

Courthouse Journal

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Washington State Association of Counties
Washington Association of County Officials

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1st Annual WACO/WSAC Conference

The 1st Annual WACO/WSAC Conference will be held this year at the WestCoast Wenatchee Center Hotel, in Wenatchee, September 30 - October 4. This year's meeting will focus on the serious revenue shortfalls facing the counties and hopefully a joint package of "relief" legislative recommendations for the 2003 session will be the end result.

We are currently developing a program that should be of interest to ALL WACO and WSAC members, with time for separate affiliate, committee, district, and board, meetings. In addition, on Monday afternoon, September 30 and Tuesday morning, October 1, the Certified Public Official Program (CPO) will be offering a training session, in conjunction with the conference entitled

"Human Resources: Understanding the Legal Issues of Managing Public Employees."

Next week, we will print a tentative agenda for the conference with further details. In the meantime, for those county officials who would like to book accommodations, please call the WestCoast Wenatchee Center Hotel at (509) 662-1234. Sleeping rooms are limited because the conference will be more than double in size this year. A large block of rooms has also been booked at the Red Lion Hotel. The number there is (509) 663-0711.

Rooms at the WestCoast are \$80 single/double, \$90 triple, and \$100 quad. Room rates at the Red Lion are \$79 single/double; \$89 triple; and \$99 quad. State and city taxes are 12%.

NACo Addresses Uncompensated Health Care Costs - Asks Counties for Support

A study by the National Association of Counties' (NACo) Task Force on Uncompensated Health Care Costs reports that immigration is at the core of unpaid health care. The Task Force report of 150 counties says that 80 percent of the counties who responded to their survey had an increase in uncompensated health care expenses in the last five years. According to NACo's *County News*, 67% percent of the counties responded that immigration was a factor in the increase.

Immediate past NACo President Javier Gonzales and Task Force members held a press conference last month with Senator Jeff Bingaman (D-N.M.) and Senator John McCain (R-Ariz.) to support their bill to help counties pay for immigrant health care. Gonzales said "Counties are the health care providers of last resort, caring for the nation's uninsured.

While it is our responsibility to make sure that those without insurance receive needed medical care, it is the federal government's responsibility to make sure that we have the funds to do so."

S. 2499, the Federal Responsibility for Immigrant Health Act, is being supported by NACo, who in turn is asking the counties across the country to call their U.S. Senators and Representatives and let them know how important the legislation is.

According to *County News*, the bill has three major provisions: "First, it expands the current definition of emergency services provided to immigrants under Medicaid so that states and counties can be reimbursed for prenatal care, testing and treatment of communicable diseases, and di-

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alysis and chemotherapy services.

"Second, it reinstates a Medicaid fund that reimburses states for emergency health care services to undocumented workers.

This fund provided \$25 million a year and expired in 2001. The bill would increase it to \$50 million.

"Finally, it includes language to amend a provision in the 1996 welfare

reform law that limited state and local governments' ability to use their own funds to provide health care to immigrants."

State Supreme Court Creates New Public Employment Law in Spokane County Case

On July 18th the Washington Supreme Court decided Hubbard v. Spokane County. This was a suit by a county planning director, claiming that he had been discharged in violation of public policy.

The trial court granted summary judgment to the county, the Court of Appeals affirmed that decision, and the plaintiff appealed to the Supreme Court. In reviewing a summary judgment, the Supreme Court addressed certain legal questions and sent the case back to the trial court for the facts to be examined. The decision clarified three points of particular interest to counties.

First, the court decided that RCW 42.23.070(1) is not limited, in its application, to conflict of interest situations. This provision prohibits a municipal officer from using his or her position "to secure special privileges or exemptions for himself, herself, or others". It has always been understood to mean that a municipal officer may not use the powers of his office to

specialize advance any project in which he has a beneficial contractual interest. Today's ruling makes it clear that an officer may violate RCW 42.23.070(1) by granting a special privilege or exemption even in the absence of such interests.

Second, the court found that, since zoning codes exist to promote the public health, safety, morals, and welfare, a zoning code can satisfy the clear public policy requirement in a claim for wrongful discharge in violation of public policy. Third, in regard to the jeopardy element of such claims, a plaintiff can satisfy this requirement by arguing that he was discharged for opposing the illegal issuance of a building permit. The claim is not invalidated by the existence of opportunities for private citizens to challenge the permitting decision.

The Courthouse Journal

The Courthouse Journal is published weekly by the Washington Association of County Officials (WACO) and the Washington State Association of Counties (WSAC).

We welcome your suggestions and contributions. The weekly deadline is noon Thursday.

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Budget, Finance and Taxes

Are Your Property Taxes Going Up?

Don't Blame the Assessor

Commentary on the Issues from the WA Policy Center by Paul Guppy (June 26, 2002)

Many people believe their property value alone determines how much property tax they must pay, and when the county assessor updates home values to reflect market trends, their taxes automatically go up. This is not the case.

County assessors do not levy property taxes. Elected state legislators and the local board and council members of the Washington's 39 counties, 268 cities and 1,436 other taxing districts do. Once elected officials in each taxing district decide the total dollar amount they feel they need to fund public operations for the following year, the assessor apportions that amount among the district's property owners, based on each parcel's assessed value. It is a budget-based tax system, and that is the source of most of the confusion over who is responsible for rising property taxes.

Most people are familiar with rate-based tax systems, like the state sales tax or the federal income tax. Under a rate-based system elected officials first a percentage rate which determines the fraction of each dollar of a given tax base that must be paid to the government. The revenue the government gets from such a tax cannot be known in advance; it can only be estimated.

A budget-based system like the property tax begins at the other end. Elected officials *first* decide how much money is they feel is needed for the budget, then divide this among the tax base to determine what rate is needed to raise that amount of revenue. The rate is expressed as so many dollars per \$1,000 of assessed value. Under this system, the amount of revenue the government will collect is known from the beginning. It is the tax *rate* that is unknown until it is calculated by the assessor. The difference between the two systems can be expressed this way:

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Budget, Finance and Taxes

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Rate-based system:

Rate x tax base = revenue.

Budget-based system:

Revenue ÷ tax base = rate.

Once the rate is determined, the county assessor applies it to the value of each owner's property. One piece of land may fall under the jurisdiction of as many as ten separate taxing districts. The assessor adds the budget demands of the different districts together, calculates the tax rate, then mails the final bill to each property owner.

Angered by the perceived greed of local officials, voters last year passed Initiative 747, limiting the rise in annual property tax collections to 1%. While tax limits help, they only restrict how fast each district's *total* budget can grow from one year to the next, not the amount levied against individual properties. Also, the limit applies only to *regular* property tax

collections, not to the yearly expansion of the tax base that results from new and remodeled buildings. They also don't apply to voter-approved levies. Many city and county councils take advantage of all these sources. They take the maximum increase allowed for regular property taxes (1%), *plus* whatever new taxes come in from new construction and property improvements, *plus* whatever added revenues have been approved by voters.

Some officials are aware of taxpayer frustration and take zero increases in their regular property tax collection, or enact increases below the 1% limit. By doing so they pass the benefit of a naturally-growing tax base on to their citizens. For example, if a new home goes up in a neighborhood and local officials hold regular property tax collections flat, the tax burden on existing homes will go down, as the newcomer assumes part of the burden.

In communities where local officials view new construction as simply providing "extra" tax revenue, existing homeowners receive no relief at all when new taxpayers are added to the rolls.

If it all sounds complicated, that's because it is. Some unscrupulous officeholders take advantage of the confusion by telling people they voted to lower the property tax *rate*, knowing full well that rising home values will actually result in higher tax collections. That is why it is so important for citizens to know exactly who is responsible for what in our government. It is the budget decisions of elected board and council members – not the assessor's real estate calculations – that determine how much property tax we all pay. Holding the right officials accountable is the first step to restoring trust and fiscal sanity to local government.

Courts, Law & Justice

Local Plans Required To Receive Federal Hazard Mitigation Grants

The Federal Emergency Management Agency (FEMA) recently provided guidance to state and local emergency management officials regarding amendments to the Stafford Act, which provides funding for the Hazard Mitigation Grant Program (HMGP). HMGP is a voluntary and competitive grant program available to local governments following a major disaster declared by the President.

Under the new rules, to receive HGMP funds for disasters declared after November 1, 2003, and as a condition of current grants, a local government must have an approved mitigation plan. Until November 1, 2003, local mitigation plans may be developed concurrently with implementation of the project grant. To meet

the current review cycle, this means that by July 1, 2003, a locally adopted plan must be sent to the state Emergency Management Division to review and forward to FEMA.

Multi-jurisdictional plans (e.g. for watershed planning areas) may be accepted, as long as each jurisdiction participates in the process, answers all the questions, covers all relevant hazards, and officially adopts the plan. Flood management, community rating system, growth management plans, critical area ordinances, and zoning ordinances are among the existing documents that may assist in the development of a hazard mitigation plan.

Mitigation plans must include a public involvement process; a local risk assessment that provides sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to

reduce losses from identified hazards; a plan maintenance process; and documentation that the governing body of the jurisdiction has formally adopted the plan. Contact the state Hazard Mitigation Grant Program office for details of these requirements, as well as other assistance in developing mitigation plans.

For your convenience, a "Planning Overview" request form is attached to the email that delivered this Courthouse Journal. At your request, state staff will visit your county and go over the new planning requirements.

You may contact the state Hazard Mitigation Grant Program Section at (253) 512-7079 or visit the Emergency Management Division website at <http://www.wa.gov/wsem/>

Public Health and Human Services

West Nile Virus Heading West

The Seattle PI reported an update on the progression of the West Nile Virus westward and what Washington is doing in preparation for its eventual arrival in our state.

Local Public Health has been asked to participate in surveillance for the emerging

infectious disease. West Nile Virus is a potentially lethal virus first identified in Uganda about 70 years ago. It landed on U.S. turn in 1999 in New York City, causing 62 serious illnesses and seven deaths. It is rapidly spreading across the country. So far, 18 Americans have died from it. A few weeks ago, Texas public health offi-

cials announced they had found the virus for the first time in two dead blue jays. Mosquitoes carry West Nile Virus. Washington has more than 50 species of mosquitoes and is in the process now of identifying the various species in different areas. That will assist in responding to an out-

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break of West Nile Virus.

Because of the New York outbreak, disease investigators nationwide have been put on alert for the virus, which can cause encephalitis, a deadly swelling in the brain. Surveillance systems have been reorganized to look for carrier mosquitoes and test dead birds or other “sentinel” animals that typically get hit before humans.

Some members of this family of viruses, such as yellow fever, dengue or Japanese encephalitis, are much more effective at causing disease and death. West Nile is relatively benign, having a human fatality rate of less than one percent. Why an unlucky few get seriously ill is unclear. However, the West Nile Virus surveillance system enhances the defenses against bioterrorism as well as all other naturally

occurring diseases that kill. It helps to put in place a system that could save countless lives should any of West Nile’s more dangerous cousins decide to migrate here. West Nile virus was a brand new disease when it hit and nobody knew what the mortality rate was going to be. Dr. Michael Bunning, an epidemiologist at the Centers for Disease Control and Prevention, said it’s common for infectious agents to have higher mortality rates when they enter a new environment. The West Nile surveillance system was begun with that in mind. The broader value of the West Nile surveillance program is in paving the way for monitoring all disease outbreaks – including acts of bioterrorism.

It’s been 30 years since Washington State did mosquito surveillance. Emerging infectious diseases point out the impor-

tance of having in place a disease surveillance system that can quickly respond to new and emerging issues plus maintain ongoing vigilance for the “usual” diseases such as tuberculosis, HIV/AIDS, Hepatitis C, other sexually transmitted diseases, other vector borne diseases, and food and water borne diseases.

Jack Lilja, chief of the West Nile surveillance program for the state Department of Health said that good surveillance is the key to good public health. In the first year of mosquito surveillance, they found new species in eight of the 12 counties surveyed and for one species; it was the first time found west of the Mississippi River.

Environment, Land Use and Resources

WSAC Submits Response to DCTED Regarding Model CAO

On July 12 the Washington State Association of Counties (WSAC) submitted a letter to the Department of Community, Trade and Economic Development (DCTED) responding to the Department’s second draft of its technical assistance publication, *Model Code Provisions for Designating and Protecting Critical Areas* (the Model CAO). CTED delayed publication of its draft to allow additional time for public review and comment.

WSAC’s response was based on concerns voiced at its June 28 roundtable held to discuss the model and its relation to the Growth Management Act. About forty county prosecutors, planners and commissioners attended the roundtable, and although not all counties were represented, of those who spoke to the matter there was unanimous support for recommending that the model be abandoned. Counties expressed concerns that the model’s one-size-fits-all approach is not appropriate because it does not make distinctions between counties when applying best available science. Representatives asserted that whether buffers are appropriate is a site-specific decision, and that the model’s recommendation that buffers conform to set widths is not in step with the discretion GMA allows counties in developing ordinances. Instead counties contended that allowance of ranges of buffer widths, as

well as the practice of active restoration, would be preferred

Counties are also worried about the model’s excessive procedural recommendations, and those counties that do not want to regulate existing agriculture felt that the model’s bias toward the protection of fish and wildlife would have that effect.

The Governor’s Office will be taking part as well in the development of a model that is both useful and workable. Ron Shultz, Executive Policy Advisor, was to meet with WSAC representatives today at the Washington Counties Building in Olympia.

State Supreme Court Sides with Department of Ecology in Clean Water Act Conflict

The Washington state Supreme Court decided today that the Department of Ecology (DOE) has the authority to condition a water quality certification on maintenance of minimum instream flows, even where such conditions affect existing water rights. In *Public Utility District No. 1, of Pend Oreille County v. Washington Dept. of Ecology*, the court held that DOE has such authority under the Clean Water Act to impose bypass flow conditions. The decision, based on the Clean Water Act, affirmed in part the Pollution Control Hearings Board’s grant of summary judgment in favor of Ecology.

In 1996, the District applied for an

application for a state water quality certification from Ecology in order to develop a hydroelectric project. The District planned to release water from a reservoir and divert it according to its 1907 and 1980 water rights to “store, divert, and use water to generate hydroelectric power.” Ecology certified the project, but conditioned certification on maintenance of specified instream flows, and disputes later ensued.

The court cited *Elkhorn II*’s decision that bypass flow requirements as conditions in grants of water quality certificates do not establish a proprietary right to water, but “merely determine the nature of the use to which that proprietary right may be put under the Clean Water Act.” Under the Act, reduced stream flow can constitute pollution where it affects the integrity of the water, and the court held that Ecology has authority to prevent this kind of pollution.

The court further held that a change in point of diversion is not allowed under RCW 90.03.380 where the right sought is an inchoate right and that Ecology is not authorized to consider the public interest when granting an application for a change. The court disagreed with Ecology’s assertion that the District had abandoned its water right because of non-use. The District used the water to generate power until 1956 when a flume collapse halted service.

Boards and Commissions

WSAC Seeking County Representation for Shorelines Hearings Board

One of the six seats on the Shorelines Hearings Board is designated, by statute, for a county representative. Although Bill Hinkle, Kittitas County Commissioner has been designated by the WSAC Board as the WSAC Representative, there is a need for alternates when shorelines hearings are scheduled that conflict with Commissioner

Hinkle's schedule.

At its June board meeting, the WSAC Board adopted a new policy regarding county representation on the Shorelines Hearings Board with first preference for the county representative and alternates to currently sitting commissioners and councilmembers, second preference for current staff who are supported by their county for this responsibility, and third preference for former county officials whom the Board

wishes to keep available to serve.

Current county commissioners or councilmembers, or county staff who are supported by their county for this responsibility, should contact Paul Parker at WSAC for this interest to be transmitted to the WSAC Board. After the Board appoints new alternates, WSAC will be scheduling a half-day training for the county shorelines representative and alternates.

Upcoming Events and Training

Training Funds for Nurses

Registered nurses from both Grant and Adams County who take the Sexual Assault Nurse Examiner (SANE) training, at Harborview Medical Center, September 30 - October 4, will be reimbursed for registration, mileage, lodging and meals. This will be made possible through the Grant County Sheriff's office, in coordination with STOP Grant Funding, and the Columbia Basin Domestic Violence and Sexual Assault Consortium. SANE trained nurses receive advanced education and clinical preparation in the forensic examination of

sexual assault victims, as well as learning how to reduce psychological trauma. They are prepared to provide empathetic care to these victims, and beyond that, are trained in enhancing evidence collection providing more assistance in the prosecution of suspects. Reimbursement of expenses will be provided for nine training positions.

WSAC Rural Issues Subcommittee Will Meet July 24

The WSAC Rural Issues Subcommittee is meeting on Wednesday July 24 in Yakima to discuss the fiscal situation in

rural counties and opportunities to work with state leadership on rural economic development. Subcommittee Co-Chair Mary Hunt is arranging for some legislators to participate in the discussion of fiscal issues.

The meeting will take place in the Yakima Health Center, across the street from the Yakima County Courthouse, from 2:00 p.m. to 5:00 p.m. The Yakima Health Center is located at 104 N. 1st Street.

Courthouse Ramblings

Whitman County Auditor Dave Repp resigned his office on July 15, effective July 31, ending a series of long disputes and disagreements with Whitman County commissioners and other elected officials. Repp ran unopposed for the auditor's office in 1998, and had announced that he would not be running for a second term this year.

The Pierce County Council confirmed Bob San Soucie as Superior Court Clerk, last week. San Soucie has been serving as interim clerk since last September after Ted Rutt left office. San Soucie started work in the county clerk's office in 1987.

Congratulations to Nancy Isham, who earlier this month celebrated her 25th anniversary with the Washington Association of Prosecuting Attorneys (WAPA). Nancy is greatly appreciated by all county prosecutor office employees for her excellent training programs. More importantly, if an association can have a heart, Nancy is WAPA's!

Calendar of Events

2002 MEETINGS

July 24

CPO *Washington Counties Risk Pool—Leadership Skills in Response to Current Issues*, Spokane—Cost: Free to Risk Pool Members, \$50 non-members, CPO Credits: 4 (Elective Course)

August 22

WCIP Board/Rate Setting Session, 9–3 pm
SeaTac

September 4–6

WAPA *Drug Training Program*—Icicle Inn, Leavenworth. 15 hrs of CLE.

September 5-6

WSAC Western District Meeting, Bonneville Hot Springs Resort, Stevenson

September 8–10

WAPA *Juvenile Training Program*—Icicle Inn, Leavenworth. 15 hrs of CLE.

September 10–13

City/County Planning Directors,
Lake Chelan

September 12

WSALPHO Meeting, Spokane

September 18-19

County Treasurers' Legislative Conference, Summit Inn, Snoqualmie

September 18–20

ACHS, Leavenworth

September 19

WCIF/WCIP Boards/Insurance Advisory Committee (All Day Meeting), SeaTac

September 30–October 4

WACO/WSAC Annual Conference,
WestCoast Convention Center, Wenatchee

October 1

CPO *Personnel/Human Resources—Understand the Laws; Maximize Your Personnel System*, Wenatchee—Cost: \$120, CPO Credits: 4 (Core Course)

October 2

CPO *The Class-Act County Government Official—Building Courthouse Partnerships*, Wenatchee—Cost TBD, CPO Credits: 2 (Elective Course)

November 14

WCIF Board Meeting, 9:00 a.m.–noon,
Eastern Washington Location

November 18–21

WASPC Annual Fall Conference, Red Lion Hotel at the Quay, Vancouver

November 20–22

ACHS, Seattle

December 3–4

WAPA Newly Elected Prosecutor Course—WAPA Conference Room, Olympia

December 5

WSALPHO Meeting, SeaTac

December 10–13

CPO *Newly Elected Officials Training—Understanding Your New Job at the Courthouse*, Olympia—Cost: TBD, CPO Credits: All newly elected officials **must** attend to become certified.

December 12–13

WAPA Winter Meeting & Banquet
Crowne Plaza Hotel, Seattle.

2003 MEETINGS

May 19–22

WASPC Spring Conference, WestCoast Grand Hotel, Spokane

June 10-12

Washington State Association of County Auditors' Annual Conference, Sun Mountain Lodge, Winthrop

June 16-20

Washington State Association of County Treasurers' Annual Conference, Davenport Hotel, Spokane

June 23-27

Washington State Association of County Clerks' Annual Conference, Silverdale Hotel, Silverdale

June 24–27, 2003

WSAC Summer Convention, Spokane

July 11–15, 2003

NACo Annual Conference, Milwaukee County, Milwaukee, WI

September 29–October 3, 2003

Joint WACO/WSAC Conference, Doubletree Hotel Seattle Airport

November 17–20

WASPC Fall Conference, Campbell's Resort, Chelan

2004 MEETINGS

May 24–27

WASPC Spring Conference, Yakima Convention Center, Yakima

June 22–25, 2004

WSAC Summer Convention,
Sheraton Tacoma, Pierce County

July 16–20, 2004

NACo Annual Conference Maricopa County, Phoenix, AZ

October 4–8, 2004

WACO/WSAC Joint Legislative Conference, WestCoast Grand Hotel at the Park, Spokane

November 15–18

WASPC Fall Conference, Shilo Inn, Ocean Shores

2005 MEETINGS

May 23–26

WASPC Spring Conference, West Coast Wenatchee Center Hotel, Wenatchee

July 15–19, 2005

NACo Annual Conference, City & County of Hawaii, Honolulu, HI

Employment Opportunities

ISLAND COUNTY – Planning & Community Development - Development Services Manager. Island County (Coupeville, WA) seeks a F/T highly motivated person to manage the department customer outreach program, intake of permits, review of land-use permits, coordination between divisions and other County and State Departments. We are seeking a person with a strong customer service/management background and who possesses strong motivation skills and an ability to develop positive working relationships with the public. Land-use permits involve review of applications for development proposals, in accordance with Zoning, Critical Areas, SEPA, and all other associated land use & environment Laws. Requires a degree in business, management, planning or related field, customer service experience, knowledge of planning, zoning, subdivision, land use law, WA GMA, SEPA, five (5) year related work experience and strong analytical, communications & Customer Service skills. Closes as soon as qualified applicant is found. Island County Application required. For application and info www.islandcounty.net/hr or Call (360) 679-7372 ext. 7254, EOE

SKAGIT COUNTY – Parks, Recreation, and Fair Dept. – Park Manager. \$15.18 - \$16.28 per hr. **This position:** manages, maintains and operates Howard Steelhead Park, as well as providing primary support for same at other up-river parks as assigned. Develops, assists, controls and accomplishes all program within assigned park areas. Supervises some staff and volunteers. Exercises limited commission law enforcement duties and enforces State and County laws, codes and ordinances. **Min. Requirements:** Two (2) years of college level study or training in Parks and Recreation, Forestry or natural resource management AND two (2) years experience in a related position; OR any combination of training or experience providing the requi-

site knowledge, skills, and abilities. Certification from NRPA Maintenance Management School preferred. **Submit applications to:** Skagit County Personnel Dept., 700 S Second St #101, Mount Vernon WA 98273. Cover letter and resumes must be accompanied by completed Skagit County application. In order to be considered, applications must be post marked by or no later than July 31, 2002. For more details log on to www.skagit.net and click on employment opportunities.

THURSTON COUNTY - Assessor's Office - Senior Appraiser. \$2,694 - \$3,681 monthly salary range (currently under negotiation for cost of living increase). A high school education or equivalent is required. A college degree and/or courses in economics, mathematics, real estate, finance, marketing, business, or cartography are highly desirable. Qualified applicants will have experience in one or more of the following areas: real property appraisals, real estate sales, building construction, market research and analysis, market modeling, or statistical analysis. Knowledge of cartography (mapping) and legal descriptions and skill in the use of word processing, spreadsheet, or statistical software packages is considered highly desirable. Request application from Gene Widmer, Thurston County Assessor's Office, 2000 Lakeridge Drive SW, Olympia, WA 98502. Phone: 360-786-5564. Email: widmerg@co.thurston.wa.us

WA State Home Care Quality Authority Board - Olympia. Position: Executive Director. **Max. Annual Salary:** \$75,000 DOQ. The Executive Director leads and manages the staff of the Authority in the implementation of the policies established by the Board. **Desirable Qualifications:** A Bachelor's degree from an accredited college or university; Demonstrated senior-level management/leadership experience

including supervision and delegation to other staff; Experience with/knowledge of social services, services to seniors and persons with physical and developmental disabilities; Experience with/knowledge of the issues facing seniors and persons with disabilities who are living independently in their own homes; Experience with/knowledge of the in-home long term care system in Washington State. Demonstrated skills in building, organizing and leading an organization, building collaborative relationships and making effective decisions. Effective communication skills with stakeholders, consumers and staff. Experience in coordinating complex programs and projects. Experience with collective bargaining/labor relations. Those interested in this position may apply by submitting a current resume, a complete list of five or more personal and professional references, and a letter of interest specifically addressing the qualifications listed in the announcement. **Please send all application materials to:** Cathy Wiggins, Interim Executive Director, Washington State Home Care Quality Authority, PO Box 40940 Olympia, Washington 98504-0940. All materials must be received by **September 6, 2002**. Persons of disability needing assistance in the application process or those needing this job announcement in an alternative format may call (360) 725-2618 or the Telecommunications Device for the Deaf at (360) 753-4107.

WHITMAN COUNTY – Assistant County Planner. Requirements: Bachelor's degree in Planning or related field; relevant work experience or internship experience and possession of a valid Washington State Driver's License. **SALARY RANGE:** \$2,407 - \$2,630 plus benefits DOQ. **CLOSING DATE:** August 7, 2002 or until filled. Applications are available at 402 North Main Street, Colfax. You can also log on to www.whitmancounty.org or call (509)

DNA no slam-dunk in getting conviction

By Lynn Thompson, *Seattle Times* staff reporter, July 17, 2002

Four and a half years after a high-school senior was raped at gunpoint while walking to a West Seattle school, the state crime lab matched DNA evidence from that rape to a man serving time for a string of bank robberies. The man's DNA also was found in a second unsolved rape that occurred eight days later. But what has happened since that man was charged in August is a cautionary tale about the limits of DNA evidence, which, at its most promising, has seemed capable of reaching across time to free the innocent and finger the guilty.

In August, as he was about to be released from prison, Walter Dillon was charged with the two 1997 rapes and transferred immediately to the King County Jail. But for the West Seattle woman's family, relief that a suspect had been identified quickly turned to dismay. Despite powerful evidence that he'd committed two rapes, Dillon was released on bail. The trial, postponed twice, is scheduled for next month, a year after he was charged. While the rape victim, now 23 and dealing with depression and drug addiction, tries to put the attack behind her, she must help the prosecution reconstruct a case 5-½ years old. She has nightmares that her attacker will return and daytime fears that he will flee before trial.

DNA matching, a powerful forensic tool in many cases, is turning out to be more complicated than first thought and is not a guarantee of a criminal conviction. Law enforcement is now using a more refined DNA-testing technique called STR, for "short tandem repeats," which allows DNA matching to be done with smaller pieces of evidence. Before STR testing, many pieces of evidence weren't viable sources because they couldn't yield enough DNA to test. But even with the advanced technology, prosecutors and victim-advocacy groups are finding that the criminal-justice system doesn't treat DNA evidence differently from any other evidence. Defendants are still eligible for release pending trial.

And in a recent Oregon case, a jury sided with defense attorneys who argued that although DNA evidence showed their client had sex with the victim, it didn't show he had killed her. "We're just starting to realize that DNA evidence may not

be the be-all, end-all," said Jane Foley, co-director of the advocacy unit in the Milwaukee County, Wis., District Attorney's Office, which recently was stung by acquittals in two so-called cold-hit DNA rape trials. Cold cases are those in which leads have dried up and investigations have gone dormant.

In the West Seattle case, the 18-year-old was on her way to high school in 1997 as the early-morning commute rushed past her on busy Southwest Admiral Way. She still can't believe one of the passing motorists didn't notice as a man dragged her from the sidewalk, stuck a gun in her side and pushed her toward a secluded area and raped her. When she got home, all she wanted to do was wash away traces of the attack. It was her 15-year-old sister, home sick that day, who persuaded her to call 911.

'Better off dead'

The woman's life in the intervening 5½ years has been marked by depression, drug addiction and the struggle to get clean. "As far as I was concerned, I was useless, better off dead," she said, sitting on a picnic bench at Alki Beach recently. It has been 10 months since she received the call from Seattle police telling her that DNA evidence preserved from her rape and a second violent attack in downtown Seattle in 1997 had been linked to Dillon, who was serving time for three bank robberies.

At Dillon's arraignment, prosecutors asked that his bail be set at \$500,000, noting that a conviction on either rape would be his third strike. But a series of King County judges reduced his bail to \$250,000, then \$100,000. On Christmas Eve, Dillon's girlfriend, herself facing sentencing on a federal fraud conviction, posted a \$15,000 bond to secure his release. "It was like a slap in the face," the rape victim said. She'd finally gotten off drugs and was thinking for the first time about college. Suddenly, she said, she was afraid even to go to the grocery. Her mother, a former high-school teacher, feared for her daughter's safety. The judge who released Dillon set no conditions on his release, and the state Department of Corrections, which still had authority over him, learned that he was out of jail only when the mother began making phone

calls.

Dillon now must report daily to a Corrections Department caseworker in Lynnwood, but the family is still worried he will flee before trial.

"DNA is such powerful, compelling evidence, it warrants putting someone in jail before trial," said the mother. Dillon's case marks the first cold-hit DNA case to come to trial in King County. The experience of the victim's family is leading prosecutors to ask whether the strength of DNA evidence shouldn't be considered by judges making pretrial-release decisions.

"DNA is an extremely powerful justice tool," said Dan Satterberg, chief of staff for King County Prosecuting Attorney Norm Maleng. "When you have that kind of evidence, that this is the rapist, there's a concern that he's out in the community." Judges are allowed to consider only whether a defendant poses a danger to the community and whether he or she is likely to return for trial. But Satterberg is concerned a DNA match will increase the chances a defendant will flee. "Because some of these defendants are facing such a long incarceration, their incentive to show up and face the music is about zero," he said.

Defense attorneys argue that the Constitution guarantees a "reasonable bail" to defendants and that the accused be presumed innocent unless proved guilty. "People aren't convicted by a crime lab but by a jury," said Jeff Robinson, a Seattle defense attorney and president of the Washington Association of Criminal Defense Lawyers. "People out on very serious charges show up for trial, get convicted and go to jail."

Scientists and the legal community are still learning about DNA, how it is analyzed by scientists and how reliable it is, Robinson said. In a highly publicized Oklahoma case, an FBI forensic scientist admitted falsifying results, putting in doubt criminal convictions in hundreds of cases.

DNA evidence can link a suspect to a victim, but not necessarily show that a crime took place. DNA matching can show there was sexual intercourse but not that there was coercion.

An acquittal in Oregon

Last month, an Oregon defendant

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whose DNA apparently linked him to a 1981 rape and murder was acquitted. The defendant's attorneys argued that their client had consensual sex with a 17-year-old Medford girl and left her alive that night 20 years ago. There was no physical evidence that the intercourse had not been consensual. The jury deliberated just three hours before finding him not guilty. "DNA evidence isn't a slam-dunk," said Lynn Hecht Schafran, Vice President of the NOW Legal Defense Fund and director of the group's judicial education program. She said cold-hit rape cases are challenging victims' advocates as they seek testimony from women who have put the rapes behind them and are reluctant to relive them. "There are a lot of ramifications from cold-hit rape cases that we are just

beginning to understand," Schafran said. One answer, she said, is to provide training to judges, prosecutors and victims' advocates about trying cases revived after long intervals.

U.S. Sen. Maria Cantwell, D-Wash., recently introduced federal legislation that would give crime labs more money to analyze DNA evidence in unsolved rape cases. DNA evidence in more than 4,000 Washington cases has never been analyzed or compared to the state felon database. Unsolved rape cases typically receive low priority in crime labs because the attacker is unknown, and criminal cases with a suspect and pending trial date must be completed first. Though DNA evidence is debated as public policy and attacked in courts of law, scientists still are convinced of its power to reveal the truth. Larry

Hebert, manager of the State Patrol Crime Lab, said the sensitivity of the technique in capturing unique fragments of DNA, coupled with scientific expertise in replicating the genetic fragments, yields impressive and verifiable results. And the crime lab doesn't stop with just one result, he said. When a match is made from crime evidence to the state felon database, the lab asks for a blood sample to make sure the DNA on file came from the same person. Once the result has been double-checked, he said, "I'm willing to take it to the bank."

Washington State Hazard Mitigation Planning Overview Request

The Washington Military Department, Emergency Management Division's Hazard Mitigation Grant Program is offering to provide a hazard mitigation planning overview for your community. The overview takes between 1-to-2 hours, depending on questions, as sharing is encouraged.

Natural hazards is the focus of the new requirement of a local mitigation plan, however, all hazards may be considered. The overview provides a brief idea of the requirements and how to look for plans already on the shelf to try to use best available data.

County wide participation is encouraged for a multi-jurisdictional plan—to include chief elected officials, emergency managers, floodplain managers, building officials, special purpose districts and others with the details to make the plan come together. This approach assures the county of a standardized plan.

If your jurisdiction would like to request an overview, please forward three dates when your jurisdiction is available and can arrange for a room with a screen or a blank wall that can be used by a computer/projector for a power point presentation (we'll bring the slides, computer and projector), provide a point of contact, allow for a minimum of one hour prior access time to set up and bring questions!

Please send the following to schedule an Overview:

Preference of Overview Date:	Time:	Access Time:
_____	_____	_____
_____	_____	_____
_____	_____	_____

Point of Contact:

Name: _____
Phone: _____
E-mail: _____

Driving Instructions/Map

Approximate Number of Participants: _____

Please return this form to San-Dee Stewart, state Hazard Mitigation Office, at:

s.stewart@emd.wa.gov or by fax: (253) 512-72