

BEFORE THE
SNOHOMISH COUNTY HEARING EXAMINER

REVISED DECISION of the DEPUTY HEARING EXAMINER

In the Matter of the Application of)	
)	FILE NO. 05 100636
SNOHOMISH COUNTY DEPARTMENT)	
OF PUBLIC WORKS)	
)	
For a major modification of Conditional)	
Use Permit No. CU 41-75)	

DATE OF DECISION: August 24, 2005

DECISION (SUMMARY): The application is **CONDITIONALLY APPROVED with a precondition.**

BASIC INFORMATION

LOCATION: The subject property is located at 8915 Cathcart Way, Snohomish, Washington.

ACREAGE: 192 acres existing; 124 acres proposed

ZONING: Rural Conservation (RC)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation:	Other land uses
Pre-GMA Subarea Plan:	Cathcart – Maltby - Clearview
Subarea Plan Designation:	Public Facilities / Possible Public Facilities

UTILITIES:

Water/Sewer: Silver Lake Water District

SCHOOL DISTRICT: Snohomish

FIRE DISTRICT: No. 7

SELECTED AGENCY RECOMMENDATIONS:

Department of:

Planning and Development Services: Approval subject to preconditions and conditions

Public Works: Same

INTRODUCTION

The applicant filed the Master Application on January 20, 2005. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 12, 13 and 14)

A SEPA determination was made on May 3, 2005. (Exhibit 14) No appeal was filed.

The Examiner held an open record hearing on August 9, 2005, the 149th day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

PUBLIC HEARING

The public hearing commenced on August 9, 2005 at 1:05 P.M.

1. The Examiner stated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general understanding of the particular request involved.
2. The applicant, the Snohomish County Department of Public Works, was represented by Steve Dickson as presenter and by Andy Smith and Deanna Carveth. Tom Barnett represented the Snohomish County Planning & Development Services Department as project manager.
3. A letter of concern dated February 21, 2005 was submitted into the record by Norma Scott, who owns property directly north of the subject site at 8324 E. Lowell-Larimer Road, which is downslope from the landfill. She expresses concern that removal of vegetation from the subject site will cause storm water runoff to damage her property. She also feels her trees will be adversely impacted and she notes that she lost more than 20 hemlock, fir and cedar trees, ranging in height from 70 to more than 100 feet, blown down by the windstorm of April 2004 due to development in the area.
4. Concerns were expressed in testimony by vicinity resident Earl Goshorn of 14813 – 80th Drive SE in the MonteVista community across from the once-proposed regional landfill. He asked about the magenta line of Exhibit 26, he asked what uses are proposed adjacent to the public school parcels, he asked what plans or proposals exist for roads opposite Puget Power Drive and between the schools, he asked about the leachate facility and the gasification facility. Mr. Dickson responded to each issue.

The hearing concluded at 1:45 P.M.

NOTE: The above information summarizes the information submitted to the Examiner at the hearing. However, for a full and complete record, an electronic recording of the hearing is available in the Office of the Hearing Examiner.

FINDINGS, CONCLUSIONS AND DECISION

FINDINGS OF FACT

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations and the State Environmental Policy Act (SEPA). That staff report is hereby adopted by the Examiner as if set forth in full herein.
3. Community concern or opposition are described above and overlap in part with such concerns expressed in the companion application for the Cathcart Maintenance Center (File No. 05-100812 LU).
4. The request is for a conditional use permit (CUP) to reduce the acreage necessary for the long-term maintenance of the now-closed facility and to add remaining pertinent conditions from the never-opened regional landfill. The proposed conditional use permit will eliminate five such permits granted between the opening of the landfill in 1975 and its closure in 1992 containing 3.2 million tons of garbage. Closure pursuant to WAC 173 imposed further conditions which are continuing in effect.
5. The closed landfill has been maintained with few problems since the early 1990's, and there is no indication that reducing the boundaries to the minimum necessary will create new issues. In addition, Public Works is proposing the Public Works Cathcart Maintenance Center (PWCMC) (PDS file number 05-100812 LU) adjacent to the closed landfill, which will mean that equipment and personnel will be readily available should any problems arise. The proposed PWCMC is to be located adjacent to the south and east of the proposed reduced boundaries, ensuring that any potential negative effects along those boundaries will be monitored by the owner and party responsible for the long-term maintenance of the landfill, the Department of Public Works
6. The conditional use permit for this site has a long history, with more than a dozen different Hearing Examiner Decisions, County Council Motions, and conditional use permit modifications. Dozens of conditions have been required of the landfill since the first conditional use approval in 1975, most of them pertaining to the construction and active operation of the landfill. The existing conditions that apply to the property which are pertinent to the long-term maintenance of the site have been summarized in the "Operating Conditions Applicable to Cathcart Landfill as of August 9, 2005" (Exhibit 15). These conditions have been updated to be applicable to the current situation, and are recommended as conditions of approval of the current application.
7. The DPW reviewed the request with regard to traffic mitigation and road design standards. This review covered Title 13 SCC and Chapter 30.66B SCC (Title 26B SCC) as to road system capacity, concurrency, inadequate road conditions, frontage improvements, access and circulation, and dedication/deeding of right-of-way, state highway impacts, impacts on other streets and roads, and Transportation Demand Management. As a result of this review, the DPW has determined that the development is concurrent and has no objection to the requests subject to various conditions.

8. The PDS Engineering Division has reviewed the concept of the proposed grading and drainage and recommends approval of the project subject to conditions, which would be imposed during full detailed drainage plan review pursuant to Chapter 30.63A SCC (Title 24 SCC).
9. There are no critical areas within 100-feet of any proposed development and therefore this project is not subject to the requirements of Chapter 30.62 SCC.
10. The subject property is designated Rural Conservation (RC) which allows the proposed use. A CUP may be granted in this type of zone if the requirements for a CUP are met.
11. The request meets the requirements for the issuance of a CUP under Chapter 30.42C SCC, in particular the decision criteria therein for a CUP as set forth in SCC 30.42C.100.
12. The request is consistent with Section 30.70.100 SCC (Section 32.50.100 SCC), which requires, pursuant to RCW 36.70B.040, that all project permit applications be consistent with the GMACP, and GMA-based county codes.
13. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

CONCLUSIONS OF LAW

Based on the findings of fact entered above, the following conclusions of law are entered.

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. The request should be approved subject to compliance by the applicant with the following precondition and conditions:¹

PRECONDITION:

An official site plan shall be submitted that shows the boundary of the permit area, the required regulatory buffers, the facilities currently in use to support post-closure care of the landfill, and existing perimeter landscaping. A 20 foot width of existing vegetation shall be retained on the east, north, and that portion of the west property line where abutting adjacent, private properties.

¹ Preconditions and conditions revised on 9/14/05 (scriveners error)

CONDITIONS:

- A. This permit supersedes in its entirety the conditional use permit issued on December 17, 1975, under file number CU 41-75, and as subsequently modified. In the event of appeal proceedings staying the effect of this permit, the prior permit(s) shall remain in full force and effect until the appeals have been fully adjudicated. If this permit is subsequently invalidated through some appeal proceeding, the prior permit(s) remains in full force and effect.
- B. The site plan submitted under the Precondition, above, shall be the official approved site plan for this conditional use permit. Any discrepancy between the content of the official approved development plan(s) and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved site plan(s) is regulated by SCC 30.42C.110.
- C. The facilities covered by this conditional use shall be surrounded by security fence. Warning signs shall be maintained on said fence at intervals of approximately 100 feet.
- D. Signs identifying the subject facility and stating any regulations associated with its operation shall be permitted. In particular, the permittee shall erect such signs as are required by the Snohomish Health District.
- E. On-site monitoring wells shall be tested as required by WAC 173-304-490, but not less than quarterly.
- F. Off-site wells as determined necessary by the Snohomish Health District shall be tested on a frequency determined by said District, but not less than two sets of samples shall be taken per year for detection of possible contamination during the life of the instant permit.
- G. Gases generated by the Landfill shall be burned in flares pursuant to permits issued by the Puget Sound Clean Air Agency (Permit No. 3177 issued March 10, 1989, and Permit No. 5131 issued March 17, 1993).
- H. The site shall be operated pursuant to the Snohomish County Solid Waste Facilities Closure and Post-closure Plan, dated October 1992.
- I. There shall be no burning on the subject property, except as allowed by the Puget Sound Clean Air Agency.
- J. All storm drainage facilities on the subject property shall be operated as previously permitted by the NPDES permit.
- K. Leachate generated within the Landfill area shall be collected and treated in accordance with the requirements of the permittee's Industrial Waste Water Pretreatment Permit issued by the City of Everett.

- L. The permittee shall comply with the regulations of, and shall obtain and keep current all other permits necessary for the operation of the site from other agencies with jurisdiction such as, but not limited to, the Snohomish Health District, the Department of Ecology, the City of Everett, and the Puget Sound Clean Air Agency. The permittee shall operate the site in compliance with the Terms and Conditions of all such permits.
- M. Conditional Use Permit modification shall be required for any leachate treatment system which differs substantially from that currently in use. The public hearing called to consider any such modification request shall be limited to consideration of the modification being sought and shall not be considered as a general review hearing.
- N. The Director of Planning and Development Services or his designee may authorize minor revisions to the approved site plan(s) so long as such revisions do not increase the intensity of use, do not reduce performance standards below those set forth herein, do not cause or increase detrimental impact on adjoining properties or public right-of-way, and do not substantially alter the design of the approved site plan(s). No revision in points of vehicular access to the property shall be approved without prior written concurrence from the county director of public works. Any approved revision shall be fully documented in writing and retained in the case record.
- O. Additional extraction wells shall be installed in the event deemed necessary by the Snohomish Health District to mitigate groundwater pollution migration.
- P. The terms and conditions in this Decision supersede and replace all terms and conditions previously applied to this conditional use permit.
- Q. Nothing in the permit/approval shall excuse the applicant, owner, lessee, agent, successor or assigns from full compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project. In particular, no clearing, grading, filling, construction or other physical alteration of the site may be undertaken prior to the issuance of the necessary permits for such activities.
- R. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)

5. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

DECISION

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a major modification of Conditional Use Permit No. CU 41-75 is hereby **CONDITIONALLY APPROVED**, SUBJECT TO COMPLIANCE by the applicant, with the **PRECONDITION** and **CONDITIONS** set forth in Conclusion 4, above.

Decision issued this 24th day of August, 2005.

Revised Decision issued this 14th day of September, 2005.

Ed Good, Deputy Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

This decision of the Hearing Examiner following reconsideration is final and conclusive and may be appealed to the County Council. No further requests for reconsideration will be accepted. No appeal may raise an issue which has not been the subject of a Petition for Reconsideration. The following paragraphs summarize the appeal process.

Appeals may be filed by any aggrieved Party of Record; PROVIDED, that only the petitioner for reconsideration may appeal from the denial of a Petition for Reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, County East Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 28, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal are limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record.

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the county file number in any correspondence regarding this case. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council rules of procedure.

The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

Staff Distribution:

Department of Planning and Development Services: Tom Barnett
Department of Public Works: Andrew Smith

<p>The following statement is provided pursuant to RCW 36.70B.130: “Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.” A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>

This decision is binding but will not become effective until the above precondition(s) have been fulfilled and acknowledged by the Department of Planning and Development Services (PDS) on the original of the instant decision. Document(s) required for fulfillment of the precondition(s) must be filed in a complete, executed fashion with PDS not later than AUGUST 24, 2006.

1. "Fulfillment" as used herein means recordation with the County Auditor, approval/acceptance by the County Council and/or Hearing Examiner, and/or such other final action as is appropriate to the particular precondition(s).
2. One and only one six month period will be allowed for resubmittal of any required document(s) which is (are) returned to the applicant for correction.
3. This conditional approval will automatically be null and void if all required precondition(s) have not been fulfilled as set forth above; PROVIDED, that:
 - A. The Examiner may grant a one-time extension of the submittal deadline for not more than twelve (12) months for just cause shown if and only if a written request for such extension is received by the Examiner prior to the expiration of the original time period; and
 - B. The submittal deadline will be extended automatically an amount equal to the number of days involved in any appeal proceedings.

ACKNOWLEDGMENT OF FULFILLMENT OF PRECONDITIONS

The above imposed precondition(s) having been fulfilled by the applicant and/or the successors in interest, the Department of Planning and Development Services hereby states that the instant Decision is effective as of

_____ , _____.

Certified by:

(Name)

(Title)