

August 16, 2004

8:00 a.m. – 9:30 a.m.	Executive Session – Personnel, Litigation and Land Acquisition
9:30 a.m. – 9:45 a.m.	Marine Resources Committee Update
9:45 a.m. – 10:00 a.m.	Bid Opening – Ferry Terminal Repair Project, ESMP 1-3
10:00 a.m. – 11:00 a.m.	Closed Record Appeal No. PL04-0492, Submitted by North Beach Community of the Hearing Examiner's Decision on the Alverson Tract Owners Association Minor Utility Development Proposal
11:00 a.m. – 11:30 a.m.	Consent Agenda and Miscellaneous Items
11:30 a.m. – 11:45 a.m.	Public Comment Period
*T 1:30 p.m. – 2:00 p.m.	Decision - Proposed Extension of Interim Ordinance No. O20030026, as Modified and Extended by Interim Ordinance No. O20040005, Implementing Interim Development Regulations Within the Unincorporated Urban Growth Areas of Anacortes, Burlington, Mount Vernon and Sedro-Woolley

The Skagit County Board of Commissioners met in regular session on Monday, August 16, 2004, with Commissioners Ted W. Anderson, Don Munks, and Kenneth A. Dahlstedt present.

MARINE RESOURCES COMMITTEE UPDATE.

Ric Boge, Natural Resources Project Manager, provided a brief history of the Northwest Straits Commission and the Skagit County Marine Resources Committee. He also reviewed recently completed projects and indicated that the creosote debris inventory and removal project is ready to begin. Jeanne Robinette summarized the recently completed Northern Skagit County Bays and Shoreline Habitat Conservation and Restoration Blueprint.

BID OPENING – FERRY TERMINAL REPAIR PROJECT, ESMP 1-3.

Barb Hathaway of the Public Works Department opened the following bids for the Guemes Ferry Terminal Repair Project:

Manson Construction Company
P. O. Box 24067
Seattle, WA 98124
Bid Bond Enclosed
Addendums 1, 2 and 3 Acknowledged
Total Bid: \$598,000

Blackwater Marine, LLC
12019 76th Place NE
Kirkland, WA 98034
Bid Bond Enclosed
Addendums 1, 2 and 3 Acknowledged

August 16, 2004

Total Bid: \$612,320

American Civil Constructors West Coast, Inc.
700 South Riverside Drive
Seattle, WA 98108
Bid Bond Enclosed
Addendums 1, 2 and 3 Acknowledged
Total Bid: \$659,880

Culbertson Marine Construction, Inc.
1004 7th Street, #201
Anacortes, WA 98221
Bid Bond Enclosed
Addendums 1, 2 and 3 Acknowledged
Total Bid: \$676,728

Quigg Brothers, Inc.
P. O. Box 1707
Aberdeen, WA 98520
Bid Bond Enclosed
Addendums 1, 2 and 3 Acknowledged
Total Bid: \$687,500

Ms. Hathaway stated that the bids would be reviewed and a recommendation would be forthcoming.

CLOSED RECORD APPEAL NO. PL04-0492, SUBMITTED BY NORTH BEACH COMMUNITY OF THE HEARING EXAMINER'S DECISION ON THE ALVERSON TRACT OWNERS ASSOCIATION MINOR UTILITY DEVELOPMENT PROPOSAL.

Brandon Black, Associate Planner, stated that the Alverson Tract Owners Association (ATOA) filed an Administrative Special Use Permit application, #PL02-0149, on June 17, 2003, for the construction and operation of a minor water utility development system on Guemes Island. The subject property is located at 5126 Guemes Island Road, Anacortes. The project proposal includes the construction of a new 23,000-gallon water storage reservoir along with a new pump house and booster pump system.

The North Beach Community filed an appeal of the SEPA threshold determination and an appeal of the Administrative Special Use decision to the Hearing Examiner on July 1, 2004. The appeal states that Skagit County is negligent in issuing new building permits because of seawater intrusion. It also states that the wells in the area are currently affected by saltwater intrusion and further degradation could make the water non-potable due to increased chloride levels. The appellant is requesting a limit on groundwater withdrawal on the new ATOA well to prevent the increase of chlorides in individual wells. The appellants are specifically requesting the following:

- a. That the project pump rate be restricted to 5-gallons per minute.
- b. That the new ATOA well be used as a replacement well serving the existing 14 hook-ups only.
- c. That the fresh water stored in the reservoir be initiated with a fill from an off-island resource.

August 16, 2004

- d. That in the required Critical Areas Site Assessment Report, as defined in SCC 14.24.340(2), the professional engineer be someone other than Richard Threet.
- e. That Skagit County set a near term date certain and initiate the process for adoption of a Seawater Intrusion Policy.

Mr. Black said the Hearing Examiner's decision is complete and he proceeded to touch on a few points that were outlined in the decision. The Hearing Examiner has stated that with the conclusions of law that the appeals here attempt to get at a decision made by the State Department of Ecology (DOE) regarding the withdrawal of ground water. The State, acting through the DOE, has exclusive jurisdiction over such withdrawals. In addition to that, it should be noted that the State DOE previously issued the groundwater permit.

The State Department of Health (DOH) has approved the plans and specifications for this system. The Hearing Examiner further stated that the County has no authority to second-guess the State on the acquisition of water rights. Review of Ecology's decision on such matters is exclusively given to the State Pollution Control Hearings Board. In short, the County permit process cannot be used to make an end run around the State's exclusive power over water rights. The basic decision to allow the withdrawal of 15-gallons per minute of water, limited to six-acre feet per year, from a particular point of withdrawal for the Alverson subdivision is simply not reviewable in these proceedings.

Mr. Black clarified that this Administrative Special Use Permit is specifically for the utility itself and not for the groundwater withdrawal. The County has no jurisdiction over that. The permit is specifically for the tank, the 23,000 storage, and the distribution or transmission lines. Based on the review of the Notice of Appeal, the Skagit County Planning & Permit Center recommends that the Board uphold the Hearing Examiner's decision and deny the appeal.

Steve Orsini, 4971 Guemes Island Road, Anacortes, said he is a member of the North Beach Community and is here today representing the residents of that community. Mr. Orsini provided copies of his presentation to the Board and proceeded to address the issues raised by Mr. Black, including a chronology of events leading up to this unfortunate situation. Mr. Orsini provided a list to the Board of all the points he wanted to speak about, and proceeded to read them.

Paul Reilly, Deputy Prosecuting Attorney, advised the Board that during the last witness' extended remarks, he mentioned a document that was not included in the record. Mr. Reilly said that Mr. Orsini stated that, since the hearing, Ron Palmer of the Health Department has followed the direction of the Hearing Examiner and submitted a document. Mr. Reilly said that Mr. Orsini quoted from that document, which is not a part of the record.

Chairman Anderson said he had repeatedly warned against introducing new evidence to this proceeding. It is critically important that only the testimony and the documents that were given to the Hearing Examiner be referenced.

Charles Ellingson, professional hydrogeologist in the State of Washington and Principal of the Pacific Groundwater Group, said he had testified at the hearing in question. The first point Mr. Ellingson made was that he believes the Hearing Examiner greatly weighed Dr. Threet's opinion that there were two aquifers involved, and he finds this information to be inaccurate. He also said the memo from the County to Howard Pellet, which post-dates the hearing, states that a site assessment report is not required to be conducted.

August 16, 2004

Mr. Ellingson stated that the issue about aquifers is secondary to the fact that the water right has increased almost ten-fold. He then referred to a document in the record, which was the water right from the DOE that cites that ATOA must monitor the old well as a means of identifying seawater intrusion impacts. Because the old well is inland from the beach wells, it is not the first place that potential problems are going to be observed. Mr. Ellingson said the beach wells are where monitoring is most appropriate, which has not been required.

Howard Pellett, President of ATOA, 5293 Guemes Island Road, Anacortes, said the group has been in the process of reconstructing their well system for approximately fourteen years. Most of the delays were afforded by other government agencies, such as the DOE. Mr. Pellett stated that ATOA is the only party that has submitted any scientific evidence concerning the new well. An eight-hour pump test was performed, which has been constantly disparaged by the opposition; however, it is the only test that shows what happens when 15 gallons per minute for eight hours is drawn. The test revealed that there was no impact to two other wells that were monitored.

Mr. Pellett feels that there are problems with the wells situated up the street from him and has supported the idea that those well systems should be taken over by the County and monitored and serviced. There is one nine unit system that is not approved by DOE. The water right of 6-acre feet is the maximum that is allowed for all eighteen units at a stated number of gallons per day, or a third of a gallon per year. ATOA plans to proceed with a carefully monitored system, including a conservation policy. Mr. Pellett said he is surprised at the reaction of the neighbors. He feels they would approve fourteen units on a new well, but not eighteen, which would mean that the other four lots could not be developed.

Mr. Pellett introduced Dr. Threet, a licensed hydrogeologist in the State of Washington, who resides at 2701 17th Street, Anacortes. Mr. Threet said he is a geologic consultant for ATOA and he performed the well tests. He feels that in the testimony that has been presented, there is a great deal of misinformation and confusion. Mr. Threet said there is no question that Mr. Ellingson's interpretation of the geologic cross-section differs from his own. Proving that the operation of the State approved system with the new well will have an adverse effect on their existing wells is something that cannot be done to everyone's satisfaction. The monitoring scheme recommended by the DOE in issuing a water right is the only plan that makes sense. The Hearing Examiner has stated repeatedly that the issue of the approval of the water right and the design of the system has already been taken care of by the agencies with the proper jurisdiction, namely the DOE and the DOH at the state level.

Mr. Threet submitted a rebuttal to the allegations and information submitted in the Notice of Appeal, No. PL04-0492. He asked the Board to read the document and consider its contents when making a decision on this matter.

Mr. Orsini commented that the allegation that there is only one scientific argument is incorrect. His group has based their knowledge and the appeal on science that has already been done, starting with the USGS study. He stated that Mr. Pellett indicated that he didn't understand the approach that several of his neighbors and the North Beach Community made to him. Mr. Orsini said he has asked ATOA to monitor their project, but nothing has become of his request. The North Beach Community would like to ask that ATOA utilize the new well to replace their existing well and service their existing hook-ups. They are not trying to damage them or shut them down, but would like them to continue. When they add new hook-ups, the Community would like to see them done

August 16, 2004

with sources other than those which are going to impact their water rights, and there are ways to fill the 23,500 gallon tank without pumping it out of the ground. There are also ways to service the four new lots without utilizing existing groundwater; however, none of these options have ever been tabled.

Chairman Anderson said the issue in front of the Board is more of a jurisdictional issue and a process issue. The question is, was the process followed according to the laws and regulations that are in place and were they reviewed properly? Did we have jurisdiction? Did we fail to invoke that to the level that we could, as required by law? Did the Hearing Examiner do a thorough job in reviewing the records and the appropriate laws, and jurisdictional issues to arrive at the right decision?

Mr. Orsini said there is no doubt that the North Beach Community situation was highly weakened by the issuance of the DOE water permit. There is also no doubt that the actions that flow from the County in that regard are justified. The argument is with the interpretation of the SEPA review, which Mr. Orsini doesn't think was correctly implied. They have also taken issue of the existence of the Skagit County Code for the Critical Areas Ordinance not being applied before the Special Use Permit was issued. The Special Use Permit only required a site assessment for wetlands; however, there was never a site assessment required by the County, per its own code, for the whole issue of the Critical Areas Ordinance and category one, all of which is in the Skagit County Code.

Mr. Pellett said he thinks it is sad that the neighborhood has been stirred up with this issue, because he doesn't think there will be an impact on their individual systems. The neighbors have been given information that has made them afraid of ATOA's system. Mr. Pellett reiterated the fact that this process has been ongoing for fourteen years and the system will be put into place at some point in time.

Chairman Anderson said the Board likes to digest the issues and delay a decision on these matters for seven to ten days. Commissioner Munks agreed, and said he appreciated the parties coming before the Board to present the information that was given to the Hearing Examiner.

Commissioner Dahlstedt also concurred and stated that one of the difficulties for the Board is that the decisions they make are not a popularity contest. They must follow the rules and the points of law that are brought before them. The Commissioners delay their decision on closed record appeals so they can fairly review both sides of the issue and receive legal support from their advisors in order to make sure they are making decisions that can be defended, because that is their responsibility.

Commissioner Munks motioned to render a decision on this matter on Monday, August 30, 2004, at 9:30 a.m. Commissioner Dahlstedt seconded the motion, which passed unanimously.

CONSENT AGENDA.

Commissioner Munks motioned to approve the Consent Agenda for Monday, August 16, 2004, items 1 through 29. Commissioner Dahlstedt seconded the motion, which passed unanimously.

COMMISSIONERS' OFFICE:

1. Record of the Proceedings for Monday, August 9, 2004.

August 16, 2004

2. Resolution appointing Mark Lione to the Skagit County Ferry Advisory Committee, in lieu of the resignation of Glenn Greathouse. This shall become effective on the date of execution and continue through December 31, 2007. **(Resolution No. R20040280)**
3. Resolution appointing Mike Crawford to the Citizens' Commission on Salaries for Elected Officials, in lieu of the resignation of John Janicki. This shall become effective on the date of execution. **(Resolution No. R20040281)**
4. Resolution approving and appointing Marvin B. Cannon, Pat Smyth, and Charles H. Bennett as Commissioners of Consolidated Dike and Drainage District No. 12. **(Resolution No. R20040282)**

ADMINISTRATIVE SERVICES:

5. Resolution appointing Roy Horn to the Skagit County Emergency Medical Services Commission, in lieu of the resignation of Miles Johns III. This shall become effective on the date of execution and continue through December 31, 2006. **(Resolution No. R20040283)**
6. Letter to the Boundary Review Board regarding a Notice of Intention, File No. 04-07, City of Burlington Annexation (Puget Sound Energy). **(Approved)**

BUDGET & FINANCE:

7. Interlocal Cooperative Agreement with Northwest Youth Services, per Resolution Nos. R20040093 and R20040232, for a homeless youth transitional housing project. The project will be funded with 2004 low-income housing funds in the amount of \$100,000, which were originally awarded to the Skagit Valley YMCA; however, they withdrew from the project. **(Contract No. C20040364)**
8. Interlocal Cooperative Agreement with the City of Sedro-Woolley, per Resolution Nos. R20040180 and R20040192, to provide \$150,000 in public facility funding for the Hammer Heritage Square project. **(Contract No. C20040365)**
9. Resolution authorizing the closeout of Best Place Program Fund #126, which has been inactive for 2004. **(Resolution No. R20040284)**

EMERGENCY MANAGEMENT:

10. Vendor Services Agreement with the Skagit Valley Casino Resort to provide a banquet room, audio/visual equipment and food for a one-day seminar, which took place on May 21, 2004. Compensation shall total \$5,154.68. **(Contract No. C20040366)**

FACILITIES MANAGEMENT:

11. Standard Form of Agreement between Skagit County, and Dimensional Communications to provide audio/video equipment and installation at the Continental Place Building. The agreement shall become effective on the date of execution and continue for 30 days. Compensation shall total \$92,524. **(Contract No. C20040367)**

August 16, 2004

12. Amendment No. 1 to Vendor Services Agreement **No. C20020343** with ORETEL Communications, Inc., which extends the term of the contract to July 31, 2006, and provides periodic repair and maintenance on the County phone system located at the Skagit County Administration Building. Additional compensation in the amount of \$1,800 shall be paid. **(Amendment No. A20040154)**

HEALTH DEPARTMENT:

13. Amendment No. 9 to an Interagency Work Order **No. 04485** with the Washington State Department of Social and Health Services, which extends the term of the contract to June 30, 2005 and increases consideration by \$25,072. The new total for consideration is not to exceed \$153,357. All other terms and conditions shall remain in effect. **(Amendment No. A20040155)**

HUMAN RESOURCES:

14. Labor Agreement between the Skagit County Prosecutor, Skagit County and the Skagit County Prosecuting Attorneys' Local 176-PA, Council #2, AFSCME. The agreement shall become retroactive to January 1, 2003 and continue through December 31, 2005. **(Contract No. C20040368)**
15. Resolution approving the transfer of sick leave for an employee of the Skagit County Sheriff's Office. **(Resolution No. R20040285)**

HUMAN SERVICES:

16. Amendment No. 2 to Personal Services Agreement **No. C20030518** with Phoenix Recovery Services, which increases the allocation for Child Care Services from \$250 to \$625. All other terms and conditions of the original contract, including Amendment No. 1, shall remain in effect. **(Amendment No. A20040156)**

INFORMATION SERVICES:

17. Purchase Agreement with VP Consulting, Inc. to procure software and services necessary to implement the Laser Fiche software product for Records Management. This software will be used to scan or capture documents, index those documents, and put retention standards on them. The agreement shall become effective on the date of execution and continue indefinitely. Compensation shall not exceed a total of \$24,999. **(Contract No. C20040369)**
18. Vendor Services Agreement with Olympic Technology, Inc. to provide a Video Streaming System for the Skagit County Health Department. The system will be used to record satellite training broadcasts and will be paid for by bio-terrorism grant funds, not to exceed \$24,999. The agreement shall commence on August 4, 2004, and continue through December 31, 2004. **(Contract No. C20040370)**

PARKS & RECREATION:

19. Resolution AND Interlocal Cooperative Agreement between Skagit County and the Conway School District #317 and the Northwest Education Service District #189, to sustain the preventative summer enrichment program called Best SELF

August 16, 2004

at Conway Elementary School. The agreement shall commence on June 1, 2004, and continue through August 31, 2004. **(Resolution No. R20040286 AND Contract No. C20040371)**

20. Resolution AND Interlocal Cooperative Agreement between Skagit County and the Burlington Edison School District #100 and the Northwest Education Service District #189, to sustain the preventative summer enrichment program called Best SELF at Lucille Umbarger Elementary School. The agreement shall commence on June 1, 2004, and continue through August 31, 2004. **(Resolution No. R20040287 AND Contract No. C20040372)**
21. Resolution AND Interlocal Cooperative Agreement between Skagit County, the Sedro-Woolley School District #101 and the Northwest Education Service District #189, to sustain the preventative summer enrichment program called Best SELF. The agreement shall commence on June 1, 2004, and continue through August 31, 2004. **(Resolution No. R20040288 AND Contract No. C20040373)**

PUBLIC WORKS:

22. Resolution amending Resolution **No. R20040076**, the 2004 Solid Waste Advisory Committee Membership. **(Resolution No. R20040289)**
23. Resolution calling for a Public Hearing regarding the 2005-2010 Six-Year Transportation Improvement Program. The hearing will be held on Monday, August 30, 2004, at 2:30 p.m. **(Resolution No. R20040290)**
24. Vendor Services Agreement with Culbertson Marine Construction, Inc. to furnish and install handrails on both the Anacortes and Guemes sides of the Guemes Island Ferry. The agreement commenced on November 4, 2003, and shall continue until November 4, 2004. Compensation shall not exceed a maximum total of \$7,527. **(Contract No. C20040374)**
25. Vendor Services Agreement with Sumas Transport, Inc. to inspect, pump and haul leachate from the Inman Landfill. The agreement shall commence on July 1, 2004, and continue through June 30, 2006. Compensation shall not exceed a maximum total of \$20,000. **(Contract No. C20040375)**
26. Vendor Services Agreement with Materials Testing & Consulting, Inc. to provide material testing and special inspection services as needed for the Town of Concrete Main Street Project and the South Fork Bridge #40008 Deck Overlay project. The agreement shall commence on July 27, 2004, and continue until July 27, 2005. Compensation is not to exceed a total of \$10,000. **(Contract No. C20040376)**
27. Resolution AND Interlocal Cooperative Agreement between Skagit County and the City of Mount Vernon for work relating to the Flowers Creek/Maddox Creek Stream Restoration Project and the Anderson-LaVenture Road Extension Project. The agreement shall become effective upon execution. **(Resolution No. R20040291 AND Contract No. C20040377)**
28. Salmon Project Agreement between Skagit County and the Salmon Recovery Board to reallocate \$20,000 of unspent grant monies for tasks to be performed by the Skagit Watershed Council for salmon recovery planning purposes. The

August 16, 2004

agreement shall become effective on May 18, 2004 and continue through August 18, 2004. **(Contract No. C20040378)**

29. Personal Services Agreement with the Skagit Watershed Council to allow for reimbursement in connection with the work performed for salmon recovery planning purposes. This agreement shall become effective July 6, 2004, and continue until October 30, 2004. Compensation shall not exceed a total of \$20,000. **(Contract No. C20040379)**

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, August 16, 2004, the Board by majority vote, did approve for payment those vouchers included in the above-mentioned list and further described as follows:

Warrant number 176968 from Clearing Fund 696 in the total dollar amount of \$2,866.94 (Transmittal No. C-105-04); and

Purchase Card Electronic Payment to JP MORGAN CHASE from Clearing Fund 696 in the total dollar amount of \$26,208.54 (Transmittal No. C-106-04); and

Warrants numbered 176969 through 177460 from Clearing Fund 696 in the total dollar amount of \$1,016,607.91 (Transmittal No. C-107-04); and

ACH Transfer Request Form and Certification to Premera Blue Cross from Clearing Fund 696 in the total dollar amount of \$93,919.96 (Transmittal No. C-108-04); and

ACH Transfer Request Form and Certification to Xpress Flex from Clearing Fund 696 in the total dollar amount of \$225 (Transmittal No. C-109-04).

2. The Board approved a Resolution authorizing the voluntary donation of accrued sick leave to an employee of the Planning & Permit Center. **(Resolution No. R20040292)**

PUBLIC COMMENT PERIOD.

Margaret Youngblood, 1198 Alger Cain Lake Road, Sedro-Woolley, expressed her concerns about the current speed limit on the road she lives on. She would like to see the speed limit reduced to 35 mph along the entire stretch of road instead of the 50 mph limit that is currently posted.

Chairman Anderson said he would have the Traffic Safety Commission conduct a traffic assessment in that area; however, he feels that there may need to be more traffic enforcement.

August 16, 2004

DECISION – PROPOSED EXTENSION OF INTERIM ORDINANCE NO. O20030026, AS MODIFIED AND EXTENDED BY INTERIM ORDINANCE NO. O20040005, IMPLEMENTING INTERIM DEVELOPMENT REGULATIONS WITHIN THE UNINCORPORATED URBAN GROWTH AREAS OF ANACORTES, BURLINGTON, MOUNT VERNON AND SEDRO-WOOLLEY.

Kirk Johnson, Senior Planner, stated that the Western Washington Growth Management Hearings Board has required the County to report by August 16, 2004, on measures taken “to prevent non-rural levels of development during the compliance period.” The Department recommends approval of the proposed ordinance, which would extend Interim Ordinance No. O20040005, and include amendments as proposed by the Cities of Anacortes, Burlington, and Mount Vernon.

Substantive comments on the proposed ordinance were received by those cities. For the most part, Mr. Johnson said they were technical in nature, proposing to fine-tune, but not significantly change the provisions of the ordinance. The City of Sedro-Woolley expressed support for the ordinance, and for the amendment proposals suggested by the City of Mount Vernon. Spoken comments were also received from residents in or near the southern portion of the Mount Vernon UGA who are concerned about potential urban growth in that area.

Commissioner Munks motioned to approve the proposed ordinance to extend the provisions of Interim Ordinance No. O20040005, with amendments as proposed by the Planning and Permit Center and the Cities of Anacortes, Burlington, and Mount Vernon. Commissioner Dahlstedt seconded the motion, which passed unanimously. **(Ordinance No. O20040015)**

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

August 16, 2004

ATTEST:

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