

**RECORD OF THE PROCEEDINGS  
SKAGIT COUNTY BOARD OF COMMISSIONERS  
TUESDAY, APRIL 26, 2005**

- \*T** 8:30 a.m. – 9:00 a.m.                   Public Hearing – Proposed Amendments to the Planning & Development Services Fee Schedule Associated With the Recently Adopted Permanent Development Regulations, for Implementation Within the Unincorporated Portions of the Urban Growth Areas for Anacortes, Burlington, Concrete, Mount Vernon and Sedro-Woolley, as well as an Inadvertent Omission of One Existing Permit Type
- \*T** 9:00 a.m. – 10:00 a.m.                   Planning and Development Services – Gary Christensen, Director  
1.           State of the Department – Semi-Annual Review  
2.           Miscellaneous
- 10:00 a.m. – 11:00 a.m.                   Closed Record Appeal No. PL05-0143, Submitted by Roger E. Pederson in Response to the Hearing Examiner’s Decision on PL04-0176 and PL04-0787
- 11:00 a.m. – 12:00 p.m.                   Closed Record Appeal No. PL05-0145, Submitted by Norm Wietting of Cimarron Transfer and Recycling Co. in Response to the Hearing Examiner’s Decision on PL04-0176

The Skagit County Commissioners met in regular session on Tuesday, April 26, 2005, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

**PUBLIC HEARING – PROPOSED AMENDMENTS TO THE PLANNING & DEVELOPMENT SERVICES FEE SCHEDULE ASSOCIATED WITH THE RECENTLY ADOPTED PERMANENT DEVELOPMENT REGULATIONS, FOR IMPLEMENTATION WITHIN THE UNINCORPORATED PORTIONS OF THE URBAN GROWTH AREAS FOR ANACORTES, BURLINGTON, CONCRETE, MOUNT VERNON AND SEDRO-WOOLLEY, AS WELL AS AN INADVERTENT OMISSION OF ONE EXISTING PERMIT TYPE.**

Carly Ruacho, Assistant Planner, stated that two new permit types, the Hearing Examiner Urban Reserve Development Permit (URDP) and the 1-Acre Plat Urban Reserve Development Permit, were adopted with the Urban Growth Development (UGA) Ordinance No. O20050007. Ms. Ruacho said interim fees for the new permit types were established with the adoption of the Ordinance and the proposed amendments would add the two permits to the official Fee Schedule. In addition to the new permit types, an existing permit type, Administrative Decisions, is proposed to be added. Ms. Ruacho said it was discovered that Administrative Decisions were inadvertently omitted with the adoption of the Fee Schedule in 2004.

The proposed fees are based on existing fees for the most-similar permits. A Hearing Examiner URDP would have the same fee as a variance (\$1467). A One-Acre Plat URDP would have the same fee as a standard Short Plat (\$975), with the exception that an additional \$100 per lot fee is proposed to be charged for One-Acre Plat URDPs (currently there is only an additional per lot fee for Long Plats). An Administrative Decision would have the same fee as an Administrative Variance (\$475). Ms. Ruacho indicated that the proposed fees would increase with the progression set forth in the currently adopted Fee Schedule (R20040311).

Ms. Ruacho said notification of this hearing was published for the past two weeks and no written comments were received.

Commissioner Anderson noted that the fee charged for a Comprehensive Plan Amendment appears to increase \$1,000 every year. He asked if that was indicative of our costs.

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Ms. Ruacho replied that the answer was yes. Comprehensive Plan Amendments are increasing dramatically; however, there is an 80% refund if the request is denied, so that would significantly reduce the cost.

Chairman Munks opened the public hearing. There being no public testimony forthcoming, Commissioner Dahlstedt motioned to close the public hearing. Commissioner Anderson seconded the motion, which passed unanimously. The public hearing was closed.

Commissioner Dahlstedt motioned to approve the amendments to the Planning and development Services Fee Schedule to include Urban Reserve Development Permits and Administrative Decision, as outlined by Ms. Ruacho. The motion was seconded by Commissioner Anderson and passed unanimously.  
**(Resolution No. R20050157)**

**PLANNING AND DEVELOPMENT SERVICES – GARY CHRISTENSEN, DIRECTOR**

**1. State of the Department – Semi-Annual Review**

Gary Christensen, Director, spoke about the Administrative side to the Semi-Annual Department Update/Report. He indicated that the Work Program, which is the second part of the report that will be presented to the Commissioners on May 10, 2005. Mr. Christensen said the Department changed their name at the beginning of the year and in doing so adopted the motto “Helping You Plan and Build Better Communities.”

Deputy Director Oscar Graham said the concept of team leaders was central to the reorganization effort. He said the Department hired Kurt Latimore of the Latimore Company to conduct a departmental audit. The audit is now complete and it identifies some standout strengths as well as areas that can stand some improvement. Mr. Graham indicated that a work session will be scheduled with the Board to review the audit findings.

Bill Dowe, Building Official, reviewed revenues and expenditures for the first quarter. He said they are currently matching budget predictions. Mr. Dowe said staff in the front office area has fielded 93,000 calls since October of 2004. Mr. Dowe continued to report on planning application activity, onsite sewage application activity, building application activity and the Time Tracking Accounting System.

Mr. Christensen said he felt the Department is functioning quite well. He said they are trying to improve their business actions and the audit provides reassuring information, which proves that the Department’s business actions are sound.

**2. Miscellaneous.**

Mr. Christensen asked for the Board’s approval to close the Planning and Development Services Department at 3:00 p.m. on May 11, 2005. Latimore Company will be giving an audit presentation to the entire staff.

The Commissioners approved the closure and asked Mr. Christensen to release a public service announcement.

**MISCELLANEOUS.**

Public Works Director Chal Martin brought forward two agreements between Skagit County and Puget Sound Energy and Glacier Northwest, Inc. The agreements would allow “day use only” public access to recreational opportunities in, on, and around Lake Shannon, including use of the boat ramp area during the fishing season of April 30 to October 30, 2005. Puget Sound Energy will reimburse the County up to \$101,945.31 and provide flagging services.

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Commissioner Dahlstedt motioned to approve an Agreement between Skagit County and Puget Sound Energy as outlined by Mr. Martin. The motion was seconded by Commissioner Anderson and passed unanimously. **(Contract No. C20050194)**

Commissioner Dahlstedt motioned to approve an Agreement between Skagit County and Glacier Northwest, Inc. as outlined by Mr. Martin. Commissioner Anderson seconded the motion, which passed unanimously. **(Contract No. C20050195)**

**CLOSED RECORD APPEAL NO. PL05-0143, SUBMITTED BY ROGER E. PEDERSON IN RESPONSE TO THE HEARING EXAMINER'S DECISION ON PL04-0176 AND PL04-0787.**

Chairman Munks reviewed the closed record appeal process. He stated that only information that was presented to the Hearing Examiner would be allowed to be presented before the Board.

Brandon Black, Senior Planner, provided a brief summary of the background information for this appeal. He said the proposed project is located along the east side of Farm to Market Road, approximately 1,200 feet north of the Ovenell Road intersection, within Phase 2 of Division 7 (proposed Lot #38) of the Port of Skagit County Binding Site Plan, Burlington, within a portion of Section 4, Township 34 North, Range 3 East W.M., situated within Skagit County, Washington.

The proposed project is located within the Bayview Ridge Heavy Industrial (BR-HI) zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated maps as adopted July 24, 2000, and as thereafter amended. The Assessor's parcel number is P118865.

On December 15, 2004, an open record hearing was held before the Skagit County Hearing Examiner to take testimony regarding Special Use Permit #PL04-0176 and the filed SEPA appeal #PL04-0787. The applicant, Norm Wietting, represented himself. Patrick Hayden represented the City of Sedro-Woolley and Scott Thomas represented the City of Burlington.

On February 3, 2005, the Skagit County Hearing Examiner issued a Decision of Denial for the SEPA appeal and indicated that the requested Special Use Permit was approved, subject to the conditions set forth in the Hearing Examiner's Written Order.

On February 14, 2005, Roger Pederson filed a timely Reconsideration Request #PL05-0077, and on February 16, 2005, Rosemary Mann filed a timely Reconsideration Request of the Hearing Examiner's Decision. On February 24, 2005, the Hearing Examiner denied both Reconsideration Requests.

On March 10, 2005, Roger Pederson and Norm Wietting each filed timely appeals #PL05-0143 and #PL05-0145 of the Hearing Examiner's Decision to the Board of County Commissioners.

Appeal #PL05-0143 was filed by Roger Pederson of the Hearing Examiner's decision denying the Request for Reconsideration of #PL05-0055 and permits #PL04-0176 and #PL04-0787. This appeal states that the nature of the decision being appealed is due to the following:

"This Appeal of the Hearing Examiner's Decision appeals:

- a. The Order Denying the Requests for Reconsideration, dated February 24, 2005;
- b. The affirmation of the Hearing Examiner's Decision of February 3, 2005, which affirmed the MDNS; and
- c. The administrative decisions of County Permit staff, preceding the above."

Mr. Black said the appeal further states that "This appeal involves both the Special Use Permit and the Threshold Determination Review" and lists several reasons why the appellant is aggrieved by the decision and believes it to be wrong.

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Finally, the appellant indicated that the sought-after decision is as follows:

“The short-term sought-after decision is a fair and equitable Cimarron Permit Process that eventuates in:

- a. The reversal of the Order Denying the Request for Reconsideration;
- b. The reversal of the Hearing Examiner’s Decision that affirms the MDNS;
- c. Acknowledgement that the preparation of an EIS is appropriate in this instance to address and mitigate the issues involved properly; and
- d. Deferral of the approval of the Special Use Permit, with a review of its approval and Conditions based on the EIS Information developed.”

“The long-term sought-after decision is for the Skagit Regional Airport to remain aviationally viable, that private property rights are honored, and that any recycling facility be properly regulated per prudent public policy sited at an appropriate location.”

“Another, sought-after benefit is public confidence in Skagit County’s permit process and their elected officials.”

Mr. Black said the Department’s rebuttal is as follows:

This appeal indicates several issues with the Hearing Examiner’s decisions, inadequacies in certain Findings and the repeated belief that the project should have required an Environmental Impact Statement (EIS). The Department notes that the Special Use Permit was thoroughly reviewed under the requirements outlined within Skagit County Code. The application and State Environmental Policy Act (SEPA) review were conducted in accordance with all applicable Code requirements in effect today. Mr. Black said the Department notes that the appellant was not a party to the SEPA appeal of the MDNS (Mitigated Determination of Non-Significance) previously presented to the Hearing Examiner; therefore, Mr. Pederson has no standing to appeal the Hearing Examiner’s decision on the MDNS to the Board. Mr. Pederson is a party of record to the Special Use Permit itself and only has standing to appeal that decision.

Mr. Black further stated that if Mr. Pederson argues that he is a party to the SEPA appeal, the Department would like to submit the following for the record: Within the Hearing Examiner’s “Conclusions of Law” findings, it was determined that the environmental review was properly conducted, the information was reasonably sufficient to evaluate the environmental impacts of the proposal, and the appellant did not prove that the decision of the Administrative Official was clearly erroneous, concluding that the Environmental Impact Statement is not required. WAC 197-11-680, the Appeals section, subsection (3)(D) states “Agencies shall provide the procedural determinations made by the responsible official shall be entitled to substantial weight.” Also, Skagit County Code Section 14.12.21(04) states: “The procedural determination by the County’s Responsible Official shall carry substantial weight in any appeal proceeding”.

Mr. Black said the Skagit County Planning and Development Services Department would recommend that the Board uphold the Hearing Examiner’s Decision and deny Appeal #PL05-0143.

The appellant, Roger Pederson said he stands on the premise of his appeal. He said the issues involve SEPA and property rights – the equal protection clause. Mr. Pederson said we are dealing with an issue that involves leasing of public property to a private party. He said it appears that this permit process has been somewhat convoluted. The permit is represented as a building permit to build a recycling facility. He questions whether or not the County has proper policy and regulations in place to accommodate a solid waste management facility, which is a central public facility. Mr. Pederson said the proposal is to local an essential public facility on Skagit Regional Airport property, which is essential public property in its own right. The FAA has not been asked to comment on this issue.

It is also Mr. Pederson’s contention that there should be a development process involved, separate from the building permit site. He said there is a raw piece of land that has not been developed yet and a

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building permit is being asked for that does not accommodate that type of site development. He questions whether Mr. Wietting has the proper authorization to be a permit applicant for a piece of property is doesn't own.

Mr. Peterson said he is also concerned that people living downstream from the proposed site have not been contacted, including the Mann's. He would like the County to look at its permitting process as he feels the process has been violated by either the Port of Skagit County or the appellant.

Mr. Pederson said he also has issues with whether or not this will be a recycling/composting facility or a transfer station. The permit is for a recycling/composting facility and has nothing to do with a transfer station. The Port of Skagit County, in its option for lease dated March 26, 2004, states that "The Port acknowledges that Cimarron intends to use the property for development and creation of a solid waste handling transfer, recycling and composting facility." Mr. Pederson said the word transfer is in the language; however, it is not in the permit.

Mr. Pederson indicated that he contacted Drainage District 12 and they informed him that they had not been apprised of the situation. There concern is over a drainage basin, which they call Low Man Slough. The permits were conditioned on an agreement with the downslope Drainage Districts and Mr. Pederson said he sees no conditions of that nature, although required. Mr. Pederson said his appeal states that specific aspects of the MDNS must be provided, which they haven't been.

Commissioner Anderson asked Mr. Black if the permit that was applied for, a recycling/composting facility, is allowed under the current Skagit County Code. Mr. Black said it is allowed. Commissioner Anderson said a composting facility is governed by the Department of Ecology and they require that stringent standards must be met. Mr. Black concurred and added that the leachate and site runoff from the development must also be complied with, per Skagit County Code 14.32, which was conditioned within the MDNS. Commissioner Anderson asked if the property in question is part of the Port District, which is zoned Commercial/Industrial. Again, Mr. Black indicated that Heavy Industrial is the current designation of the site.

Mr. Black said Skagit County Code 14.32 was a condition of the SEPA threshold determination. Engineers in the Skagit County Public Works Department have reviewed the project and the proposal and determined that the project can mitigate any proposed, adverse, significant impacts, and the mechanism the County currently has in place is the Drainage Ordinance.

Mr. Black indicated that in speaking with Chuck Bennett of Dike District 12, there were no specific concerns. He also stated that the Mann's have been a party of record from day one and have received every notification and have been kept informed throughout the process.

Mr. Pederson said Skagit County Code 14.12.110(5)(c) states "The Applicant's proposed mitigation measures must be in writing and must be specific." For example, "Proposals to control noise or prevent stormwater runoff are inadequate, whereas proposals to muffle machinery or to construct a 200-foot stormwater retention pond are adequate." Mr. Pederson said the MDNS conditions are general, not specific and County Code requires specific responses.

Mr. Pederson also stated that Skagit County Code 14.32.060(5)(f) states "Controlling offsite properties and waterways downstream from development sites shall be protected from erosion due to increases in the volume, velocity, and peak flow rate of stormwater runoff from the development site by the implementation of appropriate BMPs (Best Management Practices) to minimize adverse downstream impacts." Mr. Pederson said he feels this has not been done and there is no indication in the MDNS to that effect. Similarly, the County Code states "Submittals for all proposed development projects shall include an analysis of downstream water quantity impacts resulting from the project and shall provide for mitigation of these impacts. The analysis shall extend a minimum of ¼ of a mile downstream from the project. The existing or potential impacts to be evaluated and mitigated shall include, but not be limited to, excessive streambank erosion, flooding, surcharging of existing closed drainage conveyance facilities,

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and/or discharge to existing offsite runoff control facilities.” According to Mr. Pederson, this has not been done.

Don Anderson, Chief Civil Prosecutor, said he wanted to underscore, without belaboring the fact, that Mr. Pederson didn't appeal the MDNS. Mr. Pederson appealed the Special Use Permit, and the bulk of the comments he has made, at least during this rebuttal period, center on his dissatisfaction with the MDNS. In Mr. Anderson's legal opinion, Mr. Pederson doesn't have standing to address the SEPA threshold process since he didn't file an appeal of that process in a timely fashion. Mr. Anderson said Mr. Pederson appealed the issuance of the Special Use Permit, and he'll acknowledge that he had standing to make his comments and that he's not stated anything today that was beyond the position that he stated in the appeal in front of the Hearings Examiner Dufford.

Chairman Munks asked Commissioners Dahlstedt and Anderson to disregard any information that doesn't have to do with the Special Use permit.

Mr. Pederson said there are inequities involved in this process and concurrency has not been respected. He feels there is a difference of opinion between Mr. Don Anderson's view as to whether he has standing on the SEPA or not. Mr. Pederson said the regulatory policies in the Comprehensive Plan and the solid waste materials are in question, as well as the site development aspects. He added that the building permit has a lease option, which was to be exercised by April 1, 2005, unless extended, and there is no record of it being extended. Mr. Pederson asked the Commissioners to honor their responsibilities as public officials and do things in the right manner.

Commissioner Anderson said the issue in front of the Board is the fact that a composting facility was applied for, which is allowable under the Solid Waste Management Plan.

Norm Wietting, applicant, 13227 Southeast 54<sup>th</sup> Place, Bellevue, said on May 6, 2004, he submitted an application for a land use permit, not a building permit, for a solid waste composting and recycling facility. Nearly a year has been spent in the review process. In February, the Hearing Examiner issued a decision to grant the Special Use permit and deny the SEPA appeal. Mr. Wietting said Mr. Pederson appealed this decision and would lead one to believe that he thinks this project is considered in a vacuum. This is quite to the contrary as the site is located in an industrial park in a Heavy Industrial zone and has been created over many years through thorough reviews on all environmental issues. These review processes include extensive SEPA analysis and conditions to assure that they not only meet the County code and regulations but also other jurisdictions. The Bayview Heavy Industrial overlay zone specifically allows solid waste facilities. Stormwater and transportation issues raised by Mr. Pederson were studied extensively by the Port of Skagit in the development of their Master Plan and, specifically, in the binding site plan for the Bayview Business and Industrial Park Division 7, Phase 2.

Mr. Wietting said Mr. Pederson did not appeal that SEPA decision. That's where the stormwater issues were actually resolved for this area. Mr. Wietting said their SEPA analysis showed that the project fell well within the assumptions of the Port's SEPA review, including an EIS that they did on the Master Plan. Mr. Wietting said Mr. Pederson also seems to believe that the Port of Skagit County does not own the Bayview Industrial Park or that they have not authorized the application. As required, Mr. Wietting said their own application includes a signed authorization from the Port, the deed showing the ownership of the property to the Port, and an option to lease the property, which has been extended. Further, Mr. Wietting states that any FAA or state review of aviation issues is being dealt with between Cimarron and the Port.

Mr. Wietting also stated that the solid waste issues regarding the project – a composting and recycling facility – are also not being considered in a vacuum, as Mr. Pederson claims in his appeal. The current Solid Waste Management Plan contains a description of mixed waste processing with composting in Section 6.4.3.1 and a recommendation that says the County should facilitate the establishment of one or more composting facilities. The recommendation also states that the private sector should be involved as much as possible. This proposal clearly meets the intent of the current Solid Waste Management Plan. While the proposed Plan update has not been officially adopted, Mr. Wietting said it also includes a

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recommendation to allow MSW composting and mixed waste processing, which was approved unanimously by the current Solid Waste Advisory Committee.

Mr. Wietting said he also wanted to clarify the issue of Rosemary Mann. He said he contacted Ms. Mann before the permitting process started and tried to meet with her. She didn't have time to meet then and she has refused to meet ever since. Mr. Wietting said his company has provided specific responses to the issues raised by Mr. Pederson for the record, in writing, and are available to discuss any of these issues should the Board desire. He asked the Commissioners to deny the appeal filed by Mr. Pederson.

Rosemary Mann, the daughter of the property owner Rosemary Mann, said they live at 12734 Farm-to-Market Road. She said the proposed Cimarron transfer station is to be located directly across from their home. In permit #PL04-0176, Mr. Wietting states on Page 24 that there are no sensitive receptors such as dwelling units in the area. She said this raises concerns as to whether or not an adequate investigation has actually been completed. Ms. Mann also stated that the permit states on Page 4 that all vehicles will enter and exit at the same location, which is again directly across from their home. Large waste-hauling trucks will make about twenty round-trips a day. Additional cars, pickups, and trucks with trailers will add to the constant increase in traffic congestion.

Ms. Mann said the safety of their drinking water and well is a major concern as they are downslope from the project. She said no one has ever contacted them about what was happening. They found it out accidentally through the newspaper. Ms. Mann said they are concerned about water runoff or possible contamination. There are culverts that bring water onto their property, which is already impacted by inadequate drainage. They are also concerned about metallic contaminants being flushed onto their land and into their well. On Page 10 the permit states "The composting building has a ventilation system to remove odors." However, Ms. Mann states that on Page 24, the permit says "Only if odors become a problem will remedial measures be taken, such as installing the ventilation system, bio-filter or a perimeter odor system."

Ms. Mann said they feel that their values and living conditions will be impacted. Also, the peace and enjoyment of their home will definitely be compromised.

Chairman Munks asked Mr. Black if he contacted the Mann's and Mr. Black replied that he had. He said the Mann's were sent the first notice, which was the Notice of Application, as they are a party which is located within 300 feet. Mr. Black said they were actually one of the first people to send in a comment letter and from that point on became a party of record.

Jeff Smith said he realized that Carol Hayes was listed as a party of record and she was unable to be here; however, she sent Mr. Smith an email to deliver to the Commissioners. Chairman Munks asked Mr. Smith to present it to Mr. Don Anderson for the record.

Don Anderson stated that the comments submitted by Ms. Hayes are the same as the previous remarks she made, with the exception of her remark that an EIS should have been required, although she never appealed the MDNS determination or the threshold SEPA determination.

Commissioner Anderson asked who Ms. Hayes was and Mr. Smith responded that she is a neighboring property owner and a party of record.

Commissioner Dahlstedt motioned to deliberate and bring forth a decision in regard to this matter on Monday, May 9, 2005, at 2:30 p.m. Commissioner Anderson seconded the motion, which passed unanimously.

**CLOSED RECORD APPEAL NO. PL05-0145, SUBMITTED BY NORM WIETTING OF  
CIMARRON TRANSFER AND RECYCLING COMPANY IN RESPONSE TO THE HEARING  
EXAMINER'S DECISION ON PL04-0176.**

Brandon Black, Senior Planner, stated that appeal #PL05-014 was filed by Norm Wietting of the Hearing Examiner's Decision on the Special Use Permit Conditions #PL04-0176. The appeal states that "Condition #8 mandates that all residual waste generated at this facility shall be brought to the County Transfer Station for Disposal. The tip fee charged for non-municipal waste at the time of disposal shall apply." This condition would require fully loaded, intermodal containers with compacted residual waste to be dumped onto the County Transfer Station tipping floor, and moved by crane to the County compactor, and then loaded once more into containers for shipment.

The appellant further indicated that "The condition mandates that the Applicant pay the County a charge of \$83 per ton (presently) for the unloading, re-compacting, and reloading. Penalizing the recycler by requiring it to pay for senseless re-handling of solid waste by a County department is contrary to the goal expressed in state law, County code, and County policy of aiding private recyclers. The County should reward recycling, not penalize recyclers."

Mr. Black said the appellant indicated that the sought after decision is "Deletion or modification of Condition #8." Furthermore, the appellant indicates that the condition requiring the applicant to pay for wasted activity at the County Transfer Station is unfair and violates the laws, ordinances and policies governing solid waste issues and appropriate governmental conduct. The appellant also indicates that Condition #9 of the SEPA MDNS already requires Cimarron to have a contract with the County that will specify the location, procedure and compensation for delivery of residual waste, eliminating the need for unreasonable unloading and reloading.

Mr. Black said the Department notes that the proposal has been reviewed as a recycling and composting facility only, not for a Transfer Station facility. Condition #1 in the Hearing Examiner's written order states that "The facility shall be installed and operated as described in the application materials, except as the same may be modified by these conditions." Recycling and composting facilities are allowed with a Special Use Permit in the Bayview Ridge Heavy Industrial (BR-HI) designated area provided they are in compliance with the current Solid Waste Management Plan (SWMP). If a transfer station is desired in the future, a new special use permit will be required for that use.

The Department further notes that the appellant is requesting deletion or modification of a condition (Condition #8) from the Hearing Examiner's Decision, which states that "all residual waste generated at this facility shall be brought to the County Transfer Station for Disposal. The tip fee charged for non-municipal waste at the time of disposal shall apply." The Department notes that this condition is something that can be worked out with the Department of Public Works during the contract negotiation outlined within the Hearing Examiner's Finding #20.

Mr. Black said that based on the notice of appeal filed, the Planning and Development Services Department recommends to the Board that they uphold the Hearing Examiner's Decision and deny Appeal #PL05-0145.

Commissioner Anderson asked where Condition #8 came from. Mr. Black said Condition #8 was added by the County in the Departmental Findings for the Hearing Examiner, as indicated by the Public Works Department. It was felt that the clause would help the County facilitate coordination and cooperation with the contractor at a later date.

Commissioner Anderson asked why it must stipulate that the residual waste must be redumped and rehandled. Mr. Black said it doesn't specifically state that the waste has to be redumped; however, the County wants control over how the waste comes back to them so that the Cimarron facility doesn't become a defacto transfer station. Mr. Black indicated that if that condition were deleted then the County and the cities would have less control over some of the language of the contract when negotiating how that

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operation progresses so as not to be outlined as a transfer station. Under the current Solid Waste Management Plan there can only be one transfer station.

Garl Long stated that he is here representing Cimarron for this appeal. Mr. Long said the Solid Waste Management Plan that is now in effect (1994), which the Hearing Examiner found the applicant to be vested in, states that the County should facilitate the establishment of one or more permitted composting facilities in Skagit County, with the priority on a market-driven approach. He feels that statement summarizes the question in this appeal. There is a request from the Public Works Department to do something other than apply a market-driven approach to this. Condition #8 also ignores the fact that all waste handling in Skagit County needs to be coordinated within the Solid Waste Management Plan. That plan changes over time and is presently being redrafted. Condition #8 would bind the applicant to delivering the waste to the Skagit County Transfer Station for disposal and the only disposal method that exists there now is for waste to be tipped onto the floor and reprocessed again. What the Board decides to do with that facility may change over time. If it does, there is nothing that removes this special use provision. Mr. Long said this clause is a condition of the permit and can't be ignored later in contract negotiations. Whether it would be best to deliver it as Condition #8 sets forth or whether it is better to deliver it in some other fashion is something that can be, should be, and needs to be worked out in contract negotiations.

Mr. Long said legally speaking; the condition needs to be removed because it is not factually supported. One of the requirements for any condition that comes before the Board on appeal is that the condition must be met. Logically it makes no sense as the County should be free to contract with Cimarron or with other players in solid waste disposal to arrive at the best system for the citizens and not bound by a contract condition. The waste is not friendly to the environment if it has to be loaded and unloaded repeatedly. He believes Condition #8 should be removed.

Mr. Black said he didn't say anything about ignoring the condition during contract negotiations. It is something that would need to be worked out with Public Works to determine how that condition would be met. Mr. Black said the current Solid Waste Plan provides for only one transfer station. The residual material needs to be sent to a County designated site so that we don't end up with a defacto transfer station.

Commissioner Anderson said the Commissioners have repeatedly said that residual products must be shipped out through Rabanco.

Chairman Munks said the County is dealing strictly with a composting and recycling facility land use permit application. Within that there will be residual waste that cannot be recycled or composted. The waste will not be shipped out of the County independent of a County review, so the condition is to take it to our present site. Because that is a requirement, Chairman Munks asked if the material should be brought to the transfer site and dumped on the tip floor and then be reloaded into our own containers or did Public Works want Cimarron to bring it to the transfer site in a container and then charge them what we would charge for our entire process of loading into our own containers.

Mr. Black said this is the part that gives us the teeth to sit down and negotiate. He said we would still have control over the material by having it come to our site; however, that is organized in the contract and he doesn't anticipate that it would be repackaged or reloaded. Mr. Black thinks that since Cimarron has already done the work it would be a huge reduction in fees for what that work was that was already completed.

Mr. Long said if it is a permit condition, then you can't take that condition away by a contract. He believes this can easily be worked out in negotiations with the County but they don't want either parties to be bound by something that isn't workable. Mr. Long said they are trying to prevent putting a condition in the permit that should be a contract matter for negotiations between the parties.

Scott Thomas, City of Burlington, said there is general agreement as to where the materials need to be delivered to under the Rabanco contract. The City of Burlington's position is that the permit condition

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needs to be imposed in order to follow up with the contract provision. He finds it uncertain and highly questionable for the County to impose a contract condition if there is no permit condition imposed beforehand. Whether that entails dumping materials on the tipping floor or some other method, it would certainly be left to discuss during contract negotiations. The City doesn't think it makes sense to engage in wasteful behavior either, but they also note that the County is currently studying options to modernize that facility.

Mr. Thomas said he recalled at the hearing that Mayor Dillon of Sedro-Woolley testified as to what would happen if rates increased and it was her opinion that waste would most likely then be dumped throughout the County. Additional material should be delivered to the County Transfer Station. Mr. Thomas said it is an option the Commissioners have to add that finding to the permit. If it doesn't happen then, it would be appropriate to remand it back to the Hearing Examiner for a finding in that regard.

Pat Hayden, City of Sedro-Woolley, said the City appealed the MDNS and also participated in the SUP hearing. The City of Sedro-Woolley supports the Hearing Examiner's decision and asks the Board to deny the appeal of Mr. Wietting. The City supports the current function of the transfer station as the primary facility in Skagit County for this service. It is their concern that if this facility is allowed to take residual waste other than to the County Transfer Station then it would become a defacto transfer station in its own right, without going through the proper permit procedure and environmental review. If there is no minimum amount of waste that needs to be recycled or composted and all remaining waste can be taken to a third party, then it is a defacto transfer station performing the same functions of collecting and transporting solid waste outside the economy of the Skagit County Transfer Station.

Mr. Hayden said their goal is to preserve the system as it existed during the term of the contract that the cities and County now have. The County responded to their argument by proposing Condition #8. There is nothing in the condition that discusses how it is to be packaged or that the non-municipal fee cannot be changed, nor does it specify how it is to be loaded or unloaded. It simply states that it is to be brought to the Transfer Station. The scare tactics proposed by the applicant that he has to package it twice and unload it is not supported in the record. Condition #23 states "The Planning & Permit Center noted that the proposal was reviewed as a recycling and composting facility only and not as a transfer station." They also stated that "If a transfer station on the site was requested, a new special permit would be required." Mr. Hayden said the affect of deleting this condition as a whole is going to permit this facility to be operated as a transfer station for all practical purposes if the residual waste does not have to go to the Skagit County Transfer Station.

According to Mr. Hayden, the City supported this position and accepts the decision of the Hearing Examiner so long as this condition remains. The details of what the fee will be and how the waste is to be handled can be worked out in contract negotiations. The thought that it can be worked out in contract negotiations without the requirement that waste be taken to the County landfill itself, is not a factual statement. He also noted that the City of Sedro-Woolley tried to introduce additional evidence in this case but was not given that opportunity. The applicant states that there is nothing in the record supporting this finding. Mr. Hayden said the City attempted to call Mr. Sorenson to testify at the hearing and the County refused to produce him as a witness.

Mr. Hayden said if the Board was to find that the record doesn't contain enough information to deal with these issues, is because Mr. Sorenson's testimony was not included in the record. It would then be appropriate to remand this matter back to the Hearing Examiner for additional testimony on the affect of including or excluding Condition #8. At that time the County should permit Mr. Sorenson to testify. If this condition is deleted, it means you are looking at another transfer station.

Mr. Hayden said the contract between the cities and the County with regard to the price of waste states that the increase in fee will be based only on a cost of living increase barring unforeseen conditions. All parties testifying in this matter, both Mr. Wietting and the cities, have agreed that this facility will affect the County facility to some extent. The actual cost is unknown and the proposed response of the County is unknown as this time without Mr. Sorenson's testimony. If the cost of operating the County facility

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increases because of this new facility, then that is a cost that the County itself would have to bare and would not be born by the cities under the terms of the contract that is of record.

Commissioner Anderson remarked Mr. Hayden said their sole involvement is to preserve the system as it currently exists, so he takes that to mean that the City of Sedro-Woolley is opposed to any recycling. Mr. Hayden said that wasn't true. The purpose of the City is to preserve the County Transfer Station as it exists. They have no objection to recycling facilities or composting facilities as long as the residual garbage is brought to the County Transfer Station at the non-municipal rate. That is the part of the system that they wish to preserve.

Commissioner Anderson said he is struggling to figure out how to preserve it as it now exists if we're not going to compost that material.

Mr. Hayden said Sedro-Woolley currently participates in recycling through Waste Management and they have their own composting facility as well as a yard waste facility.

Mr. Long said what really is happening here is there has been an attempt to set county policy through permit conditions, which is impractical. There is no record to support Condition #8 in the City of Sedro-Woolley, the City of Burlington or the County's presentation. Mr. Long said it appears as if someone in Public Works simply thought this would be a good County policy and suggested it become a permit condition. The Hearing Examiner adopted it without a factual basis. Mr. Long also said there is much talk about whether this will be a defacto transfer station or not. The permit is clear that if there is going to be a transfer station or conversion to a transfer station, then there will have to be further review, which would be appropriate. The applicant is here asking to recycle, not transfer. The County contract for bringing waste to the present facility assures the cities that they will get that tipping fee even if the waste system is changed over time. There is no reason for Condition #8 unless someone has a vested interest in trying to keep an operation in place which has become inefficient.

Commissioner Dahlstedt motioned to deliberate and bring forth a decision in regard to this matter on Monday, May 9, 2005, at 3:00 p.m. Commissioner Anderson seconded the motion, which passed unanimously.

**ADJOURNMENT.**

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

**BOARD OF COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

\_\_\_\_\_  
Don Munks, Chairman

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Kenneth A. Dahlstedt, Commissioner

\_\_\_\_\_  
Ted W. Anderson, Commissioner

ATTEST:

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