditor prior to March 1, 1965. There is clearly a discrepancy involving the word "certified". The Planning and Permit Center Lot of Record Certification handout entitled "Frequently Asked Questions" defines "Lot of Record" as follows:

A lot of record is any lot platted or legally created under a Skagit County subdivision ordinance on or after March 1, 1965; any tract of land divided by metes and bounds or fractional section description or platted and recorded with the auditor prior to March 1, 1965; or any tract of land defined by metes and bounds or fractional section description and conveyed by notarized deed prior to March 1, 1995.

In accordance with the definition above and the one found under SCC 14.04.06, the lot was clearly platted in 1954, which makes Lot 6 legal at that time.

As further consideration, Mr. Taylor said that by zoning the Dewey Beach area into Rural Intermediate (RI), 2.5 acre lot size minimums constitutes a mapping error that does not support density in that area. He believes that this down-zone was accomplished to appease the WWGMHB and other interested parties. The appellants, Charles and Lorraine Saunders, purchased their residence on Lot 5 on December 9, 1997. The zoning in that area changed from Residential to Rural Intermediate in June 1997, thus requiring a minimum lot size of 2.5 acres. Lots 5 and 6 are rectangular and each measures 100 feet by 165 feet making them substandard lots under the current zoning. On October 18, 1999, the Saunders purchased the adjacent property, Lot 6, from Ray Kuntz who had owned the property since 1980. If any other person than the Saunders had purchased Lot 6 in 1999, it would have been certified as a building lot.

Mr. Taylor said that because of health concerns, Mr. Saunders was advised by his primary care physician to move to a drier climate and on April 4, 2003, the Saunders listed their lots for sale as separate listings. On May 18, 2003, John Chulick and Elizabeth Calcedo entered into a Real Estate Purchase and Sale Agreement with the Saunders for the purchase of the residence on Lot 5. The couple went to the Planning & Permit Center to inquire about getting a permit for installing skylights. At that time, they were advised that Lot 5 was aggregated with Lot 6 and that they would have to own both lots in order to receive a permit.

On May 23, 2003, Christopher Carol signed a Real Estate Purchase and Sale Agreement with the Saunders for the purchase of vacant Lot 6. Mr. Carol went to the Planning and Permit Center to obtain a

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Lot Certification. He was told that it could not be granted as the lots were aggregated as part of the GMA related lawsuit. Therefore, the contracts to purchase Lots 5 and 6 were rescinded, due to the position set forth by the Planning & Permit Center officials advising both purchasers that the lots were aggregated and could not be sold separately. June 2, 2003, was the first date Charles and Lorraine Saunders heard anything about a law requiring aggregation or any lawsuit involving the Growth Management Act. Upon inquiry, the Skagit County Planning & Permit Center officials advised them that no property owners were specifically notified and that the notice was published in the Skagit Valley Herald, to which the Saunders do not subscribe. Mr. Saunders recalled asking a planning official if Lot 6 would be certifiable as a building lot if there was no lawsuit pending and he was informed that it would be. He also asked if another party would have been allowed to build if that party had purchased Lot 6 in 1999 and again, the official responded affirmatively.

On September 10, 2003, the Saunders went to the Skagit County Assessor's Office and talked to Ben Dodge who indicated that Dewey Beach had originally been platted at the turn of the century and again in 1954. Mr. Dodge looked through the plat maps and said as far as he was concerned, the existing plats were grandfathered and exempt from the aggregation issue. He pointed out other parcels in the Dewey Beach area that had been subdivided and all lots had been certified. Mr. Dodge said that he could not change the tax assessment value without written confirmation from the Planning & Permit Center specifying the lot was not certifiable as a separate building lot.

The Saunders timely appealed the decision of the County Administrative Official to the County Hearing Examiner, who denied the Saunders appeal while stating he had no power to adjudicate the constitutional validity of the ordinances or constitutional questions. Thus, his opinion is limited to the County Code provisions cited to him. At this hearing, Ms. Roeder stated that if any other party had purchased Lot 6 it would have been certified as a separate building lot.

Mr. Taylor summarized by stating that the Saunders submitted these issues to the Hearing Examiner only to discover he had no authority to decide the issues. Under the Hearing Examiner's limited powers, it appears futile for the Saunders to attempt to exhaust their administrative remedies. Nonetheless, out of an overabundance of caution to avoid a potential affirmative defense to a lawsuit against Skagit County, the Saunders submitted an appeal to the County Commissioners. Because of Mr. Saunders' medical condition and rising medical costs, the Saunders were forced to sell both lots to the Putnam's at a greatly reduced price. The Putnam's have been advised by the Planning & Permit Center that they cannot obtain a permit to remodel the residence on Lot 5 unless they agree to aggregate Lot 5 with Lot 6.

Mr. Taylor urged the Commissioners to pass a resolution which states that if the Hearing Examiner is not qualified to hear an issue then there can be a direct appeal of an administrative determination to the Board of Commissioners.

Ms. Roeder said there was no Planning Department in 1954; therefore, the County didn't approve the plat; it was simply drawn on paper and recorded in the Auditor's office. Skagit County has always had aggregation but it was not clearly spelled out until the 1997 ordinance. She said it wasn't the County or the Planning & Permit Center that chose not to reinstate aggregation, it was a court order. Ms. Roeder said she finds it difficult to understand how the Saunders could not have been aware of the public hearings that were being held on this issue as it was a huge issue. She further stated that from June 2000 to June 2002, prior to the court order, the Saunders could have built on or sold either of their lots.

Mr. Taylor said the argument is whether aggregation is a constitutional issue. He feels Judge Allendoerfer doesn't have the jurisdiction to decide these issues.

Commissioner Munks indicated that the Board will meet with the County's legal staff to discuss the facts of the case and will postpone a decision until after that time. The appellants will be notified as to when a decision will be rendered.

Commissioner Dahlstedt motioned to defer a decision on the closed record appeal PL04-0296 of the Hearing Examiner's decision until legal counsel can be obtained. Commissioner Munks seconded the motion, which carried.

PLANNING & PERMIT CENTER – LOU HAFF, INTERIM DIRECTOR

1. Public Hearing – To Consider Public Testimony Regarding the Adoption of New Permit and Development Fees as Proposed by the Skagit County Departments of Planning & Permit Center, Public Works and Public Health.

Interim Director, Lou Haff, said the fees considered in the ordinance are permit and development fees of the Departments of Public Works, Public Health and the Planning & Permit Center. They do not include building permit fees. These fees were last modified and adopted in 1998, which reflect a set of standards that do not recover a specific rate of cost but are rather random in nature. Each of the three departments, since briefing the Board, have met with representatives of their customer client base and have made some changes to the recommendation that is before the Commissioners.

Mr. Haff said the Planning & Permit Center was specifically requested by their clients and customers to look carefully at their accounting system. He suggests improving and enhancing the accounting system so that they are better equipped to accrue actual costs at the permit end or project level. Additionally, it has been discovered that the forest practice fees are set by state law. One of the most important concepts in the fee ordinance is the theory of cost recovery. The existing system of fees recovers approximately 38%. The new fee schedule is predicated on a system where the cost of the fee is a function of the labor cost of Skagit County to provide the service. The new schedule is proposing to recover only 75% of those costs.

When questioned why these fees should logically be increased, Mr. Haff produced a copy of the "Life Cycle of a Permit Application," which details the individual steps that must be taken in the process. He said it is easy to see that the cost of doing business has risen because of the increased regulatory system that we live in today. The link between the fee itself and the cost of providing service is one of the most critical and important concepts that the Board should consider because it is fair, appropriate and are a good business practice in this time of diminishing general fund revenues. For any given permit, money that is not recovered, but spent in providing the service, comes directly out of the general fund and is in reality a public subsidy for what is usually a private separate permit application activity. A 75% recovery rate will result in a zero impact to the general fund for the Planning & Permit Center, other than long range planning, which is considered to be a public obligation because it benefits the County at large.

Mr. Haff said that, on behalf of the Planning & Permit Center and the Directors of Health and Public Works, he recommends that the Board consider adopting these increases and direct them to annually review their status and report back on actual rates of recovery, including modifications that may be necessary from time to time to reconcile the cost of the service to the cost of the permit. He also recommends that the Board direct the Planning & Permit Center to return to them with a plan to enhance their accounting system so that they can begin accruing accurate cost data by permit and/or by activity by project. He asked that the Board allow them to develop a plan in conjunction with the Public Works Department. When the Planning & Permit Center co-locate with them later in the year, they intend to utilize their accounting services to perform their accounting.

Commissioner Munks opened the public hearing.

Commissioner Dahlstedt asked if the County was above or below the normal rate for the forest practice fees. Tim DeVries advised that Skagit County falls in the middle. Commissioner Dahlstedt said he is concerned about being consistent with what the law requires. He also inquired about fee comparisons with other counties. Building Official, Bill Dowe, said comparisons were done, which showed that there are no consistencies from one jurisdiction to another. Skagit County started in the middle.

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Maryann Manville-Ailles, Skagit Surveyors and Engineers, 806 Metcalf Street, Sedro-Woolley, said she believes that the cost increases seen in the Public Works fees are reasonable. She questioned the difference between the level of review that is required for commercial and residential driveways that result in commercial driveways being four times more expensive than residential driveways. Ms. Manville-Ailles also said there are access permits for both types of driveways; however, there isn't a permit category for subdivisions that would cover a short plat or a plat road and she feels this is an oversight. She also asked that fees for drainage reviews be tied to the number of lots that are being looked at. Perhaps there should be a maximum dollar amount set for the review of drainage, with a flat fee imposed for short plats. Regarding Public Works fees, Ms. Manville-Ailles asked who was responsible for making the determination for using an outside consultant and suggested that it be negotiated between the County and the applicant.

Ms. Manville-Ailles also offered comments on site evaluations for septic systems, sewage fees and a proposed sliding fee scale. Regarding fees for the Planning & Permit Center, she said the focus should not be on increasing the fees but increasing the efficiencies of the Department.

Louie Requa, Skagit Surveyors and Engineers, provided three examples of what will take place on short plats, Hearing Examiner variances and permitting a horse arena if the proposed Planning & Permit Center fees are adopted. He asked the Board to consider setting up a timekeeper system so that projects could be monitored; therefore, substantiating any rate increases. Mr. Requa also asked that the deadline to submit written comments be extended, which might make the decision-making process easier for the Board.

Paul Taylor, 20388 Eric Street, Mount Vernon, said he feels that whatever price structure for permitting be fair and equitable; however, he asked the Board to consider the fact that overhead has risen due to GMA mandates. There should be some relationship between the cost of the service and the cost of the permit but there isn't because we have flat fees, which he doesn't feel is fair. Fees should be based on an hourly basis, which will also allow you to track the efficiency of staff. Time limits should be enacted as well as it will make the staff more efficient and the public will be served.

Carol Ehlers, 3998 Wind Crest Lane, Anacortes, agreed that it would be far fairer to charge an hourly rate for services.

Roger Pederson, 12354 Bayview-Cemetery Road, Mount Vernon, stated that fairness and equity is the issue being discussed today. His concern is in regard to the appeal process to the County Commissioners after a review by the Hearing Examiner. Mr. Pederson said the current fee for an appeal is \$350 and the fee to file a lawsuit is \$125. He said with a lawsuit you at least obtain a legal opinion, which you don't receive when appealing to the Commissioners. He finds it unfair and unjust.

Corinne Story, Environmental Health Supervisor, said it might be a good idea to take the Operation and Maintenance fee and combine it with the Design Application fee. She said Commissioner Anderson had asked that the fee be looked at as a file setup fee so that it could serve as a reminder to people with septic systems that regular inspections need to be conducted.

There being no further public comment, Commissioner Dahlstedt motioned to close the public comment period. The motion was seconded by Commissioner Munks, which was carried. Public comments will be welcome until Friday, July 30, 2004 at 4:30.

2. Miscellaneous.

- A) Mr. Haff spoke about WWGMHB Case No. 13-c and said the Department has released a proposal to extend the interim ordinance regulating development in the UGAs. A public hearing has been scheduled for August 9, 2004 and the County is required to take action by August 16, 2004, under the ruling of the Hearings Board regarding UGAs. The proposed ordinance will simply extend the current interim ordinance, which would allow the development of rural intensities in UGAs unless the property is annexed. However, Mr. Haff said he is proposing an amendment for the Board's consideration. The amendment is one that has been negotiated with the cities and would create

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greater development opportunities without annexation if the proposed development is supported by the County and the affected city. It suitably addresses future annexation and infrastructure issues. This is based on a suggestion made some time ago by the Chairman of the Board and the amendment will allow some flexibility if a development proposal comes along while the interim ordinance is in effect and the City and the County both determine that it is clearly in their best interest to approve it. This is just one element of a permanent solution of which the Board will eventually endorse.

Mr. Haff indicated that the Department is on schedule to comply with the deadlines within the order. He presented a draft resolution approving a work program to consider the development and adoption of a "Transfer of Development Rights" (TDR) Program in 2005. This issue will be discussed further on Monday, August 2, 2004, at 1:00 p.m.

- B) Kirk Johnson, Senior Planner, brought forth a Resolution establishing deadlines for Comprehensive Plan Amendment proposals to be considered as part of Skagit County's 2005 Comprehensive Plan update, as required by the State Growth Management Act. Mr. Johnson said the Resolution would establish deadlines of September 15, 2004, for individuals who wanted to submit Comprehensive Plan amendments that would be considered as part of the County's 2005 update. November 15, 2004, would be the deadline for cities that want to propose modifications to their UGA boundaries. Those proposals would be considered and then incorporated or not into the County's proposal for the 2005 update, which will come out for public review and comment early next year.

Mr. Johnson said this would not be the last opportunity for people to be a part of the update, but these would be the deadlines if they wanted to submit a formal Comprehensive Plan Amendment proposal. Because this is a State mandated seven year update, the Department is proposing that the Comprehensive Plan amendment fee associated with the applications that are submitted on September 15, 2004, be waived.

Mr. Johnson also stated that there was talk about consolidating the 2004 deadline of July 31, and then bringing the July 31, 2005, deadline and consolidating to this fall. Legal counsel had a concern about trying to tamper with the annual update deadlines of July 31, 2004, and 2005. This resolution wouldn't affect either of those July 31 deadlines that are in code. It would create a separate deadline for amendment applications to be considered as a part of the County's 2005 update process. The Department would recommend to the Board that they roll over any applications that are submitted by July 31, 2004, into the 2005 update, effectively consolidating those dates.

Commissioner Dahlstedt asked if the 2005 Comprehensive Plan Amendments would typically be due by July 31, 2005. Mr. Johnson agreed but said that this Resolution creates an additional deadline of September 15, 2005.

After a lengthy discussion, the Board decided to consider the proposed Resolution on Monday, August 2, 2004, at 1:00 p.m.

PUBLIC WORKS – CHAL MARTIN, DIRECTOR

1. Signature – Resolution and Interlocal Cooperative Agreement with the Skagit Conservation District.

Natural Resource Policy Administrator, Tom Karsh, asked the Board for their approval of a Resolution and Interlocal Cooperative Agreement between Skagit County and the Skagit Conservation District. The purpose of the agreement will allow the County to compensate the District \$19,859 for its educational assistance with the County's Agricultural Critical Areas Ordinance. Assistance was given for the period March 17, 2004, through June 15, 2004, from a non-match grant from the Governor's Salmon Recovery Office.

Commissioner Dahlstedt made a motion to approve the Resolution with the Skagit Conservation District, as presented, which was seconded by Commissioner Munks and passed. **(Resolution No. R20040261)**

Commissioner Dahlstedt motioned to approve an Interlocal Cooperative Agreement with the Skagit Conservation District, as presented. Commissioner Munks seconded the motion, which passed. **(Contract No. C20040334)**

2. Discussion/Possible Signature – Letter of Partnership in Support of the Upper Skagit Indian Tribe.

Burton Reanier, Surface Water Interim Manager, presented a letter addressed to the Upper Skagit Indian Tribe, which outlines Skagit County's commitment to provide \$8,000 in matching funds for the Tribe's Tribal 319 Non-Point Source Management Program Act Grant for the Red Creek Restoration Project. He indicated that the County will provide the matching funds in the form of a cash appropriation, staff time, and/or construction activities. Mr. Reanier said the entire \$8,000 match obligation will be fulfilled prior to the projected December 31, 2005, end date of the grant.

Commissioner Dahlstedt motioned to approve the letter, as presented by Mr. Reanier and the motion was seconded by Commissioner Munks. The motion was carried. **(Approved)**

3. Discussion – Water Rights Planning Negotiations.

Director, Chal Martin, said there hasn't been any additional information received regarding the water rights negotiations.

4. Discussion – FERC Baker Relicensing Update.

Mr. Martin provided an update on the FERC Baker Relicensing status. He reviewed a schematic for both the upper and lower Baker dams showing the additional storage. He said Puget Sound Energy (PSE) proposes that the County enter into Memorandums of Agreement with all the parties involved; however, Mr. Martin feels there isn't enough time to accomplish this proposal. He said an appropriate settlement agreement needs to be drafted and is encouraged that the County can obtain the flood storage that is needed.

Mr. Martin said the issue of compensation is important to PSE; however, the County cannot provide an ongoing operating payment to them for flood control. The U. S. Army Corps of Engineers has been providing that service, which needs to continue.

Commissioner Dahlstedt indicated that as long as a management plan is in place that states that PSE will draw the water down in the event of a flood instead of maintaining the lower level at all times, it should work. The primary concern is to get FEMA and the Corps to sign off on the plan.

5. Discussion – Partnership Transportation Projects.

Mr. Martin next provided updates on several transportation projects including the Henry Thompson Bridge. He said the project is moving ahead in spite of the death of Dewey Hyatt. A ribbon cutting ceremony is tentatively scheduled for August 21, 2004, which will coincide with a Concrete community event. The Main Street Restoration Project in Concrete is also progressing nicely and it is anticipated that sidewalks will be in place for the community event as well.

Mr. Martin said the Burlington/Goldenrod Bridge Project is underway and the Washington State Department of Transportation will be managing it for the County. He indicated that funds have been committed for the George Hopper Interchange Project; however, no other work has been done. Partnering is being done with the City of Mount Vernon regarding the Anderson/La Venture extension. Mr. Martin said the goal is to develop a preliminary package to take to our legislators for additional funding.

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Mr. Martin also mentioned that a new Skagit River Bridge and a study of Interstate 5, at the Hickox Road exit, have been added to the 2005-2010 Six-Year Transportation Improvement Program.

6. Miscellaneous.

- A) Mr. Martin announced that an effort is underway to study the effects of erosion on the Sauk River.
- B) Mr. Martin said the County received the State's final disapproval of a claim for the Virginia Doty property.
- C) Mr. Martin discussed a ticketing dilemma for the Guemes Island Ferry.

ADJOURNMENT.

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

**BOARD OF COMMISSIONERS
SKAGIT COUNTY, WASHINGTON**

Ted W. Anderson, Chairman

Don Munks, Commissioner

Kenneth A. Dahlstedt, Commissioner

ATTEST:

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