

The Hon. Ronald Castleberry  
1:00 p.m. September 9, 2008

**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; DELUXE RECYCLING AND  
DISPOSAL LLC, a Washington limited  
liability company; and FIRE RIDGE LLC,  
an Oregon limited liability company,

Respondents,

v.

SKAGIT COUNTY, a political subdivision  
of the State of Washington,

Intervenor.

No. 08-2-01130-8

**DECLARATION OF WILL HONEA  
SKAGIT COUNTY DEPUTY  
PROSECUTING ATTORNEY**

I, the undersigned declarant, make this statement on the basis of facts within the  
scope of my first hand knowledge to which I am competent to testify.

DECLARATION OF WILL HONEA - 1 -

SKAGIT COUNTY PROSECUTING ATTORNEY  
605 S. 3RD ST. -- Courthouse Annex  
Mount Vernon, WA 98273  
Phone: (360) 336-9460  
Fax: (360) 336-9497

1           1.     I am the Chief Civil Deputy Prosecuting Attorney for Skagit County, a  
2 position I have held since January 1, 2007. I represent Skagit County in the above-  
3 captioned action.

4           2.     This action was originally filed by Petitioner in Skagit County Superior  
5 Court. Because all Skagit County judges recused themselves, this matter has been  
6 assigned to Judge Ronald Castleberry, Snohomish County Superior Court Department 2.  
7

8           3.     On August 21, 2008, the Prosecuting Attorney learned that material  
9 evidence was apparently removed from the administrative record by the Sedro-Woolley  
10 City Attorney during the administrative proceedings below, through information provided  
11 under the auspices of RCW 42.41, the Washington Local Government Whistleblower  
12 Protection Act. See, Declaration of Leo Jacobs, Sedro-Woolley Solid Waste Division  
13 Manager, attached hereto as **Exhibit 1**. The Jacobs February 5, 2008 SEPA comment  
14 letter is attached as Exhibit A to the Jacobs Declaration.  
15

16           4.     The Jacobs February 5, 2008 SEPA comment letter does not appear in the  
17 Certified Copy of the Record transmitted by the City Attorney's office to the County, or  
18 the Record Index thereof. A copy of the Certified Record Index is attached hereto as  
19 **Exhibit 3**. We have also reviewed the Certified Copy of the Record filed today with the  
20 Skagit County Superior Court Clerk, which does not contain the February 5, 2008 Jacobs  
21 SEPA comment letter.  
22

23           5.     Various other City of Sedro-Woolley departments commented on the  
24 Deluxe proposal. This includes a comment letter from the City's Wastewater Treatment  
25 Plant staff, which commented the same day as the Solid Waste Division Manager, and  
26 which bears an identical City date stamp indicating acceptance into the SEPA record.  
27

1 See, **Exhibit 2** hereto. Other comment letters were not excised from the record, and  
2 appear in the Record Index that was transmitted by the City Attorney to this Court and  
3 the other parties to this litigation. See, e.g., Certified Record Index Items 20, 21, **Exhibit**  
4 **3** to this Declaration.

5  
6 **6.** True and correct copies of the following documents are attached to this  
7 declaration:

8 **Exhibit 1** Declaration of Leo Jacobs, City of Sedro-Woolley  
9 Solid Waste Manager dated August 25, 2008  
10 (and February 5, 2008 SEPA comment letter  
11 attached as Exhibit A thereto),.

12 **Exhibit 2** Selected SEPA comment letters from administrative  
13 record below, prepared by City departments.

14 **Exhibit 3** Certified Copy of the Record of the City of Sedro-  
15 Woolley's Hearing Examiner Regarding the Appeal of  
16 the SEPA Determination of the Deluxe Recycling and  
17 Disposal Project.

18 **Exhibit 4** Email chain between City Supervisor / City Attorney  
19 Eron Berg and Deluxe principal dated October 26,  
20 2007

21  
22 **Signed on penalty of perjury under the laws of the State of Washington**  
23 **this 2<sup>nd</sup> day of September 2008, at Mount Vernon, Washington.**

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William Honea, WSBA 33528  
Attorney for Skagit County

# **EXHIBIT 1**

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**DECLARATION OF LEO JACOBS  
CITY OF SEDRO-WOOLLEY  
SOLID WASTE DIVISION MANAGER**

I, the undersigned declarant, make this statement on the basis of facts within the scope of my first-hand knowledge as to matters to which I am competent to testify.

1. I have been the Solid Waste Division Manager for the City of Sedro-Woolley Solid Waste Division since 2000. In my position, I am responsible for managing the City of Sedro-Woolley's solid waste programs and policies, including the City's Solid Waste Management Plan under RCW 70.95. I also represent the City on a regional solid waste advisory body, the Solid Waste Advisory Committee (SWAC), established under a regional interlocal agreement with seven other cities and Skagit County. At times, I have served as the SWAC Vice-President. Among other things, the SWAC is charged with recommending updates, amendments and revisions to the joint regional Comprehensive Solid Waste Management Plan established under RCW 70.95 ("CSWMP").

2. For the past two decades, the City of Sedro-Woolley has participated jointly with seven other cities and towns as well as Skagit County in collectively sending all municipal solid

Exhibit 1

1 waste to a single publicly-owned transfer facility, under a joint plan of operations pursuant to a  
2 unified, jointly-created CSWMP.

3         **3.** In 2004, Skagit County unilaterally attempted to change this joint arrangement,  
4 proposing revisions that would allow multiple private transfer stations throughout the County.  
5 Because the unregulated flow of solid waste would undermine the region's ability to ensure an  
6 adequate waste stream to maintain publicly-owned infrastructure, the City of Sedro-Woolley and  
7 the other cities in Skagit County vehemently rejected the County's proposed 2004 CSWMP  
8 revisions. In particular, the City of Sedro-Woolley rejected the proposed 2004 revisions to the  
9 CSWMP by the City Council's passage of Resolution No. 706-04 on November 23, 2004. The  
10 City's rejection of the County's proposed 2004 CSWMP revisions left the 1994 solid waste plan  
11 in effect within the City of Sedro-Woolley, under which the City is required to deliver all of its  
12 solid waste to the publicly-owned transfer station.

13         **4.** On December 17, 2007, Deluxe Recycling and Disposal LLC submitted a permit  
14 application to the City of Sedro-Woolley. As is my routine practice with proposals relevant to  
15 my discipline, I commented on the proposal during the SEPA comment period on behalf of my  
16 Department. A copy of my February 5, 2008 comment letter regarding the Deluxe proposal is  
17 attached as **Exhibit A**.

18         **5.** I was highly concerned about the Deluxe proposal for a number of reasons, as  
19 reflected by the following comments in particular in my SEPA comment letter attached hereto as  
20 Exhibit A:

- 21         • **Is [the Deluxe proposal] consistent with the City [of] Sedro-Woolley Solid Waste**  
22         **Comprehensive Management Plan? The City of Sedro-Woolley did not accept the**  
23         **Count[y's] 2004 plan and therefore we may not be in compliance with the**  
24         **Department of Ecology.**
- 24         • **This facility must do an environment impact statement.**

25         **6.** On February 6, 2008, I submitted the Exhibit A comment letter to the City of  
26 Sedro-Woolley Planning Department. The comment letter was accepted and stamped in, as  
27 reflected by page 1 of Exhibit A, in the same manner as other comment letters submitted in the

1 SEPA record. It was my intention and belief that the comment letter attached as Exhibit A  
2 would become part of the Deluxe SEPA record.

3 7. On or about February 8, 2008, City Supervisor / City Attorney Eron Berg called  
4 me to City Hall to discuss the comment letter attached hereto as Exhibit A. Mr. Berg is the City  
5 Attorney as well as the City Supervisor, i.e., the City's Chief Administrative Officer. Mr. Berg  
6 handed the Exhibit A comment letter to me, which he had removed from the Planning  
7 Department's SEPA file for the Deluxe proposal. Mr. Berg told me in no uncertain terms that I  
8 lacked authority to submit the Exhibit A comment letter. Mr. Berg stated that the Exhibit A  
9 comment letter was not to become part of the Deluxe SEPA record.

10 8. True and correct copies of the following documents are attached hereto:

11 **Exhibit A** SEPA Comment Letter by Sedro-Woolley Solid Waste  
12 Division Manager Leo Jacobs dated February 5, 2008  
regarding Deluxe Recycling and Disposal LLC proposal.

13 **SIGNED on penalty of perjury under the laws of the State of**  
14 **Washington this 25<sup>th</sup> day of August, 2008 at Mount Vernon,**  
15 **Washington.**

16  
17   
Leo Jacobs

**CITY OF SEDRO-WOOLLEY**

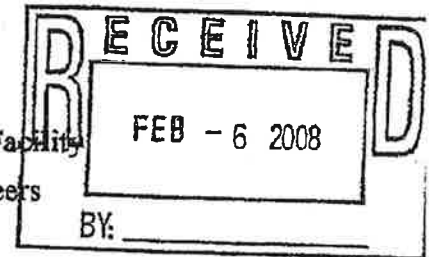
Solid Waste Division  
315 Sterling Street  
Sedro-Woolley, WA 98284  
Phone (360) 855-1884  
Fax (360) 855-9024  
E-Mail [ljacobs@ci.sedro-woolley.wa.us](mailto:ljacobs@ci.sedro-woolley.wa.us)

February 5, 2008  
IN REPLY TO: SEPA BP-111-07

NAME OF PROJECT: Deluxe Recycling and Solid Waste Handling Facility

ATTENTION: Marianne Manvill-Ailles, Skagit Surveyors and Engineers

SUBJECT: Comments on proposed site development



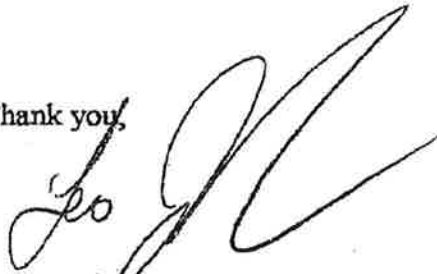
1. The Solid Waste Division requires that dust control and odor control systems be in place at this facility for the building and the recycling yard.
2. A prevailing winds study must be done to determine the path of a projected hazardous waste spill and or a radiation exposure. Especially with Sedro-Woolley High School less than 500 feet away.
3. An Evacuation Plan in case of a Hazardous waste spill and or Radiation exposure must be done for the entire area up to 1 mile in diameter this must be in place before accepting any waste or recycling.
4. The below grade compactor appears to be with in the 100 year flood plain.
5. The retention pond appears to be within the 100 year flood plain.
6. The Solid Waste Division requires that Radiation detectors be in place at this facility before accepting material.
7. A hazardous waste spill plan must be submitted and approved before accepting waste or recycling.
8. A radiation Exposure Plan must be submitted and approved before accepting waste or recycling.
9. Deluxe must comply with the 2004 Skagit County Solid Waste Comprehensive Plan.
10. Deluxe must comply with Health Department Codes and regulations.
11. Deluxe must comply with the Department of Ecology codes and regulations.
12. Is it consistent with the City Sedro-Woolley Solid Waste Comprehensive Management Plan? The City of Sedro-Woolley did not accept the Counties 2004 plan therefore we may not be in compliance with the Department of Ecology.
13. This facility must do an environmental impact statement.
14. The facility does not comply with the Zoning codes Section 17 industrial zoned land. This is not an approved use Deluxe will need to apply for a conditional use permit before proceeding. This facility may receive Hazardous waste from Drop off of Garbage.

Exhibit

A

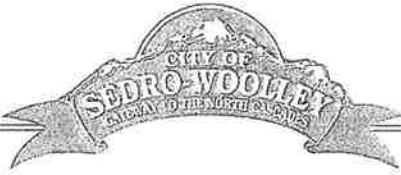
15. Storage times for compacted containers shall be no longer than 3 days. Then they must be removed from the site.
16. Oil water separator and a hazardous waste liquid waste storage tank how are they going to prevent pesticides, herbicides and paint from entering the WWTP. Deluxe must have a controlled storage tank for all run off inside and outside the building.

Thank you,

A handwritten signature in black ink, appearing to read "Leo Jacobs", written over a large, stylized scribble.

Leo Jacobs  
360-855-1884  
Solid Waste Foreman  
City of Sedro-Woolley  
LJ

# **EXHIBIT 2**

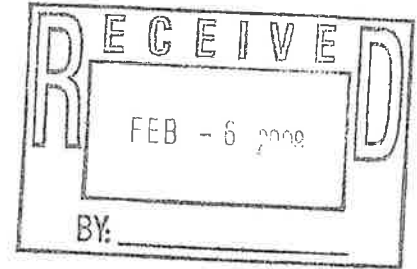


CITY OF SEDRO-WOOLLEY

Wastewater Treatment Plant  
720 Murdock Street  
Sedro-Woolley, WA 98284  
Phone (360) 856-1100  
Fax (360) 856-5269

**Memorandum**

Date: February 5, 2008  
To: John Coleman, Associate Planner  
From: Debbie Allen, Wastewater Treatment Supervisor  
Subject: Deluxe Recycling and Solid Waste Handling Facility



The Sedro-Woolley Wastewater Treatment Plant staff would like some assurance that toxic chemicals will not be in the wash down water coming from the Deluxe Recycling and Disposal Facility. Because Deluxe Recycling is in close proximity to the Wastewater Treatment Plant, a slug load of anything toxic could kill beneficial bacteria in our process and cause a possible violation of our State NPDES Permit.

Classification of the Sedro-Woolley waste stream will need to be determined by laboratory reports provided by Deluxe Recycling. Prior to that, I will be requesting laboratory documentation from the existing Deluxe Recycling facility located in Ferndale, Washington to help us establish a base line. We look forward to working with Deluxe Recycling to assure a clean waste stream for both our Citizens and Community.

Exhibit 2

# **EXHIBIT 3**

RECEIVED  
SKAGIT COUNTY  
PROSECUTING ATTORNEY

2008 AUG 20 PM 5:02

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; DELUXE RECYCLING AND DISPOSAL LLC, a Washington Limited Liability Company; and FIRE RIDGE LLC, an Oregon Limited Liability Company,

Respondents,

v.

SKAGIT COUNTY, a political subdivision of the State of Washington,

Intervenor.

Case No.: 08-2-01130-8

CERTIFIED COPY OF THE RECORD OF THE CITY OF SEDRO-WOOLLEY'S HEARING EXAMINER REGARDING THE APPEAL OF THE SEPA DETERMINATION OF THE DELUXE RECYCLING AND DISPOSAL PROJECT

CITY OF SEDRO-WOOLLEY  
CERTIFICATE OF CERTIFICATION

I, Patsy K. Nelson, The undersigned City Clerk-Treasurer of the City of Sedro-Woolley, Washington, (the "City"), DO HEREBY CERTIFY:

That the attached copies of the following listed documents are true and correct copies of documents located in the Building, Planning & Engineering Department files:

1. Notice of Appeal to Hearing Examiner, dated March 26, 2008, from C.Thomas Moser representing Annie Janicki.

Office of the City Attorney  
City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
(360) 855-9922

Exhibit 3

- 1            *Exhibit A:* SEPA Notice of Threshold Determination Mitigated Determination of  
2            Non-Significance (MDNS), issued March 7, 2008; published March 12, 2008.  
3            *Exhibit B:* Resolution 743-07, dated May 24, 2007.  
4            *Exhibit C:* Resolution 706-04, dated November 23, 2004.
2. Transmittal & Report Memorandum (aka Staff Report) for BP\*111-07.  
5            *Exhibit A:* SEPA Notice of Threshold Determination Mitigated Determination of  
6            Non-Significance (MDNS), issued March 7, 2008; published March 12, 2008.  
7            *Exhibit B:* Public comments received during January 16, 2008 – February 6,  
8            2008 open public comment period.  
9            *Exhibit C:* Resolution 743-07, dated May 23, 2007.  
10           *Exhibit D:* Interlocal Cooperative Agreement between Skagit County and Cities  
11           and Towns in Skagit County for Solid Waste Management, dated May 17, 2004.  
12           *Exhibit E:* Mitigated Determination of Nonsignificance (MDNS) for Skagit  
13           County materials processing facility Special Use Permit #PL04-0176.
3. Appellant's Response to Staff Report, dated April 25, 2008.  
14           *Exhibit A:* Excerpt from Sedro-Woolley City Council meeting minutes of May  
15           23, 2007.  
16           *Exhibit B:* Excerpt (pages 1 – 16) from Skagit County Board of County  
17           Commissioner's meeting transcript of May 22, year not noted.  
18           *Exhibit C:* Memo to Sedro-Woolley City Council from Eron Berg, dated April  
19           23, 2008, with attached draft resolution authorizing the Mayor to sign the  
20           interlocal agreement addressing solid waste governance and the adoption and  
21           amendment of the comprehensive solid waste management plan.  
22           *Exhibit D:* Article from Skagit Valley Herald, dated October 20, 2006.
4. Deluxe Recycling and Disposal LLC's Motion to Dismiss / and Response, dated May  
23           1, 2008.
5. Appellant's Response to Applicant's Motion to Dismiss, unsigned & undated,  
24           received May 1, 2008.
6. The City of Sedro-Woolley's Response to Appellant's Response to Staff Report, dated  
25           May 2, 2008.
7. SEPA Notice of Threshold Determination Mitigated Determination of Non-  
Significance (MDNS), Deluxe Recycling & Disposal, LLC, issued March 7, 2008;  
published March 12, 2008.
8. SEPA Checklist for Deluxe Recycling Solid Waste Processing Facility, dated  
November 29, 2007; received by the City January 10, 2008.  
*Attachment A:* Letter from Department of Ecology dated April 5, 2007 making a  
No Further Action Determination related to the MTCA for the subject site.
9. Traffic Impact Assessment prepared by Gibson Traffic Consultants, dated October 10,  
2007.
10. Wetland site reconnaissance prepared by Wetlands, Inc., dated September 14, 2007.
11. Stormwater Detention and Treatment study/design prepared by Skagit Surveyors &  
Engineers, dated September 6, 2007.
12. Potential Environmental Conditions regarding soil samples prepared by Geotest,  
dated July 9, 2007.
13. Map folio of the site, proposed conditions, dated October 23, 2007.
14. Commercial Building Permit Application packet, accepted December 17, 2007.

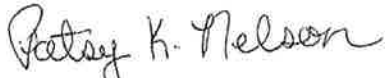
Office of the City Attorney  
City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
(360) 855-9922

- 1 15. Notice of Application and SEPA Comment Period; published in Courier-Times on  
2 January 23, 2008 (due to publisher's error was not published on January 16 as per  
original request).
- 3 16. Department of Ecology comments on MDNS, dated January 18, 2008.
- 4 17. Sedro-Woolley School District No. 101 comments on SEPA checklist, dated January  
5 28, 2008.
- 6 18. Skagit County Public Health Department comments on application and SEPA, dated  
7 January 30, 2008.
- 8 19. Skagit County Public Works Department comments on application and SEPA, dated  
9 January 30, 2008.
- 10 20. Sedro-Woolley Wastewater Treatment Plant staff comments on waste stream, dated  
11 February 5, 2008.
- 12 21. Sedro-Woolley Public Works Department comments on application and SEPA, dated  
13 February 20, 2008.
- 14 22. Skagit County Public Works Department letter to Deluxe Recycling and Disposal  
15 LLC regarding the MDNS, dated March 18, 2008.
- 16 23. Skagit County Public Health Department comments on SEPA, dated March 26, 2008.
- 17 24. Packet of public comment letters and e-mails, dated from May 2007 through March  
18 2008.
- 19 25. Packet of individual letters and signed petitions in opposition to the proposed solid  
20 waste transfer facility at the subject site, dated from April to May, 2008.
- 21 26. Excerpts from Final Skagit County Comprehensive Solid Waste Management Plan  
22 Update and Programmatic Environmental Impact Statement, April 1994.
- 23 27. Excerpt from Skagit County Comprehensive Solid Waste Management Plan,  
24 December 2005.
- 25 28. Copy of Sedro-Woolley Resolution No. 767-08, dated April 23, 2008.
29. Copy of Interlocal Agreement for Comprehensive Solid Waste Disposal System,  
dated July 9, 1986.
30. Excerpt from Sedro-Woolley City Council meeting minutes, dated November 23,  
2004.
31. Skagit County Public Works Department request to be a party of record, dated  
January 30, 2008.  
Skagit County Public Health Department request to be a party of record, dated  
January 30, 2008.
32. Excerpt from Sedro-Woolley Zoning code, Chapter 17.28.010 A & B, Use  
Restrictions, Industrial (I) Zone.
33. Excerpt from Sedro-Woolley Comprehensive Plan Capital Facilities Element, page 1  
and page 50.
34. Excerpt from Sedro-Woolley Comprehensive Plan Utilities Element, Goals and  
Policies.
35. Memo from Eron Berg to City Council regarding ordinance to approve acquisition of  
land for extension of Jameson Street to SR 9, dated January 9, 2008.
36. Excerpt from Traffic Impact Assessment prepared by Gibson Traffic Consultants,  
dated October 10, 2007.
37. Resume' for Edward T. Koltonowski of Gibson Traffic Consultants establishing  
qualifications.

Office of the City Attorney  
City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
(360) 855-9922

1 38. Findings, Conclusions and Decision of the Hearing Examiner, dated May 22, 2008.

2  
3 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of  
the City this 7<sup>th</sup> day of August, 2008.

4   
5 Patsy K. Nelson  
6 City Clerk-Treasurer

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Office of the City Attorney  
City of Sedro-Woolley  
325 Metcalf Street  
Sedro-Woolley, WA 98284  
(360) 855-9922

# **EXHIBIT 4**

## Eron Berg

---

**From:** Eron Berg  
**Sent:** Friday, October 26, 2007 12:06 PM  
**To:** 'Steve Snell'  
**Subject:** RE: FW: Sedro Valuation

Not the whole story -- I told them that we would be working with the new owner to move forward and that a potential owner who wanted to use it as-is would be a problem given our road needs.

EB

-----Original Message-----  
From: Steve Snell [mailto:steven.snell@gmail.com]  
Sent: Friday, October 26, 2007 11:01 AM  
To: Eron Berg  
Subject: Re: FW: Sedro Valuation

Thanks Eron.

How did the condemnation conversation go? Their agent is saying that the city is not planning on moving forward with it. I suspect I'm not getting the whole story from the agent as this was contrary to my previous understanding.

Please advise,

Best,  
Steve

On 10/25/07, Eron Berg <eberg@ci.sedro-woolley.wa.us> wrote:

>  
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>

> \_\_\_\_\_  
> From: Hebert, Tonya [mailto:tonya.hebert@weyerhaeuser.com]  
> Sent: Thursday, October 25, 2007 2:25 PM  
> To: Eron Berg  
> Subject: Sedro Valuation

>  
>

> Hi Eron,

>

> It was nice meeting you at the Sedro Woolley site earlier this week.  
> Weyerhaeuser will be asking \$2,995,000 for the Sedro Site in its As-Is  
> Where-Is condition.

>  
>

> Thanks for meeting me and I look forward to speaking with you in the  
> future. Tonya

>  
>

> Tonya M. Hebert, MCR, MBA  
> Weyerhaeuser Company Law Department  
> Real Estate Manager  
> 253-924-2152 phone  
> 253-924-3174 fax