

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: SPECIAL USE PERMIT SU 00 0240

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: DIKE DISTRICT #1

ASSESSOR PARCEL NO: P22515

ABBREVIATED LEGAL DESCRIPTION: located at 17917 Behrens-Millett Road, Mount
Vernon, WA; within Section 24, Township 34 North, Range 3 East, W.M., Skagit County,
Washington.



SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of
DIKE DISTRICT #1

For a Special Use Permit to
Construct a 60 by 40 Foot Storage
Building for Storing Sand Bags,
A Sand Bagger and Other Flood
Fighting Equipment, Located at
17917 Behrens-Millet Road.

PL00-0240

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION

THIS MATTER, an application for a Special Use Permit, came on regularly for hearing on December 6, 2000, after due notice. Brandon Black represented the Planning and Permit Center. Bob Dean appeared for the District. A number of members of the public testified. After the hearing, the Examiner left the record open for further public submissions until December 20, 2000. After reviewing the materials submitted, he provided the Permit Center and the applicant an opportunity to respond. The responses were due by January 26, 2001. Both the Permit Center and the Dike District timely responded.

Based on the testimony and the written record, the following is entered:

FINDINGS OF FACT

1. Dike District #1 (applicant) seeks to construct a building at 17917 Behrens-Millet Road to use for storing sand, a sand bagger and other flood fighting equipment.
2. The site is within Sec. 24, T34N, R3E, WM. The zoning is Agricultural. The Comprehensive Plan adopted June 1, 1997, designates the area as Agricultural Natural Resource Land.
3. The Permit Center gave notice of a complete application on May 15, 2000. The application therefore vested to the regulations then in effect. A Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on May 18, 2000.
4. The subject parcel is approximately 1 1/3 acres in size and situated on the north side of Behrens-Millet Road. The property measures 412 feet along the south property line, 322 feet along the north property line, 326 feet along the west property and 76 feet along the east property line. It is owned by the Dike District.



5. The proposal is to build a 40 by 60-foot structure in the northwest corner along the north property line. The building is described as a "typical metal siding, pole construction." The height will be between 21 to 23 feet to the peak of the roof.

6. The building will be accessed by a proposed gravel driveway from Behrens-Millet Road. The driveway will be raised about a foot above the site grade. About 400 cubic yards of gravel will be imported and placed on the driveway. The proposal includes a storm water collection ditch and a culvert under the road to avoid any ponding or drainage to adjacent properties.

7. An infiltration trench at each corner of the building will catch rainwater from the roof. Runoff from the gravel surface of the driveway will be directed east to a retention/infiltration pond adjacent to the driveway.

8. The building will be supplied with domestic water by Public Utility District #1. A restroom will be installed, served by a septic tank and drainfield. Electric and telephone lines will be undergrounded.

9. In the past the property has been used for growing grain and vegetables. The project will leave about an acre for continued agricultural use.

10. The surrounding land uses are as follows. To the south is a dike and beyond that is the Skagit River. Behrens-Millet Road runs on top of the dike. To the east are trees and fields. To the north is agricultural land. To the west are four single-family residences.

11. The building, in the northwest corner of the property, will abut the north property line and be 15 feet back from the western side boundary. An easement has been obtained from the property owner to the north to provide a 35-foot setback in that direction.

12. The building will be 200 feet back from the top of the levee to the south. According to the application, "this will eliminate a number of complications with zoning and other permits and requirements." The dike has been raised to hold the 50 year flood, but the application describes the top of the levee as "the high water mark."

13. The building will be used as an emergency services facility for flood fighting. Various supplies, materials and flood fighting equipment will be kept there. Sand storage will be provided and a sand bagger will be on hand. The District states that the facility "will be used for the protection of homes and over 8,053 acres of agricultural land within the district from West Mount Vernon to Pleasant Ridge." The District maintains that the facility is conveniently located for flood fighting and that the protection it provides is critical to the agricultural use of adjacent properties.



14. Intensive use of the building will be limited to periods of flooding. During most of the year, the use will consist only of periodic security and maintenance checks. There would be spaces to park five vehicles by the building at the end of the driveway.

15. The application was routed to various County departments for review. The Health unit noted that a septic system design needs to be submitted. Public Works indicated that a Fill and Grade Permit will be needed for the construction of the retention/infiltration pond and that a temporary erosion/sedimentation plan will be required. The Fire Marshal commented about fire flow needs.

16. The application was sent to Conservation Futures Farmland Legacy Program. No comments were received.

17. A Determination of Non-Significance under the State Environmental Policy Act was entered for the project on July 20, 2000. The DNS was not appealed. On review, the staff found that there no Critical Areas constraints on the project. The site, however, is located within a flood hazard zone and construction will need to comply with flood-proofing requirements.

18. A Special Use Permit is required for this proposal under the provisions of Skagit County Ordinance #17646. Under that ordinance new public uses and Essential Public Facilities outside of urban growth areas can be approved only by a Hearing Examiner Special Use Permit.

19. SCC 14.04.150(3)(d) requires consideration of the following elements in evaluating a Special Use application.

- (i) Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation;
- (ii) The zoning of the subject property and surrounding properties and the conformance of the application to the zoning ordinance;
- (iii) Automobile or truck traffic and parking and its effect on surrounding community;
- (iv) Noise, odors, heat, vibration, air and water pollution potential of the proposed use;
- (v) Intrusion of privacy;
- (vi) Design of site and structures as to possible effects on the neighborhood;
- (vii) In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered;
- (viii) Potential effects regarding the general public health, safety and general welfare.

20. In addition to satisfying the above criteria, a new public use cannot be approved under Ordinance #17646 unless the Examiner finds that "the proposed use is



necessary to serve the Rural Community in which it is locating" and will not result in "any significant adverse impact to the existing rural character of the area in which it is locating."

21. The Staff Report analyzes the application in light of the criteria of SCC 14.04.150(3)(d) and determines that the criteria are met. The Examiner concurs with this analysis and adopts the same as to all criteria, except (vi). "Design of the site and structures as to possible effects on the neighborhood" requires more extended discussion.

22. The proposal is vigorously opposed by the four near neighbors, primarily on the basis of view interference. Behrens-Millet Road, which runs down the top of the dike, was formerly a public road but is now a private road owned by the district. It is closed off and ends in a culdesac on the District's property. The residences to the west of the proposed building site are accessed from Behrens-Millet Road via a dead-end gravel driveway which proceeds north from the road. The driveway proposed for the storage building will parallel the driveway for the homes. Between the two driveways, the district intends to plant grass.

23. The view from the homes is to the east across the District's land. The homeowners most severely impacted will be Jim and Mary Mayhew. They own the last house to the north at the end of the driveway. The Mayhews have submitted numerous pictures showing the view they now have from their living room and dining/kitchen windows, and then simulating the near total view blockage that will occur from these vantages when the storage building is built.

24. The Mayhews' existing view is indeed a beautiful one. Mount Baker is visible across the District's property in the distance. They have presented a compelling description of their family's enjoyment of this pastoral setting over 23 years. The insertion of the storage building immediately in front of their house and 15 feet back from the property line will dramatically change the feeling of the place where they live. The storage building will be an overwhelming presence, replacing open space with a blank wall.

25. In addition to view problems, the Mayhews' neighbors are concerned with the District's maintenance habits. They say that grass on the dike has been often been allowed to get long and trash deposited on the roadside has not been picked up. They worry that, with the storage building replacing crops on the subject site, these problems will simply expand into a larger area.

26. James Mayhew makes the additional argument that the building may not be properly located to perform its function. He argues that if the road had to be closed because of water coming over it in a flood, no one could get to the building. He also questions that the building site is in fact 200 feet from the top of the dike.



27. There is a clear need for the kind of storage facility the District proposes. Presently flood fighting equipment is stored at various locations by private parties. A central place where everything is kept will be a significant step forward in organization and preparedness. Moreover, the facility will protect a very large residential and agricultural acreage. The applicants have carried their burden to show that the proposed this proposed new public use is "necessary to serve the Rural Community in which it is locating."

28. The District also emphasizes the need for prudent use of tax dollars they receive. They have concluded that purchasing an alternative site would be prohibitively expensive. The record raises substantial doubt that this is so. Further, there is no evidence that the District has considered the feasibility of leasing a site for this function. Nonetheless, the Examiner is not in a position to second-guess the practicality or economic wisdom of the choice of sites.

29. An early concept included putting the building further east on the parcel than where it is now proposed. This idea was abandoned when it was determined that this would place the building within 200 feet of the top of the dike. It is evident that the present site has been chosen in order to get the structure behind this 200-foot line.

30. After the hearing, the Mayhews canvassed a wider neighborhood and found many people who said they oppose the project. They submitted a petition with 94 signatures (many nearby, a few quite far afield). Some of the people they talked to expressed concern that the project was going in on such a wet and soggy piece of land. It was stated that water frequently ponds on the site in late winter and spring and that plowing usually is delayed until June because the land is so slow to drain and dry.

31. At the hearing and afterwards, concern was expressed about the adequacy of notice of the proposal and of opportunities to comment and be heard. The Permit Center showed that published and mailed notices were properly made. The posted notice was apparently placed in an inappropriate spot the second time it was done. But, there was substantial public participation in the hearing, and an opportunity for additional comment was provided.

32. In response to post-hearing submissions, the Permit Center and the applicant both noted that the reason this building is subject to the Special Use Permit process is that it is a public building. If built by a private party, a building of the same or larger size could be installed without any opportunity for public comment. Moreover, they noted that agricultural use of the property could include tree crops, such as cottonwoods or Christmas trees, that could also severely interfere with the views of neighbors.

33. Taking all of the facts and circumstances into account, the Examiner finds that the proposed public use will not result in any significant adverse impact to the existing rural character of the area in which it is locating. He emphasizes, however, that



at the hearing the applicant's representative stated that the District might be able to live with some downsizing of the facility.

34. 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 parties and the subject matter of this proceeding. Ordinance #17646.

2. There was no showing that anyone was prejudiced by improper notice.

3. The drainage features of the project were recommended by professionals. There is no competent information in the record from which to conclude that the provisions for drainage, if properly designed, will not function to resolve any problems of standing water on the site or of unwanted flow on neighboring lands.

4. The precise reason for siting the building 200 feet from the top of the levy is not clear. If the attempt was to avoid shoreline jurisdiction, the effort may have been unavailing. Assuming that the 200-foot jurisdictional line lies somewhere on the parcel, some of the project features -- the driveway and probably the retention pond -- are within the shorelines area. Since we are dealing with one integrated project, and the activities in and around the storage building will unquestionably influence activity on the shoreline, the Permit Center should evaluate whether a shoreline permit is needed for the project as a whole.

5. The Examiner is not sure that the top of a dike built to withstand a 50-year flood represents the Ordinary High Water Mark (OHWM) for shoreline purposes. But, in any event, the boundaries of shoreline jurisdiction on this property should be verified. Moreover, if any part of the project lies within 200 feet of the OHWM of the river, more detailed fish and wildlife habitat review should be carried out under the Critical Areas Ordinance.

6. On review of the relevant definitions and the provisions of the Comprehensive Plan, the Examiner is not persuaded that the subject facility is an Essential Public Facility as that term is used. The proposal is covered by Ordinance #17646 because it is a new public use, as described in SCC 14.04.130.

7. Intuitively it seems that public entities should have an obligation to evaluate alternative sites which may have lesser impacts than the site proposed. However, the Examiner has discovered no provision regarding public uses generally or within the Special Uses Permit criteria that requires an analysis of alternative sites prior to approval



of a proposal such as this. The unchallenged DNS under SEPA removes the necessity for evaluating alternative sites on an environmental basis.

8. The opponents emphasize that this proposal will occupy land zoned Agricultural and that it will take land out of agricultural production. This, however, does not necessarily make the proposal inconsistent with the applicable zoning. The Comprehensive Plan explicitly recognizes public uses as "special uses" within each land use designation. Such uses are, therefore, allowed in the Agricultural zone if they meet the Special Use Permit Criteria.

9. The issue of whether the District has kept its property neat, has picked up trash, and has moved the grass is not a ground for objection that rises to the level of justifying denial. The problem can be dealt with through a condition of approval. It has to be presumed that appropriate conditions of approval that are readily achievable will in fact be complied with.

10. The problem here is not really invasion of privacy. The facility will not often be in use. When it is, the emergency nature of the situation and broader public interest will justify whatever temporary intrusion there may be.

11. Therefore, the matter comes down to whether the view impacts posed by this facility provide a sufficient basis for turning it down. In this regard the Examiner is obliged to recall that the opponents do not own the property at the project site. They have no view easement over it. They have no private view right as against their neighbors.

12. The source of any right they have to protect their views has to arise from the relevant generally applicable land use regulations. Here these are represented by the Special Use Permit criteria and the provisions of Ordinance #17646. The Examiner sees only two potential avenues for relief: (1) the requirement that Special Use Permit review take into account "the possible effect on the neighborhood" and (2) the requirement of Ordinance #17646 that the facility "will not result in any significant adverse impact to the existing rural character of the area."

13. The main impact is on the Mayhews. The view interference objections of others is more attenuated. The "effect on neighborhood" standard appears to require more of an area-wide impact than will be experienced here. As to "rural character," the structure itself will not look much different from many buildings present in agricultural areas which are used as part of farming operations.

14. In arguing for alternative siting, the opponents in effect concede that the proposed building would be suitable in some rural settings. Thus, the problem here is the proximity to the Mayhews.

15. This case presents a situation where significant adverse impact will be felt by one party in order to create a facility that will have broad regional benefits. "Potential

effects on the region" are specifically to be considered in evaluating Special Uses. The regional effects and the potential effects on the general public health, safety and general welfare are all decidedly positive. The creation of this facility is in the public interest. Ultimately, then, in balancing values, the public benefit must be seen as outweighing the private detriment.

16. Therefore, the Examiner concludes that the Special Use Permit criteria have been met and that the application should be approved, subject to the conditions set forth below.

17. However, all this being said, the Examiner observes that the approval herein is essentially conceptual in nature. Final design has not been done. Under these circumstances, he urges the applicant to take another look at working out some means whereby the impact on the Mayhews is reduced. If review of the shorelines and critical areas issues shows that there is no advantage to locating the structure in the extreme northwest corner of the property, consideration should be given to moving it further east where the view impacts will be less dramatic. Consideration of a review of the dimensions, height and orientation of the structure is also requested. Perhaps some downsizing or profile reduction can be achieved consistent with carrying out the objectives of the District.

18. The following conditions should be imposed:

a. The project should be constructed according to final designs approved by the Permit Center. These designs shall include the storage structure, the drainage system, and a site plan showing the precise locations of all project components. b. The applicant shall obtain all necessary land use approvals. This requires verification of the boundaries of shorelines jurisdiction and determination by the Permit Center of the actions, if any, necessary to satisfy the Shorelines Management Act and the Critical Areas Ordinance. c. A Filling and Grading Permit shall be obtained for the construction of the retention pond.

d. A Temporary Erosion/Sedimentation control plan shall be submitted with the construction plans.

e. A new water availability letter from Public Utility District #1 shall be obtained prior to approval of a building permit.

f. Approval of the on-site sewage disposal system shall be obtained prior to the approval of a building permit.

g. A landscape plan shall be submitted for review and approval prior to the



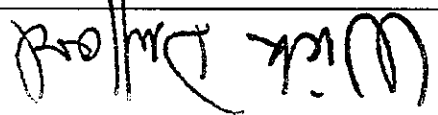
approval of a building permit.

- h. The permittee shall comply with all requirements of the Fire Marshal's office.
- i. The provisions of the Flood Damage Prevention ordinance shall be complied with.
- j. The maximum amount of area possible, consistent with the project design, shall be kept in agricultural production.
- k. The permittee shall maintain all landscaping installed and shall make efforts to keep the grounds free of refuse and trash.

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

DECISION

The application for a Special Use Permit is approved, subject to the conditions set forth in Conclusion 18 above.


Wick Dufford, Hearing Examiner

Date of Action: February 14, 2001

Copy transmitted to Applicant: February 14, 2001

Attachment: Staff Report

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 dates 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 the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.



SKAGIT COUNTY PLANNING AND PERMIT CENTER
FINDINGS OF FACT

HEARING AUTHORITY: SKAGIT COUNTY HEARING EXAMINER
HEARING DATE: DECEMBER 6, 2000

APPLICATION NUMBER: SPECIAL USE PERMIT REQUEST PL00-0240
APPLICANT: SKAGIT COUNTY DIKE DISTRICT #1
C/O BOB DEAN
17219 CALHOUN ROAD
MOUNT VERNON, WA. 98273

PROJECT LOCATION: Located at 17917 Behrens-Millett Road, Mount Vernon, Washington.
within a portion of Section 24, Township 34N, Range 3 East W.M. Skagit County,

PROJECT DESCRIPTION: Special Use permit request PL00-0240 for the construction of a 60 X 40 square foot structure for the purpose of storage for sand bags, sand bagger, and other flood fighting equipment.

ASSESSOR'S ACCOUNT NUMBER: 340324-4-003-0100, P22515

LEGAL DESCRIPTION: ATTACHED

ZONING: The property is located within an Agricultural zoning district.

COMPREHENSIVE PLAN: The Comprehensive Plan designates the area as Agricultural Natural Resource Land as indicated in the Skagit County Comprehensive Plan and associated maps as adopted June 1, 1997.

RECOMMENDATION: The Planning and Permit Center recommends approval of the request with conditions.

EXHIBITS:

1. Application dated April 28, 2000
2. Letter of completeness issued May 15, 2000
3. Notice of Development published May 18, 2000
4. Determination of Nonsignificance (DNS) issued July 20, 2000



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5. Site Plan
6. Assessors section map

STAFF FINDINGS:

1. The subject property is zoned Agricultural and the Comprehensive Plan and associated maps as adopted June 1, 1997 designates the area as Agricultural Natural Resource Land (Ag-NRL). The application was determined to be complete on May 15, 2000 and is vested under the Comprehensive Plan and zoning regulations in effect at that time.

2. Per Section 14.01.033 of the Skagit County Code, a letter of completeness was issued and a Notice of Development Application was posted on the subject property and published in a newspaper of general circulation on May 18, 2000 as required by Section 14.01.040(2) of Skagit County Code.

3. The application has been reviewed in accordance with the State Environmental Policy Act guidelines (WAC 197-11 and RCW 43.21C). A Determination of Nonsignificance (DNS) was issued on July 20, 2000, and became effective following the fifteen-day comment period that ended on August 4, 2000 and a fifteen-day appeal period that ended on August 21, 2000.

4. The subject parcel was reviewed with the respect to the Skagit County Critical Areas Ordinance 14.06 of the Skagit County Code. Staff reviewed the project and indicated the following: "Please note that all issues associated with proximity to critical areas have been resolved at this time. There are no CAO constraints to this project."

5. The subject property is located in a Zone AO designated flood hazard area as identified by FEMA on Flood Insurance Rate Map (FIRM) #530151 0250 C with the effective date of January 3, 1985.

6. The subject parcel is approximately 1.1/3 acres in size located to the north of Behrens-Millett Road. The subject parcel measures approximately 412 feet in length along the south property line, approximately 322 feet in length along the north property line, approximately 326 feet in width along the west property line and approximately 76 feet in width along the east property line. The proposal is to construct a 40' X 60' storage structure along the northwest property line, to be used by Diking District #1 for the storage of flood fighting equipment. The access to the site will be off of Behrens-Millett Road. The parcel will be serviced water from Public Utility District #1 and an individual on-site septic system will be utilized.

7. The majority of the surrounding area is currently in agricultural use. There are fields located directly to the north and east of the subject parcel. An existing wooded area is located to the south, on the south side of Behrens-Millett Road,



with Skagit River further to the south. There are existing residential parcels on smaller lots located directly to the west of this proposed site.

8. The applicant is requesting a Special Use permit to construct a 60 X 40 square foot structure for the purpose of storage for sand bags, sand bagger, and other flood fighting equipment. Skagit County Ordinance #17646, which is titled "An Interim ordinance amending and renewing the provisions of ordinance #17442, Interim Ordinance to implement the Comprehensive Plan", indicates within Section 7, Public Uses Outside of UGA's. Section 7 (1) and (1)(a) which reads as follows: "Any new public use, as described in SCC 14.04.130, any Essential Public Facility as defined by RCW 36.70A.200 or any expansion of an existing Public Use or any Essential Public Facility beyond the terms of the original zoning approvals for that public use, that is proposed outside of a UGA shall only be permitted as follows: (a) The proposed new or expanded Public Use or Essential Public Facility shall obtain a Hearing Examiner Special Use permit, pursuant to the requirements for Hearing Examiner Special Uses in SCC 14.04.150. The Hearing Examiner shall not approve the special use permit unless the Hearing Examiner makes a finding, supported by substantial evidence, that the proposed public use is necessary to serve the Rural Community in which it is locating or meets the Comprehensive Plan policies regarding the siting of Essential Public Facilities and will not result in any significant adverse impact to the existing rural character of the area in which it is locating."

9. The application was routed to the health unit for review. Environmental Health indicated the application stated that a septic system has been designed, however no design has been submitted yet. Staff notes that prior to the issuance of a building permit, a septic design shall be approved.

10. The application was reviewed by the Water Resources division of Skagit County Planning and Permit Center who had no concerns with the proposal with the use of Public Utility Water District #1. Water Resources further indicated that if the project had not obtained approval within one year of the date of the letter from Public Utility District #1, a new letter would be needed.

11. The application was routed to The Public Works Department for review. The Public Works Department indicated that a Fill and Grade permit will be needed for the construction of the retention pond and that a Temporary Erosion/Sedimentation control plan is required.

12. The application was routed to Conservation Futures, Farmland Legacy Program of review. No comments or concerns were received.

13. The application was routed to the Fire Marshall for review. The Fire Marshall's comments are as follows: "The Fire Marshals only comments involve the possible requirements for fire flow at the site of this project. Because of the rural nature of the area, if the project is less than 4,000 square feet and has 40' clear



yards, fire flow can be waived. If they can't meet these criteria they need to talk to the Fire Marshal's office."

14. Section 14.04.150 Unclassified Special Uses of the Skagit County Code indicates that certain items will be reviewed when approving or denying Special Use permits. Those items are as follows:

A. Conformity to the Comprehensive Plan in respect to the compatibility with existing and future land use and circulation.

The parcel is designated Agricultural Natural Resource Land and the Skagit County Comprehensive Plan does not specifically provide policies that either support or oppose the proposed project. However, the Comprehensive Plan adopted June 1, 1997 indicates in the Land Use Element on Page 4-29, Policy 1.1 that "Within each comprehensive plan land use designation, public uses (facilities and utilities) should be considered as "special uses" under Skagit County 14.04, the zoning ordinance. Public uses should be reviewed as site specific projects so that public benefits and land use impacts can be analyzed and, if necessary, appropriate mitigation applied."

The Capital Facilities Element, Chapter 11, of the Comprehensive Plan indicates that a Capital Facilities Plan shall be prepared to identify individual capital improvements and to determine the level of service capacity needed to accommodate new growth. This plan shall be prepared annually and incorporate the proposed new capacity, replacement and rehabilitation of capital facilities, and financing over a six year period. Also, the Essential Public Facilities Element, Chapter 15, within the Comprehensive Plan speaks in support of essential public facilities with adequate review and as long as the siting conforms with the Comprehensive Plan and its supporting policies.

B. The zoning of the subject property and surrounding properties and the conformance of the application with the Zoning Ordinance.

The subject parcel is zoned Agricultural and the Comprehensive Plan designation is Agricultural Natural Resource Land. Staff notes that the Comprehensive Plan adopted June 1, 1997 indicates in the Land Use Element on Page 4-29, Policy 1.1 that "public uses (facilities and utilities) should be considered as "special uses" under Skagit County 14.04, the zoning ordinance."

Staff also notes that Interim Ordinance #17646, the ordinance implementing the Comprehensive Plan, indicates in Section 7: Public Uses Outside of UGA's, the following under subsection (1) and (1)(a):

(1) "Any new public use, as described in SCC 14.04.130, any Essential Public Facility as defined by RCW 36.70A.200 or any expansion of an existing Public Use or any Essential Public Facility beyond the terms of



the original zoning approvals for that public use, that is proposed outside of a UGA shall only be permitted as follows:

(a) "The proposed new or expanded Public Use or Essential Public Facility shall obtain a Hearing Examiner Special Use permit, pursuant to the requirements for Hearing Examiner Special Uses in SCC 14.04.150. The Hearing Examiner shall not approve the special use permit unless the Hearing Examiner makes a finding, supported by substantial evidence, that the proposed public use is necessary to serve the Rural community in which it is locating or meets the Comprehensive Plan policies regarding the siting of Essential Public Facilities and will not result in any significant adverse impact to the existing rural character of the area in which it is locating".

C. Automobile or truck traffic and parking and its effect on surrounding community.

The applicant indicated that a portion of the gravel drive is pre-existing. The remaining drive and access will be completed when the building is constructed. The applicant further indicated that the vehicle traffic generated by the building's use will be extremely minimal, consisting of approximately one to three vehicle trips to the building per week. The applicant indicated that the parking needs and provisions are not necessary, as little parking will be anticipated. Parking areas, when necessary, would be available on the dike and/or adjacent to the shed on the gravel drive.

D. Noise, odors, heat, vibration, air and water pollution potential of the proposed use.

The applicant has indicated that other than occasional vehicles visiting the site, there will be no problem or emission of noise, odors or heat generated, or any air emissions resulting from the proposed use. The proposal does not require the installation or use of heavy equipment or machinery and there will be no vibrations or any other adverse effects to adjacent properties. The applicant further indicated that the proposal does not require the storage or use of chemicals, waste oils, solvents, fuel, or any other fluid or liquid that may contaminate water supplies or cause spills.

Staff notes that the proposed project will have a minimal impact on the surrounding area with odors, heat, vibration, air and water pollution potential of the proposed project provided the site is maintained. The use proposed is currently existing at other locations within Skagit County with no adverse impacts. Staff notes that noise may be a factor only during the time of construction of the proposed facility. This noise will be a temporary impact associated with construction activities.



E. Intrusion of privacy.

The applicant indicated that there will be no intrusion of privacy. The applicant further indicated that there is no potential for trespassing onto adjacent properties resulting from visitors, customers, or employees of the dike district. Signs will be utilized to designate the property as that of Dike District No. 1 and with a notice that trespassing on the site is prohibited.

Staff notes that there should be no intrusion of privacy onto adjacent properties due to the fact that the facility will be unmanned with personnel on site only a few times per week and in the event of a flood threat emergency.

F. Design of site and structures as to possible effects on the neighborhood.

The applicant has indicated that the structure will be a 40' x 60' square foot storage building, resembling a typical metal sided pole building.

Staff notes that the structure will be a typical pole building in size and design, similar to many other accessory structures located throughout Skagit County.

G. In addition to possible effects on the neighborhood in which the use is to be located, the potential effects on the region shall be considered.

There shall be no potential effects on the region. The use will be for the storage of equipment and materials necessary to aid in the prevention of flood damage. The location of the structure could be very beneficial in the event of a flood threat.

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

There will be no negative effects on the neighborhood, region, general public health, safety, or welfare as a result of this project provided the site continues to be maintained. The applicant has indicated that there will be no storage of chemicals, waste oils, solvents, fuel or other products that could potentially contaminate ground water.

RECOMMENDATION

Based on the above findings the Planning and Permit Center would recommend **approval** of the requested Special Use Permit with the following conditions:

1. The applicant shall obtain all necessary land use approvals.



2. A Grading permit will be needed for the construction of the retention pond.
3. A Temporary Erosion/Sedimentation control plan is required to be submitted with the construction plans.
4. A new water availability letter from Public Utility District #1 will be needed prior to the approval of a building permit.
5. The applicant shall submit a landscape plan for review and approval prior to building permit issuance, pursuant to SCC 14.16.
6. The applicant shall comply with the Fire Marshal's Office requirements.

Prepared By: BB
 Approved By:
 Dated: 11-14-00



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