

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: City of Anacortes
904 6th Street
Anacortes WA 98221

File Nos: PL05-0290 (special use)
PL05-0229 (shorelines)

Requests: Special Use Permit
Shoreline Substantial Development Permit

Location: County rights-of-way along Miller Road from Howard's Corner west and south to the intersection with SR 20; and along Mountain View Lane from SR 20 west to Lunz Road and then south along Lunz Road to where it rejoins SR 20. The properties lies south of Fidalgo Bay and north of Deception Pass, within portions of Secs. 8 and 18, T34N, R2E, W.M.

Land Use Designations: Comp. Plan – Rural Reserve and Rural Intermediate Shoreline – Rural Residential

Summary of Proposal: To relocate and replace two sections of waterline that currently lie within the right-of-way of SR 20 to new routes along Miller Road and along Mountain View Lane/ Lunz Road. The new waterlines will traverse 3310 lineal feet along Miller Road, approximately 600 feet along Mountain View Lane, and approximately 3310 feet along Lunz Road. The lines will be upsized to 16 inches from 10 and 12 inches.

Public Hearing: After review the report of Planning and Development Services, the Hearing Examiner conducted a Public Hearing on January 25, 2006.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. The City of Anacortes (applicant) seeks to replace two sections of 10 and 12 inch waterline along the State Route 20 right-of-way with 16 inch line that will be located within County road rights-of-way. The waterline services the South Fidalgo Island and North Whidbey areas.

2. The project will take place in an area south of Fidalgo Bay and north of Deception Pass within Secs. 8 and 18, T34N, R2E, W.M. The water line replacement proposed includes rights-of-way of Miller Road, of Mountain View Lane, and of Lunz Road.

3. On Miller Road, the new water line waterline will extend from Howard's Corner west and south approximately 3310 feet to SR 20. There is a small section (approximately 400 feet) where a branch will traverse an easement between Miller Road and SR 20 in order to serve Thomas Lane.

4. The second section will extend west from SR20 along Mountain View Lane approximately 600 feet before turning south to run along Lunz Road for 3310 feet where it will rejoin SR 20.

5. The waterline replacement is occasioned by a Washington State Department of Transportation project to change the vertical and horizontal alignments of two portions of SR 20. In order to bypass the realignment work along SR 20, the applicant proposes to shift the location of its waterlines to run within County rights-of-way in the affected areas. There is scattered residential development along the new route.

6. The affected areas are zoned Rural Reserve and Rural Intermediate. Potential development is limited to one residence per ten acres in the Rural Reserve zone and one residence per 2.5 acres in the Rural Intermediate district.

7. A portion of the Mountain View Lane/Lunz Road section is within 200 feet of the Ordinary High Water Mark of Campbell Lake, close enough to call the Shoreline Management Act into play.

8. Whether the proposed waterline replacement is viewed as a "minor" utility development on a "major" one, a Special Use Permit is required. See SCC 14.16.300 and 320. A Substantial Development Permit is needed for the work in the shoreline of Lake Campbell.

9. The proposal was reviewed under the County's Critical Areas Ordinance, Chapter 14.24 SCC. Critical areas were found to exist on or within 200 feet of the proposed development. One is the Lake Campbell shoreline which is a Fish and Wildlife Habitat Conservation Area. The other involves two small Category III wetlands in the easement between Miller Road and SR 20.

10. The applicant proposes to jack and bore underneath both wetlands or use directional drilling – techniques that should result in avoidance of impacts to the wetlands. Construction using Best Management Practices for control of sedimentation and erosion will be implemented during installation to minimize potential adverse impacts to water quality and fish habitat in the lake. Planning and Development Services approved the project as to critical areas with the understanding that if the installation results in any impacts to critical areas or buffers, these areas will be restored to their previous function and value immediately following construction.

11. The physical effects of the project will primarily be temporary in nature. Some short-term noise disturbance will attend the construction phase. But when the work is complete, the project should be invisible and totally quiet. The completed structure will not result in any above ground structures. The project is a part of an eventual overall upsizing of the waterline to Whidbey Island, an effort that will enhance service to existing customers. The steel pipe that is being replaced dates from the 1940's.

12. After environmental review pursuant to the State Environmental Policy Act (SEPA), the County issued a Mitigated Determination of Non-Significance (MDNS) on October 27, 2005. The MDNS was not appealed.

13. Comments by County agencies are incorporated in conditions of approval.

14. There were two letters from members of the public asking to be kept informed. Neither expressed an opinion on the project.

15. 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.

16. The Staff Report analyzes the proposal against these criteria and concludes that, as conditioned, the project will be consistent with them. 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.

17. Under the local Shoreline Master Program (SMP), utility development is permitted in the Rural Residential shoreline environment, subject to general regulations and dimensional limitations. Buried pipes are exempt from the 100 foot setback for utilities in shoreline areas, but the proposed lines will lie beyond the 100 foot limit in any event. By using existing rights-of-way the proposal is consistent with SMP policies.

18. Substantial Development Permits may be granted only when the proposal is consistent with: (a) the SMP, (b) policies of the Shoreline Management Act, and (c) implementing regulations of the Department of Ecology (DOE). See SMP 9.02.

19. The policies of the Shoreline Management Act and of DOE's implementing regulations are fully carried out in this case by the provisions of the local SMP. The project is consistent with the SMP.

20. 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. Both permits are to be considered together by the Examiner under the rules for consolidation. SCC 14.06.060.

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, satisfies the criteria for approval of a Special Use Permit. SCC 14.16.900(2)(b)(v).

4. The proposal, as conditioned, is consistent with the standards for approval of a Shoreline Substantial Development Permit. SMP 9.02

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

CONDITIONS

1. The project shall be constructed essentially as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain any other required permits and abide by the conditions thereof. This includes a right-of-way permit from the Department of Public Works.

3. The applicant shall comply with all conditions of the MDNS issued on October 17, 2005, to wit:

a) Temporary erosion/sedimentation control measures, as approved by the Department of Public Works shall be in place prior to the placement of any fill material, pursuant to Chapter 14.32 SCC, the Drainage Ordinance. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Drainage Ordinance. Said measures shall remain in place until completion of the project.

b) The project shall comply with noise limitations and light requirements pursuant to SCC 14.16.840(5) and SCC 14.16.840(3)/

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

d) The applicant shall comply with Northwest Air Pollution Authority requirements.

e) Disturbance to wetlands and any associated buffers shall be avoided. Any disturbance to wetlands and associated buffers as indicated in the wetlands site assessment report by GeoEngineers, dated September 21, 2005, as a result of the project, shall be restored to its previous function and value.

4. The applicant shall comply with all relevant County ordinances and State regulations, including but not limited to: Chapter 14.24 SCC, Critical Areas Ordinance; Chapter 173-201 WAC, Surface Water; Chapter 173-200 WAC, Ground Water; Chapter 173-60, Maximum Environmental Noise Controls.

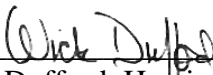
5. A utility easement across private property shall be required prior to initiating work on the proposed waterline relocation. Copies of utility easements and right-of-way permits shall be submitted to Planning and Development Services, referencing file number PL05-0290.

6. The project must be commenced within two years and completed within five years of the date of this decision. The permits shall be void if the development is abandoned for any period of one year.

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

DECISION

The requested Special Use Permit (PL05-290) and Shoreline Substantial Development Permit (pl05-0229) are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: February 16, 2006

Date of Transmittal to Applicant: February 16, 2006

RECONSIDERATION/APPEAL – SPECIAL USE

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 - SHORELINES

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.