

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** City of Anacortes  
P.O. Box 547  
Anacortes, WA 98221

**File Nos:** PL 05-0108 and PL 05-0523

**Request:** (1) Substantial Development Permit (shorelines)  
(2) Special Use Permit (zoning)

**Summary of Proposal:** To replace a portion of the City’s waterline which brings water from the Anacortes Water Treatment Plant (east of the Skagit River) across the valley to Fidalgo and Whidbey Islands. This project consists of Segments 5 and 6 of an overall pipeline upgrade, and will involve installing about 3.2 miles of new 36 inch diameter welded steel pile, including about 1,600 feet of drilled line under the Skagit River. The new line will replace an old and deteriorated 24 inch steel pipeline.

**Location:** The project will occur within a portion of Secs. 9, 10, 11, 13, 14, 15, and 16, T34N, R3E, W.M. From the Anacortes Water Treatment Plant, the line will be placed under the river; then it will extend across agricultural land to Avon Allen Road, then south on Avon Allen Road to Donnelly Road, then west on Donnelly Road to Beaver Marsh Road, then north about 700 feet on Beaver Marsh Road. At this point the line will turn west crossing agricultural fields for about 5, 925 feet to Bradshaw Road. On Bradshaw Road the line will proceed north to the intersection of Young Road and SR 536. The pipeline will extend about 235 feet west on Young Road and about 200 feet east on SR 536.

**Land Use Designations:** Zoning: Agricultural-Natural Resource Land and Rural Intermediate  
Shoreline: Rural

**Public Hearing:**

After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on March 14, 2007.

**Decision:**

The application is approved, subject to conditions.

**FINDINGS OF FACT**

1. The City of Anacortes (applicant) seeks to replace a portion of water pipeline used to supply the City's regional water supply system.

2. The system supplies water to multiple large-scale users, including the City of Anacortes, the City of Oak Harbor and nearby naval station, two large oil refineries, and the Swinomish Tribe. There are interconnections to the Skagit Public Utility District and La Conner. Other segments of the system's pipelines have already been replaced.

3. The current project will involve laying about 16,600 lineal feet of new 36-inch diameter welded steel pipe of which 1,600 feet will be placed beneath the Skagit River. The under-river portion will be created by horizontal directional drilling.

4. The new pipeline will replace a section of existing 24-inch steel pipe water line that was originally installed in the 1920's. The old pipeline has been experiencing an increased frequency of pipe wall ruptures attributable to corrosion and age. The reliability of the old line is now considered poor and replacement is required.

5. The new segments of pipeline will connect the Anacortes Water Treatment Plant, located on the east bank of the Skagit River, to the existing 36-inch waterline on Youngs Road. The replacement line will follow a different route from the old line. The new route was selected on the basis of a thorough route selection study, including evaluation of the construction methods for crossing the Skagit River.

6. The selection study looked at numerous issues associated with the project, including methods and materials of construction, environmental issues, permitting requirements, geotechnical conditions, easement and right-of-way acquisitions and costs.

7. The route ultimately selected avoids the Washington State University Mount Vernon Research Station. WSU staff members were concerned that soil along the pipeline right-of-way could not be returned to the original condition and that dewatering for pipeline construction could potentially alter plant growth at the research station. The fear was that construction alteration might invalidate 35 years of experimental results.

8. When complete the replacement pipeline for will run westerly from the City's treatment plant, be placed under the river and then proceed across agricultural land to Avon Allen Road, then south on Avon Allen Road to Donnelly Road, then west on

Donnelly Road to Beaver Marsh Road, then north about 700 feet on Beaver March Road. At this point the line will turn west crossing agricultural fields for over a mile to Bradshaw Road. On Bradshaw Road the line would head north to the intersection of Young Road and SR 536. The pipeline will extend about 235 feet west on Young Road. It will also extend about 200 feet east on SR 536 for intertie purposes.

9. The portion of the route crossing agricultural land between Bradshaw Road and Beaver Marsh Road was altered to the presently proposed location in order to accommodate property owners who objected to the having the waterline cross their property. The route considered at the Hearing Examiner hearing is shown on Applicant's Exhibit 3 in this record. The selected route follows private property lines. The Examiner finds that, in the last analysis, this chosen route is the only viable one.

10. The project as a whole involves the installation of pipe below grade. In end result there will be no visible impact. There are no above-ground structures associated with the proposal and no changes in land use are contemplated. Once the construction is complete, the land surface will be restored to the status quo ante.

11. Except for the segment between Bradshaw Road and Beaver Marsh Road and the segment between Avon Allen Road and the treatment plant, the waterline will be installed within existing road rights-of-way by standard methods of excavation and fill. To reduce potential impacts on adjacent property owners, the line will be placed within the roadway prism along Bradshaw, Beaver Marsh and Donnelly Roads.

12. Critical areas review showed that the pipeline will cross nine separate critical areas – seven wetlands and two fish and wildlife conservation areas. A Wetland Delineation and Stream Identification Survey Report was prepared in 2005, and then supplemented in late 2006 to account for revisions of the route. Also prepared was a Fish and Wildlife Habitat Conservation Area Assessment.

13. In the agricultural lands between Bradshaw and Beaver Marsh Roads, the applicant proposes to jack and bore beneath the Schoolhouse Slough. As noted, horizontal directional drilling will be used underneath the Skagit River. Both of these are trenchless methods. Neither entails any in-water work. The depth of the proposed crossing beneath the slough is approximately 10.5 feet. The pipe line will be installed between 30 and 60 feet below the channel of the Skagit River. The horizontal directional drilling launch and receiving pits are more than 400 feet back from the Ordinary High Water Mark. These techniques were selected to avoid impacts on fish and wildlife habitat conservation areas.

14. All of the wetlands identified occur within existing agricultural fields and provide only limited wetland functions and values. The applicant proposes to install the waterline across wetlands and buffers identified in the wetland report as 3, 10 and 11 by using standard methods of excavation and fill placement. The pipeline will be installed in existing roadway adjacent to wetlands 6, 7, 8, and 9. As relates to wetlands, Staff review concluded that the proposed installation will have minimal impacts. If impacts

are experienced, the applicant will be required to restore critical areas to their previous function and value.

15. Easements, as needed, have been obtained for the routing through agricultural lands. On these lands, the pipeline trench will be excavated to a depth of approximately seven feet below grade. The top two feet of topsoil will be segregated during excavation and then, after the pipe is in, will be put back in the top zone of the trenched area. Once the pipeline is installed, the contractor will be required to disk (aerate) the top two to three feet of soil that have become compacted during construction. The easements have been kept as narrow as possible to keep impact on the land as small as possible. No significant long-term effects on agricultural production are anticipated.

16. Review under the State Environmental Policy Act (SEPA) resulted in the issuance of a Mitigated Determination of Non-Significance (MDNS) of December 8, 2005. A SEPA Addendum, considering changes in the pipeline route, was issued on January 8, 2007. The MDNS was not appealed. The conditions it imposed were unaffected by the Addendum. The MDNS conditions are:

1. Temporary erosion/sedimentation control measures, as approved by the Skagit County Department of Public Works shall be in place prior to the placement of any fill material pursuant to Skagit County Code (SCC) 14.24.32, Drainage Ordinance. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage/Erosion/Sedimentation Control Ordinance. Said measures shall remain in place until completion of the project.
2. The project shall comply with noise limitations and light requirements pursuant to SCC 14.16.840(5) and SCC 14.16.840(3) respectively.
3. The public right-of-way shall be kept clean. Tracking of mud and debris from the site will not be allowed.
4. The applicant shall comply with Northwest Clean Air Agency requirements.
5. Disturbance to critical areas and any associated buffers shall be avoided. Any disturbance to critical areas and associated buffers as a result of the project, shall be restored to its previous function and value.

17. The Health Department commented that the new area and infill service provided by the replacement pipeline will reduce potential adverse impacts to area aquifers. The pipeline will make possible the abandonment of some wells.

18. The principal impacts from the project will be temporary construction-related effects. There will be periods along different portions of the route when noise will

exceed normal levels and where traffic will be disrupted. Traffic control measures will be instituted to minimize disruption of traffic flow.

19. A revised Notice of Development Application was published on December 7 and 14, 2006, describing the final route considered at the hearing. Notice of this route was also given in the notice of hearing, published on February 22, 2007. During permit processing, several farmers wrote letters, objecting to the pipeline across their lands. The route ultimately selected was represented by the applicant as having resolved these concerns. One letter writer, residing on Donnelly Road, expressed concerns about the effects of the pipeline on two old trees on her property. The Friends of Skagit County objected to the notice provided, stated general opposition to waterline extensions in rural Skagit County unless needed, and questioned the need for this line.

20. At the hearing, one of the farmers who had written a letter testified that he is pleased that the pipeline is going down the road and not across his land, but he emphasized the need to avoid interfering with the operation of culverts across the road. The person concerned about her trees said she wants the applicant to execute a legal document taking responsibility for any damages to the trees or from the trees if they fall. She also asked about fire hydrants and paving. Her husband testified that communications between the applicant and potentially affected property owners has not been good and asked that this be improved. Representatives of two diking districts (#12 and #17) testified that they approve of the approach being taken to the river crossing.

21. The applicant introduced a letter report from a Registered Consulting Arborist who has inspected the two trees of concern (a cedar and a willow) near Donnelly Road. The arborist stated that in his opinion the trenching proposed “will impact the root systems of both trees, but should not significantly reduce their vigor or stability . . . if specific actions are taken.” He proposed four specific protective actions which the applicant agreed to undertake.

22. The applicant’s project engineer stated that fire hydrants will be installed on Donnelly, Beaver Marsh and Bradshaw Roads. He said that the surface of affected roads will be paved with hot mix asphalt. And he gave assurance that property owners will be provided with a contact number for use during the construction phase.

23. The engineer also provided information on the projected timetable for construction. He said that the work will start with the horizontal directional drilling under the river first, probably some time in June or July of this year. He said the agricultural areas will be addressed second. The effort will be to finish the whole job by October of this year.

24. Parts of the route are within Agricultural-Natural Resource Lands and parts are within Rural Intermediate zoning. The affected shoreline areas are designated Rural under the local Shoreline Master Program.

25. A Special Use Permit is required for those portions of the project outside of the shoreline area. SCC 14.16.300(4)(r), 14.16.400(4)(f). Within the shoreline, a Shoreline Substantial Development Permit is needed. SMP 9.01(1). If buried, a utility facility on Rural shorelines is not subject to Conditional Use approval or setback requirements. SMP 7.18(2)(A)(3)(b), 7.18.(2)(C)(1).

26. The criteria for Special Use Permit approval are set forth 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.

27. Shoreline Substantial Development Permits may be issued when the proposal is consistent with the policies and rules of the Shoreline Management Act and with the provisions of the local Shoreline Master Program (SMP). SMP 9.02.

28. The Staff Report analyzes the application under both the Special Use Permit criteria and the applicable shoreline policies and regulations. The Staff finds that, as conditioned, the proposal will consistent with both sets of requirements. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

29. In particular, the Examiner notes that the proposal conforms with the Critical Areas Ordinance provision that allows utilities across wetlands and associated buffers, provided that any impact to such areas resulting from the installation is fully mitigated or restored to its previous function and value immediately after installation. SCC 14.24.240(6). Further, the project contemplates that all disturbed farm land will be restored, so that agricultural productivity should not be affected. Finally, the replacement of the deteriorated line with a new larger pipe is clearly serves the interests of public health and safety.

30. 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. Notice of the application and of the hearing were properly given.

3. The subject project is “major utility development” as defined by SCC 14.04.020. Such a development is allowed by Hearing Examiner Special Use Permit in the Rural Intermediate (RI) and Agricultural-Natural Resource Lands (Ag-NRL) zones. SCC 14.16.300(4)(r) and SCC 14.16.400(4)(f). In the Ag-NRL zone the permission can be given only “where there is no other viable parcel or non-agricultural designated land to serve the affected area.” There is a requirement for analysis of alternatives to the development of the utility in the natural resource land.

4. The requisite alternatives analysis was provided. No other routes involving non-agricultural designated lands were shown to be viable.

5. The Special Use Permit and Shoreline Substantial Development Permit are both “development permits” as that term is used in the code. The applications were properly consolidated for hearing in accordance with SCC 14.06.060.

6. The proposal, as conditioned, meets the criteria for approval of a Special Use Permit. SCC 14.16.900(2)(b)(v). This includes compliance with other code provisions, in particular the Critical Areas Ordinance.

7. The proposal, as conditioned, meets the criteria for approval of a Shoreline Conditional Use Permit. SMP 9.01.

8. The Examiner interprets the Master Program as requiring a Shoreline Conditional Use Permit for a shoreline crossing only when the pipeline is not buried. SMP 7.18.(2)(A)(3)(h). Since the subject line will be buried, conditional use approval is not needed. However, if such a permit were required in this case, the proposal meets the relevant criteria. SMP 11.02(1).

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

## **CONDITIONS**

1. The applicant shall install the replacement pipeline in the locations and in the manner described in the application materials, except as the same may be altered by these conditions.

2. The applicant shall obtain all other necessary permits and approvals, including but not necessarily limited to rights-of-way permits, State Health Class A Public Water System Approval and grading permits.

3. Utility easements or permission for crossing private property and rights-of-way permits from the County (Public Works) shall be obtained prior to initiating work. Copies of relevant easements and permits shall be submitted to Planning and Development Services, referencing file no PL05-0523.

4. The applicant shall comply with all conditions of the MDNS issued on December 8, 2005. (See Finding 16.)

5. The applicant shall comply with the recommendations in regard to two older roadside trees at 16784 Donnelly Road, expressed by Urban Forestry Services, Inc., in its letter of March 12, 2007.

6. Construction activities affecting wetlands and wetland buffers shall be carried out as described in Section 3.2.2 of the Fish and Wildlife Habitat Conservation Area Assessment, issued by MWH Americas, Inc. on July 19, 2005. If after project completion, any adverse impacts to wetlands or buffers are experienced, the affected areas shall be restored to their original function and value.

7. The applicant shall comply with all relevant provisions of the Skagit County Code, including Chapter 14.32 SCC (Drainage), Chapter 14.24 SCC (Critical Areas), Chapter 14.16 SCC (Shorelines), and Chapter 14.16 SCC (Zoning).

8. The applicant shall comply with all relevant State regulations, including Chapter 173-201A WAC (surface water quality), Chapter 173-200 WAC (ground water), and Chapter 173-60 WAC (noise). Note that construction activities are exempt from the provisions of WAC 173-60-040 between 7 a.m. and 10 p.m.

9. The Special Use Permit shall be void if the project is not started within two years of the date of approval, and if abandoned for a period of one year.

10. The Substantial Development Permit shall be void if the project is not started within two years and completed within five years of the effective date of the permit.

11. Failure to comply with any condition may result in permit revocation.

### **DECISION**

The requested Special Use Permit and Shoreline Substantial Development Permit are approved, subject to the conditions set forth above.



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Wick Dufford, Hearing Examiner

Date of Action: April 9, 2007

Date Transmitted to Applicant: April 9, 2007

### **RECONSIDERATION/APPEAL – SPECIAL USE PERMIT**

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

### **RECONSIDERATION/APPEAL – SHORELINE PERMIT**

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.