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DOCUMENT TITLE: ORDER ON APPEAL AP 03 0511

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: CASCADE AG SERVICES, INC. and CITIZENS FOR ZONING AND
CODE COMPLIANCE

ASSESSOR PARCEL NOS: P# 112114, 112115, 15448, 15449

LEGAL DESCRIPTION: The project is located at 13459 Dodge Valley Road, Mount
Vernon, WA; within Section 5, Township 33 North, Range 3 East, W.M., Skagit County,
Washington.

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)

**CITIZENS FOR ZONING AND
CODE COMPLIANCE,**)

Appellant,)

v.)

**SKAGIT COUNTY, and
CASCADE AG SERVICES, INC.,**)

Respondents.)

PL03-0511

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

CASCADE AG SERVICES, INC.,)

Appellant,)

v.)

SKAGIT COUNTY,)

Respondent.)

PL03-0510

This matter, the appeal of a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) came on regularly for hearing on September 24, 2003.

Appellant Citizens for Zoning and Code Compliance (CZCC) was represented by Gerald Steel, Attorney at Law. Cascade Ag Services, inc. was represented by Phil Olbrecht, Attorney at Law. Skagit County was represented by John Moffat, Deputy Prosecuting Attorney. Anne Anderson and Larry Jensen acted as spokespersons for Cascade Ag. Brandon Black, Planner, spoke for Skagit County.

PROCEDURE

This hearing was convened as a consolidated proceeding taking up two appeals of the MDNS for Cascade Ag Services' agricultural processing facility at 13459 Dodge Valley Road. The appeal of CZCC (PL03-0511) urged that the MDNS should not have been issued, but rather that an Environmental Impact Statement (EIS) should be prepared.



The appeal of Cascade Ag Services (PL03-510) did not question that a negative threshold determination should have been issued, but sought clarification or amendment of the MDNS conditions. CZCC was not made a party to Cascade Ag's appeal.

The instant decision concludes that a negative threshold determination conditioned as set forth in the MDNS was proper and that no EIS is legally required. The effect is to decide both appeals.

After the referenced appeals were instituted, a separate appeal (PL03-0552) related to building permits for the facility was filed by CZCC. However, the permits were subsequently revoked by the County, thus rendering the appeal premature.

The basis of the permit revocation was SCC 14.06.230 which states that an appeal stays all proceedings in the action appealed from unless a Court directs that proceedings not be stayed. No Court order was obtained here and accordingly the stay was considered to be in effect prior to the issuance of the permits. Accordingly, the permit applications remain active.

The Hearing Examiner's hearing was held on due notice of September 24, 2003. At the close of the hearing, Cascade Ag, as respondent in PL03-0511, was given two weeks to provide further response to appellant's presentation. CZCC was provided with an additional week to rebut the respondent's response.

By letter dated October 6, 2003, Cascade Ag advised that it would not be filing additional material and argument. Over objection from CZCC, the Examiner then notified the parties that he considered the record closed. On October 15, 2003, the Examiner visited the site accompanied by representatives of the parties.

FINDINGS OF FACT

1. On March 18, 2003, Cascade Ag Services, Inc., filed an Environmental Checklist with the Skagit County Planning and Permit Center relating to the operation of an agricultural storage and processing facility. The project includes an 18,180 square foot processing and storage building, 440 brining tanks of 10,000 gallons each, a modular office, a separate bathroom facility, and parking.

2. The subject property is located on Pleasant Ridge at 13459 Dodge Valley Road, about two miles east of La Conner. It lies within a portion of Sec. 5, T33N, R3E, W.M. The facility occupies about nine acres. The land use designation is Rural Reserve (RRv).

3. The facility handles cucumbers, cabbage and potatoes. The raw vegetables are brought to the site by truck and unloaded for initial processing in the building. Cabbages are trimmed, cored, shredded and then placed in indoor tanks for natural fermentation. After fermentation, the sauerkraut is removed from the site in refrigerated trucks. Cucumbers are washed, cleaned, sorted, sized and then either shipped off site fresh or placed in outdoor tanks for fermentation in brine. After fermentation, the pickles are likewise transported from the site



in refrigerated trucks. The fermentation process for cabbage varies from 8 weeks to a year, depending on customer needs. The fermentation process for cucumbers is approximately 21-28 days. Potatoes are kept in cold storage.

4. PUD water is available for sanitary and consumptive use. Water for processing at the facility is provided by on-site wells. The brine is recycled, so that only make-up water is normally needed for the brine tanks.

5. The brine tanks have the capacity to capture and store the 100 year 24-hour rainfall event. Roof runoff is routed to an infiltration area. For general site runoff, a stormwater management pond is designed for the northwest corner of the site. The storm water pond is irregularly shaped, approximately 270 feet long and 120 feet wide. The total depth is nine feet. Storage capacity for stormwater is 8 acre feet. The system includes an oil separator. Releases from the pond are at less than pre-developed rates. The stormwater management system was professionally designed by the Natural Resources Conservation Service.

6. There are two waste water streams: cucumber wash water and industrial waste water. Cucumber wash water is collected each processing day and released into a wash water treatment infiltration ditch. No chemicals are introduced into this water at the site. Industrial waste water consists primarily of washdown water from the cabbage cutting equipment. A screen separator removes organic solid material from the waste stream. The waste water then goes to a small circular wastewater storage pond, located south of the storm water pond. The design of the wastewater pond is for storage 0.3 acre feet (4 to 6 months capacity). After detention in the containment pond, the water is fed to an irrigation system for land application. There are no public water supply wells within ¼ mile of the land application site. This system also was designed by NRCS and is the basis for a Wastewater Discharge Permit from the State Department of Ecology.

7. A spill containment system is to be built into the stormwater drainage system by the installation of an automatic shut-off valve. This shut-off equipment will provide the opportunity to contain the spill in the storm water collection pipeline. From a catch basin immediately upgradient of the shut-off valve the brine will be pumped out of the storm drain pipes and into a collection tank.

8. The high season for operations at the site is the cucumber harvest period from roughly mid-July to the end of September. The most intense period is two to three weeks from mid-August into early September. On the Environmental Checklist, Cascade Ag listed the following "approximate" hours of operation:

December through Mid-July -- 7 a.m to 6 p.m. , Monday-Friday
Mid-July through Mid August -- 7 a.m. to 8 p.m., Monday-Sunday
Mid-August through Labor Day -- 24 hours a day, Monday-Sunday
September -- 7 a.m. to 10 p.m. -- Monday-Sunday
October - November -- 7:30 a.m - 6 p.m. -- Monday-Friday.



Cabbage is harvested from mid-October through early December, but this apparently does not require the facility to extend its hours.

9. The number of employees using the site on a daily basis varies with the seasons. The employee count in 2002 was:

Jan-June: 10
July: 20
Aug: 74
Sept: 169
Oct: 82
Nov: 57
Dec: 47

Available parking space on site is adequate to handle the maximum number of employees. Traffic generated by the facility, of course, fluctuates with the level of activity on site and the number of employees.

10. Cascade Ag estimates up to 120 car trips per day during the 3-week, 24-hour operations peak and less than eight car trips per day during the winter and spring. The Environmental Checklist does not provide an estimate for truck trips during the height of the cucumber harvest, but does state that there will be approximately 5 truck trips per day on an annual average.

11. The subject property is accessed via a gravel drive from Dodge Valley Road on the south. Valentine Road is a north-south running street to the east that intersects with Dodge Valley Road. Valentine Road is separated from the Cascade Ag site by intervening property. The processing facility is in a clearing, surrounded by closely spaced trees on all sides except in the northeast where there is a layer of shrubs with scattered trees. The facility is effectively screened from exterior views, except for the entry from Dodge Valley Road and perhaps a portion of the northern and eastern boundaries when shrubbery is not in leaf.

12. Cascade Ag presented a landscape plan to the County with a request for a partial waiver of standards requirements due to the natural dense vegetation that surrounds the facility. The plan with the waiver was approved. To implement the plan Cascade Ag acquired an easement 60 feet wide and 300 feet long on the adjoining property to the east. The plan, to be completed by October 31, 2003, involved plantings on 330 feet of the eastern portion of the north property line and within the 300 foot-long easement on the eastern boundary. Two alternating rows of cedars trees have been planted along these areas as well as ground cover. Also in these areas a six foot high cedar fence is called for.

13. To the south of the site, across Dodge Valley Road is agricultural land. To the west and northwest is forest. To the northeast and east are three residences, all some distance from the facility and at least partially screened by vegetation. The residences are accessed from



Valentine Road. Apart from residences scattered along Valentine Road, the immediate area is devoted to farms and trees.

14. On May 20, 2003, after reviewing the Environmental Checklist and other material on file, the Planning and Permit Center issued a Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA). The MDNS was published and mailed on May 22, 2003, subject to a 15-day comment period.

15. On June 20, 2003, the final day of the appeal period, both Cascade Ag Services, Inc. and Citizens for Zoning and Code Compliance (CZCC) filed appeals of the MDNS.

16. The MDNS contained the following conditions:

- (1) The applicant shall comply with Northwest Air Pollution Authority requirements.
- (2) The applicant shall comply with the applicable provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance.
- (3) The applicant shall comply with Fire Code Standards.
- (4) Fire flow is to be provided for the protection of the processing building in compliance with Skagit County Fire Marshal Procedures Concerning Fire Flow and Placement of Fire Hydrants. Section I - Procedure for Setting Fire Flow, Sub-Section E - Minimums for buildings where flow is required. 2.b. Commercial 750 GPM - 60 Minutes. Further, the applicant is to submit plans and obtain Fire Marshal's approval prior to the installation of a fire flow system. Fire flow compliance will be required prior to the issuance of the "Change of Use" permit BP03-0305.
- (5) Pursuant to the Uniform Building Code, Chapter 33, Section 3301, an engineered soils compaction report shall be required for all structures placed on fill material.
- (6) The applicant shall comply with all relevant provisions of 14.24, Skagit County Critical Areas Ordinance.
- (7) The operation shall comply with the Performance Standards outlined within Skagit County Code section 14.16.840.
- (8) Traffic generated by this operation shall be restricted from the use of Valentine Road.
- (9) Pursuant to Skagit County Code section 14.16.865(e), Interim Ordinance #020030006, a Type I landscape plan is required to be submitted with the



"Change of Use" permit.

(10) Noise levels shall not exceed Chapter 173-60 WAC "Maximum Environmental Noise Levels."

(11) In order to assure compliance with Chapter 173-60 WAC, "Maximum Environmental Noise Levels," a noise monitoring proposal prepared by a certified acoustical engineer shall be submitted with the "Change of Use" building permit application number BP03-0305 for approval by the Health Department. The noise monitoring program shall take into consideration the seasonal aspects of the facility's operation and the working hours included in the high production season.

(12) The applicant shall meet the requirements of Skagit County Code section 12.48 "Rules and Regulations of the Skagit County Board of Health Governing Individual and Public Drinking Water Systems."

(13) Any future expansion that triggers development permit review and approval, and which is not specifically exempt from SEPA review under WAC 197-11-800, shall require the submittal of a new environmental checklist for review of the cumulative impacts on site.

17. Cascade Ag's appeal asserted that the conditions imposed are redundant because they related to Code requirements that apply in any case. The company asked for relief from the conditions of the MDNS in only one respect. Because of the noise control and noise monitoring efforts they have voluntarily undertaken, they sought to be relieved of the requirement for a report prepared by a certified acoustical engineer. Otherwise, the appeal presentation dealt with questions of clarification as to what constitutes compliance.

18. Cascade Ag presented no clear proof that their operations are fully in compliance with the state regulations for "Maximum Environmental Noise Levels." There was no independent verification of their self-monitoring efforts.

19. For all that this record shows, the CZCC currently has been reduced to one household -- that of Robert Coe and Jan Auman, located at 18562 Valentine Road, about 500 feet to the east of the Cascade Ag facility. There is an intervening lot.

20. CZCC's appeal document enumerated 11 ways in which significant adverse environmental impacts from the project are purportedly significant. In its appeal presentation, these appellants concentrated on two of these: noise and odor.

21. On the issue of noise, the appellants presented no on-site measurements. They did, however, present subjective testimony by Mr. Coe regarding background noise compared with noise when operations are conducted at the facility at night. He likened the background to the noise made by the rustling of leaves. He testified to being disturbed by noises from the facility



during some nights from late June through September. The noises he identified were from an air compressor, conveyor belts, trucks, machinery and human voices. There was no testimony from any other household about noise disturbance.

22. Cascade Ag advised that the noise level this season (2003) has been reduced from last when on-site construction activities were in progress. They listed the following sound reduction efforts:

- (1) Replacing large diesel motor for hydraulic system with a quieter electrical system. Staff has been trained to keep doors to the housing closed during operation.
- (2) Installing insulated cold storage fan house.
- (3) Backup beepers have been eliminated on fork lifts.
- (4) Blower system on north side of property has been insulated with four inches of styrofoam insulation.
- (5) Diesel and gas powered water pumps used for cucumber washing have been replaced with electric pumps.
- (6) Purchasing decibel meter and implementing a test routine with results recorded in a logbook.
- (7) Planned insulation of second blower system this winter.

Cascade Ag believes they are complying with state noise limits. However, the record does not show what results are being obtained from routine testing with the decibel meter.

23. Mr. Coe testified that odors from the pickling process represents a major problem for him. He marked on a calendar the days when he could smell odors from Cascade Ag. There were 44 such days in the June through September period. He said that the odors were most intense on days without wind. He said that during the summer there were times when the smell interfered with the enjoyment of his property to the extent that he and his wife were deterred from barbecuing outdoors. There was no testimony from any other household about odor disturbance.

24. Cascade Ag took the position that the odors associated with the fermentation process are generally mild, typical of the outdoor storage of agricultural produce, and of a type that should be tolerated by those living in an area where agriculture is practiced. They also stated that the vinegar tank has been moved to the far western end of the tank pad in order to reduce any possible odors from it.



25. Cascade Ag referred to Chapter 14.38 SCC by which persons living adjacent to property designated as resource lands in the County are given notice of possible uses that may cause inconvenience or discomfort, with the understanding that they are expected to live with noises and odors typical of agricultural activities. The subject site is, however, on Rural Reserve lands, not designated resource lands.

26. Cascade Ag reported that they have been in touch with the Northwest Air Pollution Authority and have asked for a site visit to evaluate the odors from the brining. NWAPA has stated that it would need to visit the site of a complainant at the time the odor is offensive to them to make an assessment.

27. CZCC suggested that perhaps covers could be placed over the brining tanks to reduce odors. Cascade Ag responded that the process requires ultra-violet light for bacteria control and that covers are nowhere used in the industry for the brining process.

28. CZCC expressed concerns about traffic generated by Cascade Ag, as did some members of the public who testified. Increased traffic and speeding on Valentine Road were discussed. Fears were also expressed about truck traffic on the narrow, largely shoulderless Dodge Valley Road -- conditions that make biking or walking along the roadway hazardous.

29. Cascade Ag has made efforts to re-route employee and truck traffic from Valentine Road and appears largely to have succeeded in eliminating trucks and in reducing workers' use of that public road.

30. County departments were consulted on the negative threshold determination and no comments were received about traffic from the Department of Public Works.

31. On matters of aesthetics and lighting, Mr. Coe testified that these are not now a problem for him. He said that natural vegetation effectively screens the facility from his house and that lighting changes have eliminated any problem.

32. CZCC argued that the automatic shut-off valve and spill containment measures in general are inadequate to avert the threat of possible ground water contamination. The spill control features of the project apparently have the approval of the State Department of Ecology.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding. SCC 14.06.110(7).

2. Agricultural processing facilities are a permitted use in the Rural Reserve zone. SCC 14.16.320(2)(c).



3. A final negative environmental threshold determination is appealable as a Level I decision pursuant to Chapter 14.06 SCC. Under SCC 14.12.210(4), the administrator's determination shall carry substantial weight in any appeal proceeding.

4. An MDNS, in theory, contains conditions that are needed to reduce potentially significant adverse environmental impacts to below the level of significance. See WAC 197-11-350. The application of existing regulations, laws and rules may have the same effect. See RCW 43.21C.240.

5. In determining the validity of a negative threshold determination, the issue is whether the probable adverse environmental impacts that will result after all valid requirements are imposed are significant or not. The issue is not what the source of those valid requirements may be. Thus, it does not matter whether the requirements are found in existing laws or are expressed as conditions, and it is legally irrelevant if the conditions of the MDNS relate to matters that are already required by rule, ordinance or statute. Indeed some redundancy is expressly contemplated. See RCW 43.21C.060.

6. The matters raised by the Cascade Ag appeal are largely requests for clarification, relating to how or whether the conditions are being met. These are compliance questions for negotiation and discussion between Cascade Ag and the County. The Examiner perceives no need to intervene in this process to rewrite the conditions.

7. Implicit in the conditions is that they require only actions that are within the power of the recipient to take. For example, the applicant is not expected to regulate traffic on Valentine Road directly, but rather to influence the behavior of its employees and contractors to the extent possible.

8. In one respect, Cascade Ag seeks to be relieved of a requirement that it understands perfectly well. This is the requirement for a noise monitoring proposal prepared by a certified acoustical engineer. The Examiner is convinced that the facility is capable of meeting state noise standards, but the record does not establish whether it is doing so or not. Noise monitoring at critical times in accordance with the advice of a professional appears to be a completely reasonable way to insure that measures insuring long-term compliance will be taken.

9. As to CZCC's case, while it would have been useful to have more information on some topics, such as traffic, the Examiner does not think that additional information was required to make a threshold determination. Keeping in mind the weight to be given the administrator's decision, the Examiner is persuaded that the threshold determination was based upon information reasonably sufficient to evaluate the environmental impact of the proposal. See WAC 197-11-335.

10. On the issue of "significance," the appellants presented no direct evidence of adverse environmental impacts applicable to this project based on objective measurements. The subjective response of a single household to occasionally experienced noise and odor levels is not enough to carry the burden of establishing that an environmental impact statement is needed.



The subjective evaluation of Cascade Ag was to the contrary.

11. Moreover, the only "expert" opinion offered for appellant was that presented by appellant's lawyer -- testimony that because of the conflict of roles is self-impeaching.

12. CZCC attempted to show "significance" by the indirect means of comparing assessed valuations of various properties in the neighborhood. The Assessor did not testify and was not subject to cross-examination. The Examiner declines to accept data on comparative assessed values as proof of "significant" environmental impact. "Indirect impacts" as used in WAC 197-11-060(4) are environmental impacts, not economic ones.


13. There was inadequate proof to show the likelihood of significant adverse impacts to ground water, or that the present scale of the operation is itself an adverse impact, or that the effect of all impacts taken together produce a probable significant adverse impact.

14. In short, CZCC, did not establish that the operations at Cascade Ag, in fact, present a reasonable likelihood of more than a moderate adverse impact on environmental quality. See WAC 197-11-794. Therefore, no environmental impact statement is required.

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

DECISION

The MDNS is affirmed. The appeals are denied. This decision relates solely to the negative threshold declaration at issue in relation for the operations as presently conducted and does not purport to decide whether any future expansion of operations would result in significant environmental impacts.


Wick Dufford, Hearing Examiner

Date of Action: December 2, 2003

Date Transmitted to Parties: December 2, 2003

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.

