

**NOTICE OF DECISION OF  
THE SKAGIT COUNTY HEARING EXAMINER**

- Applicant:** Duane Scholten
- Request /File No:** Nos. PL21-0623 and PL21-0638
- Location:** Located at 9534 Green Road, on property situated within Skagit County, Washington, identified as tax assessor parcel number P36925; and minimally described as:
- DR 14: THAT PORTION OF THE NORTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 35 NORTH, RANGE 4 EAST, W.M., LYING EASTERLY OF THE EAST RIGHT OF WAY LINE OF THE BURLINGTON NORTHERN RAILROAD, EXCEPT THE SOUTH 384 FEET THEREOF, AND EXCEPT THE NORTH 30 FEET THEREOF FOR COUNTY ROAD KNOWN AS THE COOK ROAD, AND THAT PORTION LYING WITHIN THE BOUNDARIES OF THE COUNTY ROAD ALONG THE EAST LINE THEREOF KNOWN AS GREEN ROAD.
- Land Use Designation:** Rural Business
- SEPA Determination:** The County acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Mitigated Determination of Nonsignificance (MDNS) on April 12, 2022, with an appeal deadline of April 28, 2022. The MDNS was not appealed.
- Public Hearing:** The Skagit County Hearing Examiner held an open record hearing on the application on June 8, 2022, as required by SCC 14.06.160(1)(b).
- Summary of Decision:** The request for a special use permit and 15-year phasing plan to allow the construction of a 16,000 square foot building that would be used for parts storage and maintenance/repair activities associated with an existing commercial business on-site, and for the future construction

of a 15,000 square foot building on-site, on an approximately 3.47-acre property, located at 9534 Green Road, is **APPROVED**.

The related request for variances from the setback requirements of SCC 14.16.150(5)(a), to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet, and to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-framed accessory structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet, is also **APPROVED**.

**Decision Date:** **July 26, 2022**

**Appeal:** As provided in SCC 14.06.120(9), the decision of the Hearing Examiner after the open record hearing shall be final, unless 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 Hearing Examiner decision, or decision on reconsideration, if applicable. The appeal fee must accompany the Notice of Appeal, and the Notice of Appeal is not considered filed unless the appeal fee accompanies it.

The entire decision can be obtained at Skagit County Planning and Development Services, 1800 Continental Place, Mount Vernon, WA.

**BEFORE THE HEARING EXAMINER  
FOR SKAGIT COUNTY**

In the Matter of the Application of	)	Nos. PL21-0623; PL21-0638
	)	
<b>John Ravnik, on behalf of,</b>	)	Scholten Proposal
<b>Duane Scholten and Scholten’s</b>	)	
<b>Equipment, Inc.</b>	)	
	)	
For Approval of a Special Use Permit and	)	FINDINGS, CONCLUSIONS,
<u>15-Year Phasing Plan, and Variance</u>	)	AND DECISION

**SUMMARY OF DECISION**

The request for a special use permit and 15-year phasing plan to allow the construction of a 16,000 square foot building that would be used for parts storage and maintenance/repair activities associated with an existing commercial business on-site, and for the future construction of a 15,000 square foot building on-site, on an approximately 3.47-acre property, located at 9534 Green Road, is **APPROVED**.

The related request for a variance from the setback requirements of Skagit County Code 14.16.150(5)(a) to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet, and to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-framed accessory structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet, is also **APPROVED**. Conditions are necessary to address specific impacts of the proposed development.

**SUMMARY OF RECORD**

Hearing Date:

The Hearing Examiner held an open record hearing on the request on June 8, 2022, utilizing a hybrid approach allowing for live participation or participation through remote access technology. The record was left open until June 14, 2022, to allow any member of the public having difficulty connecting to the hearing to submit written comments in lieu of live testimony.

Testimony:

The following individuals presented testimony under oath at the open record hearing:

Kevin Cricchio, County Senior Planner  
John Ravnik, Applicant Representative

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Exhibits:

The following exhibits were admitted into the record:

1. Staff Report, dated June 2, 2022
2. Application Materials:
  - a. Special Use Permit Application, dated October 27, 2021
  - b. SEPA Environmental Checklist, revised March 11, 2022
  - c. Variance Application, dated November 17, 2021
  - d. Response to Request for Additional Information Letter, Ravnik and Associates, Inc., dated March 11, 2022
  - e. SUP Questionnaire Responses, amended February 20, 2022
  - f. Project Narrative – Variance, amended March 11, 2022
  - g. Project Narrative – SUP, amended March 11, 2022
3. Assessor’s Parcel Information & GIS Images:
  - a. Assessor Property Search, No. P36925, printed May 4, 2022
  - b. Site Map, undated
  - c. Zoning Map, undated
  - d. Aerial Photograph, undated
4. Notice of Application Materials:
  - a. Revised Notice of Application, published March 24, 2022
  - b. Notice of Application, published January 6, 2022
  - c. Mailing Labels
  - d. 300-foot Radius Map
5. SEPA Mitigated Determination of Nonsignificance, dated April 12, 2022
6. Notice of Public Hearing, published May 19, 2022
7. Project Plans:
  - a. Site Plan, revised March 11, 2022
  - b. Civil Plan Set (4 Sheets), dated February 23, 2022
  - c. Architectural Floor Plans and Building Elevations (4 Sheets), dated June 16, 2021
8. Twelve (12) Site Photographs, dated May 19, 2022
9. Staff Presentation

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

**FINDINGS**

Application and Notice

1. Duane Scholten, of Scholten’s Equipment, Inc. (Applicant), requests a special use permit (SUP) to allow construction of a 16,000 square foot building on an approximately 3.47-acre property. The proposed building would include an upper mezzanine and would be used for parts storage, maintenance/repair activities, and office space associated with the Applicant’s agricultural equipment business, which has operated on the property for

approximately the past 30 years, within an existing 7,875 square foot building located immediately to the north of the location proposed for the 16,000 square foot building. The Applicant also requests approval of a 15-year phasing plan in conjunction with the SUP to allow for the future construction of a 15,000 square foot agricultural equipment maintenance building that would be located on the southern portion of the property. In addition, the Applicant requests variances from the requirements of Skagit County Code (SCC) 14.16.150(5)(a) to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet, to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-framed accessory structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet. The subject property is located at 9534 Green Road, in the Burlington area of unincorporated Skagit County.<sup>1</sup> *Exhibit 1, Staff Report, pages 1 through 3; Exhibit 2; Exhibit 3; Exhibit 7; Exhibit 8.*

2. The Skagit County Planning & Development Services Department (County) determined that the SUP and variance applications were complete on December 30, 2021. On January 6, 2022, the County published notice of the applications in the *Skagit Valley Herald*, posted notice at two different locations on the subject property, and mailed notice to adjacent property owners within 300 feet of the site, as required by SCC 14.06.150, with a comment deadline of January 21, 2022. The Applicant later submitted revised application materials that provided additional project details and that addressed a setback variance request for a partially constructed wood-frame accessory structure on the property. Accordingly, on March 24, 2022, the County provided revised notice of the application by publishing notice in the *Skagit Valley Herald*, posting notice at two different locations on-site, and mailing notice to adjacent property owners within 300 feet of the site, with a new comment deadline of April 14, 2022. On May 19, 2022, the County published notice of the open record public hearing associated with the application in the *Skagit Valley Herald*, posted notice on the subject property, and mailed notice to both parties of record and landowners within 300 feet of the property as required under SCC 14.06.150(3). The County did not receive any comments on the proposal from members of the public in response to its notice materials. *Exhibit 1, Staff Report, page 5; Exhibit 4; Exhibit 6.*
3. The County received the following comments from reviewing departments and agencies:
  - The County Natural Resource Division approved the critical areas review for the site (Permit No. PL06-0548), without any additional comments or requirements for critical areas associated with this proposal.

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<sup>1</sup> The subject property is identified by Tax Assessor's Parcel No. P36925. *Exhibit 1, Staff Report, page 2; Exhibit 3.* A legal description of the property is included with the Title Report. *Exhibit 3.*

- The County Health Unit reviewed the proposal and noted that it had no issues regarding sewage disposal or water, provided that Skagit Public Utility District (PUD) would serve the proposed use with potable drinking water.
- Skagit PUD noted that either a new meter or an upsized to the existing meter would be required to serve the additional proposed buildings.
- The County Public Works Department did not raise any concerns about the proposed use or requested variances.
- The County Fire Marshal did not raise any concerns about the proposed use or requested variances.
- The County Building Department noted that the project is located in a moderate to high liquefaction zone and that the proposed development would be required to comply with the recommendations provided in a geotechnical report.
- The County Stormwater Department did not raise any concerns about the proposed use or requested variances. It noted that the proposed development would be required to comply with all applicable stormwater regulations and that a complete review of civil engineer documents to ensure compliance with the applicable stormwater regulations would be conducted at the building permit stage.

*Exhibit 1, Staff Report, pages 5 and 6.*

#### State Environmental Policy Act

4. The County acted as lead agency and analyzed the environmental impacts of the proposal, as required by the State Environmental Policy Act (SEPA), Chapter 43.21C Revised Code of Washington (RCW). The County consolidated notice of the SEPA review and application comment periods under the optional process provided for by Washington Administrative Code (WAC) 197-11-355, with a SEPA comment deadline of April 8, 2022. The County did not receive any comments specific to the environmental review of the proposal. The County reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation measures, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Mitigated Determination of Nonsignificance (MDNS) with 10 mitigation measures on April 12, 2022, with an appeal deadline of April 28, 2022. The MDNS was mailed to parties of record, posted on the subject property, published in the *Skagit River Herald*, and posted on the Department of Ecology's SEPA register. The MDNS was not appealed. The mitigation measures have been incorporated, below, as required conditions of approval. *Exhibit 1, Staff Report, page 5; Exhibit 2.b; Exhibit 4; Exhibit 5.*

#### Comprehensive Plan, Zoning, and Surrounding Uses

5. The subject property is designated "Rural Business" by the County Comprehensive Plan. The Rural Business designation is intended to acknowledge certain significant uses in the rural area that were in existence as of June 1, 1997,

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when the Skagit County Comprehensive Plan was adopted, that do not match any of the other commercial and industrial Comprehensive Plan designations. The Rural Business (RB) designation provides reasonable expansion and change of use opportunities for these pre-existing rural uses. The designation is consistent with the Growth Management Act's allowance for "the intensification of development on lots containing isolated nonresidential uses" (RCW 36.70A.070(5)(d)(iii)). The Rural Business designation may not be appropriate for all pre-existing commercial uses in the rural area, if the use is more consistent continuing to operate under a special use permit, or if the granting of a commercial designation might jeopardize the appropriate use of surrounding Natural Resource Lands.

*Comprehensive Plan, page 68. Exhibit 1, Staff Report, page 2.*

6. The subject site is located in the "Rural Business" (RB) zoning district. The RB zoning district is intended to "provide reasonable expansion and change of use opportunities for existing isolated nonresidential uses in the rural area that provide job opportunities for rural residents and that are not consistent with the other commercial and industrial Comprehensive Plan designation and zoning districts." *SCC 14.16.150(1)*. The expansion of an established rural business use not exceeding 50 percent of the gross floor area existing as of June 1, 1997, or 1,500 square feet, whichever is less, is permitted outright in the RB zoning district. *SCC 14.16.150(2)(c)*. The Applicant's established rural business has operated in the 7,875 square foot building on the property for 30 years (meeting the length-of-operation requirement), but the proposed expansion would exceed the permissible threshold under *SCC 14.16.150(2)(c)*.

*SCC 14.16.150(4)(d)* provides in relevant part, however, "With an approved Hearing Examiner special use permit, a use designated Rural Business which was established prior to July 1, 1990, may be expanded beyond the 1,500-square-foot limit established in Subsection (2)(c) of this Section. For agricultural support services, the expansion is not limited." Accordingly, the Applicant's proposal to expand the established agricultural support business use of the property with a new 16,000 square foot building and a new 15,000 square foot building is allowed with approval of a special use permit. *Exhibit 1, Staff Report, pages 2 through 7; Exhibit 2; Exhibit 3; Exhibit 7.*

7. The RB zone requires front setbacks of 55 feet when parking is located in the front or sides of a structure and side and rear setbacks of 35 feet. *SCC 14.16.150(5)(a)*. The RB zone also requires front, side, and rear setbacks of 35 feet for accessory structures. *SCC 14.16.150(5)(a)(iii)*. As discussed in more detail below, the Applicant requests variances to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet and to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the rear setback of an existing 20-foot by 40-foot unfinished

wood-frame structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet. *Exhibit 1, Staff Report, pages 2, and 12 through 16; Exhibit 2; Exhibit 7.*

8. The approximately 3.47-acre subject property is relatively flat and is developed with the existing 7,875 square foot business building constructed in 1989 and associated site improvements. The property is located along the southwest corner of the intersection of Cook Road and Green Road and is accessed from Green Road. The west property line is bordered by Burlington Northern – Santa Fe (BNSF) railroad and associated right-of-way. Properties to the north are zoned Rural Reserve (RRv) and Agricultural Natural Resource Lands (Ag-NRL) and are developed with single-family residences, a gas station, and agricultural uses. Properties to the south are zoned RRv and Ag-NRL and are developed with single-family residences and agricultural uses. Properties to the east are zoned RRv and RB and are developed with commercial businesses and single-family residences. Properties to the west are zoned RRv and Rural Freeway Service and are developed with commercial businesses and the BNSF railroad. *Exhibit 1, Staff Report, pages 2 and 3.*

#### Special Use Permit

9. As noted above, the Applicant has applied for an SUP and 15-year Phasing Plan to allow for an expansion of the established rural commercial use of the property, to include construction of a 16,000 square foot building and future construction of a 15,000 square foot building, beyond the threshold permitted outright in the RB zoning district. The Applicant's materials specifically address the criteria for approval of an SUP, under SCC 14.16.900(1)(b)(v), and contend:
  - The subject property and the property on the opposite side of Green Road are both zoned Rural Business. The business on the adjoining east side of Green Road is a steel fabrication facility and also displays and sells utility trailers. Scholten's Equipment is an agricultural-related business that is outright permitted in the Rural Business zoning. These two businesses are very similar and compatible. The south half of the Scholten's Equipment property is adjoined on the east side by Green Road and agricultural fields. The north, west, and east sides of the subject property all adjoin a form of right-of-way, i.e., Cook Road, BNRR, and Green Road. The southernmost end of the subject property adjoins a residentially developed parcel zoned RRv. Other than the south half of the subject property used for the outdoor storage of ag equipment, all display, sales, and maintenance is conducted in the north half of the subject property. The daily activities at Scholten's Equipment are actually benign. As such, it is unlikely the proposed and future buildings will compromise the adjacent neighbor.
  - Per SCC 14.16.150(4)(d), agricultural support businesses in the Rural Business zoning are allowed a non-restricted building expansion.

- The existing business does not generate a noise that would be detectable from across the adjoining rights of ways. Construction of the proposed and future buildings will include insulation to dampen any noises generated inside. Other than driving/operating equipment onsite, no noises are generated outdoors. The current business activities together with the proposed and future buildings do not generate any measurable degree of odors, heat, vibrations, steam, or glare. Other than the occasional welding, no fumes and exhaust is generated from this business other than the operation of vehicles and equipment. There are no activities that would create an electrical disturbance. Much of the site consists of a flat crushed-rock-covered gravel fill. Rainfall directly on the site soaks into the ground because there are very few storm water management facilities onsite to control rainfall. The proposed project herein is to construct a 16,000 square foot building overlying existing crushed rock and gravel. Rainfall upon the new roof will generate a clean runoff which will be managed by the onsite construction of a new 5,310 square foot roof runoff infiltration bed. This same approach will be applied to manage roof runoff from the future building. The only adjoining dwelling unit is adjacent to this site's south property line. With the southerly half of the property used for the outdoor storage of agricultural equipment and implements, there [are] no disruptions imposed to the adjoining dwelling. The potential of creating a dwelling unit is extremely limited in the Rural Business zone.
- The only adjoining, privately-owned property is along the subject property's south end where business activities are predominately limited to outdoor equipment storage until such time as the future building is developed.
- The activities and products involved with Scholten's Equipment do not pose a risk or threaten general public health. The display, sales, and maintenance of agricultural equipment are the only activities conducted onsite. No products are generated nor used that would endanger public health. The activities onsite are conducted in a safe manner. The business activities provide for good jobs and serve the valuable agricultural activities in Skagit Valley.
- This project is not located on property zoned Industrial Forest – Natural Resource Lands, Secondary Forest – Natural Resource Lands, Agricultural – Natural Resource Lands, or Rural Resource -Natural Resource Lands. The products and activities conducted at Scholten's Equipment supplement many activities that are conducted in the above-listed zonings.
- The products and activities ongoing at Scholten's Equipment do not endanger any private nor personal health and are conducted in a safe manner.

- The only public facility serving the subject property is public water supply provided by PUD for domestic services and fire protection. The project herein is to expand the onsite business activities. No significant change will occur to domestic water needs. The extent of fire protection for the current site conditions is not significantly different than that needed for the expanded building, however, the proposed building will be fully sprinklered, and as required by the Skagit County Fire Marshal, an additional hydrant will be installed at the west edge of the Green Road right of way to serve the project's FDC. These same levels of water needs will likely apply for the future building. Sanitary sewer is served by private onsite facilities because there is no public sanitary sewer system serving the site. All storm water runoff from the current site conditions soaks into the ground by way of crushed rock surfacing over gravel and an onsite storm water infiltration pond. A new infiltration facility is planned in the southeasterly quarter of the property to receive and infiltrate all roof runoff from the proposed building.
- The uses and activities slated for the proposed building as well as the future building are the same as what has been occurring onsite for more than 30 years with exception of equipment upgrades to serve advances in technology. The addition of this proposed building will result in a landscape enhancement along Green Road. As previously referenced, landscape improvements are not proposed within the northerly 15% of the Green Road frontage so as to not block the display of equipment and products sold by Scholten's Equipment. Frontage landscape improvements are also not proposed for the Cook Road frontage so as to not obstruct display areas. It is also important to not obstruct vision triangles for vehicles at the intersection of Cook Road and Green Road. The completed site improvements will maintain the rural appearance of an agricultural-equipment display, sales, and maintenance business.

*Exhibit 1, Staff Report, pages 7 through 12; Exhibit 2.e.*

10. County staff also reviewed the proposal for consistency with the requirements for an SUP under SCC 14.16.900(1)(b)(v) and determined:
- The subject property is zoned Rural Business. The proposed addition would not change the use of the existing business located on-site.
  - The proposed use is allowed with a Hearing Examiner approved Special Use Permit. As conditioned, the proposed project would comply with both the Skagit County Code and the Comprehensive Plan.
  - The proposed project would not have any impacts to the surrounding, existing, or potential dwelling units in the vicinity. Noise, odor, heat, vibration, and/or air and water pollution that could result from construction activities associated with this project would be minimal, temporary, and limited during construction activities.

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No potential impacts to the surrounding neighboring vicinity are anticipated once construction activities are complete.

- Expansion of “Agricultural Support Service” uses with an approved Hearing Examiner Special Use Permit is not limited in square footage per SCC 14.16.150(4)(d). During the proposed construction activities on-site, there would be no intrusions on the privacy of surrounding uses. Typical construction noise and activity would take place and would be intermittent. After construction is completed, the on-site activities would return to the levels of what currently exists.
- No impacts from this project are anticipated that would adversely impact the public’s health, safety, or general welfare.
- The subject property lies in the Rural Business zoning district of unincorporated Skagit County. The proposed addition to the existing business would not adversely impact or change the long-term management and production of any natural resources in nearby lands zoned as Industrial Forest – Natural Resource Lands, Secondary Forest – Natural Resource Lands, Agricultural – Natural Resource Lands, and Rural Resource – Natural Resource Lands.
- The proposed addition to an existing business would not adversely impact the public health and safety of the community.
- The proposed project would not adversely alter existing or proposed public facilities or services to neighboring properties or to the surrounding areas as a whole.
- The proposed addition to the existing business would not change or alter the character, landscape, and/or lifestyle of the rural area.

*Exhibit 1, Staff Report, pages 7 through 12.*

#### Variance

11. As noted above, the Applicant requests variances from SCC 14.16.150(5)(a) to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet, to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-frame accessory structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet.

The Applicant’s materials specifically address the criteria for approval of variance under SCC 14.10.040(1) and assert:

- At this project location, Scholten’s Equipment has an address of 9534 Green Road, thereby recognizing Green Road as the front yard for the proposed building. The Burlington Northern Railroad Right of Way adjoins the west side of the subject property and is recognized as the rear yard. The specific variation requested herein is to reduce the rear yard

setback distance of 35 feet, per the Rural Business zoning code, to 25 feet, and, to reduce the front yard setback of 55 feet to 45 feet.

- Scholten's Equipment displays, sells, maintains, and repairs agricultural equipment from small tractors to large farming implements. Equipment access into the proposed building is provided along the west and south sides of the proposed building. Reducing the rear yard setback from 35 feet to 25 feet is the maximum reduction in order to maintain a sufficient area along the west side of the proposed building upon which large equipment is maneuvered into the building. The east face of the proposed building is not parallel to Green Road. Having the opportunity to shift the building 10 feet east will not impair parking and access.
- A reduction of the rear yard building setback will not negatively influence the ongoing activities at Scholten's Equipment. These requested building setback reductions are a supportive action to the Rural Business zoning code which promotes reasonable expansion of existing isolated non-residential uses in the rural area. For agricultural support services such as Scholten's Equipment, the Rural Business zoning code notes that associated building expansions are not limited. These requested building setback reductions will not have any negative impact on train travel within the adjoining Burlington Northern Railroad right of way nor vehicle travel on Green Road. There is no public access, nor will there be any public access, to the west side of the Scholten's property adjoining the BNRR right of way.
- The north-to-south narrowing of the property limits the size of the proposed agricultural support services building, which per the Rural Business zoning code, is not to be limited. Due to adjoining rights of ways north (Cook Road), east (Green Road) and west (BNRR), there is no potential for the property to enlarge which would otherwise provide additional room to accommodate the proposed building size without having to apply for the rear yard and the front yard setback reductions. Other properties zoned Rural Business, along the east side of Green Road, are not inhibited by the BNRR.
- When the subject property was purchased by Scholten's Equipment in 1991, the property's dimensions and adjoining rights of ways that presently exist, existed in 1991. Only due to an active business growth does the property's shape and dimension now impinge on the size of potential buildings. The business cannot be faulted for being prosperous which is indirectly associated with the Rural Business zoning code that does not limit building sizes for agricultural support services.
- Other properties in the surrounding Rural Business zoning are not subject to having rights of ways virtually encompassing the entire parcel boundary. In recent years, Skagit County amended the Rural Business

zoning code such that buildings providing agricultural support services were not limited in their ability to expand. Having the right to expand a building size, thereafter, being limited by the application of building setbacks, ends up restricting the growth of the agricultural support businesses.

- All of the surrounding Rural Business zoned properties have the right to maximize their building potential, especially when the business provides agricultural support services.

*Exhibit 1, Staff Report, pages 12 through 16; Exhibit 2.*

12. County staff also reviewed the proposal for consistency with the requirements for a variance under SCC 14.10.040(1) and determined:

- As conditioned, the variance request would comply with all relevant variance criteria found in other sections of the Skagit County Code.
- The subject property is triangular in shape and abuts Cook Road to the north, Green Road to the east, and BNSF railroad to the west. To the south is an existing single-family residence. The variance request appears reasonable to make use of their land and expand an existing commercial business given the site constraints of rights-of-way on three sides and the triangular shape of the property.
- The proposed expansion to the business and the variance request would be in harmony with the intent of Skagit County Code including, but not limited to, SCC 14.16.150 regulating the underlying Rural Business zoning district. The use does not pose the potential to be injurious to the surrounding neighborhood and public welfare.
- The subject property is a narrow triangular shaped piece of property. The requested variance does arise from special conditions and circumstances unique to the subject property due to the shape of the property and its physical location being impacted by right-of-way on three sides.
- The subject property is a narrow triangular shaped piece of property. To make use of the property and expand the existing business, the Applicant has applied for a variance to deviate from the required property line setbacks. These special circumstances are not the result of the actions of the Applicant.
- The subject property is a narrow triangular shaped piece of property. It is surrounded by three rights-of-ways including Cook Road, Green Road, and BNSF railroad rights-of-way. Per SCC 14.16.150(4)(d), expansions to agricultural support services are not limited. Due to the shape of the subject property and the fact that it bordered by three rights-of-way, literal interpretation of the provisions of this Chapter would deprive the Applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title and Title 15 SCC.

*Exhibit 1, Staff Report, pages 12 through 16.*

### Testimony

13. County Senior Planner Kevin Cricchio testified generally about the applications, the review process that occurred, how the proposal would be consistent with the County's Comprehensive Plan, zoning ordinances, critical areas ordinances, and the specific criteria for approval of an SUP with a 15-year phasing plan, with requested setback variances, under the municipal code. He stated that the subject property is located in the RB zoning district, which permits outright the expansion of established commercial uses up to a certain threshold. Mr. Cricchio noted that the existing 7,875 square foot commercial building on-site was constructed in 1989 and explained that the expansion of the Applicant's established commercial agricultural support services use of the building and property would exceed the threshold allowed outright in the RB zone but would be allowed with approval of an SUP. He stressed that, unlike other commercial uses, there is no size limitation for the expansion of established agricultural support service uses in the RB zone. Mr. Cricchio noted that the Applicant's requested variances would typically be reviewed administratively but that the requests were consolidated with the SUP application for review by the Hearing Examiner. He described the Applicant's variance requests and detailed how it would meet the criteria for variance approval. Finally, Mr. Cricchio explained that phased development is allowed in conjunction with an SUP and that, here, the Applicant has requested approval of a 15-year phasing plan. *Testimony of Mr. Cricchio.*
  
14. Applicant Representative and Project Engineer John Ravnik, of Ravnik and Associates, Inc., testified that the subject property narrows from the north to the south, creating a unique circumstance necessitating a variance to allow for the proposed commercial expansion project. He noted that the proposed new buildings are necessary to manage and maintain agricultural equipment associated with the Applicant's established business. Mr. Ravnik stated that the requested variances would not cause any hardship, stressing that there would be adequate room for vehicles and equipment to circulate through the site and that the adjacent BNSF railroad to the west is located 50 feet from the property line. He noted that the new buildings would utilize utilities currently serving the site, with additional fire protection extended to the property to serve the new buildings. Mr. Ravnik explained that stormwater runoff from the new development would be addressed by an existing infiltration pond on-site. *Testimony of Mr. Ravnik.*

### Staff Recommendation

15. Mr. Cricchio testified that the County staff recommends approval of the SUP and variances with conditions. Mr. Ravnik testified that the Applicant understands and would comply with the proposed conditions. *Testimony of Mr. Cricchio; Testimony of Mr. Ravnik.*

## CONCLUSIONS

### Jurisdiction

The Hearing Examiner has jurisdiction to hear and decide requests for non-administrative Special Use Permits (SUPs) and, through the County's consolidated permit review process, requests for an administrative variance. The Hearing Examiner's decision may be to grant or deny an application. *Chapter 14.06 SCC; SCC 14.16.900(1)(b)(ii); SCC 14.10.020(1).*

### Criteria for Review

#### *Special Use Permit*

Applicants for Special Use Permits must demonstrate that the proposed activity will not adversely affect or prevent those uses normally allowed within the respective zoning district. *SCC 14.16.900(1)(a).*

The burden of proof shall be on the Applicant to provide evidence in support of the application. Under the municipal code, the Applicant must demonstrate:

- (A) The proposed use will be compatible with existing and planned land use.
- (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) The proposed use will not cause potential adverse effects on the general public health, safety, and welfare.
- (F) For special uses in Industrial Forest—Natural Resource Lands, Secondary Forest—Natural Resource Lands, Agricultural—Natural Resource Lands, and Rural Resource—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 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.
- (I) The proposed use will maintain the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

*SCC 14.16.900(1)(b)(v).*

In addition, SCC 14.16.900(1)(d) provides:

All special uses, including master planned resorts, shall require a development project be commenced for the entire parcel within 2 years of the permit approval,

unless development is phased. For the purposes of this Section, “commenced” shall mean either (1) the use permitted by the permit has been established or (2) a complete building permit has been filed with Planning and Development Services for the principal building which will allow the use. Upon building permit approval, the principal building shall be completed (i.e., final inspections completed) within 3 years. Those portions of the property, which are not included within the development area and where the above time frames are not met, shall automatically be removed from the special use approval, unless a phasing plan is approved pursuant to Subsections (1)(d)(i) and (iii) of this Section. For purposes of this Subsection, “development area” shall mean all portions of the site needed to meet UDC requirements, such as lot coverage and setbacks.

- (i) If an applicant desires to phase development of a special use, a phasing plan shall be submitted and reviewed as part of the special use permit application. When a special use includes a phasing plan, the initial phase shall be commenced and completed within the time frames articulated above, except that for master planned resorts, development in the initial phase must be commenced consistent with the approved phasing plan. Subsequent phases for special uses, except for master planned resorts, shall be commenced and/or constructed within the time frames established in the phasing plan, or within a 6-year period. Subsequent phases for master planned resorts shall be commenced and/or constructed within the time frames established in the approved phasing plan. Otherwise, the special use shall expire for those portions of the property where these requirements are not met.
- ...
- (iii) The time limits established above shall be tolled pending resolution of any appeals, and may be extended by the Board of County Commissioners upon a showing that the applicant is diligently taking actions to obtain necessary permits and approvals to establish the use.

#### *Variance*

To approve a variance, the Hearing Examiner must make findings that the reasons set forth in the application and record justify the granting of the variance and all of the following:

- (a) The variance complies with any relevant variance criteria found in other sections of Skagit County Code.
- (b) The variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- (c) The granting of the variance will be in harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

- (d) For all Level II variances and all setback variances:
  - (i) The requested variance arises from special conditions and circumstances, including topographic or critical area constraints, which are peculiar to the land, structure, or buildings in the same district.
  - (ii) The special conditions and circumstances do not result from the actions of the applicant.
  - (iii) Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title and SCC Title 15.
  - (iv) The granting of the variance requested will not confer on the applicant any special privilege that is denied by this Title and SCC Title 15 to other lands, structures, or buildings in the same district.

*SCC 14.10.040.*

In granting any variance, the Hearing Examiner may prescribe such conditions and safeguards as are necessary to secure adequate protection for the locality in which the use is to be permitted.

*SCC 14.10.050.*

The criteria for review adopted by the Skagit County Board of County Commissioners are designed to implement the requirement of chapter 36.70B RCW to enact the Growth Management Act. In particular, RCW 36.70B.040 mandates that local jurisdictions review proposed development to ensure consistency with County development regulations considering the type of land use, the level of development, infrastructure, and the characteristics of development. *RCW 36.70B.040.*

#### Conclusions Based on Findings

1. **With conditions, the project would comply with the requirements for a Special Use Permit.** The approximately 3.47-acre property is located in the RB zoning district, which is intended to provide reasonable expansion opportunities for existing commercial uses in the rural area. The Applicant has established a commercial agricultural support services business on the property, which currently operates within an existing 7,875 square foot building that was constructed in 1989. The Applicant's proposed expansion of the established agricultural support services use of the property is allowed in the RB zone with a special use permit and would be compatible with the existing and planned land use in the vicinity and the RB zone. The proposed expansion would also be consistent with the Comprehensive Plan's Rural Business designation of the property, which recognizes and allows for the intensification of commercial uses existing in the rural area on or before June 1, 1997.

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With the requested variances discussed in detail in Conclusion 2, below, and as conditioned herein, the proposed use would comply with the Skagit County Code. The County provided reasonable notice and opportunity to comment on the proposal and to testify at the open record hearing. The County did not receive any comments on the proposal from members of the public, and no members of the public provided testimony at the open record hearing. The proposed use is for an expansion of the Applicant's existing agriculturally related commercial use, which, under the performance standards of SCC 14.16.840, would not create undue noise, odor, heat, vibration, or air or water pollution impacts on surrounding, existing, or potential dwelling units. Any impacts resulting from construction would be minimal and temporary. The County reviewed the Applicant's environmental checklist and other information on file and determined that, with mitigation conditions, the proposal would not have a probable significant adverse impact on the environment. Accordingly, the County issued a Mitigated Determination of Nonsignificance (MDNS), which was not appealed, with the 10 mitigation measures that are included as conditions, below.

The proposed use would not generate intrusions on privacy of surrounding uses. The Applicant has operated the existing business on the property for 30 years, and, following construction of the proposed buildings, the on-site activities are expected to return to that which currently exists, and no neighboring property owners commented on the proposal or participated at the hearing. The proposed use would not cause potential adverse effects on the general public health, safety, or welfare and would not adversely impact or change the long-term management and production of any natural resource lands. The proposal to expand the existing commercial use of the property would not be in conflict with the health and safety of the community. The proposed use would utilize existing utilities serving the site and would not adversely alter existing or proposed public facilities or services to neighboring properties or the surrounding areas as a whole. County staff did not identify any cumulative impacts from granting the SUP and determined the proposed activity would maintain the character, landscape, and lifestyle of the rural area. The Hearing Examiner concurs with this assessment.

Special use permits require that a development project be commenced for the entire parcel within two years of permit approval unless a phasing plan is submitted and reviewed with the SUP application. The Applicant proposes to complete the proposed development in phases, with the first phase to include construction of the 16,000 square foot building that would be located directly south of the existing 7,875 square foot building and the second phase to include construction of the proposed 15,000 square foot building that would be located at the southern end of the site, with the second phase to be completed within 15 years. The Hearing Examiner approves the Applicant's phasing plan.

Conditions, as detailed below, are necessary to ensure that the proposed use complies with state and County regulations, with the MDNS mitigation measures, and with the requirements of all other applicable permits and requirements for approval of the SUP. *Findings 1 – 15.*

2. **With conditions, the proposal would comply with the requirements for setback variances.** The Applicant requests variances from SCC 14.16.150(5)(a) to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet and to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-frame accessory structure located at the northwest corner of the existing business building from 35 feet to approximately 20 feet. The Applicant does not request a variance from any other dimensional requirements of the Skagit County Code.

The approximately 3.47-acre subject property is triangular in shape, narrowing from the north to the south, and abuts three rights-of-way, Cook Road to the north, Green Road to the east, and BNSF railroad to the west. The RB zoning district specifically allows, without limitation, the expansion of established commercial agricultural support service uses, and the site conditions unique to the property limit the Applicant's ability to proceed with the proposed expansion of its established commercial agricultural support service business. These unique site conditions are not the result of any actions by the Applicant.

County staff reviewed the proposal and determined that the requested variance would be reasonable and would allow for the Applicant to make use of the property for an expansion of the existing business. The Hearing Examiner concurs with County staff's determination. The proposed variance would allow for the new 16,000 square foot building and the existing wood-frame accessory structure to be located on the property in manner that would not impede vehicular circulation through the site and would not significantly impact surrounding land uses. Accordingly, granting the variance would allow for a reasonable expansion of the Applicant's existing business, a right enjoyed by other property owners with established commercial uses in the RB zoning district, and would not confer a special privilege that would be denied to owners of property that do not have similar site constraints. Conditions, as detailed below, are necessary to ensure that the proposed use complies with state and County regulations, complies with the MDNS mitigation measures, and with the requirements for variance approval. *Findings 1 – 15.*

## DECISION

Based on the preceding findings and conclusions, the requests for a special use permit to allow phased construction of a 16,000 square foot building and a 15,000 square foot building, as expansion of an existing commercial business currently operating within a 7,875 square foot building on-site, and for variances from the setback requirements of SCC 14.16.150(5)(a) to reduce the required front setback for the proposed 16,000 square foot building from 55 feet to 45 feet, to reduce the required rear setback for the proposed building from 35 feet to 25 feet, and to reduce the required rear setback of an existing 20-foot by 40-foot unfinished wood-frame accessory structure, on an approximately 3.47-acre property located at 9534 Green Road, are **APPROVED**, with the following conditions:<sup>2</sup>

1. Both a building permit and grading permit (if required) with Skagit County Planning & Development Services shall be secured prior to work.
2. The project shall meet all applicable requirements of Skagit County Code Chapters 14.32 and 14.34 regulating Stormwater Management and Flood Damage Prevention respectively in unincorporated Skagit County.
3. All applicable permits (local, state, and federal) shall be secured before any construction activities begin onsite. Copies of permits shall be provided to the Skagit County Planning & Development Services Department.
4. The Applicant shall be responsible for reimbursement to Skagit County Planning & Development Services Department for the full cost of mailing(s) and newspaper publication associated with the Notice of Development Application, Notice of Issuance of SEPA MDNS, Notice of Hearing, and Notice of Decision. Payment shall be made prior to grading permit application submittal or issuance.
5. At all times, best management practices (BMPs) shall be implemented during grading, excavation, cut/fill, and construction activities.
6. Development shall comply with SCC 14.16.900 regulating Special Use Permits in unincorporated Skagit County including but not limited to:
  - A. All special uses, including master planned resorts, shall require a development project be commenced for the entire parcel within 2 years of the permit approval, unless development is phased. For the purposes of this Section, “commenced” shall mean either (1) the use permitted by the permit has been established or (2) a complete building permit has been filed with Planning and Development Services for the principal building which will allow the use. Upon building permit

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<sup>2</sup> This decision includes conditions designed to mitigate impacts of this proposed project as well as conditions required by County Code.

approval, the principal building shall be completed (i.e., final inspections completed) within 3 years. Those portions of the property, which are not included within the development area and where the above time frames are not met, shall automatically be removed from the special use approval, unless a phasing plan is approved pursuant to Subsections (1)(d)(i) and (iii) of this Section. For purposes of this Subsection, “development area” shall mean all portions of the site needed to meet UDC requirements, such as lot coverage and setbacks.

7. The Applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements. Please contact the Northwest Clean Air Agency to determine what permits or requirements are required.
8. The Applicant shall contact Skagit PUD to determine if proposed development will require the need for the installation of a new water meter or the upsizing of the existing meter to serve the additional building(s) proposed.
9. The Applicant shall comply with both Fire Code and Building Code Standards.
10. Both a landscape plan and parking plan shall be submitted with the building permit application that shows how conformance with SCC 14.16.830 and 14.16.800 respectively are to be met. The landscaping will be required to be installed and inspected prior to final building permit approval and occupancy.
11. A Utility Permit will be required for any work to be performed within the Skagit County Road Right-of-Way.
12. Development shall comply with the SEPA Mitigated Determination of Nonsignificance (MDNS), issued April 12, 2022, as follows:
  - A. Temporary erosion/sedimentation control measures, as approved by the Skagit County Planning and Development Services, shall be in place prior to the placement of any fill material. The Applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures shall remain in place until the completion of the project [**Mitigation Measure #1**].
  - B. No track out of dirt onto to county roads is permitted. For the duration of construction activities, the Applicant shall sweep track out dirt and debris from county roadways/rights-of-way adjacent to the subject properties [**Mitigation Measure #2**].

- C. The Applicant shall comply with Northwest Clean Air Agency (NWCAA) requirements. Please contact the Northwest Clean Air Agency to determine what permits or requirements are required [**Mitigation Measure #3**].
  - D. The project will need to meet all applicable requirements of Chapters 14.32 and 14.34 of the Skagit County Code regulating Stormwater Management, and Flood Damage Prevention Best Management practices shall be utilized throughout the life of the project [**Mitigation Measure #4**].
  - E. The Applicant shall comply with Fire Code Standards [**Mitigation Measure #5**].
  - F. The Applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance) [**Mitigation Measure #6**].
  - G. The proposal, and site development, shall comply with all applicable requirements of Chapter 14.16 SCC, and specifically SCC 14.16.150 [**Mitigation Measure #7**].
  - H. This project may be subject to one of Ecology’s National Pollutant Discharge Elimination Systems (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project [**Mitigation Measure #8**].
  - I. The project is located in the moderate to high liquification zone. The Geo-tech report indicates such and proposes 3 options. The Applicant would be required to implement one of the geo-tech recommendations [**Mitigation Measure #9**].
  - J. Should any human remains, archaeological, historic or cultural materials be discovered during construction, work in the affected area shall cease immediately and the area shall be secured. Within 24 hours, of the discovery, or as soon thereafter as possible, the developer shall notify the Skagit County Sheriff’s office, Skagit County Planning and Development Services, the Washington State Department of Archeology and Historic Preservation and affected tribes. If following consultation with the above parties it is determined that an archaeological and cultural resource assessment is required, the project developer shall retain the services of a professional archaeologist to prepare such an assessment. Project work in the affected area shall only continue when in conformance with applicable state and federal laws [**Mitigation Measure #10**].
13. Further review will be needed by Planning and Development Services if any major change occurs in the intensity of the use outlined in the application or if additional expansions are proposed.
  14. A copy of this decision shall be submitted with subsequent development permits.
  15. Per SCC 14.16.900(1)(d) the initial project shall be commenced within 2 years of the permit approval.

16. Development shall comply with the recommendations of the Geotechnical Report as discussed above.

**DECIDED** this 26<sup>th</sup> day of July 2022.



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ANDREW M. REEVES  
Hearing Examiner  
Sound Law Center