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Skagit County Auditor

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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 PL04 0176 and  
SEPA APPEAL PL04 0787

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: CIMARRON TRANSFER and RECYCLING COMPANY  
% NORM WIETTING

APPELLANTS: CITY OF SEDRO WOOLLEY  
CITY OF BURLINGTON

ASSESSOR PARCEL NO: P118865

LEGAL DESCRIPTION: The proposed project is located along the east side of Farm to  
Market Road, Burlington, WA; within Section 4, Township 34 North, Range 3 East W.M.,  
Skagit County, Washington.

## BEFORE THE SKAGIT COUNTY HEARING EXAMINER

### FINDINGS, CONCLUSIONS AND DECISION

**Applicant:** Cimarron Transfer and Recycling Company  
c/o Norm Wietting  
13227 SE 54<sup>th</sup> Place  
Bellevue, WA 98006

**Appellants:** Cities of Sedro Woolley and Burlington

**File Nos:** (1) PL04-0176 – Special Use Permit  
(2) PL04-0787 – SEPA Appeal

**Requests:** (1) Special Use Permit  
(2) Threshold Determination Review

**Location:** Approximately 9.4 acres on Port of Skagit County property situated along the east side of Farm to Market Road, approximately 1,200 feet north of Ovenell Road intersection, within Phase 2, Division 7 (proposed lot #38) of Port of Skagit County Binding Site Plan, within a portion of Sec. 4, T34N, R3E, W.M.

**Land Use Designation:** Bayview Ridge Heavy Industrial (BR-HI)

**Summary of Proposal:** To develop a private facility for sorting, processing and storing recyclable materials derived from mixed municipal solid waste. Planned construction will include: a processing facility – 25,000 sq. ft.; two composting buildings – each 40,000 sq. ft.; bale storage building – 12,000 sq. ft.; office – 2,500 sq. ft.; and scale house – 300 sq. ft.

**Decision:** The appeal of the Mitigated Determination of Non-Significance (MDNS) was consolidated with the hearing on the underlying proposal.

(1) The Special Use Permit is approved with conditions.  
(2) The MDNS is affirmed. The appeal is denied.



## FINDINGS OF FACT

1. Cimarron Transfer and Recycling Company (applicants) seek a Special Use Permit to construct and operate a private facility for sorting, processing and storing recyclable materials derived from mixed municipal solid waste. The facility will provide comprehensive recycling efforts including the composting of organic materials.

2. The site for the facility is 9.4 acres of Port of Skagit Count property, located along the east side of Farm to Market Road, approximately 1,200 feet north of the Ovenell Road intersection. The property is within Phase 2 of Division 7 (proposed Lot #38) of the Port of Skagit County Binding Site Plan which is situated within a portion of Sec. 4, T34N, R3E, W.M. The zoning is Bayview Ridge Heavy Industrial (BR-HI).

3. The structures will include an approximately 25,000 square foot material processing/transfer facility, two approximately 40,000 square foot composting buildings, an approximately 12,000 square foot bale storage building, an approximately 2,500 square foot office building and a 300 square foot scale house. Initially only one of the composting buildings will be built. The second will be constructed when additional contracts for waste are secured and the space for more composting is needed.

4. Hauled wastes will be unloaded onto a tipping floor within the materials processing building and then conveyed to a rotating screen (trammel) that will separate out smaller particles (mostly organics). These smaller particles will be conveyed to the composting building. The balance of the material will be dumped onto a sorting conveyor.

5. The composting process will include a computer controlled blower which will draw air through compost piles through vents in the floor. Once initial composting is complete (12 to 18 days) the material will be moved to a curing area. The material will remain in the curing area for approximately 45 days. After curing, the materials will be screened and tested for compliance with State criteria that must be met before sales can be made.

6. Larger material put onto the sorting conveyor will be segregated into recyclable categories: such as plastics, cardboard, mixed paper, wood waste, sheet rock, metals, concrete and asphalt roofing. Following separation these materials will, where practical, be baled. They will then be sold for further recycling.

7. Residual material and non-processable wastes will be compacted into transport trailers each operating day and ultimately transported to the County Transfer Station.

8. The tipping floor will be swept and cleaned daily. The use of water for cleaning will be minimized. When water is used, the wash down water will be collected



and either used as makeup water or discharged to the City of Burlington's sewage treatment plant. No hazardous waste will be disposed of at the site.

9. The composting building will have a ventilation system that will allow the air inside the building to be re-circulated through a biofilter to remove any odors. Odor neutralizers can be injected if necessary. In order to minimize odors, every effort will be made to assure that the composting piles are kept in an aerobic state and not allowed to become anaerobic (without oxygen). The blower system should accomplish this. An additional section of biofilter will be added when the second composting building is constructed.

10. Runoff at the site will consist of clean storm-water from exterior areas where waste is not handled. Runoff from paved areas and roofs will be captured in catch basins and directed to a storm water pond for retention per the Port of Skagit County's stormwater management plan. The system will be equipped with oil water separators as required. Because processing activities at the site will be contained indoors, stormwater will not come into contact with solid waste or recyclables handled at the facility. Stormwater from the site is not likely to cause water pollution, flooding, erosion or other adverse impacts to off-site property.

11. Wetlands on the Port's property are protected under the Port's Binding Site Plan. There are no protected wetland's on the subject site and no other critical areas will be affected by the project.

12. The properties adjacent to the proposed facility on three sides are also lands designated as Heavy Industrial. The land located to the west across Farm to Market Road is zoned Rural Reserve. The facility is not adjacent to any Agricultural – Natural Resource Lands. The area contains scattered residences to the west and northwest, agricultural fields to the southwest, the Skagit Regional Airport to the east and northeast, Paccar, Inc. to the north and various industrial operations to the south. These latter operations include the existing Skagit County Transfer Station.

13. The buildings will all be within an area of industrial development and consistent with the aesthetics expected in such a district. The highest structure will be 40 feet above grade. Most of the activities at the site will be conducted indoors. The facilities may be visible to other industrial users, but otherwise will be seen by the general public mainly from the Farm to Market Road. There will be an eight-foot site obscuring fence along that road.

14. On completion of the project, the facility's staff will consist of 20 to 25 people during the week, and a reduced staff for more limited operations on the weekends. The site will typically be open for public use from 7:00 a.m. to 5:00 p.m. Truck deliveries of waste will probably commence around 6:00 a.m. and terminate about 4:00 p.m. Waste processing will occur between 10:00 a.m. and 7:00 p.m. These hours may be adjusted to accommodate customers.



15. The compost generated will be marketed for agricultural applications where nutrients and organic humus additives are needed. Nurseries, tree farms and turf farms are among potential users. The composting operations will have to meet design and operating requirements adopted by the Department of Ecology. These regulations include testing requirements and standards for compost products. The applicants are confident that their proposal can meet these requirements.

16. Inbound traffic will enter the site through a new access point on a new Port-constructed road leading east from Farm to Market Road along the north side of the property. The access way to the interior facilities will branch off the new road about 600 feet east of its intersection with Farm to Market Road.

17. A traffic impact analysis for the project was prepared by professional consultants. Nearly all of the traffic expected to use the proposed facility currently uses the County Transfer Station located approximately 1, 000 feet to the south on the Farm to Market Road. Therefore, there are no "new trips" in the project area. The vehicle trips will consist of users of the facility, employees, and outbound truck trips which will be reduced. Accordingly, traffic generated by the operation of the facility is not anticipated to be greater than that which currently exists.

18. The application was submitted on June 17, 2004. On July 8, 2004, the Planning and Permit Center sent a letter deeming the application complete. On July 21, 2004, additional information was sought. The applicant supplied the information requested on August 2, 2004, and on August 5, 2004, a Notice of Development Application was published, posted, and mailed as required by law. Included in the application materials was a completed Environmental Checklist. The application materials and the additional information submitted contained a substantial amount of environmental information. Also noted in the materials were numerous other existing environmental documents relating to the industrial park and to the County' solid waste planning.

19. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued and published on September 30, 2004. The comment period expired on October 15, 2004 and the appeal period ended on October 29, 2004. Several comment letters were received. An appeal of the MDNS was ultimately filed on October 29.

20. The MDNS set forth the following conditions:

1. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works shall be in place prior to the placement or movement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall remain in



place until completion of the project.

2. The applicant shall comply with Northwest Air Pollution Authority requirements.

3. The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Drainage Ordinance.

4. The applicant shall comply with Fire Code Standards.

5. 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 applicant shall comply with the Skagit County Health Department requirements. The requirements include but are not limited to the following: the applicant shall obtain and maintain a solid waste facility permit from the Skagit County Health Department in compliance with WAC 173-350 including 173-350-220 (composting facilities).

8. The public right-of-way shall be kept clean. Tracking of mud and debris from the site will not be allowed.

9. A contract shall be required between Skagit County and the applicant to specify:

Monitoring and reporting of inbound and outbound materials.  
Procedures and compensation methodology for disposal of all residual and non-processable materials.

10. The proposed project shall conform with the current Solid Waste Management Plan.

21. Agency comments on the proposal raised questions of compliance with State regulations that can be addressed in conditions of approval. The Federal Aviation Administration is fully aware of and has acquiesced in the industrial zoning of the site.

22. The Department of Public Works asked for the following condition:

"All residual waste generated at this facility shall be brought to the County transfer station for disposal. The tip fee charged for non-municipal waste at time of disposal (currently \$83/ton) shall apply."



The inclusion of this condition in the approval has been recommended by the Planning and Permit Center.

23. The Planning and Permit Center noted that the proposal was reviewed as a recycling and composting facility only and not as a transfer station. They stated that if a transfer station on the site is requested, a new special use permit will be required.

24. The Planning and Permit Center further pointed out that the proposal, as a recycling and composting facility, will need to comply with the Skagit County Solid Waste Management Plan (SWMP). The application is vested to the version of the plan in effect at the time the application was complete. The SWMP is now under review for the adoption of an updated version – a process independent of the review provided for this application.

25. The applicants argued that this proposal is consistent with the underlying policies of the Comprehensive Plan and the SWMP. For the past several years, solid waste generated in the county has been directed to the County Transfer Station which was converted from its original use as a waste incinerator. The applicants stated that the proposed recycling and composting facility will complement the operations at the County facility to enable solid waste collected within the county to be handled more efficiently by the system as a whole and will increase recycling capabilities that are now absent from the system. They said the SWMP “clearly encouraged the private sector to develop compost facilities.” The applicants proposed to apply for a Solid Waste Site Designation to become part of the Solid Waste Management System in the County. This would require them to pay a pro rata share of the System costs.

26. The applicants provided an analysis of the possible economic impacts of the approval of their operation, showing that costs for waste disposal would probably not differ much with or without the project. They maintained that going beyond mixed waste processing and including composting allows the entire process to be achieved with a tip fee approximately the same as the County currently pays for landfill disposal. But the result is a significant reduction of waste that is landfilled.

27. They acknowledged that the reduction in landfilled waste would mean a reduction in revenue for the County Transfer Station. They contended, however, that the County could institute changes at the transfer station that would allow the County to maintain the current tip fee rates at the reduced tonnage. If the Cities in the County were to choose the new facility, the applicants envisioned a situation in which the current transfer station was either converted to a self-haul facility or closed.

28. In response to concerns that composting operations at other locations have not proven viable, the applicants provided examples of comparable operations that have been successful. They said the main reasons for closure of other plants have been (1) odors and (2) competition with low-fee landfills. They said that the use of enclosed buildings using aerated piles and biofilters has eliminated odor complaints elsewhere.



They noted there is no mixed solid waste landfill in Skagit County nor in surrounding counties, so that a regional landfill in Klickitat County is being used. This choice significantly increases the costs of landfill disposal because of higher transportation costs and makes composting a viable disposal method in Skagit County.

29. Comment letters were received from three individuals (Rosemary Mann, Roger Pederson, and Carol Hays), three governmental entities (Mount Vernon, Sedro Woolley and the Port of Skagit County) and one citizen's group (Friends of Skagit County).

30. The individuals are nearby residents who are concerned over impacts on traffic, odors, water pollution and the suitability of the site for the use proposed. On the record, it does not appear likely that significant adverse environmental effects will flow from this project. As to site suitability, the zoning clearly allows this kind of use there

31. Mount Vernon raised a policy issue, expressing a preference for just one mixed material processing facility in the County.

32. Sedro Woolley alleged short-comings in the environmental review and ultimately appealed the issuance of the MDNS. They were joined in this appeal by the City of Burlington.

33. The Port sought to put to rest questions raised concerning stormwater management, wetlands impacts, and the attitude of the FAA toward this kind of land use at this location.

34. The Friends of Skagit County maintained that a decision on this application would be premature until after completion and adoption of the County's updated SWMP. Before approving the permit for the subject proposal, they urged that the cost analyses in the draft solid waste plan be revised to reflect the new facility. They also urged that an Environmental Impact Statement be written.

35. In addition to the comment letters, the record contains a petition to the County Commissioners with 56 signers concerned with keeping the current facilities at Clear Lake and Sauk open and keeping tipping rates affordable. The petition urged that solid waste services not be contracted out.

36. The criteria for Special Use Permit approval are set for at 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 standards of SCC 14.16.840.

(d) The proposed use will not generate intrusions on privacy of surrounding uses.

(e) Potential effects regarding the general public health, safety, and general welfare.

(f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.

(g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

37. The Staff Report analyses the application in light of these criteria and finds that, as conditioned, the proposed facility will be consistent with them. In so doing, the Staff in large measure relies on the information and reasoning provided by the applicants. The Hearing Examiner has been persuaded by this analysis and hereby adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

38. The issues of the SEPA appeals, as paraphrased, were: (1) that the conditions imposed do not mitigate probable environmental impacts, (2) that it is premature to approve the facility until the SWMP is changed to allow a second transfer station, and (3) that the MDNS should prohibit Cimarron from taking partially composted material directly to a land-fill rather than to the County Transfer Station, thereby allowing Cimarron to operate a de facto solid waste transfer station in competition with the County without appropriate analysis.

39. The appellants failed to introduce persuasive evidence that the project will result in probable significant adverse impacts that the MDNS does not adequately mitigate. Essentially no environmental case was made. Instead, the arguments focused on the economic impact of the facility.

40. 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 MDNS is a threshold determination under SEPA. Under the County code it is a Level I administrative decision that may be appealed to the Hearing Examiner pursuant to SCC 14.06.110. In such appeals the appellant bears the burden of proving that the decision of the administrative official was "clearly erroneous." The determination of the administrative official on SEPA threshold determinations carries "substantial weight" in any appeal proceedings. SCC 14.12.210(4).

3. The record here contains "information reasonably sufficient to evaluate the environmental impact" of the proposal. WAC 197-11-335. Further study, therefore, is not needed in order to make a threshold determination. Moreover, a reasonable likelihood of more than a moderate adverse impact on environmental quality from this proposal was not shown. WAC 197-11-794. Accordingly, there was no error in making the negative threshold determination issued in this case. See WAC 197-11-40.

4. SEPA requires an analysis of environmental impacts. Economic impacts, per se, are beyond the scope of required environmental review. The "environment" includes those elements listed in WAC 197-11-444. Among the elements are aspects of the "built environment" including "sewer and solid waste." However, the kinds of impacts meant are physical effects, not economic ones. Any failure to analyze the effect of the proposed facility as a competitor to the existing transfer station is not a failure to comply with the dictates of SEPA.

5. In any event, an analysis of the economic impact of the proposed facility was, in fact, provided. The evidence did not demonstrate that this analysis was defective.

6. It is true that a Special Use Permit requires compliance with the Comprehensive Plan and compliance with functional plans such as the SWMP are covered by this requirement. However, this kind of compliance is again not a SEPA issue. It does not involve an environmental impact.

7. In sum, the Examiner concludes that the SEPA appeals must fail. The appellants simply did not show that issuance of the MDNS was "clearly erroneous."

8. Under the findings, the proposed facility, as conditioned, will meet the special requirements of SCC 14.16.190(6).

9. Likewise, as conditioned, the proposed facility will be consistent with the Special Use Permit criteria of SCC 14.16.900(2)(b)(v).



10. Any finding herein which may be deemed a conclusion is hereby denominated as such.

### **CONDITIONS**

1. The facility shall be installed and operated as described in the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain all other necessary permits and approvals necessary for construction and operation of the facility.
3. The applicants shall comply with the conditions set forth in the MDNS issued September 30, 2004 (See Finding 20 above.)
4. The applicants shall comply with all relevant provision of Chapter 14.24 SCC (Critical Areas Ordinance) and Chapter 14.16 SCC (Zoning Ordinance).
5. The proposal shall comply with applicable Fire Flow requirements.
6. The operation shall demonstrate the entire facility is in compliance with the performance standards of Chapter 173-350 WAC and Chapter 12.16 SCC.
7. The applicants shall employ the best available control technology (BACT) to prevent odor and nuisance problems and in order to receive and maintain operational permits. Additional documentation and design detail shall be provided as needed for the Solid Waste Permit application and satisfaction of Northwest Air Pollution Authority requirements.
8. All residual waste generated at this facility shall be brought to the County Transfer Station for disposal. The tip fee charged for non-municipal waste at the time of disposal shall apply.
9. For purposes of this permit, the proposal is accepted as a phasing plan. The initial phase shall be commenced with two years and completed as provide in SCC 14.16.900(2)(d). The second phase shall be completed within six years.
10. Failure to comply with any condition of approval may result in permit revocation.



## DECISION

- (1) The MDNS is affirmed. The appeal is denied.
- (2) The requested Special Use Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Approval: February 3, 2005

Date of Transmittal to Parties: February 3, 2005

## 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.

