

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

SKAGIT COUNTY CITIZENS)	
ALLIANCE FOR RURAL)	
PRESERVATION, and)	PL06-0066
)	
FRIENDS OF SKAGIT COUNTY,)	
)	
Appellants,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
v.)	AND DECISION
)	
SKAGIT COUNTY DEPARTMENT)	
OF PLANNING AND DEVELOPMENT)	
SERVICES, and)	
)	
SKAGIT COUNTY PUBLIC)	(Appeal of PL05-0580)
UTILITY DISTRICT #1)	
)	
Respondents.)	
<hr style="border: 0.5px solid black;"/>		

This matter came on regularly for hearing on September 20, 2006, before Skagit County Hearing Examiner *pro tem* Bradford E. Furlong in the Commissioner's Hearing Room, 1800 Continental Place, Mount Vernon, Washington.

The case involved the appeal of an Administrative Special Use Permit approved for the Public Utility District for the installation of new water line and related infrastructure north of the City of Sedro Woolley.

The appellants, Skagit County Citizens Alliance for Rural Preservation (SCARP) and the Friends of Skagit County (FOSC) were represented by Ellen Gray, FOOSC, and Diane Freethy, SCARP. Respondent Department of Planning and Development Services (PDS) was represented by Brandon Black, Senior Planner. Respondent Public Utility District #1 (PUD) was represented by Warren Gilbert, Attorney at Law.

WITNESSES

Ellen Gray, Friends of Skagit County
Diane Freethy, Skagit Citizens Alliance for Rural Preservation
Brandon Black, Planning & Development Services
Warren Gilbert, Attorney at Law for PUD #1 of Skagit County
Jim Wiggins, Aqua Terr Systems, Inc.

Lee Schuirman
Patrick Perkinson
Keith Woods
James Weese
Malla Pizzuto
Nancy Swalling
Robert Helton

EXHIBITS

Skagit County Exhibits:

- #A1 Staff Memorandum
- #A2 Special Use application packet
- #A3 Notice of Development Application
- #A4 SEPA checklist and DNS 8/22/05
- #A5 Revised SEPA checklist and DNS 9/22/05
- #A6 Wetland and Fish and Wildlife Report 7/6/05
- #A7 Site plan/maps
- #A8 Comment letters
- #A9 Staff findings 6/28/06
- #A10 Notice of Appeal

Appellant Exhibits:

- #B Letter Michael Gerard
- #C Letter Jeanette Elliott
- #D Letter Henry Olander
- #E Letter Lee & Jan Schuirmann
- #F Fax Grace Johnson
- #G Letter Yvonne Martin
- #H Letter Robert & Marilyn Dite

Applicant Exhibits:

- #I Wetland Assessment Report - PUD
- #J Letter Army Corp of Engineers - PUD
- #K Amicus Curiae brief 6/5/98 *Abenroth v. Skagit County* - PUD

Additional Exhibits:

- #L Letter Lee & Jan Schuirmann - Schuirmann
- #M [Excluded]
- #N Notice of Decision PL06-0481 Sandy Tenneson - PUD
- #O "Potential Effects..." paper with attachments - Appellant
- #P *Thurston County v. Cooper Point* 108 Wn App 429 - Appellant
- #Q Presentation of Diane Freethy w/20 attachments - Appellant
- #R Letter June Kite - Appellant

PROJECT LOCATION: The proposed project is located north of the City of Sedro-Woolley and ranges over several roadways which include Fruitdale, Grip, Mosier, Bassett, and Hansen Roads. The pipeline extensions begin at Fruitdale and Kallock Roads and continue further along the primary roadways. Located within a portion of Section 31, Township 36 North, Range 5 East W.M.; Sections 1, 2, 11, 12, and 13, Township 35 North, Range 4 East W.M.; and Sections 6 and 7, Township 35 North, Range 5 East W.M., situated within Skagit County, Washington.

PROJECT DESCRIPTION: Administrative Special Use permit (#PL05-0580) for the installation of approximately five (5) miles of water conveyance infrastructure.

FINDINGS OF FACT

1. A hearing on this matter was first held on April 12, 2006 before Skagit County Hearing Examiner Wick Dufford. Hearing Examiner Dufford issued a decision on May 22, 2006. On June 1, 2006 a Request for Reconsideration was submitted by the appellants. On July 5, 2006 Hearing Examiner Dufford entered an Order Granting Reconsideration wherein he withdrew his decision and recused himself from further participation in the case. Notice for a new hearing was published on August 31, 2006 and a *de novo* public hearing was held on September 20, 2006.
2. The proposed project is located within a Rural Reserve (RRv) zoning/comprehensive plan designated area as indicated in the Skagit County Comprehensive Plan and associated maps adopted July 24, 2000 and as thereafter amended. The application was determined to be complete pursuant to SCC 14.06.100(2) on September 21, 2005.
3. A Notice of Development Application was posted along the subject project location and published in a newspaper of general circulation on September 29, 2005 as required by SCC 14.06.150. Notification was provided to all property owners within 300 feet of the subject project. There was a fifteen (15) day public comment period associated with the Notice of Development which ended on October 14, 2005. There were fifteen (15) comment letters received during the public comment period.
4. The application was reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C). Public Utility District #1 of Skagit County Washington assumed Lead Agency status. A Determination of Non-Significance (DNS) was issued on August 22, 2005. A "Revised" DNS was issued on September 22, 2005, and became effective following a fifteen-day (15) comment period that ended October 7, 2005. No conditions were placed on the threshold determination and no appeals were received.

5. The project was reviewed with respect to the Skagit County Critical Areas Ordinance (CAO) 14.24 of the Skagit County Code. Critical Areas staff recommended approval of the proposal without conditions.

6. The proposed project is not located within a designated flood hazard area as identified by FEMA on the Flood Insurance Rate Maps.

7. The application was routed to the Skagit County Public Works Department for comments. Public works supplied the following comments:

- a. A Utility Permit from Skagit County Public Works is required for all work done within County Right-of-way.
- b. All work shall comply with Skagit County Utility Policy and Road Standards. These standards include the use of CDF back fill for all open cuts located within County roadway prism and minimum 10” gravel base material. (reference detail on page 21 of construction plans)
- c. All work shall comply with Skagit County Code 14.32.060 Erosion and Sediment Control.

8. The application was routed to the Water Resources Division of Skagit County Planning and Development Services for review. Water Resources indicated the following:

“SCC 14.24.330 requires protection measures to reduce adverse impacts or potential adverse impacts to underlying aquifers. Installation of a water line by PUD is protecting beneficial groundwater uses and preventing degradation by protecting area groundwater and does not require a hydrogeo report per SCC 14.24.330(1).”

Additionally, a “Wetland-Fish and Wildlife Assessment” was conducted by ATSI. The assessment concluded that the project

...does not impact wetlands or streams but goes through county regulated wetland and stream buffers. However, the pre-existing condition of these buffers consist of paved road or gravel shoulder. Disturbance to the buffers will be temporary and post-construction conditions will resemble pre-existing conditions. Therefore, since post-construction conditions will not reduce the functions the existing buffers currently provide, and since the installation of the pipeline will not impact regulated wetlands or streams, mitigation for Skagit County is not required.

Correspondence from the U.S. Army Corps of Engineers indicated that no Department of Army permit under the Clean Water Act is required for the project.

9. The application was routed to Skagit County Planning and Development Services Shoreline review staff for comments. Shoreline staff had no comments or concerns with the proposal.

10. The majority of the area surrounding the project is rural in nature with scattered residential development on varying lot sizes, open pastures, and forested areas.

11. The applicant requested an Administrative Special Use permit (#PL05-0580) for the installation of approximately five (5) miles of water conveyance infrastructure. The project proposal includes the installation of water mains and a pressure reducing station near Mosier and Fruitdale Roads, to reduce further degradation of instream flows in the Samish and lower Skagit Rivers by providing potable water to existing development and future growth. Skagit County Code (SCC) 14.16.320(3)(b) requires Minor Utility Developments to obtain an approved Administrative Special Use Permit. SCC 14.04.020 defines "*Minor Utility Developments*" as "*utility developments designed to serve a small local community, are not manned and would be considered normal utility services for the area.*"

12. The applicant has supplied the following narrative:

"The Public Utility District No. 1 is improving its water system to meet existing and future distribution and regulatory requirements. These improvements will reduce further degradation of instream flows in the Samish and lower Skagit rivers including the tributaries Thomas, Hansen and Swede creeks by providing potable water for existing development and future growth through the Regional Water Supply System."

"In general, the proposed project will extend pipelines in the following areas:"

- 1800 lf of 12" – Bassett Road to Grip Road
- 2600 lf of 12" – Grip Road, Bassett Road to Union Square
- 5900 lf of 8" – Grip Road, Union Square to Brookings Road
- 7400 lf of 8" – Mosier Road, Grip Road to Fruitdale Road
- 8800 lf of 12" – Fruitdale Road, Kallock Road to Hansen Creek Road
- Pressure reducing station – Mosier Road and Fruitdale Road

"The majority of the proposed pipeline segments and appurtenances will be constructed within existing Skagit County road right of way. These extensions are located outside the corporate limits of Sedro-Woolley and fall under the jurisdiction of Skagit County. The project area is zoned Rural Reserve. Title 14 of the Skagit County Code provides the framework and permitting requirements for this project. The Skagit County Planning and Development Services has determined this project a minor utility development."

13. The Department approved the application for a Special Use Permit, subject to the following conditions and modifications:

1. The applicant shall obtain all necessary land use approvals.
2. The proposal shall be in compliance with the performance standards outlined within SCC 14.16.840.
3. A Utility Permit from Skagit County Public Works is required for all work done within County Right-of-way.
4. All work shall comply with Skagit County Utility Policy and Road Standards. These standards include the use of CDF back fill for all open cuts located within County roadway prism and minimum 10” gravel base material. (reference detail on page 21 of construction plans).
5. All work shall comply with Skagit County Code 14.32.060 Erosion and Sediment Control.
6. Construction of this water system (minor utility development) does not justify approval of future development proposals.

DISCUSSION

As a preliminary matter, the Appellants seek to have the tape recording of the first appeal entered into the record and reviewed by the Hearing Examiner. The current appeal was conducted *de novo*. This Hearing Examiner has taken pains to not consider the earlier decision so as to allow the Appellants a clean slate upon which make their case. To allow the tape in would be inconsistent with this approach and would allow an entire hearing’s worth of testimony and argument into the record of this appeal to which the participants cannot respond. Further, the first Hearing Examiner recused himself due to a challenge to his impartiality. To listen to a hearing he conducted could let into this hearing the manifestations of such impartiality, if any there is. For these reasons and because the Appellants had a full and fair opportunity to be heard at the hearing conducted in this appeal, the offer of the tape is denied and it will not be considered by this Hearing Examiner.

The appellants have raised three principle issues, and others, on appeal:

- (1) The application is for a “major” not a “minor” utility development per SCC 14.04.020;
- (2) The project will have unacceptable environmental impacts; and

(3) The project violates various land use policies and constitutes the prohibited extension of “urban services” into a “rural” area in violation of GMA and/or the County-Wide Planning Policies and/or the Comprehensive Plan and/or UDC.¹

1. Major v. Minor Utility Development.

SCC 14.04.020 defines “Minor Utility Developments” as “utility developments designed to serve a small local community, are not manned and would be considered normal utility services for the area.” Per SCC 14.04.020, a “Major Utility Development” is defined as “utility developments designed to serve a broader community area, or are manned.” This application is for five miles of water line infrastructure along approximately two miles of Grip Road and over a mile each of Mosier and Fruitdale Roads. The Hearing Examiner takes judicial notice that the Grip Road area and Fruitdale Road area are separate neighborhoods but appear to be in what is understood to be roughly the same “community.” Although water service has not previously been available and therefore is not “normal” in the immediate vicinity, water service in such areas is somewhat common and not, strictly speaking, abnormal.

The definitions of “minor” and “major” utility developments are vague at best, since the only difference in the case of unmanned systems is whether they serve a “small” or “broader” community. These are admittedly relative terms and provide little, if any, specific guidance. In such cases, it is within the administrative purview of the Department, as the agency charged with carrying out the zoning code, SCC § 14.06.040 (1), to set policy for the interpretation and administration of the code. *See, e.g., Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wash.2d 568, 90 P.3d 659 (2004). If the Department’s interpretations/administration are plausible and not contrary to the intent of the code, they will be upheld. *Anderson v. Weyerhaeuser Co.*, 116 Wash.App. 149, 64 P.3d 669 (Div. 2, 2003).

¹ It should be noted that the Appellants also object to the project as an unwise use of public resources and they question the scientific basis for the Applicant’s assertion that the project will protect or enhance low flow streams. As indicated at the hearing, the Hearing Examiner does not have jurisdiction to review or pass judgment on the wisdom of the Applicant’s decision to pursue the project. Likewise, the Hearing Examiner has no jurisdiction to evaluate the whether the project will achieve or help to achieve any particular goal with respect to low flow streams. Many applications come before the Hearing Examiner which the applicants plan and/or hope will achieve certain ends if completed. The role of the Hearing Examiner is limited only to determine whether the permit is properly issued or denied under applicable codes; the role does not include a judgment as to whether the ends sought by the applicant can be achieved, unless those ends are performance standards regulated under applicable codes. Therefore, the wisdom and utility of the project should not and will not be evaluated in this forum.

In this case, the Department testified that it generally determines whether an unmanned water utility development is major or minor based on whether the line is a transmission line or distribution line. In this case, although the line will “loop” into existing PUD lines, it is intended and will primarily serve, as a distribution line. The code is vague and another interpretation might also be plausible; but the Department’s interpretation that the instant application is for a “minor” utility development is plausible and not contrary to the intent of the code and therefore must be upheld.

Although not directly substantive, this classification has important ramifications. A minor utility development is processed as a Level I permit under SCC § 14.16.050 (1) (a) (vii). Therefore, the burden of proof is on the Appellant to show that the action of the Department is “clearly erroneous.” SCC§ 14.16.110 (13). A determination “is ‘clearly erroneous when, “although there is evidence supporting the [decision-maker’s] finding, the reviewing [authority] on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *Mitchell v. PEMCO Mut. Ins. Co.* 142 P.3d 623, 625 (Div. 1, 2006). It is under this standard therefore that the Department’s approval must be judged.

2. Environmental Harm.

Skagit County Special Use Permit Criteria. Section 14.16.900 (2) Special Use Permit requirements of the Skagit County Code indicates that certain items will be reviewed when approving or denying Special Use permits. The Department addressed the requirements as follows (Department comments in italics):

- A. The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.

The Skagit County Comprehensive Plan does not specifically provide policies that either support or oppose the proposed project. However, the proposal is located within the Rural Reserve (RRv) designation which allows for minor utility developments designed to serve a small local community and are not manned. The Skagit County Comprehensive Plan (Chapter 10) does speak to public water systems and the relationship to the Skagit County Coordinated Water System Plan (CWSP) within the Utilities Element. Specifically, Page 10-12 states, under “County Planning Policies Regarding Water” the following:

“All growth outside the urban growth boundary shall be rural in nature as defined in the Rural Element, not requiring urban government services except in those limited circumstances shown to be necessary to the satisfaction of both the County and the affected city (with regard to water the City of Anacortes is the only municipal water purveyor) to protect basic public health, safety and the environment, and when such services are financially supportable at rural densities and do not permit urban development.”

Also, Page 10-12 and Page 10-13 state the following under “County Comprehensive Plan Policies Regarding Water”

“The Comprehensive Plan recognizes that the need for the provision of piped water in rural areas may occur under limited circumstances such as: the transmission pipeline routing between Urban Growth Areas; where existing developments are providing rural public water service and fire protection in accordance with the CWSP; where groundwater does not meet Safe Drinking Water Act and State Health Department criteria for potable water use; where water quantity issues related to actual yield or where groundwater withdrawal will cause a conflict with instream resources as defined by the Skagit River MOA; and properties that are rural in nature and density and are adjacent to a piped water system.”

Further, Objective 10 on Page 10-13 states:

“To influence the development and use of the water resources of Skagit County in a manner that is consistent with the Countywide Planning Policies and the Comprehensive Plan.”

The applicant has stated the following within the application narrative:

“The District requires that improvements be made to its water system to meet existing and future distribution and regulatory requirements. These improvements will reduce further degradation of instream flows in the Samish and lower Skagit rivers and its tributaries Hansen, Thomas and Swede creeks by providing potable water for existing development and new growth through the Regional Water Supply System. The Skagit County Code and the Growth Management Act (GMA) recognize domestic water as an urban service; therefore this project is compatible with land use. Pipe sizing is based on the Comprehensive Plan which references the SCCWSP requirements.”

B. The proposed use complies with the Skagit County Code.

The proposed project is located within the Rural Reserve (RRv) zoning/comprehensive plan designated area. SCC 14.16.320(3)(b) requires Minor Utility Developments to obtain an approved Administrative Special Use Permit within the Rural Reserve zone. SCC 14.04.020 defines “Minor Utility Developments” as “utility developments designed to serve a small local community, are not manned and would be considered normal utility services for the area.”

The applicant has indicated that “The proposed use complies with the Skagit County Code for permitting and the area is zoned as Rural Reserve.”

- C. The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.

The department notes that the proposal will be required to be in compliance with the performance standards outlined within SCC 14.16.840. The department further notes that there will be limited noise and vibration in the immediate location of construction during the line installation. The disturbances will be temporary and limited to daylight hours.

The applicant has indicated the following:

“The extension of the pipeline will result only in temporary construction activities. Disturbances will be minimal and temporary for the life of the project. Undue noise, odor, heat, vibration, air and water pollution impacts on the surrounding residents will be limited to daylight hours during the business week. The contractor will mitigate disturbances as needed according to code and standards set by the County.”

“The associated noises will be a result of earth moving and excavating equipment, truck activity from delivery of construction materials and equipment, air compressors, asphalt saw-cutters and associated tools during building construction and equipment assembly”

“It is expected that noise, odors and emissions will occur during the construction of the pipeline. Emissions from heavy equipment during construction will exist temporarily during the pipeline extension. Emissions are expected to be minimal. Odors generated from the project will be minimal and limited to emissions from heavy construction machinery and equipment. The District does not anticipate storage of chemicals, fuels, waste oils or solvents at the project site. The plans and specifications will require that the contractor implement best management practices to remedy any potential spills or improper use of materials. The use of filter fences, straw bails, construction entrances etc. will reduce the risk of contamination from waste materials as well as reducing surface water runoff and for erosion and sedimentation control.”

- D. The proposed use will not generate intrusions on privacy of surrounding uses.

The proposed use will not generate intrusions on privacy of surrounding uses. After construction is completed, the project site will be unmanned. The work to be completed will occur within the County road right-of-way and/or easements.

The applicant has indicated the following:

“Construction activities will be conducted during the daylight hours of the workweek.” The proposed pipeline extension will not generate intrusions on privacy of surroundings. Construction activity will be limited to the County road right of way and/or easements.”

- E. Potential effects regarding the general public health, safety, and general welfare.

There will be no negative effects on the neighborhood, region, general public health, safety, or welfare as a result of this project provided the construction/installation is conducted in compliance with the state and local requirements. The project is being proposed to reduce further degradation on the instream flows in the Samish and lower Skagit Rivers as well as the tributaries, Hansen, Thomas and Swede Creeks by providing potable water for exiting and new development.

The applicant has stated that “Public health, safety and welfare will not be adversely affected by construction activity. The District will mitigate any effects in accordance to code and standards set by the County. Public safety will be improved by installation of the fire hydrants as required by the County Fire Marshal as outlined in the SCCWSP.”

- F. For special uses in Industrial Forest NRL, Secondary Forest NRL, Agricultural NRL, and Rural Resource NRL, the impacts on long-term natural resource management and production will be minimized.

There will be no impacts on natural resource management or production as a result of the proposed project.

- G. The proposed use is not in conflict with the health and safety of the community.

The proposed use will not create a conflict with the health and safety of the community provided all local, state and federal regulations are complied with. The project will improve the water supply quality to several parcels within the area.

- H. The proposed use will be supported by adequate public facilities or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

The proposal will be supported by adequate facilities and will not adversely affect public services to the surrounding areas.

With respect to the issue of environmental harm, items B, C, E and G above are implicated by this issue. The evidence adduced at the hearing revealed that numerous road cuts will be made and that the bulk of the project will be installed in or next to existing roads within county right-of-way. The Public Works Department reviewed the proposal and suggested conditions to control sedimentation. Critical Areas reviewed the proposal and had no concerns. No appeal was filed with respect to either of the SEPA determinations of non-significance. The wetlands assessment found that there would be no degradation from current conditions of regulated wetlands, streams or their buffers.

The Appellant produced a number of illustrative photographs of the proposed route. These photos demonstrate the presence of wetlands or wetland buffers adjacent to the roadways. However, there was no demonstration that the safeguards proposed by Public Works would be inadequate. Nonetheless, the photos demonstrate that in some areas, there is little room for installation and consequently little room for error.

Under the circumstances, it is prudent to require that the Applicant or its contractor conduct a pre-construction meeting with Public Works and during the course of construction call for periodic inspections by Public Works staff to assure that conditions of approval imposed by Public Works are being met and are effective. With such an additional condition and in light of the four cited criteria, the Department's approval is not clearly erroneous on this basis.

3. Consistency with County Wide planning Policies, Comprehensive Plan and Zoning Code/Extension of "Urban Services."

The Appellant cited numerous provisions in the County-Wide Planning Policies, ("CPPs"), the Comprehensive Plan ("CP") and Unified Development Code ("UDC") with which the proposed project is inconsistent. These arguments implicate review for compliance with SCC § 14.16.900 (2) (A & B).

a. Application of CCPs. The Appellant cites CPPs 1.8, 12. and 12.10 for the propositions, respectively, that the proposal would construct in the rural area an impermissible "urban service;" that the proposal is not consistent with the CP; and not in conformance with the Coordinated Water System Plan. However, SCC § 14.16.900 (2) (A) refers to comprehensive plan consistency. The CPPs, while they are "the foundation of the CP," *Role of the County -Wide Planning Policies*, item # 1, CCP, p.1, June, 2000, are separate planning document required under GMA, RCW 36.70A.040 (3). Thus, while the CP and UDC might be judged by their consistency with the CPPs, a conditional use permit, under the UDC is not. Therefore, Appellant's contentions of inconsistency with the CPP cannot be the basis to determine that the Department's approval is clearly erroneous.

b. Comprehensive Plan Consistency. The Appellant cites numerous policy statements in the CP with which it is alleged the proposal is inconsistent. Each is addressed as follows:

i. CP Policy 6A-3.6. this Policy states:

Urban governmental services should not be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

This policy forms basis for the Appellant's primary objection to the project. In particular, the Appellant contends that the proposed water line and supporting infrastructure constitute "urban services" and that as such are prohibited in a rural area. Indeed, the focus of Appellants' objections seems to be the perception and concern that allowing this type of utility extension will lead to urbanization of the area in violation of GMA, the CCPs, the CP and the UDC. There can be no doubt that the extension of urban services into rural areas in contrary to these state and local regulations. However, this argument begs the question as to whether the proposal meets the definition of "urban services" under GMA.

RCW 36.70A.030 (20) defines "Urban governmental services" or "urban services" to

include those public services and public facilities at an intensity *historically and typically provided in cities*, specifically including storm and sanitary sewer systems, *domestic water systems*, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas *and normally not associated with rural areas*. (emphasis supplied).

There is no doubt that domestic water supply lines and infrastructure are historically and typically found in cities, but in this county they have been associated with rural areas approximately seventy years. In this sense, they may or may not be deemed "normal." But the inquiry does not end here. The Legislature also defined "Rural governmental services" or "rural services" to

include those public services and public facilities *historically and typically delivered at an intensity usually found in rural areas*, and may include *domestic water systems*, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

RCW 36.70A.030 (17) (emphasis supplied).

The Legislature recognized that domestic water service, historically delivered in rural areas, is a "rural," not "urban" service. Again, the evidence at the hearing clearly established that the Applicant, a county-wide public utility district, has provided domestic

water supply in rural Skagit County since the 1930s and at an intensity similar to that proposed in this project. While domestic water systems certainly are also, under different circumstances, “urban services”, the conclusion is inescapable that the project here meets the definition of a “rural service” and therefore is not violative of any provision in the CP discouraging the provision of urban services in a rural area and is not violative of GMA.²

ii. CP Policy 6A-3.7 and 10A-3.1. These CP policies state respectively that:

Skagit County shall promote wise use of public funds in rural areas by allowing service providers to establish distinct rural facility and service standards that are consistent with rural densities and uses.

and

The extension and sizing of distribution system components shall be consistent with the comprehensive plan.

As explained at the hearing, the hearing Examiner is not in a position to review or pass judgment on the wisdom of the PUD commission’s decision to construct these improvements. The Applicant indicated that the improvements are in line with the Coordinated Water System Plan which anticipates water supplies for densities allowed under the current UDC. The area in question is zoned Rural Reserve, which is a zoning district that prescribes rural densities and uses. As discussed above, extension of domestic water supply in a rural area is not in and of itself inconsistent with the comprehensive plan. The proposal is not inconsistent with these policies.

iii. CP 10A-10.4. the policy states, in part that:

Rural Water Service shall mean water service provided by an individual well, a stand alone public water system, or extension of a water system from within an urban growth area that is designed to provide rural water service. The water service shall be designed to meet the rural water supply needs of the rural area users as defined by this Comprehensive Plan, the Coordinated Water System Plan and the criteria established for the water service in Section 4 and on Table 4-1 of the Coordinated Water System Plan.

(i) The design shall be guided by the projected rural area water supply and fire protection associated with the requirements of this Comprehensive Plan, and based on the physical or hydraulic capacity requirements as outlined in the Coordinated Water System Plan and the designated water utility’s water system plan.

This proposal is an “extension of water system...designed to meet rural water supply needs” and from the evidence provided (and uncontroverted) is in compliance with the Coordinated Water System Plan and CP. This policy is not violated.

² For the same reason, were the CPPs applicable, this proposal would not run afoul of policies therein discouraging urban service in rural areas.

iv. CP10A-10.5. the policy states:
New capital facilities for water-system compliance with state and federal safe-drinking-water rules, and water treatment standards shall be based on rural area densities and a level of service that is consistent with the existing character of the environment.

Again, the evidence at the hearing indicated that the proposal is sized and designed to provide a level of service consistent with the density established in the Rural Reserve zone. This proposal is consistent with this policy.

v. CP 10A-10.7 and 10.8. These policies state:
Connection to a public water system should be encouraged in those areas of low flow streams.

Limitations on uses and densities should be considered within designated low flow stream corridors where necessary to limit individual wells and protect base flows.

The evidence at the hearing established that the purpose of the grant to pay for this project is to create a water system in an area of low-flow streams. While density limitations may be another solution, the fact that the project is the chosen means to deal with low flow stream issues does not make the project inconsistent with these policies.

4. Other Contentions.

a. Application of RCW 36.70A.110. The Appellants contend that the proposal runs a foul of RCW 36.70A.110 (4), which states:

In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

They claim that there is no necessity to protect public health and safety and that therefore the extension of “urban services” is not justified. This argument fails for two reasons. First, the UDC does not include consistency with any state statutes in the review criteria. Second, as discussed earlier, the proposed water system meets the definition of a “rural” service.

b. Application of *Thurston County v. Cooper Point Ass'n*, 148 Wash.2d 1, 57 P.3d 1156 (2002).

The Appellants argue that the Supreme Court's decision in the *Copper Point* case should control the outcome here. In *Copper Point*, the Supreme Court upheld a decision that the extension of a *sewer* line into a rural area was prohibited by GMA. In this case, the proposal involves a water line, which as discussed, meets the definition of a rural service. The Court in *Cooper Point* noted that sewer lines are re defined as "urban" by RCW 36.70A.030(19). The case has no application to this permit.

c. Evidence of Low Flow Stream Problems.

The Appellants presented evidence indicating the science of in-stream flows is uncertain and the problems putatively addressed by this project may not exist. However, as discussed earlier, neither the wisdom of the project nor the likelihood of its operational success, except as pertains to county performance standards, is within the jurisdiction of the Hearing Examiner. These arguments, which may be meritorious, should be presented in political-policy forum, not in a quasi-judicial proceeding on a permit application.

d. Opposition by Many Citizens.

A petition presented and numerous letters demonstrate quite clearly that many citizens in the area and elsewhere oppose the project. Unfortunately, none of the criteria in the UDC by which the project must be judged allow the hearing Examiner to be affected by this sentiment. Again, the proper forum for this expression of opposition is political.

CONCLUSIONS OF LAW

1. The Hearing was properly requested by Appellants, advertised and conducted. The Hearing Examiner has jurisdiction over this matter pursuant to the UDC.
2. The Appellants have standing to bring the appeal.
3. The Applicant and Department complied with SEPA requirements.
4. The application was properly processed as a minor utility development pursuant to SCC § 14.04.020.
5. The decision of the Department to approve the application with conditions was not clearly erroneous, with the addition of one further condition.
6. Any finding of fact may be construed as a conclusion of law and any conclusion of law may be construed as a finding of fact.

CONCLUSION AND RULING

The Appellants presented well-articulated arguments in opposition to the project. Many of the arguments are, however, simply not a basis upon which the Hearing Examiner, within the context of this quasi-judicial appeal, may overrule the Department's approval. The Appellants' primary contention that the project would place an urban service in a rural area is incorrect under applicable law. The UDC sets a high standard of review to upset this permit approval. It does not allow the Hearing Examiner to substitute its judgment for that of the Department and requires that the appellants meet a difficult burden. That burden has not been carried in this case.

For the reasons set forth above, the decision of the Department to approve the application, with conditions as set forth above is **AFFIRMED**, with the following additional condition imposed: Prior to commencement of construction, the Applicant and its contractor shall meet with the appropriate Public Works staff to discuss implementation of conditions imposed by Public Works and during the course of construction the Applicant or its contractor shall call for period inspections of the project to assure compliance and effectiveness of the Public Works conditions.

SKAGIT COUNTY HEARING EXAMINER

BRADFORD E. FURLONG, *pro tem*

Date: October 11, 2006

Date transmitted to appellant: October 11, 2006

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.