

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Washington State Department of Transportation (WSDOT)
c/o Ben Brown
15700 Dayton Ave. North
Seattle, WA 98133

File No: PL07-0719

Request: Special Use Permit

Location: Adjacent to 61077 Cascade River Road, west of Foxglove Lane, east of the Town of Marblemount, within a portion of Sec. 7, T35N, R11E, W.M.

Parcel No: P45950

Land Use Designation: Rural Reserve (RRv)

Summary of Proposal: To store approximately 120,000 cubic yards of rock for use by WSDOT, Skagit County, and the National Park Service as needed for maintenance, construction and emergency repair of roads. The rocks currently occupy approximately 4.5 acres of a 35 acre site

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on January 23, 2008. There was substantial public testimony.

Decision: The application is remanded to Planning and Development Services for further review.

FINDINGS OF FACT

1. The Washington State Department of Transportation (WSDOT) seeks a Special Use Permit for the outdoor storage of approximately 120,000 cubic yards of rock which originated from the clean up of a rock slide that closed State Route 20 in the vicinity of Newhalem.

2. In the winter of 2003-2004, a major rock fall occurred on SR20 between Falls Creek and Afternoon Creek, just east of Newhalem. Portions of the highway were damaged and slopes above the highway were unstable. WSDOT created a rock fall catchment area to protect the traveling public. Eventually arrangements were made to remove the rock material from the catchment area.

3. WSDOT, Skagit County and the National Park Service (NPS) reached an agreement allowing approximately 120,000 cubic yards of rock to be hauled to and stockpiled at a county-owned storage site north of the Cascade River Road near Marblemount. Under the agreement the stockpiled rock was to be available on a first need basis for maintenance, construction and emergency road repair requirements of the three agencies.

4. The storage site is located near 0.5 miles east of SR 20 within a portion of Sec. 7, T35N, R11E, W.M. The site is on the opposite side of the Skagit River across the bridge from Marblemount. The location is adjacent to 61077 Cascade River Road, west of Foxglove Lane. The Cascade River is about 335 feet to the south of the site. The Skagit River is about 1,700 feet to the west. There is a seasonal pond about 250 feet to the west. The zoning is Rural Reserve.

5. The site is approximately 35 acres in size. There is a cleared area of about 4.5 acres where the rock is currently stored. The balance of the site is covered with trees and undergrowth. The storage site is in the southeasterly portion of the acreage, about 196 feet north of the Cascade River Road. The entry is gated and the gate is locked when the site is not in use. In the future, the entire property will be fenced.

6. The County Commissioners adopted Emergency Resolution #R20040199 on June 24, 2004, taking note of the rock slide and authorizing WSDOT to move rock from the slide site to County's property near Marblemount. The Resolution stated that if the rock is moved to this location it could be used by WSDOT, the County and the NPS. The Resolution also noted that "the property belonging to Skagit County does not have a Special Use Permit at this time for the storage of rock, but a Permit will be applied for as soon as possible."

7. Over the intervening years, long beyond the end of the original emergency, operations at the site have from time to time continued. Until now there has been no other formal County action allowing the rock storage and removal operations. The

purpose of the present application is to secure the Special Use Permit referred to in the Emergency Resolution.

8. According to WSDOT's Environmental Checklist, the storage site will be needed for approximately 20 years. The plan is for WSDOT and the County to be able to enter the site and remove materials on a periodic basis over this time. (The NPS will take materials from the site for five years.) The Staff Report states that at the end of the 20 years, remaining rock on the site will become the property of the County. There are no plans to bring more rock onto the site. The proposal does not include rock crushing, or other processing activities.

9. The application calls for using the existing access to the site, which means that entering trucks will leave SR 20 near milepost 106.10 in Marblemount, cross the Skagit River Bridge on Cascade River Road, and proceed about a half mile to the site gate. Loaded trucks leaving the site will follow this course in reverse.

10. The request is to authorize operations at the site from Monday through Saturday, from 7 a.m. to 7 p.m., with night work to occur only when "necessary." The application contemplates that operations at the site will include rock sorting as well as rock removal.

11. The impression created is that rock will be removed from time to time for use in connection with scheduled road contracts and in "emergency" situations. There has been no attempt to define what constitutes a need for such material. No idea whatsoever has been provided as to what might constitute an "emergency" or when night work might be "necessary."

12. The application does not describe what is involved in "rock sorting," nor is there any listing of the type and amount of equipment that would be needed on site, either to carry out sorting or to load the trucks.

13. As to impacts, the applicant indicates the following: a) removing material from the stockpile will not impact traffic or existing parking areas; b) noise levels will only temporarily increase from sorting, loading and hauling vehicles; c) no adverse air quality impacts are expected, though there will be temporary increases in engine emissions from trucks and dust particles may temporarily increase due to sorting and removal operations; d) vibrations will not impact adjacent properties; e) no toxics will be stored on site; f) no surface water impacts are anticipated; g) the property will be kept secure through a perimeter fence and an entry gate that is locked when not in use; h) no structures will be built; portable sanitary facilities will be provided if needed; i) no aesthetic impacts will occur. The applicant states that existing regulations will be complied with and that noise variances will be obtained if needed.

14. The County staff recommends approval of the permit. The primary justification is that if the site is not permitted the rock will need to be moved to an approved site, probably in the western part of the County. The Staff Report states that “relocating the existing material to a western Skagit County location and transporting the material back to eastern locations when needed is not an efficient use of resources, nor would this meet the goals and objectives of the Comprehensive plan to conserve energy and maintain the County Transportation system in an environmentally and economically sensitive manner.”

15. There is a significant residential population in the neighborhood near the rock stockpile. There are over 30 homes within a half mile radius. The closest is about 100 feet from the stockpile. An RV park is located approximately 650 feet from the stockpile.

16. The immediate vicinity is a popular recreation area. Thousands of fishermen annually use the lower section of the Cascade River. A raft launching site (with parking lot) and a river-walk trail are within 1000 feet of the rock pile. Promotional material from the Forest Service (which maintains these facilities as part of the Skagit Wild and Scenic River System) notes that deer may be encountered along the path and that eagles and other fish-eating birds can sometimes be observed.

17. Just across the Skagit River bridge is the main commercial area of Marblemount, including a hotel, restaurants, a general store and tourist services.

18. On November 8, 2007, the County issued a Mitigated Determination of Non-Significance (MDNS) in relation to the application. The conditions were standard directives to comply with existing regulations. Subsequently on November 15, 2007, the County withdrew the MDNS, noting that WSDOT, as lead agency for the project, had already issued a DNS on July 16, 2007.

19. Until the County issued its MDNS, the local citizenry were unaware of the WSDOT application. Once they learned about it, they responded. The record contains letters of protest from 13 citizens. Several wrote multiple letters. Ten local residents testified at the hearing.

20. The public comment focused principally on the noise caused by operations on and near the site and on fears that ongoing operations may cause pollutants to migrate from a dump formerly maintained there.

21. When the rock was first brought into the site, the neighbors tolerated the noisy commotion because of the recognized need to restore the normal functions of SR 20. However, the experience was highly disruptive. One man described it as “six weeks of hell.” At that time the County offered to relocate area residents temporarily to hotels and some accepted the offer.

22. Related neighborhood problems included a heavy pall of exhaust fumes from idling trucks lining up at the site; safety concerns, especially for small children riding bikes and elderly pedestrians; excessive wear and tear on the Cascade River Road; the risk of damage to the bridge from heavily loaded trucks; night-time disturbance from lights and noise; the introduction of noxious weeds to the site from the imported rock.

23. The sounds of heavy equipment at the site and of rocks dropping into trucks can be heard in downtown Marblemount. Moreover, the trucks move disruption with them as they travel. The proprietor of the Buffalo Run Inn and Restaurant said he had several guests cancel remaining days on their reservations and that some even demanded their money back. He said they were bothered by “the loud screeching noise when the trucks were braking to turn at the bridge.”

24. Information about the former town dump on the site is sketchy on this record. Apparently the dump has never been cleaned up. Residents report that old barrels, appliances, logging equipment, and refuse from power line construction remain on site. There is a fear that PCBs, petroleum products and unknown toxic chemicals may lurk in the soil. The rockpile is in close proximity to the old dump although the precise physical relationship is unclear. The concern is that rock removal operations and attendant vibration may cause the entry of pollutants into the ground water. The water table in the area is high and some local wells are only 10 to 15 feet deep.

25. A County health official testified that the staff hydrogeologist is not concerned about leachate caused by vibration. However, the official agreed that tests of area wells should be conducted and he said that the County is willing to do such testing with the permission of the well owners.

24. He also acknowledged that enforcement of noise limits is difficult. There are exceptions to the standard thresholds for certain amounts of time per hour. Motor vehicles off of public highways are exempted. Work necessary for the health, safety and welfare of the community is exempted.

25. Some of the citizens argued that the permit should be denied outright because rock removal operations are incompatible with the residential neighborhood and with the recreational activities in the area. Apart from interference with the quiet enjoyment of homes, noise pollution and heavy truck traffic would, they alleged, drive fishermen and boaters away and negatively affect the local economy.

26. Alternatively, some urged that operations should be subjected to rigorous conditions. For example – explicit prohibitions on rock crushing, screening and asphalt production, an express prohibition on the introduction of more rock to the site, more stringent operational time limits (such as 8 or 9 a.m. to 5 p.m., Monday through Friday), specific conditions on dust control and noise control, a prohibition on truck idling at the site, enforcement of posted speed limits and posting of additional warning signs when intense truck traffic is expected, a requirement for frequent repair of Cascade River

Road, a limitation of site use to 10 rather than 20 years, a requirement for an environmentally-sensitive weed management plan

27. Looking at the record as a whole, the Examiner finds that the application is simply inadequate to provide the basis for informed evaluation of the proposal. There is no discussion of how or when it is to be determined that rock removal operations are “needed” and no evaluation of how often that might occur. There is no estimate of how much rock is likely to be “needed” at a time, of how long it might take to provide it, or of how much truck traffic might be expected in connection with any particular job. Is there a typical job? Is there a worst case scenario? Is there such a thing as an “emergency” need? What is an example? Presumably, activities of the length and intensity of those that originally brought the rock into the site are not proposed, but there is simply no way for the neighbors to know what to expect under the open-ended permit sought.

28. Further, the project description is deficient in failing to describe what exactly will go on at the site itself. There is no description of what is meant by rock sorting nor is there any discussion of what kinds of impacts rock sorting might impose. Whether sorting is planned only in connection with particular projects, or whether it might be an ongoing effort in between removal operations is unknown. Also unknown is the kind of ancillary equipment needed on-site. What machines will be used for sorting and for loading? What are their noise-generating characteristics? What emissions might be anticipated? Do trucks need to idle while waiting to be loaded?

29. The analysis of likely impacts provided is limited to conclusory statements. No detailed analysis is provided of about the possibility of ground water contamination or what might be done to prevent it. Do steps need to be taken to avoid disturbing the old dump? What, if any, sort of ongoing monitoring should be required? The composition of the rock brought to the site, its size, type, and chemistry are not described. Does it contain heavy metals that could possibly impact surface and ground water quality? No analysis at all is given of the likely impact of loaded truck traffic on the Cascade River Road or on the Skagit River Bridge. No analysis is provided regarding traffic safety. In addition, there is no useful discussion of the potential duration and level of noise that might be anticipated, nor of whether there are noise barriers or other sound reducing techniques that might be used to mitigate the noise impacts.

30. SCC 14.16.320(4) lists Hearing Examiner Special Uses. Subsection (z), allows special use approval for “outdoor storage of processed or unprocessed natural materials in quantities greater than 500 cubic yards that do not have a potential health hazard.” The WSDOT application is for a permit under this section.

31. Any conclusion here 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 14.06.050(1)(b).

2. The applicant has complied with the procedural requirements of the State Environmental Policy Act (SEPA).

3. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(1)(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.

4. The problem here is not with storage of the rock per se. If the application were simply for leaving the rock in place, all that would be needed is a showing that the

rock is not itself causing contamination of surface or ground water (*i.e.*, that the stored materials do not present a public health hazard). However, the request is for moving some of the rock off of the site and the details that surround such operations are not completely enough described to allow for a determination of whether the criteria of SCC 14.16.900(1)(b)(v) (A), (B),(C),(E), and(G) above are met.

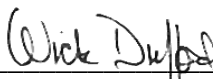
5. The Examiner notes that analyzing the requirement for compatibility of this industrial-like operation with the surrounding residential neighborhood is analogous to analyzing an issue of nuisance. The question is not solely whether specific regulations will be met, but whether interference with the quiet enjoyment of property is unreasonable.

6. Accordingly, the matter must be remanded to Planning and Development Services for additional information and analysis. As a result of this process, it is assumed that if approval is again recommended, a more detailed set of operating conditions will attend the recommendation. Among these, the Examiner would hope to see a special condition for timely notice to the community of rock removal operations that are planned in advance.

DECISION

The application is remanded to the Department of Planning and Development Service with instructions to elicit additional information from the applicant responsive to the concerns raised in Findings 27, 28 and 29 above. Staff shall analyze the information, and then report back to the Hearing Examiner.

DONE this _____ day of February, 2008.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: February 19, 2008