

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND FINAL DECISION

Applicants: Washington State Department of Transportation (WSDOT)
c/o Ben Brown
15700 Dayton Ave. North
Seattle, WA 98133

File No: PL07-0719

Request: Special Use Permit

Location: Adjacent to 61077 Cascade River Road, west of Foxglove Lane, east of the Town of Marblemount, within a portion of Sec. 7, T35N, R11E., W.M.

Parcel No: P45950

Land Use Designation: Rural Reserve (RRv)

Summary of Proposal: To store approximately 120,000 cubic yards of rock for use by WSDOT, Skagit County, and the National Park Service as needed for maintenance, construction, and emergency repair of roads. The rocks currently occupy approximately 4.5 acres of a 35-acre site.

Public Process: After reviewing the report of Planning and Development Services (PDS), the Hearing Examiner conducted a public hearing on January 23, 2008. Thereafter, the matter was remanded to PDS for further review. PDS filed an additional report and a second public hearing was held on June 25, 2008. Thereafter, the matter was continued to July 23, 2008, to allow additional public testimony and further County review. A third public hearing was held on July 23, 2008.

Decision: The permit is approved for storage of rock on the site and for periodic removal for emergencies only and subject to additional conditions.

FINDINGS OF FACT

1. The Washington State Department of Transportation (WSDOT) seeks a Special Use Permit for the outdoor storage of approximately 120,000 cubic yards of rock which originated from the clean-up of a rock slide that closed State Route 20 in the vicinity of Newhalem.

2. In the winter of 2003-2004, a major rock fall occurred on SR20 between Falls Creek and Afternoon Creek, just east of Newhalem. Portions of the highway were damaged and slopes above the highway remained unstable. WSDOT created a rockfall catchment area to protect the traveling public. Additional rock was removed from the slope by blasting. Eventually arrangements were made to remove the rock material from the catchment area.

3. WSDOT, Skagit County and the National Park Service (NPS) reached an agreement allowing approximately 120,000 cubic yards of rock to be hauled to and stockpiled at a County-owned storage site north of the Cascade River Road near Marblemount. Under the agreement the stockpiled rock was to be available on a first need basis for maintenance, construction and emergency road repair requirements of the three agencies.

4. The storage site is located about 0.5 miles east of SR 20 within a portion of Sec. 7, T35N, R11E, W.M. The site is on the opposite side of the Skagit River across the bridge from Marblemount. The location is adjacent to 61077 Cascade River Road, west of Foxglove Lane. The Cascade River is about 335 feet to the south of the site. The Skagit River is about 1,700 feet to the west. There is a seasonal pond about 250 feet to the west. The zoning is Rural Reserve.

5. The site is approximately 35 acres in size. There is a cleared area of about 4.5 acres where the rock is currently stored. The rock pile occupying this area has been described as “gargantuan.” It is estimated to be over 50 feet high. The balance of the site is covered with trees and undergrowth. The storage site is in the southeasterly portion of the acreage, about 196 feet north of the Cascade River Road. The entry is gated and the gate is locked when the site is not in use. In the future, the entire property will be fenced.

6. A significant residential population exists in the neighborhood near the rock repository. There are over 30 homes within a half mile radius. The closest is within 100 feet of the stockpile. An RV park is located approximately 650 feet away. Normally this neighborhood is a quiet, peaceful pocket of tranquility.

7. The immediate vicinity is a popular recreation area, used primarily during the summer season. Thousands of fishermen annually visit the lower section of the Cascade River. A raft launching site (with parking lot) and a river-walk trail are within 1,000 feet of the rock pile. Promotional material from the U.S. Forest Service (which maintains

these facilities as part of the Wild and Scenic River System) notes that deer may be located along the path and that eagles and other fish-eating birds can sometimes be observed.

8. Just across the Skagit River bridge is the main commercial area of Marblemount, including a hotel, restaurants, a general store and tourist services.

9. The Skagit County Commissioners adopted Emergency Resolution #R20040199 on June 24, 2004, referencing the rock slide and authorizing WSDOT to move rock from the slide site to the County's property near Marblemount. The Resolution stated that if the rock is moved to this location it could be used by WSDOT, the County and the NPS. The Resolution also noted that "the property belonging to Skagit County does not have a Special Use Permit at this time for the storage of rock, but a Permit will be applied for as soon as possible."

10. The rock was not actually brought into the site until the summer of 2005, some 18 months after the slide. What happened then was described by one local resident as "six weeks of hell." Noise from the operation was highly disruptive of domestic peace at all hours of the day and night. Heavy truck traffic on the road and bridge raised safety concerns, particularly for children on bikes and for elderly pedestrians. There was a pall of exhaust fume from idling trucks backed up at the site. At the time, the County offered to relocate area residents temporarily to hotels and some accepted the offer.

11. The sounds of the heavy equipment at the site and of rocks dropping into trucks could be heard in downtown Marblemount. Moreover, the trucks moved disruption with them. The proprietor of the Buffalo Run Inn and Restaurant (just across the bridge) said he had several guests cancel remaining days on their reservations and that some even demanded their money back. He said they were bothered by "the loud screeching noise when the trucks were braking to turn at the bridge."

12. Over the intervening years, long beyond the end of the original "emergency," operations at the site have from time to time continued. Until now, however, there has been no other formal County action allowing the rock storage or removal of rock from storage. The purpose of the present application is to secure the Special Use Permit referred to in the 2004 Emergency Resolution.

13. According to WSDOT's Environmental Checklist, the storage site will be needed for approximately 20 years. The plan is for WSDOT and the County to be able to enter the site and remove materials periodically over this time. (The NPS will take materials from the site for five years.) At the end of the 20 years, any rock remaining on the site would become the property of the County. There are no plans to bring more rock onto the site. The proposal calls for some rock sorting, but does not include rock crushing, screening, or other processing activities.

14. The application calls for using the existing access to the site, which means that entering trucks will leave SR 20 near milepost 106.10 in Marblemount, cross the Skagit River Bridge, and proceed up Cascade River Road about a half mile to the site gate. Loaded trucks leaving the site will follow this course in reverse.

15. The request is to authorize operations at the site from Monday through Saturday, from 7 a.m. to 7 p.m., with night work to occur only when “necessary.” Rock will be removed from time to time for use in connection with scheduled road contracts and in “emergency” situations. Night work apparently will be considered “necessary” only in “emergencies.” Temporary site lighting, fueled by field generators, will be used during night operations.

16. The initial placement of the rock on the site was complicated by the pre-existence of a dump on the property. Dumping went on there for many years in an unregulated fashion. The dump has never been cleaned up. Residents report that old barrels, appliances, logging equipment and refuse from power line construction remain on the site. There are fears that PCBs, petroleum products and unknown toxic chemicals may lurk in the soil.

17. When the rock pile was created care was taken that it not overlap with the site of the old dump. However, the rock pile is close to the old dump and there is a concern that rock removal operations and attendant vibration may cause the entry of pollutants into the groundwater. The local annual rainfall is extremely heavy. The water table in the area is high. Some nearby domestic wells are only 10 to 15 feet deep. However, the record contains no evidence of existing water well contamination in the vicinity of the site.

18. The County staff recommends approval of the permit, with conditions designed to lessen disruptive impacts and to avoid disturbance of the existing landfill. Notice to the community is to be provided when rock removal operations are planned in advance.

19. Problems with notice have plagued this application with many citizens complaining that they were not informed of the proposal or of hearings about it in time to respond adequately. As a result, several hearings were held in an attempt to insure opportunities for informed public input.

20. Considerable public comment was received. The main concerns were with four areas: (1) noise, (2) safety, (3) water contamination, and (4) economic impacts.

21. From the outset the applicants appear to have taken it as a given that rock removal will result in noise and disruption for the nearby residents. However, little detail about what to expect was initially provided. The application was remanded by the Examiner in an attempt to find out more about when the rock might be “needed,” how long operations might last, what on-site activities would be conducted and how such

operations would be conducted. Questions were also asked about anticipated noise impacts, analysis of groundwater contamination and its prevention, traffic safety, and the ability of the Skagit River Bridge to bear the traffic anticipated.

22. In response to the remand, the followings information was derived from WSDOT's responses:

a) For economic feasibility, uses of rock from the site would likely be limited to a reasonable hauling distance – an area approximately from Concrete to Newhalem on SR 20 and from SR 20 to Skaglund Hill (milepost 36) on SR 530.

b) Non-emergency projects would likely occur during the April to September time frame and be determined 8 to 10 months ahead of time. Advance notice of such project activities could be provided to the community.

c) Emergency projects are projects that address unanticipated events that pose an immediate threat to the integrity of the highway system and the safety of the traveling public.

d) Emergency projects are mainly those related to fighting floods and therefore are likely to occur from November through April. WSDOT's pre-eminent reason for wanting periodic access to the rock stock pile is for rapid response to emergencies.

e) As many as four emergency projects have occurred within the reasonable haul distance of the subject stockpile in a year, but the number is usually less, and in some years it is none.

f) On emergency projects, WSDOT wants to be able to work 24-hours a day, seven days a week.

g) No definite estimate can be given in advance, but projects are likely to require rock in a range between 1,000 cubic yards to 10,000 cubic yards. The time frames for sorting and removing these amounts are 3 to 30 days.

h) Rock sorting operations will involve the use of excavators and probably a bull dozer. A loader will be needed for loading the trucks. Steel tracks rolling over rocks and the sounds of the machines themselves will provide independent sources of noise. Rock sorting will occur in connection with individual rock removal contracts and not be conducted independently.

24. Skagit County Road Operations has for years been using the site as a staging area for road maintenance in the Upper Valley. Gravel is stored there and ditching and slide debris from road maintenance are dumped there. These operations predate and are separate from use of the large rock stockpile in question. The County expects to make

very limited use of the subject rock pile for maintenance operations. They would also like to be able to access it in emergencies.

25. The National Park Service is not involved in emergency road repairs. They hope to make use of small amounts of the stockpiled rock for Cascade Road maintenance. They would be satisfied with a condition that limited their operations to between 9 a.m. and 4 p.m. on weekdays.

26. After evaluating the record, the Examiner is persuaded that the level of noise from any rock removal operations will be essentially the same as it was when the rock was brought in. Berms are not likely to be a particularly effective or practical noise reduction measure here. Some practical measures may achieve some noise reduction (e.g., requiring bed liners, ambient back-up alarms, enclosures around the generators for lights, the securing of tailgates to prevent banging, and restrictions on engine idling.) But such measures are unlikely to prevent noise from constituting a significant disruptive intrusion into the quiet enjoyment of residential life in the vicinity. No technology for significantly quieting the sound of rocks banging against equipment, truck beds and each other was advanced. And the sounds made by bulldozers, excavators, loaders, and heavy dump trucks will largely go unabated.

27. The State noise regulations are enforced on a complaint basis, meaning that violations are not addressed until after they have occurred. Ongoing monitoring is not available. Moreover, because of numerous exemptions in the regulations, it is likely that the noise from the project would constitute a serious problem to residents even if the regulations were met.

28. The safety of the rock removal operations in a residential environment is likely to continue to be a concern. People of all ages walk along Cascade River Road and are entitled to do so. WSDOT can hire flaggers for times of heavy operations, but nothing has been suggested that promises a substantial reduction in the inherent dangers posed by pedestrian/truck conflicts in this particular setting. Truck drivers can be advised of speed limits and greater efforts might be made to secure loads, but there is no guarantee that safe walking conditions will be created or maintained.

29. WSDOT says that it will insure that trucks are not overloaded with respect to the capacity of the Skagit River Bridge. A scale could be installed at the stockpile site to improve confidence in this assurance.

30. There is little likelihood of groundwater contamination from rainwater or runoff coming into contact with the materials in the rock pile. However, though the probability is not high, there is a possibility that direct disturbance of the old dump or excessive vibration from rock removal operations will cause toxics to migrate into the groundwater. Therefore, steps should be taken to minimize the risk.

31. The Hearing Examiner agrees that the proposals of the County Health Department on groundwater protection are prudent. These include ongoing groundwater sampling in the area, and conditions as follows: (a) maintenance of a barrier, such as ecology blocks, between the dump site and the rock storage site; (b) direction of drainage from the site away from the landfill area, (c) prohibition of wash-down of rock material or equipment on-site, (d) prohibition of rock crushing and other activities that may cause excessive vibration.

32. The record shows that fishermen and tourists frequent the immediate vicinity primarily during the summer months. Their contributions are a critical component of the local economy. The precise economic impact that rock removal operations during this period would have was not (and perhaps could not) be forecast, but it is a plausible supposition that there would be a negative impact.

33. After the second hearing, the Examiner asked the applicants to get together and provide an estimate of the time and cost of a one-time removal of the rock-pile to another location. Their analysis was that the removal and relocation of the stockpile within a 10-mile radius could take 6+ weeks and cost approximately 4.5 million dollars. As the distance was increased, the cost increased. If additional right-of-way had to be acquired, the cost increased even more. The removal time estimate was based on an around-the-clock schedule. Using normal working days and daytime hours only, it was estimated that removal of the stockpile would taking three to six months.

34. From the hearings, four principal alternatives emerged: (1) Allow the storage of the rock and simply leave it in place; (2) Disallow the storage and provide for a one-time removal of the entire stockpile to another location; (3) Allow rock removal for both pre-planned projects and in emergencies; and (4) Allow rock removal only in emergencies.

35. Deciding among the alternatives involves a balancing of competing values. After evaluating all the testimony and evidence, the Examiner finds that allowing rock removal in emergencies only is the alternative that outweighs the other choices.

36. Maintenance of passage on the State highway system is vital to the health, safety and welfare of citizens in Marblemount and in the overall Upper Valley community. The rock in question constitutes a valuable available resource that can be of critical importance in meeting local emergency situations. Weighing the inevitable local disruption against the emergency need, the Examiner finds that allowing storage of the rock but leaving it in place is not in the highest public interest.

37. The cost of removing the rock to a nearby storage site that could feasibly serve roughly the same area is very high and, in the Examiner's view, is not justified solely to avoid the occasional local disturbance of allowing emergency rock removal from the present site. Accordingly, denying the permit and disallowing the storage site does not appear a reasonable option.

38. However, in non-emergency situations, the Examiner finds that the unavoidable disruption of the quiet enjoyment of the surrounding residential environment and the continuance of conditions of questionable safety for pedestrians outweighs the convenience to the applicants of being able to access this source of rock.

39. Restricting rock removal to emergency situations has the advantage of limiting most, if not all, of the removal operations to the off season when tourists and fishermen are less likely to be in the area, thus reducing the potential for adverse impacts on the local economy.

40. The record does not disclose that any community meetings were held on this matter by the agencies involved. The Examiner takes note that the group of residents adversely affected by the subject permit perceives a lack of government interest in their legitimate issues. With the notable exception of the County Health Department, the Examiner has seen little effort on the part of the agencies involved to reach out to this community or to seek to ameliorate its concerns.

41. 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 14.06.050(1)(b)(ii).

2. The requirements of SEPA have been met.

3. If the general criteria for issuance are met, a Special Use Permit may be approved in the Rural Reserve (RRv) zone for the “outdoor storage of processed and unprocessed natural materials in quantities greater than 500 cubic yards that do not have a potential health hazard.” SCC 14.16.320(4)(z).”

4. It was argued that there is a potential health hazard here, both as to water contamination and as to road safety. While this is true, the code also allows outdoor storage of natural materials that do have a potential health hazard. SCC 14.16.320(4)(aa). The difference is only that in the latter case the threshold for when a permit is needed is much lower (50 cubic yards).

5. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(1)(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.

6. The removal of rock from the stockpile in non-emergency situations does not meet the above criteria. Such proposed use would create “undue” noise impacts on surrounding dwellings. Such use would also present safety dangers with potential adverse affects on general public health, safety and general welfare that are not outweighed by other considerations of the public interest.

7. The occasional removal of rock to meet clear emergencies would be consistent with the above criteria. Authorization of storage of materials presupposes the ability to remove the material under some circumstances. The code provides that Special Use Permits may be issued for such storage and, thus, approval of the application under strict limitations would be consistent with the zoning code. There is nothing in the record that suggests the code is in conflict with the Comprehensive Plan.

8. The water pollution risks can be adequately addressed through conditions of approval. Noise and safety conflicts with the health and safety of the immediate community are outweighed by the health, safety and welfare benefits to the larger community of allowing emergency rock removal

9. Similarly, although the proposed use will at times be incompatible with existing and likely future land use near the site, the ability to meet emergencies more than

satisfies the requirement for compatibility with the societal needs of the larger overall area.

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

CONDITIONS

1. Rock removal at the site shall be limited to emergency situations. The agencies involved shall precede rock removal by a clear declaration of emergency.
2. No rock crushing or screening shall be conducted on the site.
3. Generators used for lighting shall be enclosed within appropriate noise barriers.
4. Skagit County shall continue to monitor residential wells in the area for impacts to groundwater. Sampling shall be performed by Skagit County's Landfill sampling personnel with oversight by Health Department Solid Waste Program staff.
5. The permittees shall consider the drilling of monitoring wells to the specifications of the County's hydrogeologists and the sharing of costs for the installation of such wells.
6. No activity shall occur west of the current access road. Barriers, such as ecology blocks, shall be placed along the western edge of the access road into the pit area. (Exception: a single chain or gated access point shall be provided for ingress and egress by County employees to monitor and maintain the garbage dump area.
7. Drainage from the overall site shall be directed away from the landfill area to the west.
8. No wash-down of the rock materials or equipment shall occur on-site. Moderate water use in the dry season for dust control shall be permissible.
9. Vehicles shall be equipped with ambient sensitive or least intrusive backup warning devices to the extent allowed by the State Department of Labor and Industries.
10. Truck tailgates shall be secured to prevent excessive noise from banging.
11. Truck bed liners shall be used.

12. A scale shall be installed at the site and used to insure that trucks are not overloaded, particularly with respect to the load limits on bridges in the vicinity.
13. Every reasonable effort shall be made to insure that loads are secure.
14. Trucks shall not idle while waiting to be loaded.
15. Truck drivers shall be advised of the relevant speed limits and strongly urged to comply with them. The possibility of pedestrian/truck conflicts shall likewise be emphasized.
16. Special warning signs shall be posted when intense truck traffic is expected. Flaggers shall be used during conditions of heavy truck traffic.
17. Every effort shall be made to keep the local community informed about particular rock removal operations at the site as soon as it is possible to do so. The agencies shall consider selecting a local contact to serve as a conduit for information.
18. Except for traditional County road maintenance operations, no new rock shall be introduced to this site.
19. This permit shall be limited to 20 years from the date of final approval. After that time, it shall become void and any rock remaining on the site shall become the property of the County.
20. To the extent that rock has been removed during the life of the permit, the site shall be reforested and otherwise restored.
21. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Special Use Permit (PL07-0719) is approved, subject to the conditions set forth above.

DONE this 28th day of August, 2008.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicants: August 28, 2008

RECONSIDERATION/APPEAL

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.