

NOTICE OF DECISION

BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY

FINDINGS, CONCLUSIONS AND DECISION

- Applicant:** Skagit County Public Utility District #1
c/o Randy Brower
1415 Freeway Drive
Mount Vernon, WA 98273
- Request/File No:** Special Use Permit, PL11-0069
- Location:** Within the right-of-way on the north side of Josh Wilson Road, extending west from Chuckanut Drive to Higgins Airport Way, within portions of Secs 30 & 31, T35N, R4E W.M., and portions of Secs 25, 26, 27, 34, 35 & 36, T35N, R3E, W.M.
- Land Use Designation:** Rural Reserve (RRv), Agricultural Natural Resource Land (AG-NRL), Bayview Ridge Urban Reserve (BR-URv); Bayview Ridge Light Industrial (BR-LI).
- Summary of Proposal:** Installation of about 20,031 lineal feet of restrained 18-inch ductile iron water transmission main. The project includes a 6" pressure reducing station, telemetry provisions and miscellaneous appurtenances.
- SEPA Compliance:** Mitigated Determination of Non-Significance (MDNS) issued April 7, 2011. No appeals.
- Public Hearing:** June 8, 2011. Public testimony focused on potential adverse effects on neighboring lands. Planning and Development Services (PDS) recommended approval.
- Decision:** Approval, subject to conditions.
- Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an Appeal with PDS within 14 days of the date of the decision or decision on reconsideration, if applicable.
- Online Text:** The entire decision can be viewed at [www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Skagit County Public Utility District #1 seeks a Special Use Permit to install a section of water main as part of the build-out of Major Capital Improvements identified in the District's State-approved 2007 Water System Plan.
2. The project is to be built within the right-of-way associated with the north side of Josh Wilson Road. The line will extend approximately 20,031 lineal feet from the intersection at Chuckanut Drive to the intersection at Higgins Airport Way. The proposal lies within portions of Secs 30 & 31, T35N, R4E, W.M., and portions of Secs 25, 26, 27, 34, 35 and 36, T35N, R3E, W.M. The lands are zoned Rural Reserve (RRv), Agricultural Natural Resource Lands (AG-NRL), Bayview Ridge Urban Reserve (BR-URv) and Bayview Ridge Light Industrial (BR-LI). A portion will be within the Airport Environs overlay.
3. The water line will be constructed of restrained 18-inch ductile iron pipe; included will be a 6" pressure reducing station contained within a vault, telemetry provisions for monitoring pressure and miscellaneous appurtenances. The project will be entirely within the road prism and should, when completed, have no impact on adjacent properties.
4. The project corridor is mostly bordered by agricultural land, although there are some abutting single family residences, light industrial facilities and one school. The purpose is to provide increased flows of drinking water and increased water pressure to the Bayview area of the County. Ancillary benefits will include enhanced fire flow capacity, redundancy in the Judy Reservoir water system, and a reduction in the need for the consumption of well water.
5. The original plan was to award contracts in June and for construction in July through September, allowing project close-out in early to mid November. However, slippage in this schedule has occurred so that presently it appears that contract bid and award activities will take place in August - September with construction beginning in October and extending perhaps into the early part of 2012.
6. The waterline will be entirely subsurface and will, thus, present no post-construction aesthetic impacts. After construction, a small graveled area will remain adjacent to the pressure reducing station to allow District personnel to park off road during maintenance activities. Because the line will be entirely within the Josh Wilson Road right-of-way, no new access locations will be needed and no internal roads will need to be built. When complete, the project will impose essentially no traffic impacts. A single District vehicle will visit the area approximately once per week.
7. The applicant successfully demonstrated that there is no other viable alternative to the siting of this pipeline through agriculturally designated land. An alternatives analysis showed building the pipeline within the prism of the existing Josh Wilson Road will not interfere with agricultural uses and is the least intrusive alternative for building the water transmission line.
8. Environmental review of the project was conducted pursuant to the State Environmental Policy Act (SEPA.) As a result a Mitigated Determination of Non-Significance

(MDNS) was issued on April 1, 2011. There was no appeal. Conditions imposed were standard requirements calling for erosion and stormwater control and compliance with applicable regulations. No critical areas issues were presented.

9. Comments by consulted Departments and Agencies are reflected in conditions of approval. The Washington State Department of Transportation had no concerns.

10. Public notice of the application was given as required by law. Only one public comment letter was received. It expressed concern about residential water service being provided along Josh Wilson Road. The project will be a transmission line and will not serve residences along its route.

11. At the hearing Roger Knutson presented concerns of Drainage District 14. The new pipeline will be across the road from the existing drainage ditch. He said that some property owners are dependent on drainage through pipes under the road. He noted that one culvert needs to be lowered. He said the Drainage District doesn't want the new water main to create problems for the eventual relocation of the culvert. He also warned of construction problems that may arise because of peaty soils and quicksand.

12. Kent Knutson, an owner who farms along Josh Wilson Road, said he was likewise concerned with drainage. He advised that he has seven drain pipes under the road and says the location and protection of these facilities needs to be in the pipeline plan. He said that to date he has not been contacted by the District.

13. Kent Knutson detailed problems from past District projects which have blocked his field access with spoils and have pumped excess water into his fields, creating muddy conditions impossible to operate machinery in. He said that constructing the pipeline in the October - February timeframe would be asking for disaster.

14. The District responded that because this project is completely within the road prism there will be no need to put spoils in adjacent fields. The District acknowledged the need to identify the location and depth of drain lines under the road and to insure that the project does not interfere with them.

15. The District also acknowledged that if they build in the wet season they may be faced with dewatering needs. The idea is apparently to direct discharges to the drainage ditch on the south side of the road, but no solution was offered for the situation where dewatering causes the drainage ditch to exceed its capacity. The most they could say was that if that happens they might have to look at some sort of alternate dewatering strategy.

16. Of course the District has the option to defer construction until the season of dryer weather conditions returns. They will be analyzing the risks, increased costs, and potential liabilities of rainy season construction before proceeding.

17. 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 subject matter of this proceeding.
2. Under the County Code this project is a Major Utility Development. SCC 14.04.020. As such, it requires a Special Use Permit to be located in the zoning districts through which it will run. See, e.g., SCC 14.16.320(4)(p).

3. SCC 14.16.400(4)(g) allows major utility development in Ag-NRL zones

"where there is no other viable parcel or non-agricultural designated land to serve the affected area. Analysis of alternatives to the development of the use within the natural resource land must be provided."

The applicant's alternatives analysis showed that the proposal meets this requirement.

4. Special Use Permits may be approve, pursuant to SCC 14.16.900(1)(b)(v), when the following criteria are met:

- (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 or services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities
- (I) Maintains the character, landscape and lifestyle of the rural area. For new uses, proximity to existing businesses operating via special use permit shall be reviewed and considered for cumulative impacts.

5. The Staff Report thoroughly analyzes the application against the above criteria and finds that, as conditioned, the project will comply with them. In general, the Examiner concurs with this analysis and adopts the same. However, he concludes that additional conditions are necessary to protect the public health, safety and general welfare.

6. Adequate protection of health, safety and welfare requires a pre-construction contingency plan for trench dewatering, including alternatives that can be effectively

implemented if the capacity of the existing drainage ditch is exceeded. In addition, prior to commencing construction, the applicant needs to consult with neighbors along the construction route and plot the location of drain pipes and culverts under the road. The project should not disturb the function of existing drainage facilities.

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

CONDITIONS

1. The project shall be constructed in accordance with the applications materials except as the same may be modified or supplemented by these conditions.

2. The applicant shall comply with the conditions set forth in the Mitigated Determination of Non-Significance issued on April 21, 2011.

3. The applicant shall obtain a utility permit to perform work within the Josh Wilson Road right-of-way, and shall all other necessary permits and approvals, abiding by the conditions of same.

4. The project shall be performed and completed in compliance with the applicant's franchise agreement.

5. The project shall comply with requirements of the Skagit County Fire Marshal. Hydrant locations shall be those set in the Comprehensive Water System Plan, Section 6 of Table 4-3. Plans for the hydrants shall be submitted for review to PDS and shall be approved by the Fire Marshal and Fire District #6 prior to commencing construction.

6. In consultation with owners of property along the project route, the applicant shall prepare a map showing the location and depth of existing drain pipes that the project will cross. The map shall be submitted to PDS prior to the commencement of construction. Existing pipes shall not be disturbed unless absolutely necessary. In the case of any necessary drain pipe disturbance, the District shall provide adequate substitute drainage facilities.

7. If it is determined that construction will proceed during the wet weather season, the applicant shall submit to PDS a contingency plan for trench dewatering. Wet weather construction shall not commence until this plan is reviewed and approved. The plan shall include strategies for the disposal of water if the capacity of the drainage ditch on the south side of the road is exceeded. Dewatering shall not include casting water on adjacent properties.

8. The applicant shall comply with all relevant State and County regulations, including but not limited to Chapter 14.16 SCC (zoning) and specifically SCC 14.16.840 (performance standards); Chapter 173-200 and 173-201A WAC (water quality); Chapter 173-60 WAC (noise).


9. The project shall commence within two years of the issuance of this permit and shall be completed as required by SCC 14.16.900(1)(d).

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

DECISION

The requested Special Use Permit (PL11-0069) is approved, subject to the conditions set forth above.

DONE, this 27th day of June, 2011.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on June 27, 2011

See Notice of Decision, Page 1 for Reconsideration and Appeal information.