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

DOCUMENT TITLE: ORDER ON SPECIAL USE PERMIT AND VARIANCE SU 02 0038  
and VA 02 0350

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CITY OF BURLINGTON

ASSESSOR PARCEL NO: P35426, P23645, P23853, P23642

ABBREVIATED LEGAL DESCRIPTION: The pump station is proposed to be located at 17333 Peterson Road, Burlington, WA; a portion of Section 36, Township 35N, Range 3 East W.M. Skagit County, Washington. The proposed force main will be located within the road right-of-way of Peterson Road and Pulver Road, Burlington, WA; within Sections 36, Township 35N, Range 3 East W.M. and Section 6, Township 34N, Range 4 East W.M., all in Skagit County, Washington.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** City of Burlington  
Department of Public Works  
C/o Rod Garrett, Director  
820 E. Washington Street  
Burlington, WA 98233

**File Nos:** PL02-0038, PL02-0350

**Requests:** Special Use Permit  
Variance

**Summary of Proposal:** Replacement of Pump Station No. 8 serving Burlington's western sewer service area and replacement or upgrade of approximately 19,535 lineal feet of force main and associated gravity sewer lying between Pump Station No. 8 and the Burlington sewage treatment plant.

**Location:** Pump Station -- 17333 Peterson Road, within a portion of Sec. 36, T35N, R3E, WM.  
Force Main -- Within the right-of-way of Peterson Road and Pulver Road, within portions of Sec. 36, T35N, R3E, WM, and across agricultural land located within Sec. 6, T34N, R4E, WM.

**Land Use Designation:** Agricultural-Natural Resource Lands

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on October 9, 2002.

**Decision:** The applications are approved, subject to conditions.



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## FINDINGS OF FACT

1. The Department of Public Works for the City of Burlington seeks permission to pursue the County portions of the Burlington-Bayview Ridge sanitary sewer upgrade project. The project involves replacing Pump Station No. 8 and replacing or upgrading approximately 19,535 lineal feet of force main and associated gravity sewer lying between the pump station and the City's sewage treatment plant.

2. Within unincorporated Skagit County the project involves the pump station and approximately 110 feet of 12-inch force main, 11,240 feet of 20-inch force main, and 110 feet of 12-inch gravity sewer. These facilities will connect to the portion of the sewer system located within the City limits.

3. The project components lying within the City of Burlington include approximately 360 feet of 14-inch force main, 5,470 feet of 20-inch force main, 1,640 feet of 24-inch force main, and 605 feet of 18-inch gravity sewer.

4. The Burlington sewage treatment plant is a regional facility located within the City limits just west of the Skagit River. The City provides sewer service to the Bayview Ridge Urban Growth Area (UGA) which is within the City's western service area. The instant project carries out wastewater planning efforts that have identified system improvements necessary to accommodate anticipated growth in the UGA.

5. The project area and the surrounding lands are designated Agricultural-Natural Resource Lands (AG-NRL). The vicinity consists of open agricultural fields with scattered residential parcels along the roads.

6. The proposed replacement pump station will be located on the north side of Peterson Road, approximately 400 feet east of the intersection of Peterson Road and Avon Allen Road. It will occupy about 11,900 square feet on an existing two-acre residential parcel. The structure's footprint will be approximately 145 feet by 85 feet. The existing pump station is south of Peterson Road. The new pump station will be almost directly across the road from the prior site.

7. The new pump station will be sited close to the road-right-of way. An analysis of alternative sites was carried out. The conclusion reached was that no other parcel and no non-agricultural land are suitable for serving the Bayview Ridge area. Burlington will obtain an easement from the landowner for the smallest area that will accommodate the pump station. To further reduce the quantity of land removed from commercial agricultural production, a variance is requested to reduce the front yard setback from 35 feet to 20 feet.



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8. The majority of the force main alignment is within Skagit County rights-of-way. It will begin at the pump station and extend east within the roadway of Peterson Road turning south within the roadway of Pulver Road. From a point on Pulver Road, it will cross privately owned agricultural lands zigzagging east along property lines to West Stevens Road, and then continue east within West Stevens Road to the existing Burlington transmission system.

9. The force mains will be placed at depths sufficient to avoid conflict with the continuance of agriculture of the surface. The depth coupled with the location along property lines, means that the force mains will not interfere with agricultural operations or production. As with the pump station, an analysis of alternative force main alignments was performed.

10. The pump station will operate continuously but will not involve any on-site employees. Perimeter fencing will be erected and appropriate "No Trespassing" signs will be installed. Routine maintenance will involve occasional visits by maintenance staff. A parking space will be provided on the gravel access driveway between the road and the pump station. Traffic impacts will be negligible.

11. The facility will not generate vibrations, noise, odors, or other emissions to the air. The use will not involve the storage of any chemicals, waste oils, solvents or fuels.

12. The applications were filed on June 28, 2002. The County issued a letter of completeness on July 29, 2002, and published a Notice of Development on August 1, 2002.

13. Under the State Environmental Policy Act (SEPA), a co-lead environmental review was conducted by Burlington and Skagit County. A Mitigated Determination of Non-Significance (MDNS) was issued on July 16, 2002. The MDNS was not appealed. It contained the following conditions:

- a. Comply with Skagit County and Burlington Critical Areas and Flood Hazard requirements.
- b. Construction activities shall comply with noise standards.
- c. Pump station shall be screened, landscaped and maintained to mitigate visual effects.
- d. Best Management Practices shall be used during construction to prevent waste material from storm water flows and from entering adjacent ditches or offsite, to include silt fences and construction during the dry season.

14. The project falls within the definition of a "major utility development.." SCC 14.04.020. On AG-NRL lands such developments may be authorized by Special Use Permit "where there is no other viable parcel or non-agricultural designated land to serve



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the affected area." SCC 14.16.400(4)(f). Based on the alternatives analysis, the Examiner concludes that there is not other viable site or routing for the facilities involved.

15. The application was routed to Conservation Futures, Farmland Legacy Agricultural Advisory Board for review. No comments were received.

16. The general criteria for Special Use Permit Approval are set forth in SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standard of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy or surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in Industrial Forest-NRL, Secondary Forest-NRL, Agricultural-NRL, and Rural Resource-NRL, the impacts on long-term natural resources 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.

17. The Staff Report analyzes the proposal against these criteria and finds that, as conditioned, it will be consistent with them. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

18. The considerations for approval of variances are set forth at SCC 14.10.030. The proposed setback variance is intended to minimize impacts on agricultural lands. Given the conclusion that the selected site is the most practical location for the new pump station, the AG-NRL zoning represents a special circumstance to which the requested variance accommodates. There are no special features, such as critical areas or shorelines, that must be addressed in the variance analysis. The lesser setback will serve the public interest through reducing the quantity of land removed from agricultural production.



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19. The application details the reasons the variance should be granted in light of the variance standards. The Examiner finds that the reasons set forth in the application justify the granting of the variance. The variance is the minimum variance that will make possible reasonable use of the land. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.

20. Only one letter of concern from a member of the public was received. It expressed fears about being forced to hook up to the new facilities. One member of the public testified asking about the possibility of such a hook up. There will be no private connections to the force mains covered by this application. The pressure carried through the piping involved will be too great to permit any such thing.

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

### CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. The requirements of SEPA have been satisfied.

3. The purpose of the AG-NRL designation is to keep the land so designated in agricultural production over the long term. Nonetheless, major utility developments may be allowed in such zones, following analysis of alternative siting possibilities. SCC 14.16.400(4)(f). The required analysis was performed here. It showed that "there is no other viable parcel or non-agricultural designated land to serve the affected area."

4. The findings support a conclusion that the proposal, as conditioned, will be consistent with the criteria for Special Use Permit approval and for approval of the variance sought. SCC 14.16.900(2)(b)(v), 14.10.030, 14.10.040.

5. The following conditions should be imposed.

(1) The applicant shall construct and operate the project as described in the application materials, except as the same may be modified by these conditions.

(2) The applicant shall obtain all other necessary permits.

(3) The applicant shall comply with the conditions set forth in the MDNS (See Finding 13).

(4) Noise, vibration, ventilation and lighting shall comply with applicable state and local standards, including WAC 173-60 and SCC 14.16.840.



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(5) Compliance shall be maintained with Chapters 173-201A WAC (surface water standards) and 173-200 WAC (ground water standards).

(6) Work within County rights-of-way shall require a permit from the Skagit County Department of Public Works.

(7) The applicant shall submit a landscape plan for the pump station site to the Permit Center for review and approval, prior to building permit issuance. (See SCC 14.16.830.)

(8) The applicant shall submit a copy of this decision with the building permit application.

(9) The applicant shall conform with the timing requirements for development under Special Use Permits, as set forth in SCC 14.16.900(2)(d).

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

### DECISION

The requested Special Use Permit and variance are approved, subject to the conditions set forth in Conclusion 5 above.

*Wick Dufford*

Wick Dufford, Hearing Examiner

Date of Action: November 4, 2002

Copies Transmitted to Parties: November 4, 2002

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



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