

May 10, 2005

- 8:00 a.m. – 10:00 a.m. Closed Record Appeals, PL05-0159 and PL05-0160 of Hearing Examiner Special Use Permit Modification (PL04-0167), to allow the Bow Hill Mill to Extend Operating Hours Weekdays From 4:30 p.m. to 6:30 p.m. for the Purposes of Maintenance and Repair
- *T 10:00 a.m. – 11:00 a.m. Planning and Development Services – Gary Christensen, Director
1. State of the Department – Semi-Annual Review – Part 2, Review of Work Program
 2. Miscellaneous
- *T 11:00 a.m. – 11:15 a.m. Public Hearing – To Consider Testimony Regarding an Amendment to the 2005 Budget for the Prosecuting Attorney, Fund #001
- *T 11:15 a.m. – 11:30 a.m. Discussion/Possible Action – Contract Amendment for Mentor Law Group

The Skagit County Board of Commissioners met in regular session on Tuesday, May 10, 2005, with Commissioners Don Munks, Kenneth A. Dahlstedt and Ted W. Anderson present.

CLOSED RECORD APPEALS, PL05-0159 AND PL05-0160 OF HEARING EXAMINER SPECIAL USE PERMIT MODIFICATION (PL04-0167), TO ALLOW THE BOW HILL MILL TO EXTEND OPERATING HOURS WEEKDAYS FROM 4:30 P.M. TO 6:30 P.M. FOR THE PURPOSES OF MAINTENANCE AND REPAIR.

Bill Vaux, Port Gardner Timber Company, stated that because the appellants in this case have legal counsel present, he would like to ask for a continuance on this matter until his company can apprise their legal counsel as to what is transpiring and have them present. Mr. Vaux said he was under the impression that this was a closed record hearing and therefore, has not bothered to consult their legal counsel. He feels that if the appellants have their attorney present, then Port Gardner Timber Company should have representation as well.

Colonel Betz said he would leave, assuming that the hearing could proceed. Mr. Vaux was agreeable to resuming the hearing.

Oscar Graham, Deputy Director of the Department of Planning and Development Services, outlined the closed record appeals submitted by Eric Stark (PL05-0159) and James Bucknell (PL05-0160). He said the property is located at 16812 Colony Road, Bow, Washington.

A Notice of Violation was issued to the Bow Hill Mill on March 12, 2004, for operating outside of approved operating hours. The violation indicated that the Mill had been operating from 6:30 a.m. to 6:30 p.m. and approximately a half day on Saturday.

On July 9, 2004, the applicant applied for a Special Use Permit Modification (PL04-0167) to a previously approved Special Use Permit (SPU92-006), for the expansion of Mill operating hours from 4:30 p.m. to 6:30 p.m., Monday through Friday. The expansion of hours was requested to make repairs, do routine maintenance, and conduct general

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clean-up. The application was determined to be complete on October 7, 2004. A Notice of Development Application was posted on the subject property, mailed to the adjacent property owners within 300 feet of the subject property, and published in a newspaper of general circulation on October 14, 2004, as required by Section 14.06.150 of the Skagit County Code.

Mr. Graham said the application has been reviewed in accordance with the State Environmental Policy Act (SEPA) guidelines (WAC 197011 and RCW 43.21C). A Determination of Non-Significance (DNS) was issued on March 5, 1993, for the original Special Use Permit that approved the Mill operation. A SEPA Addendum was issued on October 28, 2002, for the purpose of reconstruction and configuration of the existing Bow Hill Mill operation that was destroyed by fire on June 8, 2002. A SEPA Addendum was issued on October 7, 2004, describing the request for the change in operating hours (allow additional operating hours from 4:30 p.m. to 6:30 p.m. weekdays) of the mill for the purpose of maintenance and repair.

The original Mill operation proposal is described in detail in a staff report (SPU92-006). The Hearing Examiner approved this proposal in a decision dated May 17, 1993. The decision was not appealed. After the fire, the owner obtained a building permit (BP02-1084) to reconstruct and configure the Mill operation.

The zoning of the Mill site at the time of original permit approval was zoned Rural. The use at that time was permitted by the approved Special Use Permit. The property is now zoned Rural Reserve and the use is not permitted outright or by way of a Special Use Permit. The Mill continues to operate today as an existing non-conforming use. The request to expand operating hours with the Special Use Permit Modification for maintenance and repair purposes is not an expansion of the non-conforming use, but a clarification of that use. The majority of the surrounding area is currently rural and residential in character.

On November 17, 2004, the Hearing Examiner, pro tem, conducted a public hearing on the Special Use Permit Modification (PLO4-0167), of which the Hearing Examiner approved on January 5, 2005, subject to the following conditions:

1. The applicant shall comply with the conditions contained in the Hearing Examiner's decision of May 17, 1993, for the original Special Use Permit (SPU92-006), with the exception that the hours permitted for maintenance and repair of the Mill will be extended from 4:30 p.m. to 6:30 p.m. Monday through Friday.
2. The Mill operation, including maintenance and repair activities must comply with Chapter 173-60 WAC, "Maximum Environmental Noise Levels" and SCC 14.16.840, "Performance Standards." The maximum allowable noise levels during the daytime hours between the hours of 7:00 a.m. and 10:00 p.m. must not exceed 60 decibels at adjacent properties.
3. The applicant shall continue to investigate and implement reasonable noise mitigation measures to lessen noise impacts on surrounding properties.
4. The applicant shall comply with all applicable provisions of the Skagit County Code.
5. Failure to comply with any condition of approval may result in permit revocation.

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Mr. Graham said that on January 12, 2005, the Hearing Examiner received a timely Request for Reconsideration from James R. Bucknell and Eric Stark. On January 13, 2005, the Hearing Examiner received a timely Request for Reconsideration by Jan Gordon. On January 18, 2005, the Hearing Examiner received a timely Request for Reconsideration by John and Glenda Everett. On March 4, 2005, each of the above noted Requests for Reconsideration were denied. On March 17, 2005, Eric Stark and Jim Bucknell-Judy Clifford filed separate closed record appeals to the Board of County Commissioners.

Eric Stark, 16331 Colony Road, Bow, said he lives about ¼ mile from Bow Hill Mill. Before the Mill burned and an entirely new and expanded Mill was built, they never heard it from their property. He said the Mill paid a fair price for his cedar logs and he has friends and patients who work there. Mr. Stark feels it is an important part of our economic community and none of their neighbors want it to be shut down. Although the Mill was supposed to be prohibited from expanding, Mr. Stark said he feels they certainly have a right to exist on Bow Hill.

The Mill obtained their original Special Use Permit in 1993. It was for a mill with a staff of six employees and it could not be seen or heard from Colony Road. After burning in 2002, the Mill rebuilt and even though it is prohibited by Skagit County Code, they expanded. They received a permit to rebuild without a septic system or approved water supply. The issue of non-conforming uses, as stated in County Code, was disregarded. The value of the building increased from \$18,000 to over \$634,000 after the expansion. According to Puget Sound Energy, power consumption since the rebuild has increased 10-fold.

After starting production, the new Mill immediately drew a chorus of complaints from neighbors. By March 2003, after minimal progress on noise reduction, members of his neighborhood turned in twenty written complaints to the Planning and Permit Center. He said it was those complaints that finally led the County to cite the Mill for operating outside of their permitted hours. The Mill's response was not to comply with their Special Use Permit, but to try to change it to meet their needs.

According to Mr. Stark, Bill Vaux became involved in the spring of 2004. He attended a meeting at the Stark house on May 5, 2004, with members of the neighborhood and a professional acoustic engineer, Michael Yantis. At that meeting Mr. Vaux acknowledged that noise from the new Mill was a problem and said they wanted to be "good neighbors." It was mutually agreed upon that they would hire Mr. Yantis to make recommendations to reduce the Mill's acoustic impact. Mr. Stark said Mr. Vaux never did hire Mr. Yantis or any acoustic engineer for that matter, and most importantly, he never notified his neighbors of his new plan.

Mr. Stark said at the time of the hearing on November 17, 2004, Bow Hill Mill's neighbors were misled by Mr. Vaux about his commitment to noise abatement and therefore, arrived at the hearing unprepared to argue against the expansion of hours. Mr. Stark said if they all had known of Mr. Vaux's change of heart and had arrived at the hearing ready to present what was actually a very straightforward case against further expansion, there would have been a very different outcome. What makes this whole thing truly frustrating is that the neighbors should have been able to sit at the hearing quietly with their hands folded in their laps and still expect the Hearing Examiner to follow Skagit County Code and deny the expansion.

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Commissioner Anderson said Mr. Stark keeps referencing existing non-conforming use and is dove-tailing that and the Special Use Permit. He said Mr. Stark seems to be melding the two together; however, they are separate processes that are clearly defined and entirely different.

Mr. Stark said what he is discussing is the expansion of hours and modification of the Special Use Permit. He believes that all along it has been agreed to by the County that this is a non-conforming use.

Commissioner Anderson said a Special Use Permit by definition allows you to use property other than what it has been zoned under special consideration. A pre-existing, non-forming use is something that was there prior to 1997 when the Comprehensive Plan was adopted. He said you can still have a Special Use Permit, which could be construed as a pre-existing, non-conforming use.

Mr. Graham clarified that point by saying that the Mill was originally authorized under a Special Use Permit in 1993. With the subsequent rezoning of the property, the option for either outright use of the Mill or a Special Use Permit that would authorize the use of the Mill was eliminated. So, under current zoning, Mr. Graham said it is not allowed either outright or as a special use and today it would be considered a pre-existing, non-conforming use.

Mr. Stark showed a map of his neighborhood. He highlighted those properties from which the Planning Department received letters regarding the proposed expansion of hours. Without exception, every letter received by the County was in opposition to this expansion. Those that cared enough to comment lived in a wedge to the North and West of the Mill, which is where the configuration of the new Mill focuses the noise. Although the Planning Department received no letters of support of the expansion, Mr. Vaux did obtain a few letters well after the deadline for public comment had closed. Mr. Stark said three of the eight letters Mr. Vaux presented at the hearing on November 17, 2004, were not from his neighborhood and did not fit onto the map.

Mr. Stark also noted on the map where Pamela Kutcher recorded for her survey, which supposedly documents noise problems. Ms. Kutcher was an audiologist hired by Mr. Vaux to document that there was not a noise problem. However, Mr. Stark said he feels she didn't attempt to document the problem, she avoided the problem and collected limited data to support that there wasn't a noise problem.

Mr. Stark said depending on the season, they can hear the new Mill from inside their home from 7:00 a.m. until 4:30 p.m. He said it's not how long you have lived on Bow Hill, but where you live and whether or not you can hear the Mill that dictates how one feels about this expansion.

Mr. Stark provided a DVD of the sound recorded at his house on November 17, 2004, the morning of the hearing. He said it is a fairly normal level of sound during the winter months. It was made by recording with a video camera from his back porch at 6:45 a.m. to demonstrate what his neighborhood once sounded like. He then recorded the sound at 7:30 a.m. while the Mill was operating. Mr. Stark asked how Mr. Vaux or Mr. Dorsey would feel if their neighborhood sounded like that. He asked which of the Commissioners would like to have a nearby mill illegally expand and suddenly face this level of noise six days per week. And if they did have to live with noise like that, how would they feel about the expansion of noise into their evening hours.

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Mr. Stark said he is aggrieved at himself for taking Mr. Vaux at his word and still believing in a handshake between neighbors. He is aggrieved because Bow Hill Mill appears to be exempt from standard permitting practices, from the limitations of their Special Use Permit, and even from Skagit County Code. He is aggrieved because it took over a year, twenty written complaints, and repeated telephone calls and verbal complaints to finally get the Mill cited for operating outside of their permitted hours. He is aggrieved because the Mill's response to the citation was not to comply with the restrictions of their Special Use Permit, but to try and change it. He is aggrieved because the Hearing Examiner ignored the letter and intent of County Code and issued what was apparently a predetermined decision in favor of industrial growth. He is aggrieved because even after their mistakes are pointed out to staff at the Planning and Permit Center instead of reversing the erroneous original recommendation to approve expansion of hours, the best they could do was to defend their position with fading enthusiasm.

Mr. Stark said that in his business, the right thing to do after making a mistake is to look the patient straight in the eye, take responsibility, apologize, and promise to help in whatever way possible. He said he is also aggrieved because his family and his neighbors have had their neighborhood invaded by the industrial noise of the Mill at breakfast, when waiting for the school bus, while working in their yards, through the afternoon, and now maybe into the evening hours.

Mr. Stark said he respectfully requests that the Commissioners demonstrate their autonomy and reverse the Hearing Examiner's erroneous decision. Bow Hill Mill is an important part of our economic community and he and his neighbors are not asking the Board to take anything away from them. They are asking the Board to follow the letter and intent of the Skagit County Code, uphold the limitations of the Mill's Special Use Permit, and stop further expansion into what should be the neighborhood's protected evening hours.

Jim Bucknell, 168909 Colony Road, Bow, said he lives immediately east of the Mill. Mr. Bucknell indicated that he and his wife grew up in the Skagit Valley, graduated from Concrete High School, and call this valley their home. He asked for the Commissioners' help in preserving the home and quality of life that he and his wife have built on Bow Hill.

Mr. Bucknell said they are not interested in trying to get rid of the Mill, as it was there before they moved in. They actually listened to the Mill and checked on its Special Use Permit before buying their property. He feels the Mill has a right to be where they are and continue to operate; however, that operation has to be within the rules that apply to the Mill, just the same as whatever he does on his property needs to comply with the rules. Mr. Bucknell said he and his wife have made a number of improvements to their property. Each activity was done with a building permit. When they built an addition to their home, they were required to confirm that their existing septic system was adequate. No such requirement was placed on the Mill when it was rebuilt or when they applied for the expansion of hours, even though the application was reviewed by the Skagit County Health Department.

Mr. Bucknell said a meeting was held a few weeks ago to discuss the Department of Ecology's instream flow rules for the Skagit River. He said each Commissioner spoke about why they had run for office and what the job meant to them. Each Commissioner expressed the theme that they were dedicated to protecting the rights of their constituents and protecting them from harm. Mr. Bucknell said he is here today to ask that the Commissioners do the same for himself, his wife, and their neighbors.

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Mr. Bucknell said the Bow Hill Mill is a non-conforming use and as such, Skagit County Ordinance (SCC) 14.16.880 applies. He asked the Board to base their decision on the application of that Ordinance because that is the rule that applies to this use and this parcel. Mr. Bucknell said if he lived next to an industrially zoned parcel and the Mill wanted to expand its hours, he wouldn't be here because different rules would apply.

Mr. Bucknell said there are three verbs the Board needs to remember: encourage, expand and alter. Skagit County Code (SCC) 14.16.880(1) says, "It is the intent of this Ordinance: (a) to permit these con-conformities to continue until they are removed, but not to encourage their survival..." SCC 14.16.880(1)(c) states: "That non-conforming uses or structures not allowed to expand, be altered or reconstructed, except as otherwise outlined in the Section. SCC 14.16.880(2)(a) allows for expansion of a non-conforming use within an existing building provided that "No expansion of the structure or parking requirements occurs."

The Skagit County Code discourages non-conforming uses in order to carry out the requirements of State law. The Supreme Court said: "The ultimate purpose of a zoning Ordinance is to confine certain classes of buildings and uses to certain localities. The continued existence of those which are non-conforming is inconsistent with that object, and it is contemplated that conditions should be reduced to conformity as completely and as speedily as possible with due regard to the special interests of those concerned and where suppression is not feasible without working substantial injustice, that there shall be accomplished 'the greatest possible amelioration of the offending use, which justice to that use permits'. State ex rel. Miller v. Cain 40 Wash.2d 216 221 242 P.2d 505

Mr. Bucknell said that was in 1952 – 53 years ago. He said he's not an attorney, but he thinks they didn't envision rebuilding a non-conforming saw mill, making it bigger, and then allowing it to operate more hours as the best way to implement this decision. So, the question becomes "Does the County intend to ignore both their own Ordinance and the State Supreme Court or not?"

Mr. Bucknell said he wants to make it clear that every activity of the Mill is non-conforming. Not because everything they do is wrong, because it isn't. It is a non-conforming use because all of its operations are inconsistent with the current zoning. Therefore, any expansion in those activities in terms of intensity or duration must, by definition, be an expansion of that non-conformity. It must also, by definition, be an alteration of the non-conformity. Neither expansion nor alteration is allowed by the Code and any such expansion or alteration is illegal.

Mr. Bucknell said the Hearing Examiner stated that the expansion of hours is not an expansion of the non-conformity. He did not address alteration. He appears to be assigning new meanings to words we have all used in our daily lives. If the expansion of hours in which the Mill can perform non-conforming activities isn't an expansion or an alteration of the non-conformity, then what is it? Mr. Bucknell said that before the Commissioners approve this request, they should know how to explain their decision. Mr. Graham uses the phrase "expansion of hours" in his presentation. What is the answer to this question? Mr. Bucknell also asked how can the approval of a request to expand the hours of a non-conforming use not be an expansion of that use once it is approved.

Mr. Bucknell provided an example that he said might help the Commissioners to appreciate how he is feeling about this issue. He said if the Board required all County employees to work a 50-hour week, some of them would ask why you are expanding or

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altering their hours. If the Board replied that they were neither expanding nor altering their hours, how would you expect them to react? What would you call it?

Mr. Bucknell said their attorney added that: "It is no explanation that for the additional two hours, the Mill will only be doing clean-up. The Mill operators say that they can't do clean-up while the Mill is operating. Currently, all operations must stop by 4:30. Even if it devotes two hours to clean-up per day, the additional two hours would actually allow the Mill to expand its production work by that amount of time. That would be a clear and unlawful expansion of its use."

The expansion of hours would allow the Mill to make the louder noise associated with production more hours of the day. The result would be that the Mill's activities will be more intrusive on the surrounding community. That is an expansion of the non-conformity.

Mr. Bucknell said Mr. Graham was quoted in the Skagit Valley Herald as saying that "There has been no expansion, only the placement of pre-fire operations indoors." Based on the aerial photograph he provided, Mr. Bucknell doesn't believe that is true. He reminded the Board that the expansion that is forbidden in the non-conforming use code refers to both structures and uses. While he and his neighbors believe his statement is false, it doesn't matter because they have records of vastly increased total value and vastly increased power use. Mr. Vaux has stated several times that they increased production to make the new, bigger Mill economical. All of these are illegal because they constitute expansion and/or alteration of the non-conforming use.

Although the overall noise level of the new Mill compared to the old Mill is in dispute, Mr. Bucknell said there is no doubt that the Mill's production activities are louder than their clean-up, maintenance, and repair activities. This is true for the old Mill and the new Mill. It is simply louder when it's turned on than when it's turned off. Allowing production more hours of the day will increase the non-conformity and is illegal.

Mr. Bucknell said Mr. Furlong justifies several of his decisions by discussing the hardship it would cause the Mill if he didn't rule in their favor. The Ordinance clearly states that the County cannot take any action that encourages a non-conforming use, yet the Hearing Examiner justifies his decision by arguing that it is necessary to encourage the continuation of the Mill. Mr. Bucknell said he contends that this is a direct violation of the Ordinance. He stated that at one point, Mr. Furlong says that it would be a hardship on the Mill if they had to "cut back their operating hours to fit their work into the current schedule." He asked the Board to think about that statement carefully. Mr. Furlong is saying that it would be a hardship for the Mill if they had to comply with the permit that was in effect when they decided to rebuild the Mill. If the Mill made a poor business decision in deciding to rebuild and now finds they can't survive without two additional hours per day, Mr. Bucknell asked why it is the responsibility of the neighbors to absorb the impact when the Ordinance makes no allowance for such a consideration.

Mr. Bucknell said what is clear is that the Mill plainly knew of the limitations on its operations from both the Code and its Special Use Permit and still chose to invest several million dollars to rebuild and illegally expand the Mill. In doing so, they sent a clear message to the community and the County that speaks far louder than their claims about wanting to work with the neighbors. Mr. Bucknell also asked the Commissioners if requiring the Mill to comply with their existing Special Use Permit is a cutback, then why isn't allowing two additional hours a day an expansion.

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Because the County failed to effectively regulate the rebuilding of the Mill, Mr. Bucknell said they are now faced with a request for additional hours and, once again, the neighbors are being required to subsidize the operation of the Bow Hill Mill by living with increased noise levels, which if the expansion of hours is approved, will be allowed over more hours of the day, thus increasing the degree of non-conformity of this use.

Mr. Bucknell said he and his neighbors are experiencing a significant decrease in their ability to enjoy their property and, very likely, in their property values, because the County has allowed an illegal expansion of this non-conforming use and is now proposing to allow them to operate and make intrusive noise two additional hours every week day. Smart money says they won't see a commensurate reduction in their property taxes and their quality of life is irreplaceable.

Mr. Bucknell reminded everyone that the Mill is the non-conforming use and the surrounding community is the conforming use. That's apparently not always clear because, based on past actions and the Hearing Examiner's decision to approve the expansion of hours, the community is being required to conform to the non-conforming use. He feels this is completely backwards from the intent of the Ordinance. Mr. Bucknell asked the Board to administer the laws of the County and to do so impartially as stated in their oaths of office. He said he had to address his septic tank issues and the Mill didn't. He added that he and Mr. Stark comply with the terms of their County permits and the Mill doesn't. Mr. Bucknell said Jan Gordon was told the plans for her addition didn't meet the County Code and she is not pursuing her addition. In a similar situation, the Mill elected to ignore the existing Code, ignore their Special Use Permit, and did what it wanted to do and the County let them.

Mr. Bucknell said Corinne Story of the Skagit County Health Department called him yesterday to tell him that, after several months of badgering by him, they have looked into the Mill's septic system and they will be required to seek a septic permit and construct a new system. He said that while that's good, he can only wonder why it didn't happen as part of the new building permit or the request for the expansion of hours, which is how it works for everyone else.

Mr. Bucknell said they believe only one decision is consistent with the existing law and they respectfully request that the Commissioners deny the requested extension of hours, citing the non-conforming use Ordinance and State law as the justification and require the Mill to operate within the terms of its existing Special Use Permit as required by the law. He added that this decision is just a small step by the County to demonstrate that they take their jobs seriously in terms of enforcing existing laws. This decision does nothing to alleviate the problems that have already been created by the Mill's decision to rebuild and expand the Mill. By denying the requested extension of hours, the County can send an important message to the Bow Hill Mill that says the County and State laws mean something and that the Mill does not have the right to negatively impact their neighbors in violation of existing law.

Mr. Bucknell said that at the same time, the Commissioners can also send an important message to the neighbors of the Mill and, for that matter, to all the citizens of Skagit County, especially to those living near or adjacent to other non-conforming uses. That message is that the Commissioners really do care about their property and their lives and they are truly here to administer the existing laws fairly and equitably.

Mr. Bucknell said that throughout this process, he has asked virtually every County staff person he has spoken to the following question: Given that the Mill is a non-conforming

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use, and given that the County has the non-conforming use Ordinance, is the Mill, as it currently exists and is currently operating, legal? He also asked for an explanation as to why his reasoning is flawed? Mr. Bucknell said if the Commissioners can provide him with an explanation that convinces him he is wrong, he would drop the appeal and go home and be quiet. No one has been able to do so and in fact, no one has said they think the Mill is legal.

Mr. Bucknell asked the Board to seriously consider the points he and Mr. Stark have made in their appeals. He realizes it is difficult to change the decision at this point in the process, but he said they urge the Board to do so because they believe it is the right thing to do because it is based on the laws the Board is sworn to uphold.

Mr. Vaux stated that he did agree during a meeting at Mr. Stark's house that he would hire Mr. Yantis; however, when Mr. Yantis sent him a contract to sign, it was found to be very offensive and; therefore, was not signed. It was decided at that point that the money spent with him could be better spent for noise abatement on the Mill. Mr. Stark claims that an unqualified lady was hired to take readings to conform and direct what they could do at the mill, which is not the case. Mr. Vaux said they hired a lady to take readings at the locations of those people who have testified and written letters of complaints to see if the Mill had exceeded the 60-decimal limit, which the Mill doesn't. He also said the bill for Mr. Yantis' presence at the meeting held at Mr. Stark's house was paid for. Mr. Vaux said he wondered why they didn't hire Mr. Yantis themselves, but perhaps it was because they didn't want to spend the money.

Mr. Vaux said the sad part about all of this is that there were no noise readings from the old Mill. One of the reasons they enclosed all the activities in the new Mill was because they thought they were cutting down the noise level. He also said we are supposed to believe that Mr. Stark's taped recording of the noise is authentic, yet Mr. Stark doesn't want to believe that the readings done by Ms. Kutcher are authentic. Mr. Vaux said the Mill needs the additional two hours and that's why they are being asked for. He said it has been said that the Mill employs 35 people, which isn't true. When the Mill burned they had approximately 20 employees. The old Mill operated the same hours as the new Mill and there were never any complaints. Mr. Vaux said his company signed off and agreed to the conditions put on them by the Hearing Examiner. Condition #4 says the company will continue to make every effort to reduce noise and they don't take that lightly. He said it is a difficult condition to live up to on their side of the coin; however, they will comply.

Mr. Bucknell said it was discussed at the meeting held at Mr. Stark's home who would pay for Mr. Yantis' services. Mr. Vaux offered to pay for the study. Mr. Bucknell said he finds it ludicrous that Mr. Vaux should even suggest that they couldn't pay for Mr. Yantis' services. He also said he has difficulty with the fact that Mr. Vaux didn't have the courtesy to call anyone, after a handshake agreement, to say that there was a problem with the contract. Mr. Vaux also said there were no noise readings from the old Mill. Mr. Bucknell contends that there were none because the noise at that time wasn't loud enough to warrant any complaints. No one was upset about the old Mill being a good neighbor.

Mr. Bucknell said since the new Mill has been in place there have been over twenty noise complaints. He said he is sympathetic to the economic plight of the mill; however, he firmly believes that they knew what the permit conditions were and they chose to rebuild, thus ignoring the Code.

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Mr. Bucknell said if the Board approves this modification request, he thinks it would be illegal. And if the Board does approve it, he is asking that it have some specificity in it.

Mr. Stark said there were never any complaints of the Mill before it was rebuilt. He said he doesn't buy the story that the Mill was rebuilt in expanded configuration to quiet things down. Why would you enclose something that no one ever complained about before? Mr. Stark said he doesn't contend Pamela Kutcher falsified her records; however, he thinks her information is worthless because it didn't document the clearly existing problem. She recorded during the summer months, which is not nearly as loud as the winter months when the trees have no leaves on them.

Mr. Stark said the only person that has ever paid a visit to his house, besides the visit that Bill Vaux made, is Oscar Graham. Mr. Stark said he has a problem with the fact that someone builds a million dollar mill in a residential neighborhood and then won't pay a \$3,000 bill for an acoustic consult.

Mr. Graham spoke to the issue of non-conforming uses. Mr. Graham said there has been a lot of discussion today about reconstruction of the Mill following the fire. He said it was also discussed before the Hearing Examiner; however, it is not the subject of either the Hearing Examiner's Order or today's discussion. It is therefore, off the table and not a part of this hearing. The second item relates to modification of the special use to provide two additional hours for clean-up, maintenance and repair. Mr. Graham said that has been characterized as an expansion of this use. He said when the Department receives complaints that are based on County Code, they attempt to allow the property owner or operator to come into compliance voluntarily through the application to the County for the appropriate permit. Mr. Graham said that in this case it was the County's opinion that what was being applied for was two additional hours, which actually represented things that were occurring at the Mill previously under the old Special Use Permit. It was an attempt to clarify what had been occurring at the Mill on an ongoing basis.

Commissioner Dahlstedt motioned to render their decision in regard to closed record appeals PL05-0159 and PL05-0160 on May 17, 2005, at 10:00 a.m. The motion was seconded by Commissioner Anderson and passed unanimously.

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

1. State of the Department – Semi-Annual Review – Part 2, Review of Work Program.

Director Gary Christensen stated that earlier this year, the Board of County Commissioners was presented the Planning and Development Services 2005 Department Goals. One of the goals was to provide the Board with a Department status report/update in April and October of this year. Mr. Christensen said that last week, the Department presented a status report/update to the Board regarding Department Administration functions through April of this year. Today, he said the Department is presenting their 2005 Work Program accomplishments and progress to date.

Mr. Christensen indicated that the following items fall under the Work Program for 2005:

- Comprehensive Plan and Development Regulation 2005 GMA Update
- Master Planned Resort
- Capital Facilities Plan

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- Subarea Plans and Rural Study Areas
- On-call Professional Services
- WWGMHB Cases
- Other Work Program Tasks
- Other Major Projects

Mr. Christensen introduced Guy McNally to discuss the Comprehensive Plan and Development Regulation 2005 GMA Update.

Mr. McNally said the County is currently updating its Comprehensive Plan Policies, Map, and Development Regulations, which is a State requirement under the Growth Management Act. It applies to all counties and cities; therefore, Skagit County and its cities are to complete the update of their respective Comprehensive Plans by December 1, 2005. Mr. McNally said the Board appointed a 15-member GMA Update and Public Outreach and Steering Committee last September, which since then has been working diligently on reviewing the various Elements, or Chapters of the Comprehensive Plan. To date, the Steering Committee has completed its review of the Housing, Economic Development and Urban Growth Elements, and is nearing completion of its review of the Rural Element.

Mr. McNally said that while the Steering Committee has been reviewing policies, others have been working to review and make recommendations on Natural Resource Lands policies. Staff forwarded preliminary recommendations on Agriculture and Mineral Natural Resource Lands to the Steering Committee on May 4, 2005. The Committee has elected to hold a special meeting on May 18, 2005. Forestry and Rural Resource Natural Resource Lands policies will be taken up at a special meeting in June.

Mr. McNally said that part of the Department's public outreach process includes reaching out to the community through open houses; however, attendance wasn't quite what they had hoped for. Many of the folks that attended seemed to look forward more to having revised policies and maps to respond to. Mr. McNally discussed the mission of the GMA Update and Public Outreach Steering Committee.

Mr. McNally spoke about the review of the 100 or so individual Map-amendment requests that were submitted to the County last fall. In the summer, the public was asked what they thought of the Comprehensive Plan policies, and the Plan and Zoning Map. This was done early in the Update process to help the County understand what some in the community feel needs to change, improve, or simply stay as it is. Many responded with both general and specific policy suggestions. Mr. McNally said when the Department gets closer to knowing how any changes to the Plan's policies affect the Plan's map, they will then be in a position to roll in those property-specific map-amendment requests into the overall review of the various Plan designations and zoning districts.

Mr. McNally said that some of the map-amendment requests involve more than a single parcel of land. Several citizens recommended area-wide re-designations and rezones that may affect other property owners. The Department recently contacted these 'affected parties' to inform them that the Department will be reviewing the various map proposals with them.

Mr. McNally reviewed a generalized timeline of the Update project. He said they are about a third of the way through the schedule. The goal of the Department is to complete

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this work, including final adoption of any changes to the Plan, Map and Development Regulations by December 1, 2005.

Mr. McNally stated that the Board recently approved a new section of Skagit County Code allowing for the creation of Master Planned Resorts. These regulations will not only enable the creation of new Master Planned Resorts, but allow for existing resorts that may wish to intensify and expand their resort beyond that which is allowed in the Small-Scale Recreation & Tourism district. Master Planned Resorts are intended to make available many of the significant natural amenities that are present in Skagit County, and can also bring significant economic benefits to the community. Mr. McNally said some follow-up tasks remain, including staff training, creating forms, and establishing any applicable fees. He noted that two existing resorts have applications on file to convert to Master Planned Resorts. These will be addressed under the same public, agency and Planning Commission review and hearing process as the Comprehensive Plan Update.

Mr. McNally said that Capital Facilities Planning is an essential part of any Comprehensive Plan. The Capital Facilities Plan is where the “rubber meets the road” in planning to accommodate expected growth. It gives decision makers and the general public a tool to evaluate whether existing facilities, such as roads, drainage facilities, parks, jails and courts are adequate to serve a growing population. Since the Capital Facilities Plan is an integral part of the Comprehensive Plan, the two will be updated together. Given that this year’s review of the Comprehensive Plan is to focus, in part, on compliance with the Growth Management Act, the Capital Facilities Plan will be reviewed and updated this year with an eye to several basic requirements.

Jeroldine Hallberg, Associate Planner, presented a slide showing the Bayview Ridge Subarea, which is located about 1 mile west of Burlington and encompasses approximately 4,000 acres that includes a 3,600-acre non-municipal UGA. It is anticipated that by 2015 as many as 3600 people could live there. For the last several years the Citizen’s Advisory Committee has been preparing the plan with the help of the consultant Reid Middleton, which has completed its review. Discussions will begin to take place in front of the Board on June 20, 2005.

Ms. Hallberg reviewed a few highlights of the plan, including adequate separation of airport safety zones and the surrounding development. Provisions for stormwater management will ensure that the stormwater doesn’t negatively impact the downstream farmland. Sewer services are proposed to be provided by the City of Burlington. The County will provide law enforcement and emergency services, including fire protection from Fire District #6. Ms. Hallberg said schools are an important part of a new community. The plan also identifies and quantifies the need for additional parks.

Moving to the south to the Fidalgo Subarea, Ms. Hallberg said there is an active group of citizens that are helping to craft a plan they are hoping will preserve the existing rural character and considerable amenities, while accommodating forecast growth. There have been 2 of 3 open houses and the next step is for the consultant to begin writing plan chapters to take in front of the Citizen’s Advisory Committee. It is anticipated that this plan will be presented to the Planning Commission toward the end of the year.

Moving next to Guemes Island, Ms. Hallberg said a study of shorelines is underway, with the help of a small Department of Ecology grant. The elected Citizen’s Advisory Group has been recognized by the County and has had its work program approved. The Shorelines Plan is also set for completion at the end of the year.

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Kirk Johnson, Senior Planner, introduced the Alger Subarea Plan. He emphasized that at this point, planning for the Guemes shoreline area is underway; however, there will be a second stage that will be a subarea plan. He said the Guemes group is looking for their own funding for the Guemes Island Subarea Plan, so it is not something that is actively taking place at this point. Mr. Johnson stated that Alger is the most recent subarea plan that has been authorized by the Board in March 2005. The first step for the project will be to develop a proposed Scope of Work in the next month or so. At that point, a consultant will be hired to begin work on the full project, advertise for a Citizen's Advisory Committee, and ask the Board to appoint members for that Committee.

Mr. Johnson said one of the recommendations coming from the 2005 GMA Update Steering Committee is that the County needs to conduct more detailed planning in rural areas, like what is already being done in Bayview Ridge, Fidalgo Island, Guemes Island and Alger. Mr. Johnson said there have been a lot of requested changes around the areas of Birdsvie, Big Lake and Lake Cavanaugh. He said the Steering Committee realizes that different areas of the County have different local needs that can best be addressed through more localized planning efforts. Therefore, the Committee is recommending that the County establish a multi-year schedule for conducting subarea plans throughout the rural area and find a way to commit the resources to do that. The Steering Committee is also recommending that the County conduct an inventory of legal buildable lots to help determine the capacity for development in rural areas.

The Comprehensive Plan already identifies more than fifteen areas of more detailed rural planning, which are all of the rural villages, rural center, and Fidalgo Island.

Ms. Ruacho, Associate Planner, stated that many cases go before the Hearings Board several times before compliance is achieved. Ms. Ruacho touched on two cases that have had to go before the Board repeatedly. The first case is Ag-Fish, which began when the County adopted the Critical Areas Ordinance (CAO) in 1996. That Ordinance was appealed on several issues, one of those being that the County exempted agricultural activities from regulation. As a result of that appeal, the Hearings Board mandated that the County reasonably regulate agriculture when it comes to critical areas. After several attempts of trying to meet those regulations, the Hearings Board found the current regulations compliant, with two exceptions.

The Swinomish Tribe appealed that decision to Thurston County Superior Court; however, they have submitted a motion to have that appeal heard in Supreme Court, of which the County is supportive. The Hearings Board has issued a Certificate of Appealability, which indicates the Tribe has a right to appeal.

Ms. Ruacho said that in January the County received a ruling from the Hearings Board relating to our changes that were made to comply with the requirements to become compliant. The ruling found the changes to the regulations acceptable; however, found the added clarity to the supplementary programs was in continuing non-compliance and imposed a 180 day timeline, which would be in July. Ms. Ruacho said the County appealed that ruling of non-compliance to Thurston County Superior Court. The basis of the County's appeal was that our right to due process was violated based on the way they engaged the use of an outside expert after the close of the hearing proceedings. Apparently, the Tribe has motioned to consolidate both appeals and/or have the appeals go directly to the Board of Appeals. Ms. Ruacho said the County is opposing both of these motions.

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Ms. Ruacho next discussed Lot Certification. She stated that last October, the Skagit County Commissioners adopted a permanent Ordinance relating to Lot Certification and development on substandard lots of record (Ordinance No. O20040017). Aggregation regulations will remain in effect until an order of compliance is received from the Hearings Board. That order is expected at any time; however, there is no mandated timeline in which the Hearings Board must rule. Normally, the Hearings Board takes approximately 60 days to rule, but the County has now waited about 120 days.

Ms. Ruacho said the Skagit County Commissioners adopted Ordinance No. O20050006 addressing the Hearings Board's findings of non-compliance concerning the Parks and Recreation Comprehensive Plan regarding a reference to the Frailey Mountain Shooting Range. A compliance hearing is scheduled for June 3, 2005.

Mr. Johnson said Futurewise, formerly 1,000 Friends of Washington, has appealed the County's addition to the Mount Vernon Urban Growth Area of the WJY and Mount Vernon School District properties. A hearing on the merits is scheduled before the Hearings Board in August, with a final decision due by September 21, 2005. Mr. Johnson said Skagitonians to Preserve Farmland and Joseph Soler are trying to join the Futurewise appeal. He said the Bayview Ridge UGA and Bouslog v. Skagit County cases may be addressed by the adoption of the Bayview Ridge Subarea Plan and Development Regulations.

Mr. Johnson said the County Commissioners adopted permanent development standards for city UGAs, which took effect upon adoption. The County and cities are jointly requesting the Hearings Board to dismiss all remaining issues in the case.

Mr. Graham said the Critical Areas Ordinance update and Critical Area Ag/Fish enforcement investigations represent ongoing tasks of their work program. The update was to be completed by the end of this year; however, the County has received a reprieve for one additional year. The enforcement investigations are being conducted and many of them have been resolved.

Mr. Christensen said one of the components of the Lot Certification Ordinance was a proposal to consider the Transfer of Development Rights (TDR). The Ordinance specified that the County would proceed with a Request for Proposals to conduct a feasibility analysis to look at how such a program might be put into practice in the County. If the program is feasible, then the Department would proceed with the development of a TDR program.

2. Miscellaneous.

There were no miscellaneous items to discuss.

PUBLIC HEARING – TO CONSIDER TESTIMONY REGARDING AN AMENDMENT TO THE 2005 BUDGET FOR THE PROSECUTING ATTORNEY, FUND #001.

Gary Rowe, County Administrator, outlined a budget request for legal services and provided a detailed breakdown of the proposal. Mr. Rowe said the increase for \$760,000 covers legal expenses for Buck & Gordon; Davis Wright Tremaine LLP; Mentor Law Group; and Preston, Gates and Ellis.

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A discussion ensued regarding the various legal services that each law firm currently provides.

Chairman Munks opened the public hearing.

Prosecuting Attorney Tom Seguire clarified the fact that the additional expenses being requested are not being requested by him. Funds will be put under the umbrella of the Prosecutor's Office for accounting purposes only. Mr. Seguire said this will more fairly display the legal expenses the County is incurring at this time.

There being no further public testimony, Commissioner Dahlstedt made a motion to close the public hearing, which was seconded by Commissioner Anderson. The motion passed and the public hearing was closed.

Commissioner Dahlstedt motioned to approve the resolution, as outlined by Mr. Rowe. Commissioner Anderson seconded the motion, which passed unanimously. **(Resolution No. R20050170)**

DISCUSSION/POSSIBLE ACTION – CONTRACT AMENDMENT FOR MENTOR LAW GROUP.

Mr. Rowe next outlined a budget amendment for Joseph P. Mentor, Jr. and Mentor Law Group, PLLC. He indicated that the proposal is to revise the current contract from \$150,000 to \$650,000. Mr. Rowe stated that when the 2005 budget was put together, it was not known where the litigation on the instream flow and water resources process would lead. The County was hoping for a settlement for there is no option now to pursue the litigation. Therefore, the contract amendment is in anticipation of expenditures associated with continuing to pursue the case.

Commissioner Dahlstedt made a motion to approve Amendment No. 1 with Mentor Law Group, as outlined by Mr. Rowe. The motion was seconded by Commissioner Anderson and passed unanimously. **(Amendment No. A20050097)**

MISCELLANEOUS.

Mr. Rowe discussed a Boundary Review Board Notice of Intention for an annexation request by Fire District #7.

Chief Civil Prosecutor Don Anderson provided a map showing the existing boundary of Fire District #7. He said the portion they wish to annex is currently equal to the area they have committed to protect on a Fire District Response Zone map. Fire District #7 wishes to annex in order to obtain taxes from private property as development occurs. The area specified is Industrial Forest/Natural Resource lands. Mr. Anderson said this Board and prior Boards have expressly stated that they are expected to eliminate residential-type growth in the industrial forest lands. He said if the County were to agree to the annexation and take no action with regard to the Notice of Intention, then it would amount to an invitation to growth that would be contrary to the County's own Code.

Commissioner Anderson said the recommendation that will come forward from the Resource Land Advisory Committee will be to continue to retain the 200-foot setback and limit residential growth in the industrial forest.

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Prosecutor Anderson asked how legal advice should be provided to the Boundary Review Board (BRB). He said he is consulted on a regular basis by the Board. Commissioner Anderson said legal advice will have to be provided by an independent attorney. Prosecutor Anderson said this issue could be handled by a neighboring county as they have experience in representing their own Boundary Review Boards.

Commissioner Dahlstedt said the secondary forest was to provide a buffer and not encourage the encroachment of industrial forest by homes. He said he supports Commissioner Anderson's position entirely. Commissioner Dahlstedt motioned to invoke the Boundary Review Board. 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

Kenneth A. Dahlstedt, Commissioner

Ted W. Anderson, Commissioner

ATTEST:

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