

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

- Applicant:** Public Utility District #1
c/o Scott Spahr
P. O. Box 1436
Mount Vernon, WA 98273
- File No:** PL06-0008
- Request:** Special Use Permit
- Location:** Cook Road right-of-way from near intersection of Highway 99 and Cook Road east to Brickyard Creek and then south paralleling the creek and then east across the creek running along the south side of Janicki Ball Fields within Sedro Woolley and then south along Hodgins Road to the transmission main that parallels SR 20. The portion of the project in the unincorporated County will be within portions of Sec. 19 – 23, T35N, R4E, W.M.
- Land Use:** Agricultural-Natural Resource Land
- Summary:** Installation of a water transmission line connecting the District's 24-inch transmission main along SR-20 to an existing 16-inch line in the old Highway 99 right-of-way at Cook Road. The new line will be 18-inch ductile iron pipe. Appurtenances will include air release valves, blow off valves, inline isolation valves, pressure reducing valves and vaults.
- Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 22, 2006.
- Decision:** The application is approved, subject to conditions.

FINDINGS OF FACT

1. Skagit County Public Utility District #1 (applicant) seeks to install approximately 4.1 miles of 18-inch transmission line.
2. The route will traverse lands between the 24-inch transmission line that parallels SR 20 at Hodgins Road and the 16-inch transmission line within the right-of-way of Old Highway 99 at the Cook Road intersection. Part of the project will be in the City of Sedro Woolley and part in unincorporated Skagit County.
3. In the County, the project will be located within portions of Secs. 19, 20, 21, 22, 23, T35N, R4E, W.M. Most of the property involved is zoned as Agricultural-Natural Resource Land (Ag-NRL). The connection along Old Highway 99 will take place adjacent to a Rural Freeway Service (RFS) zone.
4. The new line will be 18-inch diameter ductile iron pipe and will include as appurtenances air release valves, blow off valves, inline isolation valves, pressure reducing valves, and vaults.
5. The purpose of the new line is improve system performance by increasing pressure and flows to the Bow Hill, Burlington Hill and Bay View areas, where demand has been increasing. These areas are higher in elevation than the nearby agriculturally-dominated flood plain, but are currently receiving water pumped up from the valley. The subject project will deliver water by gravity flow from the treatment plant at Judy Reservoir via a high-head pipe that will eliminate the need for pumping of water for distribution.
6. The Staff has determined that the project is a “Major Utility Development,” and that a Hearing Examiner Special Use Permit is required. See SCC 14.04.020, 14.16.400(4)(f).
7. Most of the County portion of the project is within the Cook Road right-of-way and will require the acquisition of easements. The Cook Road route was selected as the optimal route after an assessment of three alternative routes. The route selected offers the least impact on the operation of the existing system, and a low risk of pipe failure. It also represents a comparatively less complex project to build.
8. Tracing the route from the Highway 99/Cook Road intersection, the proposed alignment will run in the north shoulder outside of pavement of the Cook Road right-of-way eastward nearly to Brickyard Creek. Just west of Brickyard Creek, the pipeline will turn south, crossing Cook Road and paralleling Brickyard Creek before turning east, crossing the creek and running along the south side of the Janicki Ball Fields within Sedro Woolley. The line will then again turn south along Hodgins Road right-of-way until its connection with the transmission main between SR 20 and the railroad tracks at

Hodgins Road. An isolation valve and pressure reducing station will be installed south of the intersection of Hodgins and SR 20.

9. There will be four special crossings. At the west end where the new line connects to the 16-inch line, the pipe will cross Old Highway 99 and the BNSF railroad tracks. Along its route it will cross a tributary to Joe Leary Slough and it will cross Brickyard Creek. At the east end of the project, the new pipeline will cross SR 20 as it connects to the 24-inch main. Except at Brickyard Creek and Joe Leary Slough, the project crosses no critical areas.

10. Open-trench construction is proposed with the possible exception of some roadway crossings where jack and bore techniques may be used. Waterway crossings will be open cut construction occurring during summer months when flows are low or absent. Excavated soil will be used as backfill as the construction progresses. Waste excavation will be trucked away and disposed of at an approved site. Imported bedding materials will be placed in the trench as necessary.

11. The proposal is to install the line during the summer and fall of 2006 with waterway crossings during the summer. The principal environmental effects are expected to be short term impacts accompanying construction. Best Management Practices to control emissions will be employed during the construction phase. No heavy equipment or machinery will be used. During construction appropriate arrangements will be made for worker parking, traffic control and detours. Vehicle impacts during construction are expected to be small because most of the construction is on the edge of the right-of-way.

12. The completed facilities will operate continuously and will involve no on-site personnel except for periodic maintenance inspections. Once installed the new pipeline facility will be underground. The only aesthetic impact will be from several air relief vent pipes extending about three feet above ground. The facility will not add noise, odors or heat to the environment.

13. An Environmental Checklist was submitted. A Biological Assessment was prepared. After environmental review, the PUD issued a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) on November 1, 2005. The MDNS added conditions related to reducing construction impacts. The MDNS was not appealed.

14. The portions of the project affecting waterways are within Fish and Wildlife Habitat Conservation Areas under the County's Critical Areas Ordinance. The Staff concluded that the conditions of permits required by the United States Army Corps of Engineers and the State Department of Fish and Wildlife satisfy the protection standards of the County Code.

15. Comments of other County Department can be reflected as conditions of approval.

16. The surrounding land uses along Cook Road are agricultural with scattered rural residences. As the project approaches Sedro Woolley, the land use pattern becomes more residential.

17. The District provided a detailed analysis of alternatives to the development of the project in natural resource lands. Though within the AG-NRL zone, the portions of the work directly within road rights-of-way, will not affect agricultural production. But in two areas, some productive agricultural property will need to be traversed – the Joe Leary Slough tributary crossing and the Old Highway 99-BNSF Railroad crossing.

18. Where the alignment will be on an easement on agricultural lands, the applicant proposes to mitigate effects on this land to the maximum extent possible. The pipeline will be buried at a depth that will not impact the agricultural productivity of the area. The mode of construction will be designed to restore the land to preconstruction conditions. After cover is placed over the pipe, top soil stockpiled during excavation will be returned to the surface. The original grade will be restored. Compensation will be paid for any crop damage or loss during construction. Any drain tiles damaged will be replaced.

19. The District testified that it has met with potentially affected property owners to try to negotiate easements and permit conditions. The owners of the Tennessee farm (Joe Leary Slough tributary) testified to their concerns over possible long-term impacts of the construction on their operation. Old drainage systems that are effective are in place and the fear is that 50 to 60 acres could be lost to farming if such systems are disturbed. The suggestion was made that impacts could be avoided if the south side of Cook Road were used.

20. The District stated that it does not want to disturb farmland and hopes that it can avoid doing so by using the road prism where needed along the north side. At present this is not a viable alternative because the Department of Public Works has refused to allow work in the road prism. The District estimates that crossing to the south side of Cook Road would cost an additional \$200,000 and would have an impact on agricultural areas south of the road.

21. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (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.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety, and general welfare.

(f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

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

22. The Utilities Element of the Comprehensive Plan recognizes the need for water transmission systems in rural areas when the routing provides water to areas experiencing residential growth. The subject project is consistent with the intent of the Comprehensive Plan.

23. The Code requires a Hearing Examiner Special Use Permit for major utility developments where there is no viable alternative to using designated agricultural land. An analysis of alternatives to development on natural resource lands must be provided. SCC 14.16.400(4)(f). The required analysis was provided in this case. In the relatively limited areas where agriculture would be affected, no alternative to using agriculturally designated land has been found to be viable. As conditioned, the Special Use Permit will meet the requirements of the County Code.

24. As conditioned, the project will not have significant adverse environmental effects and will meet the Code's performance standards.

25. Once in operation, the project has no significant potential to intrude upon privacy. It will require minimal maintenance at a few locations, accessible from Cook Road.

26. The general public health, safety and general welfare will be positively affected by an improved public water system. Fire hydrants will be included at major intersections, a gain for public safety.

27. The mitigation proposal presented by the applicant should minimize any long-term impacts on agricultural land management and production. The District, however, needs to enter into an agreement with affected landowners that insures they will be made whole for any damage inflicted on their agricultural activities.

28. There will be no conflict with the health and safety of the community. The purpose of the project is to serve a broader community with a reliable and ample supply of safe potable water.

29. No significant demands on existing public facilities will be made by this project. It will not adversely affect public services.

30. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.150(1)(b)(ii).

2. The requirements of SEPA have been met.

3. The proposal is a “Major Utility Development” designed to serve a broader community area, as defined by SCC 14.04.020. A Hearing Examiner Special Use Permit is required in the Ag-NRL zone. SCC 14.16.400(4)(f).

4. The facts support a conclusion that, as conditioned, the proposal will be consistent with the Special Use Permit criteria of SCC 14.06.900(2)(b)(v).

5. The proposal satisfies the substantive requirements of SCC 14.16.400(4)(f).

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be constructed and operated substantially as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other necessary permit and approvals.

3. The applicant shall comply with all relevant provisions of the Skagit County Code.

4. The applicant shall comply with the conditions of the Mitigated Determination of Non-Significance issued on November 1, 2005, as follows:

a. Develop a temporary erosion/sedimentation control plan which shows proposed water quality practices during construction which are in accordance with the Washington Department of Ecology Stormwater Management Manual as adopted by Skagit County and the City of Sedro Woolley.

b. During construction, appropriate traffic controls and flagging will be used in accordance with the MUTCD Manual as necessary. All construction activities must be in accordance with the standards set forth by the Washington Department of Labor and Industries. Best Management Practices for any environmental hazards produced by equipment shall be implemented.

5. The applicant shall submit to Planning and Development Services for approval copies of easements and agreements regarding the use of agriculturally productive land showing that impacts on long-term natural resource management and production will be minimized. These submissions shall include an enforceable promise to compensate agricultural land owners for any damages to their property and its productive capacity.

6. All work within County right-of-way shall be in compliance with County Utility Policy and shall require a utility permit from the Department of Public Works.

7. The applicant shall comply with relevant State regulations, including those concerning noise (Chapter 173-60 WAC) and surface and ground water quality (Chapters 173-201A, 173-200).

8. In the County, fire hydrants shall be installed in compliance with the Skagit County Coordinated Water System Plan, Table 4-3, and in the City, in compliance with Sedro Woolley Fire Department requirements.

9. The Washington State Department of Transportation (WSDOT) shall have the opportunity to review and comment on any work occurring with the right-of-way of State Route 20. In addition, WSDOT shall review and approve the Traffic Control Plans for work occurring in the vicinity of SR 20/Hodgins Road and I-5/Cook Road prior to any work occurring in those locations.

10. The Special Use Permit shall be void if work is not started within two (2) years of the date of approval, or if the use is abandoned for a period of one (1) year.

11. Failure to comply with any condition may result in permit revocation.

DECISION

The application is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: May 10, 2006

Date Transmitted to Applicant: May 10, 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.