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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT**

ANNIE JANICKI,

Petitioner,

v.

CITY OF SEDRO-WOOLLEY, a municipal  
corporation, and DELUXE RECYCLING  
AND DISPOSAL LLC, a Washington  
Corporation,

Respondents.

No. 08-2-01130-8

**REPLY AND CR 24(C)  
PLEADING IN SUPPORT OF  
SKAGIT COUNTY'S MOTION  
TO INTERVENE**

**1. The Hearing Should Go Forward On July 7 As Noted.**

The City argues that this motion must be heard at the July 21, 2008 scheduling hearing, pointing to RCW 36.70C.080(2) for support. The City's argument is inconsistent with the plain language of the statute. RCW 36.70C.080(2) provides that "parties" must consolidate procedural matters at the initial scheduling hearing. Skagit County is not a party, but rather is a proposed intervenor. Whether the County will be a party is the entire point of this motion. Moreover, the City has not alleged it will be prejudiced if the County's motion to intervene is heard as noted on July 7, 2008. Skagit County is entitled to learn whether it will become an intervening party in advance of the initial hearing so that it can properly prepare.

1                   **2. The County Has An Interest At Stake, And All Facts Must Be Construed In**  
2                   **The County's Favor.**

3                   The County's initial pleadings discuss the matters at stake for the County in this  
4 litigation. The City provides a conclusory pronouncement to the contrary, indicating that the  
5 City fails to appreciate the relevant burden of proof in a motion for intervention. In  
6 determining whether a party satisfies the conditions for intervention, the court must "look to  
7 the pleadings, accepting the well pleaded allegations therein as true." *Westerman v. Cary*,  
8 125 Wn.2d 277, 303 (1994). The County is not obligated to refute the Hearing Examiner's  
9 decision on the merits in a motion to intervene, and, having alleged a cognizable interest that  
10 will be injured, all doubts must be resolved by the Court in the County's favor.

11                   The City's opposition then makes the startling announcement that "county plans and  
12 agreements were not at issue" in the record below, an assertion plainly inconsistent with  
13 reality.<sup>1</sup> Jurisdictions are entitled to rely on existing plans in making their environmental  
14 determinations, on the theory that programmatic analysis has already covered the  
15 environmental bases.<sup>2</sup> Indeed, the City's Staff Report submitted to the Hearing Examiner  
16 says that the City considered County legislative planning documents related to solid waste as  
17 an integral part of the City's environmental review.<sup>3</sup> The Petitioner's brief before the Hearing  
18 Examiner correctly pointed out that the City was basing its environmental determination on a  
19 version of the County plan that the City rejected by Council resolution over three years prior.<sup>4</sup>  
20 The City's reply to the Hearing Examiner argued that documents the City claims it considered  
21 should be ignored, followed by a page and a half of inaccurate argumentation about the  
22 City's relationship to the County's solid waste management plans and agreements.<sup>5</sup>

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24 <sup>1</sup> City's Response to Skagit County's Motion to Intervene, 3:21-22 (on file with Court).  
25 <sup>2</sup> WAC 197-11-158; *Moss v. City of Bellingham*, 109 Wn. App. 6, 22 (2001); see also City of Sedro-  
26 Woolley's Response to Hearing Examiner at 13:18-22.  
27 <sup>3</sup> City Staff Report, page 3, first sentence, last paragraph (**Exh. A.** to Supp. Fallquist Dec.)  
<sup>4</sup> Appellant's Response to Staff Report at 4 (**Exh. B** to Supp. Fallquist Dec.)  
<sup>5</sup> City of Sedro-Woolley's Response to Appellant's Response to Staff Report, at 8:10-9:20 (**Exh. C** to  
Supp. Fallquist Dec.)

1 In its opposition brief, the City attempts to explain all this away with a masterwork of  
2 circular reasoning, arguing that County plans and agreements are not at issue because the  
3 Hearing Examiner ignored them.<sup>6</sup> That, of course, is the point: neither the City nor the  
4 Hearing Examiner (a non-attorney land use consultant handpicked and hired by the City from  
5 out-of-town especially for this appeal) are entitled to any deference whatsoever when the  
6 legislative planning documents on which the City's determination in part purportedly rests  
7 directly contradict the basic decision ultimately reached. As the Janicki LUPA Petition  
8 correctly pleads at ¶4.4, the Hearing Examiner's arbitrary decision to simply ignore all this is  
9 clearly erroneous, and constitutes reversible legal error. The County agrees.

10 **3. The County Will Suffer Injury.**

11 Contrary to the City's unsubstantiated opinion, Skagit County will, in fact, be  
12 substantially injured by the Court's failure to remedy the Hearing Examiner's error. The City  
13 of Sedro-Woolley in 2004 vehemently rejected a County-created plan that would have  
14 allowed multiple private transfer stations inside city limits, passing a resolution making clear  
15 that the City wanted to remain a team player with the County and the other seven cities and  
16 towns in planning a collective solid waste management future. The County has acted in  
17 substantial reliance on the City's articulation of its solid waste planning preferences in  
18 structuring the Skagit County Solid Waste System, making legal and economic decisions,  
19 interacting with other jurisdictions, businesses and regulators, and expending significant  
20 taxpayer funds to that end. All of this has been reduced to contractual commitments  
21 between the County and the City, cognizable legal interests that the County is fully entitled to  
22 protect through intervention as a matter of right. The City's bald assertions to the contrary  
23 are not adequate grounds to resist the County's motion to intervene.

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27 <sup>6</sup> City's Opposition at 4:15-17 ("Petitioner's claim that the Hearing Examiner erred in not considering  
28 county plans and agreements will not affect their validity because they were never considered...")

1                   **4. Permissive Intervention Is Proper In Any Event.**

2                   The City claims that the County is not entitled to intervene as a matter of right under  
3 CR 24(a)(2), an argument thoroughly refuted by the preceding paragraphs. But even if the  
4 City is correct (it isn't), the County should be allowed to intervene under the standards  
5 governing permissive intervention. CR 24(b). Anyone may be permitted to intervene when  
6 (i) the intervention applicant's claim and the main action have a question of law or fact in  
7 common; and (ii) the intervention will not unduly delay the adjudication of the parties' rights.  
8 *Id.* As set forth above, there are indisputably common issues of law and fact, and the City  
9 offers no suggestion that the County's participation will delay resolution of this dispute.

10                  In fact, Deluxe (the true party in interest) and Janicki (the appellant) have both agreed  
11 that the County's intervention is proper,<sup>7</sup> and the only party opposing the County's  
12 intervention is the City. Moreover, it is useful to note that Washington courts routinely allow  
13 intervention in LUPA actions. See, e.g., *Boehm v. City of Vancouver*, 111 Wn. App. 711, 715  
14 (2002)("In October 2000, the Boehms appealed to the Clark County Superior Court under the  
15 Land Use Petition Act (LUPA), chapter 36.70C RCW. In December 2000, a superior court  
16 judge entered an order allowing Fred Meyer to intervene...").

17                   **5. The County Need Not Demonstrate Independent Standing To Sue**

18                  The City's suggestion that the County needs independent standing to sue under  
19 LUPA and SEPA is simply a recycled version of its prior argument that the County will suffer  
20 no injury, something the County has fully refuted,<sup>8</sup> again keeping in mind that the County, as  
21 the proposed intervenor, is entitled to all factual inferences.<sup>9</sup> The City's argument that the  
22 County only has standing if the City was required to consider the County's interests under  
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25 <sup>7</sup> Settlement Agreement with Deluxe Recycling and Disposal LLC et al, dated June 26, 2008, ¶ 10 at  
26 5, Skagit County Contract No. 20080405, copy attached to Supplemental Fallquist Declaration as  
27 **Exhibit D.** ("The parties agree that Skagit County's intervention is proper."); see also Petitioner's  
Response to Skagit County's Motion to Intervene (on file with Court).

<sup>8</sup> *Supra*, 3:10-23.

<sup>9</sup> *Supra*, 2:2-10.

1 SEPA further ignores the fact that the City actually did consider matters within the County's  
2 interests, mischaracterizing and erroneously applying those interests in the process.<sup>10</sup>

3 Most importantly, the City is improperly attempting to stack additional intervention  
4 requirements on top of CR 24. The City cites no authority for this proposition, leaving its  
5 argument with a gaping logical hole. Although we could find no Washington precedent  
6 directly on point, the Ninth Circuit Court of Appeals has made clear that independent  
7 standing is not a requirement for intervention under FRCP 24:

8 In *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir.1983), we  
9 interpreted Rule 24(a) to require the granting of a motion to intervene at  
10 the outset of litigation if four criteria are met: (1) timeliness; (2) an interest  
11 in the subject matter of the litigation; (3) absent intervention the party's  
12 interest may be practically impaired; (4) other parties inadequately  
13 represent the intervenor. *Id.* at 527. In order for an individual to intervene  
14 in ongoing litigation between other parties, he need only meet the  
15 *Sagebrush Rebellion* criteria. However, where no party appeals, the "case  
16 or controversy" requirement of Article III also qualifies an applicant's right  
17 to intervene post-judgment.

18 *Yniquez v. Arizona*, 939 F.2d 727, 731 (9<sup>th</sup> Cir. 1991). The Ninth Circuit's reasoning is  
19 compelling: the County seeks to intervene in ongoing litigation, and, therefore, need only  
20 meet the criteria of CR 24. The County has clearly done so, and intervention is proper. The  
21 County's motion to intervene should be granted.

22 DATED this 2<sup>nd</sup> day of July, 2008.

23 SKAGIT COUNTY PROSECUTING ATTORNEY

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<sup>10</sup> See, Section 2, *supra*.