



**DECISION of the  
SNOHOMISH COUNTY HEARING EXAMINER**

**Gordon Sivley**  
Hearing Examiner

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DECISION DATE: March 5, 2013  
PROJECT NAME: **CASCADE MATERIALS SNOHOMISH BIOSOLIDS  
PROJECT**

APPLICANTS/  
LANDOWNERS: Cascade Materials & Aggregate, LLC  
P. O. Box 1716, Snohomish, WA 98291

Kurt Bartelheimer  
12224 92nd Street, SE, Snohomish, WA 98290

Dale Bartelheimer  
12224 92nd Street SE, Snohomish, WA 98290

Pacifica Poplars, Inc.  
3600 Lysander Land, 2nd Floor,  
Richmond, B.C., Canada V7B1C3

Fred Zylstra  
14118 Short School Rd, Snohomish, WA 98290

John Misich  
7115 Lowell-Snohomish Road  
Snohomish, WA 98296

Dana Kimborowicz  
7528 Raven Road, Snoqualmie, WA 98065

FILE NO.: 11-103756-000-00-LU  
TYPE OF REQUEST: CONDITIONAL USE PERMIT (CUP)

DECISION (SUMMARY): **APPROVED, SUBJECT TO CONDITIONS**

GENERAL LOCATION: Snohomish River Valley – various locations

ZONING: Ag-10 and R-5

COMPREHENSIVE PLAN: RCF – Rural Commercial Farmland

RR/5 – Rural Residential Five Acre

PDS RECOMMENDATION: Approve, subject to the recommended conditions

**A. BACKGROUND INFORMATION**

1. The Record. The official record for this proceeding consists of the Exhibits entered into evidence (Exhibits A.1 through L.9), as well as the testimony of witnesses received at the Open Record Hearing. The entire record was admitted into evidence and considered by the Examiner in reaching the decision herein.

**NOTE:** For a complete record, an electronic recording of the hearing in this case is available in the Office of the Hearing Examiner.

2. Parties of Record. The Parties of Record are set forth in the Parties of Record Register and include interested parties who testified at the Open Record Hearing.
3. Public Hearing. The Hearing Examiner commenced an Open Record Hearing on January 16, 2013 but it was determined that an error in the notice of the hearing had occurred. The Open Record Hearing was continued to February 20, 2013 to permit new notices to be given. At the Open Record Hearing on February 20, 2013, witnesses were sworn, testimony was presented, and exhibits were entered into the record at the hearing. Corrected notices of the application and public hearing were issued according to the provisions of SCC 30.70.050(5). (Exhibits L.1, L.2, and L.3)

Randy Middaugh and Brian Dorsey, Deputy Prosecuting Attorney, appeared and testified on behalf of the Snohomish County Department of Planning and Development Services (PDS). Appearing for the Applicant was Jane Koler, attorney, Kurt Bartelheimer, Marietta Sharp with the state Department of Ecology Biosolids program and Dr. Sally Brown.

In addition, several interested citizens appeared at the public hearing. The following people offered testimony on the proposal: Alice Cho Snyder, Mark Snyder, and Joyce Stevens.

4. Prior Proceedings. On January 6, 2011, a Code Interpretation (File Number 11-101260 CI) was issued by the PDS Director regarding permitting requirements for the application of sludge/Class B Biosolids on agricultural lands owned or controlled by Kurt Bartelheimer. The Director found that the application of sludge/Class B Biosolids is only allowed as a conditional use in the Ag-10 and R-5 zones.

On January 19, 2011, the Applicant filed a lawsuit in Snohomish County Superior Court (Cause No. 11-2-0207-3) challenging the Code Interpretation and making other claims.

After being advised that the Code Interpretation was subject to appeal to the Hearing Examiner and not directly to Superior Court, on February 17, 2011 the Applicant, Kurt Bartelheimer *et al*, filed an Administrative Appeal of Zoning Interpretation (File Number 11-101260 CI) with the Hearing Examiner. (Exhibit F.1).

On April 14, 2011, the Hearing Examiner held an Open Record Hearing on the appeal of the January 6, 2011 Code Interpretation made by the Director. However, on April 25, 2011,

before issuing a decision in the appeal, the Hearing Examiner issued an Order Staying Issuance of Final Decision. The Order stayed the issuance of a final decision for a period of thirty days in order to allow time for the two parties to resolve the dispute.

While the Stay in the Code Interpretation appeal was in effect, PDS and the Applicant reached an agreement touching on a number of matters but primarily concerning whether the Applicant would seek to obtain a Conditional Use Permit (CUP) from the County to conduct its biosolids application activities. This agreement resulted in the filing on May 19, 2011 of a CR 2A Settlement Agreement in the pending Superior Court case. (Exhibit F.5). In the Settlement Agreement, the Applicant agreed to apply to Snohomish County for a CUP for the application of any treated wastewater sludge, including but not limited to application of those materials commonly referred to as "Biosolids".

In order to permit the processing of the CUP application, the Hearing Examiner issued a Supplemental Stipulation and Stipulated Order on May 23, 2011 which stayed the issuance of final decision on the appeal of the Code Interpretation until November 1, 2011. (Exhibit F.6).

Because processing of the CUP application had not been completed, on July 13, 2012, the Hearing Examiner issued a second Stipulated Order which further stayed the final decision on the Code Interpretation appeal until September 1, 2012 with the possibility of a further extension until November 1, 2012. (Exhibit F.7). Finally, on December 10, 2012 the Hearing Examiner issued a third Stipulated Order which extended the stay of Issuance of final decision on the Code Interpretation appeal until March 1, 2013. (Exhibit F.2).

## **B. FINDINGS OF FACT**

The following Findings of Fact are supported by a preponderance of the evidence presented in the record pertaining to this matter.

1. In the CR 2A Settlement Agreement (Exhibit F.5), the Applicant made the following agreements:

"Plaintiffs stipulate and agree ... that ... Biosolids are subject to regulation under the Snohomish county Code (SCC) as a form of Sludge Utilization...."

"Plaintiffs, Kurt Bartelheimer and Cascade Materials and Aggregate LLC, hereby stipulate and agree to make application on or before June 1, 2011, to Snohomish County for a Conditional Use Permit in accordance with Ch. 30.42C SCC relating to the application of any treated wastewater sludge, including but not limited to application of those materials commonly referred to as "Biosolids" as otherwise defined in Ch. 70.95J RCW and regulated by the Washington State Department of Ecology under Ch. 173-308 WAC, upon any land located within unincorporated Snohomish County. **For purposes of such application, it is agreed that such activity shall be subject to regulation as "Sludge Utilization" under the SCC requiring a conditional use permit....**" (Emphasis added)

Because the Applicant has voluntarily agreed to seek a CUP for use of biosolids as sludge utilization under the County Code, this case does not require the Examiner to determine whether a CUP is **required** for the application of biosolids under County Code. The

Examiner will assume (without deciding) that the sludge utilization code applies and that a County CUP can be used to provide authority for the Applicant to conduct the biosolids application activities.

2. Application Request. The Applicant has requested approval of a GUP for the application of Class B biosolids to 70 different parcels in three different application areas (A, B, & D) covering a total of 1,382 acres. (Exhibit J)

As of the date of the hearing, 230 days of the 120 day review period had elapsed. PDS indicated that the 120 day time frame could not be met due to the lengthened review times experienced by PDS caused by staff reductions. An additional delay was caused by the need to reissue notice for the Open Record Hearing. PDS indicated that, in accordance with SCC 30.70.110(5), the Applicant was notified that the decision of the Hearing Examiner will be rendered outside of the usual 120 day review period. (Exhibit J)

3. Site Description. The Applicant proposes to apply biosolids to 70 parcels in three different application areas (A, B, & D) covering a total of 1,382 acres (Exhibit J, Table 1). The application sites are located in the Snohomish River flood plain on Ag-10 and R-5 designated lands between the cities of Everett and Monroe (Exhibit J, Table 2). All of the lands are actively in agricultural production or have related agriculture structures and residences.

The sites are bisected by or adjacent to numerous drainage channels, streams and wetlands. Some of the wetlands and the areas adjacent to the wetlands and streams are cleared and actively managed for agriculture.

4. Adjacent uses. The land adjacent to Area A is zoned Ag-10 and is in agricultural use. Uses adjacent to Area B are also agricultural and are zoned Ag-10 and R-5. The property adjacent to Area D is also zoned Ag-10 and R-5 and is in agricultural and residential use.
5. State Environmental Policy Act Compliance. A Determination of Nonsignificance (DNS) for the project was issued the Washington State Department of Ecology (DOE) on April 18, 2011 (Exhibit D.3). The DNS was not appealed.
6. Issues of Concern.

A. Public Agency Review.

The Cross Valley Water District filed comments and concerns about the proposal and its relation to District facilities. (Exhibit G.3). The District is concerned primarily that the restrictions on access to sites where biosolids have been applied not be imposed in a way that would preclude access to the District's water main for operation and maintenance.

B. Citizens.

Several comments were received from groups and individuals expressing concerns about the potential for various negative health effects that could result from ground application of biosolids. (Exhibits H.1, H.2, H.3, H.5 and H.6)

A letter with several attachments was submitted by People for Puget Sound, Community Environmental Legal Defense Fund and The Precautionary Group. (Exhibit H.1). They sought a ban on biosolids spreading in the county. The primary concern noted was that the DOE only requires testing for a limited suite of pollutants. Contaminants from households,

commercial establishments, industries, medical facilities, and street runoff are all potentially present in the sludge, which can include pharmaceuticals and a host of toxic chemicals.

Tony and Karen Spane wrote to request denial of the permit, expressing their concerns regarding the high water table, the possibility of spreading due to flooding and the possibility of pathogens and pharmaceuticals in the biosolids. (Exhibit H.2).

Comments were received from John and Sherry Stecher, landowners abutting application Area A. They have a farm and raise beef for consumption. They expressed concerns about the long term effects on the meat for human consumption as well as possible spreading from flooding and wildlife impacts. (Exhibit H.3).

Dale and Elaine Wilson wrote to raise numerous questions about the composition of the biosolids, how they will be applied, what kinds of restrictions will apply, how testing will be conducted, *etc.* They also have concerns regarding odors. (Exhibit H.6).

A petition signed by seven neighbors was submitted in opposition to the CUP. (Exhibit H.7).

The Applicant submitted written responses to several of the comment letters. (Exhibits I.1 – I.4).

At the Open Record Hearing, Alice Cho Snyder indicated that she owns a farm off Lowell-Larimer Road where she intends to engage in organic farming. She expressed her concerns about the possibility for the spread of the biosolids from the Applicant's property onto her farm during flood events. She did note that Mr. Bartelheimer has indicated he will not apply biosolids on the land immediately adjacent to her farm.

Mark Snyder testified that his biggest concerns with biosolids use are focused on whether the biosolids contain heavy metals, pharmaceuticals or PCBs. He also raised a concern about the possible spread of biosolids onto his property by a flood event.

Joyce Stevens (who had also submitted written comments (Exhibit H.5)) indicated she is a next door neighbor of Mr. Bartelheimer. She is trained in and has worked with hazardous materials, including work at the Hanford nuclear site. Her concern is about the possibility for currently unknown future consequences and health effects associated with the use of biosolids.

7. Applicant's testimony.

The Applicant presented testimony from its attorney, Jane Koler, who stressed that the DOE regulates most aspects of biosolid application, especially treatment standards, allowable levels of various components of the biosolids materials, methods of application, *etc.* She described the state's oversight of the use of biosolids as being intense. Ms. Koler also noted that the County's regulations regarding agricultural practices permit most farming activities without the need for County permits, including the application of fertilizers and soil conditioners. She stressed that the application of most fertilizers, either chemical or manures, are not regulated by the County.

Kurt Bartelheimer, who is a principal of Cascade Materials & Aggregate, LLC. testified indicating that he is a farmer and his family has been farming in the valley for at least 100 years and has always used some form of fertilizer, whether manure or commercial fertilizer. Beginning seven years ago, his family began using biosolids as an additional form of fertilizer. He noted that the biosolids tend to have a longer lasting beneficial effect than

commercial fertilizer. He has not previously had complaints from neighbors regarding his use of biosolids under a prior DOE permit. A couple of neighbors had some concerns about this use but he has been able to alleviate the concerns of those he has talked to about the use of biosolids. Mr. Bartelheimer contrasted the extensive regulatory restrictions on his use of biosolids with the nearly complete lack of restrictions on the spreading of manure. Mr. Bartelheimer also described the various requirements that apply to his use of biosolids under the DOE permit. For example, he noted the seasonal time restrictions that apply to biosolids applications as well as restrictions associated with ground water levels. Mr. Bartelheimer also indicated that there is limited opportunity for the biosolids to wash off his property since the material is tilled into the soil soon after its application and then cover crops are planted. During the winter flooding season, there is no application of biosolids.

Ms. Marietta Sharp, a Biosolids Coordinator with DOE, testified and described the State biosolids regulatory program in detail.

The Applicant also called Dr. Sally Brown, a Research Professor in the Ecosystem Science Division of the University of Washington, College of Environmental and Forest Sciences, to provide testimony about her extensive background in biosolids research and about the nature and composition of biosolids and a comparison of them to other types of fertilizers and the history and development of federal and state regulation of the use of biosolids. She also addressed the perceived health risks associated with biosolids.

## 8. Applicable Regulations.

A. Approval Criteria. The proposal must meet the requirements of the CUP regulations found in SCC 30.42C.100, as well as any required mitigation imposed pursuant to SEPA. SCC 30.42C.100 provides that the Hearing Examiner may approve, or approve with conditions, a CUP only when all the following criteria are met:

- The proposal is consistent with the comprehensive plan;
- The proposal complies with applicable requirements of Title 30 SCC;
- The proposal will not be materially detrimental to uses or property in the immediate vicinity; and
- The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

B. Consistency with the Comprehensive Plan. (SCC 30.42C.100(1)(a)). The Snohomish County Comprehensive Plan designates all of the parcels proposed for biosolid application as Riverway Commercial Farmland except two lots in the southeast corner of Application Area D, which are designated Rural Residential - 5. These properties have been cultivated for commercial agricultural uses by the Bartelheimer family and others for approximately 100 years. The Applicant is proposing to apply biosolids to these lands for the purpose of improving the tilth and fertility of soils for the production of grass, corn and small grain crops used predominantly as animal feed stock. The application of soil amendments and fertilizers on farmland supports and facilitates the production of agricultural products. The proposed application of biosolids would be in furtherance of the existing agricultural use, and, therefore, would be consistent with the Comprehensive Plan designation.

- C. Compliance with Chapter 30.42C.100(1)(b). The Applicant must demonstrate that the proposal meets all development regulations in Title 30 SCC applicable to the proposed use. Each applicable regulation is reviewed below. The proposal is vested to the regulations in effect on May 27, 2011. (Exhibit J).
- i. Zoning Regulations. Sludge utilization is allowed as a conditional use in the Ag-10 and R-5 zones. SCC 30.22.110. As indicated above, for purposes of this case, it will be assumed that the application of biosolids is a form of sludge utilization.
  - ii. Sludge Utilization (SCC 30.28.085)
    - (a) Code Requirements. The CUP sought by the Applicant is for the land application of biosolids under the sludge utilization requirements of Chapter 30.28 SCC. These requirements are set forth in SCC 30.28.085 and are summarized below:
      - (1) The project area must be at least 20 acres in size, including setbacks;
      - (2) Access to the site must be controlled using measures such as fences, gates, posting, *etc.*;
      - (3) For surface application of sludge, minimum setbacks between the utilization area and the property boundary must be at least 300 feet;
      - (4) Minimum setbacks to protect water quality of year-round surface waters must be at least 200 feet;
      - (5) A joint site inspection must be arranged by representatives of the Snohomish Health District and PDS at the time of initial application. The Applicant must provide the agencies with at least 10 days advance notice of its initial application.
      - (6) The Applicant must submit a monitoring schedule (suitable to the Snohomish Health District) to the Hearing Examiner for approval.
    - (b) Limited Scope of County Regulation. From foregoing summary of the County's sludge utilization regulations, it is readily apparent that the County only regulates very limited aspects of such utilization. The concerns addressed are the minimum size of the area in which sludge utilization will occur, the need for controlling access to treated areas and the need for setbacks from property boundaries and year-round surface waters. The County's regulations do not address the composition of the sludge (such as allowable levels of pathogens, organics, heavy metals, pharmaceuticals, *etc.*), identifying permissible sites, timing of application, amount of application, restrictions on harvest of crops after application, transportation of sludge to the site of application, storage of sludge or application rates or methods.

- (c) Applicant's Arguments. The Applicant's counsel submitted extensive briefing that consisted primarily of arguments that the County could not require a sludge utilization CUP for the application of biosolids proposed. (Exhibits K.4 and L.4). As the Examiner has indicated in Finding of Fact 1., such arguments are not pertinent to the matter currently at issue since the Applicant has agreed to pursue a CUP for the biosolids application and, therefore, the Examiner will not address in this proceeding whether the CUP is required. Regarding the Applicant's compliance with the requirements of SCC 30.28.085, its briefing focuses only on arguing against any involvement by the Snohomish Health District, expressing fears that this might trigger the requirement of a solid waste handling permit by the Health District. However, there is little basis for such fears. SCC 30.28.085 does not give the Health District any regulatory or decision making authority regarding the CUP. The Health District's involvement is more in the nature of a consultative relationship to PDS. Moreover, the Health District has indicated that as long as the materials applied by the Applicant qualify as biosolids under the DOE permit, the Health District would not impose any additional regulations. (Exhibit G.2) Only if the Applicant attempts to use sludge that is not properly treated to enable it to be classified as biosolids would concerns arise under the Health District's solid waste regulations. (Exhibit G.2). In any event, limited involvement by the Health District is mandated by SCC 30.28.085 and the Examiner cannot ignore this code requirement.
- (d) Size of Application Areas. From the information presented in the record, it appears that all three of the application areas exceed 20 acres in size; Area A is 737 acres, Area B is 547 acres and Area D is 98 acres.
- (e) Access Control. The majority of the points of access to proposed biosolids application areas are equipped with gates to restrict public access. In addition, under the requirements of the Biosolids Management permits issued to the Applicant by DOE, the Applicant must post and maintain informational signs for 30 days on sites with a low potential for public exposure. These access control measures meet the requirements of both County Code and the State Biosolids Management permit but would not preclude access by the Cross Valley Water District to its pipeline for operation and maintenance since the District's access rights are secured by pre-existing easements that are not affected by the CUP sought by the Applicant.
- (f) Setbacks. Only surface application is proposed. The Applicant has committed to provide a buffer of 300 feet from adjoining properties, except at locations where adjoining property owners have given (or may give in the future) permission for a reduced buffer from the property line. (Exhibit I.2)

The Applicant also has proposed the following buffers (in feet):

Domestic wells	100
Irrigation wells	100
Surface water, perennial	200



Surface water, intermittent	200
Dwellings	200
Roadways, state (from centerline, as appropriate)	0-50
Roadways, county (from centerline, as appropriate)	10-50
Property line	0-50

(Exhibits B.1 and F.10).

iii. Odor prevention requirements. Since the sludge utilization is proposed as an agricultural activity, it is exempt from the odor prevention requirements of SCC 30.28.093.

iv. Shoreline Management. (Chapter 30.44 SCC)

All of the sludge disposal areas are in the Snohomish River floodplain, which is a State Shoreline. All of the lands proposed for biosolids application are designated Rural under the County's Shoreline Management Master Program (SMMP). The southern-most area abuts Conservancy designated waters along its southern boundary. The other two areas are either surrounded by rural designated farmlands, or non-shoreline areas. PDS analyzed the proposal for compliance with the SMMP. The SMMP defines "Agriculture" as *...all methods of livestock, crop, vegetation and soil management. These include but are not necessarily limited to the related activities of tilling, fertilizer application, soil preparation and maintenance, harvesting and the control of weeds, plant diseases and insect pests.* Under this definition, the application of biosolids in the manner and for the purpose proposed in the instant application would be an allowed agricultural activity. Under the analysis conducted by PDS, the proposal was consistent with the applicable Policies and Regulations of the SMMP. (Exhibit J). The Examiner finds that the evidence in the record supports that analysis.

v. Critical Areas Regulations (Chapter 30.62 SCC).

The application of biosolids in the manner and for the purpose proposed is an agricultural activity and, therefore, it is subject to the version of the County's Critical Areas Regulations (CAR) found in Chapter 30.62 SCC.

The application areas are located entirely in the lower Snohomish River floodplain where there are numerous wetlands, stream channels, and perennial and seasonal artificial drainage channels. PDS evaluated the proposal's compliance with CAR the CAR in the following manner:

Wetlands – PDS noted that accurately identifying wetlands on actively managed agricultural lands would be a very difficult and time consuming exercise. Therefore, rather than requiring the Applicant to identify all wetlands on all 70 parcels in the three different application areas, PDS determined that an acceptable alternative would be for the Applicant to map and avoid all "naturally vegetated" wetlands (those containing native shrubs and/or trees) in the proposed application areas. The Applicant would then be required to protect these "naturally vegetated" areas with a 200 foot buffer.

Streams – Similar to the problems in identifying wetlands in the application areas, distinguishing between "streams", as defined in SCC 30.62.015(26)

and other seasonal or perennial drainage features would be very difficult on the heavily managed and altered agricultural lands of the river valley. Therefore, PDS determined that rather than requiring the Applicant to determine which channels meet the definition of a "stream" (SCC 30.91S.640) and which are non-stream, non-critical area drainage features, an acceptable alternative would be for the Applicant to map and provide 200 foot buffers on all perennial surface waters.

Wildlife – There are no known state or federal listed threatened or endangered terrestrial wildlife on or within close proximity to the application zones. The southern part of Area B abuts French Creek. French Creek is known or presumed to contain several state and federal listed fish species, including; Bull Trout, Chinook salmon and Steelhead Trout. Part of the southern boundary of application Area D abuts the Snohomish River. The river is known or presumed to contain Bull, Trout, Chinook salmon and Steelhead Trout. PDS determined that no habitat management plan under SCC 30.62.110 would be required.

Based upon its review of the Applicant's proposal and the buffers proposed, along with the requirements of the Biosolids Management permit issued by the State DOE, PDS concluded that adequate compliance with the CAR would be achieved. The Examiner finds that this analysis is supported by the record in this matter.

- vi. Land Disturbing Activity. (Chapter 30.63B SCC). The placement of biosolids is not a Land Disturbing Activity (LDA) as defined in SCC 30.91L.025. Moreover, the surface application of biosolids on farmland for the purpose and in the manner proposed would be exempt from the requirement for a LDA permit under SCC 30.63B.070(4).
- vii. Groundwater Protection. (Chapter 30.64 SCC) As an agricultural activity, the project is subject to the previous version of the County's Groundwater Protection Regulations, Chapter 30.64 SCC. The Applicant submitted a hydrogeologic site evaluation meeting the requirements of SCC 30.64.020. (Exhibit C.1) PDS determined that groundwater protection will be regulated and managed under the permit issued by the DOE and that no additional conditions need to be imposed under the County's Groundwater Protection Regulations.
- viii. Flood Hazard. (Chapter 30.65 SCC) The application of bio-solids is not "development" as that term is defined in SCC 30.91D.250 and, therefore, is not subject to the requirements of Chapter 30.65 SCC.
- ix. Traffic Mitigation and Road Design Standards. (Title 13 SCC & Chapter 30.66B SCC) The Traffic Review Section of PDS has reviewed the proposal for compliance with Title 13 and Chapter 30.66B SCC, Snohomish County Engineering Design and Development Standards (EDDS), and the appropriate policies and procedures. The subject property is located within Transportation Service Area (TSA) "C." (Exhibit J).

- (a) Road System Impacts (SCC 30.66B.310) As is the case in the review of every project seeking a County CUP, the biosolids application proposal was analyzed by PDS to determine whether and to what extent it will impact the future capacity of the Snohomish County road system. Proposals that do create such impacts are required to mitigate those impacts by paying a road system impact fee reasonably related to the impacts of the proposal on the arterial roads located in the same transportation service area as the proposal. A proposal's road system impact fee is determined from the amount of new average daily traffic (ADT) generated by the proposal.

In the instant case, PDS used trip generation estimates for the proposal that were based on data provided by the Applicant. PDS estimated that the average weekday trips generated by the proposed use will be 2.43 and that there will be few, if any, peak hour trips. This was because the Applicant will transport biosolids during hours of the day that will avoid the AM and PM peak hour of traffic on area roadways. Through this analysis, PDS determined that the impacts to the local road system by the proposal will be insignificant and that the Applicant should not be assessed any traffic mitigation fee.

- (b) Concurrency. (SCC 30.66B.120) The County Department of Public Works (DPW) makes a concurrency determination for each development application to ensure the development will not impact a County arterial unit in arrears or cause a County arterial to go in arrears. The subject proposal was evaluated by DPW for concurrency under the provisions of SCC 30.66B.120 and was found to be concurrent as of August 16, 2012. The expiration date of the concurrency determination is six years from this date.
- (c) Inadequate Road Condition. (IRC) (SCC 30.66B.210) Regardless of the existing Level of Service (LOS), any development which adds three or more PM peak-hour trips to a location in the road system determined to have an existing IRC at the time of imposition of mitigation requirements, or development whose traffic will cause an IRC at the time of full occupancy of the development, must eliminate the IRC. The DPW analysis indicates that the subject proposal will not impact any IRC locations identified within TSA C with three or more of its PM peak hour trips, nor will it create any. Therefore, no mitigation will be required with respect to IRCs. (Exhibit J).
- (d) Frontage Improvement Requirements. (SCC 30.66B.410) All developments are required to make frontage improvements, as determined by DPW, along the parcel's frontage on any opened, constructed, and maintained public road. In the instant case, DPW has determined that no frontage improvements will be required due to the nature and low traffic impact of the proposed activity.
- (e) Access and Transportation Circulation. (SCC 30.66B.420). All developments are required to provide for access and transportation circulation in accordance with the comprehensive plan and SCC

30.66B.420, design and construct such access in accordance with the EDDS, and improve existing roads that provide access to the development in order to comply with adopted design standards, in accordance with SCC 30.66B.430. The trucks transporting biosolids from Arlington and Everett waste water treatment facilities to farmland in the Snohomish River area will use existing farm field access points on rural public roads. DPW determined that no improvements are required to any of those access points due to the low number of average weekday trips generated by the proposed activity.

- (f) Right-of-Way Requirements. (SCC 30.66B.510 and .520). A development or use is required to dedicate, establish or deed right-of-way to the County for road purposes as a precondition of approval of the development or use, when to do so is reasonably necessary as a direct result of a proposed development or use, for improvement, use or maintenance of the road system serving the development. PDS indicated that, due to low traffic impact of the proposed use on the road system that serves it, there is no need for the Applicant to deed additional right-of-way. (Exhibit J).
- (g) Impacts to State Highways. (SCC 30.66B.710). There was no evidence in the record to indicate that the proposal would have a significant adverse impact upon state highways. Therefore, there is no basis for requesting that the Applicant provide traffic mitigation for impacts to state highways.
- (h) Impacts to City Streets and Roads in Another County. (SCC 30.66B.720). There was no evidence in the record to indicate that the proposal would have a significant adverse impact upon city streets or roads in another county. Therefore, there is no basis for requesting that the Applicant provide traffic mitigation for impacts to city streets or to roads in another county.
- (i) Transportation Demand Management (TDM). (SCC 30.66B.630). SCC 30.66B.630 requires development inside the Urban Growth Area (UGA) to provide TDM measures. Since this proposal is outside of the UGA, TDM measures are not required
- x. Park and Recreation Impact Mitigation. (Chapter 30.66A SCC) This proposal does not meet the definition of "development" as set forth in SCC 30.91D.200 and, therefore, is not subject to park mitigation fees in accordance with SCC 30.66A.010(3).
- xi. School Impact Mitigation. (Chapter 30.66C SCC) This proposal does not meet the definition of "development" as set forth in SCC 30.91D.220 and, therefore, is not subject to school mitigation fees in accordance with SCC 30.66C.010(2).
- xii. Land Use Permit Binder. (SCC 30.42C.200) The Applicant will be required to file a Land Use Permit Binder (LUPB) prior to the initiation of any biosolids application under this CUP.

- D. The proposal will not be materially detrimental to uses or property in the immediate vicinity.

As to the aspects of the proposed use that are subject to regulation under the County's sludge utilization code; minimum parcel size, access control and protective setbacks, the proposal satisfies all requirements. Additionally, meeting the requirements of the DOE permit that control composition of the biosolids used, timing of application, application rates, ground water protection, monitoring, etc. will alleviate most detrimental impacts to other property in the vicinity.

Based on the foregoing, the Examiner finds that, as currently proposed and conditioned, the proposal will not be materially detrimental to the uses or properties in the immediate vicinity.

- E. The proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

The most significant potential impacts to surrounding property would be impacts to surface and groundwater. Beyond meeting the requirements of the County's sludge utilization code, the Applicant must also comply with much more comprehensive requirements under the DOE Biosolids Management permit. Those State requirements will provide significant protections to surface and ground waters as well as other public health protections. The DOE permit includes regulations that address transportation, spill prevention/response, analysis and monitoring, rates of application, thresholds for pollutants and pathogens, vector attraction reduction, crop harvest waiting periods, and public access restrictions.

The Applicant has also modified the original proposal to make it more compatible to the surrounding property. For example, the application area has been reduced so that there will be a three-quarter mile separation from the Stevens' property and approximately a one mile separation from the Snyder's property.

Accordingly, the Examiner finds that, with the revisions now proposed and under the conditions recommended by PDS, the proposal will be compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.

- F. Any Finding of Fact which should be deemed a Conclusion of Law in this Decision is hereby adopted as such.

### **C. CONCLUSIONS OF LAW**

1. The Examiner has original jurisdiction over the CUP application pursuant to Chapter 2.02 SCC, SCC 30.42C.020 and SCC 30.72.020.

2. The proposal must be consistent with the Comprehensive Plan. The sites proposed for the application of biosolids are designated Agricultural in the Comprehensive Plan. Because the application of biosolids is proposed as a soil amendment and fertilizer to facilitate the production of agricultural products, the Examiner concludes that this proposal would be consistent with the Comprehensive Plan.
3. The legislative decision to include sludge utilization as a conditional use on property zoned Ag-10 and R-5 represents a conclusion by the County's legislative officials that this activity may have different impacts and effects depending upon the particular proposal and its surroundings. The question here is, as it always is in a CUP application, whether the characteristics of this particular proposal on this particular site will be sufficiently compatible or can be made sufficiently compatible with the surrounding area to allow issuance of the requested permit. The focus is on the characteristics of the specific proposal and the area in which it would be located. Here, the Examiner concludes that the proposal is compatible with the existing character of the area.
4. Many of the members of the community who provided written and oral testimony regarding the Applicant's proposal are concerned about the composition of the biosolids that will be used. The County's regulation of the application of biosolids as a form of sludge utilization does not directly address such matters. These are issues the DOE is charged with addressing under its Biosolids Management Program. The Examiner concludes that regulation of the composition of biosolids is beyond the scope of the County's current authority as expressed in its sludge utilization code.
5. In approving a CUP, the Examiner has broad discretion to impose conditions of approval. The Examiner may increase the requirements in the standards, criteria, or policies established by Title 30 SCC. However, the Examiner may not reduce the requirements specified by Title 30 SCC as it pertains to the proposal. Therefore, regarding the role of the Snohomish Health District, the Examiner may not, as the Applicant has requested, eliminate Health District involvement as specified in SCC 30.28.085(5) or (6). The Examiner concludes that the joint site inspection contemplated by SCC 30.28.085(5) does not confer any regulatory jurisdiction upon the Health District. Similarly, requiring the Applicant to obtain a determination that its monitoring schedule is suitable (as SCC 30.28.085(6) requires), does not involve the Health District in the actual monitoring program. In view of the Health District's position as outlined in Exhibit G.2, it may well be that the Health District will determine that the monitoring program the Applicant is required to conduct under its DOE permit will be "suitable" and therefore satisfy the County Code requirement.
6. Conditioned as set forth below, the proposal is compatible with and incorporates specific features, conditions, or revisions that ensure it responds appropriately to the existing or intended character, appearance, quality of development, and physical characteristics of the site and surrounding property.
7. Based upon the entire record and the Findings of Fact herein, the Examiner concludes that the proposal meets all of the requirements of the County's CUP regulations, provides for the public health, safety and welfare and should be approved, subject to the recommended conditions.
8. Any Conclusion of Law in this Decision which should be deemed a Finding of Fact is hereby adopted as such.

## D. DECISION AND ORDER

A **CONDITIONAL USE PERMIT** is **GRANTED** to the Applicant for application of Class B biosolids on the subject property as described in the Master Permit Application, subject to the following **CONDITIONS**:


### CONDITIONS

- A. This permit applies only to those parcels described in Attachment AA to Master Permit Application No. 11-103756 LU dated June 4, 1012 (Exhibit A.4).<sup>7</sup> Biosolids may only be applied to those sites shown in Exhibit B.1 and buffers must be maintained as provided in this Conditional Use Permit. SCC 30.42C.110 governs revisions to conditional use permits.
- B. All activities associated with the application of biosolids pursuant to this Conditional Use Permit must comply with the conditions and requirements of State General Permit for Biosolids Management – Permit Number BT0903 and must be undertaken in conformance to the Site Specific Land Application Plan for the Cascade Materials Biosolids Application Site associated therewith (Exhibit F.10), except as may be modified by this Conditional Use Permit.
- C. Minimum setback for applications shall be as set forth in SCC 30.28.085(3). For the proposed surface application, the Applicant shall provide a buffer of 300 feet from adjoining properties, except at locations where adjoining property owners have given (or may give in the future) permission for a reduced buffer from the property line.
- D. The following additional buffers shall apply to all surface applications:
- |   | (feet) |
|---|--------|
| Domestic wells                                      | 100    |
| Irrigation wells                                    | 100    |
| Surface water, perennial                            | 200*   |
| Surface water, intermittent                         | 200    |
| Dwellings   | 200    |
| Roadways, state (from centerline, as appropriate)   | 0-50   |
| Roadways, county (from centerline, as appropriate)  | 10-50  |
| Property line                                       | 0-50   |
| Naturally vegetated areas (as shown on Exhibit B.1) | 200    |
- \*Minimum setbacks from year-round surface waters shall be 200 feet, or greater if deemed necessary to protect water quality.
- E. The Applicant must institute access control measures for treated areas in accordance with Biosolids Management – Permit Number BT0903, PROVIDED: that access by the Cross Valley Water District to its pipeline for operation and maintenance on its pre-existing easements shall not be affected.
- F. A joint site inspection shall be arranged by representatives of the Snohomish Health District and the Department of Planning and Development Services at the time of initial application of biosolids under this permit (i.e. the first application of biosolids to be made following the issuance of this permit). The Applicant shall provide said agencies with at least 10 days advance notice of such initial application. The sole purpose of the site inspection shall be to provide oversight and ensure that the Applicant is complying with all terms and conditions of

this permit as issued and shall not convey any authority or jurisdiction upon the Health District to regulate or otherwise control any activity authorized hereunder.

- G. The Applicant shall submit a monitoring schedule to the Hearing Examiner for approval prior to the first application of biosolids under this Permit. The Applicant shall submit with the monitoring schedule, a written indication from the Snohomish Health District that the Applicant's monitoring schedule is suitable to the District.
- H. Prior to the initiation of the approved conditional use activity, the recipient of the Conditional Use Permit shall file a Land Use Permit Binder on a form provided by the Department of Planning and Development Services with the County Auditor. The binder shall serve both as an acknowledgment 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.
- I. Nothing in this 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.

Decision issued this 5<sup>th</sup> day of March, 2013.

  
Gordon Sivley, Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### Reconsideration

Any party of record may request reconsideration by the Examiner **within 10 days** from the date of this decision. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, Robert J. Drewel Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201) **on or before March 15, 2013**. There is no fee for filing a petition for reconsideration. "The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing." [SCC 30.72.065]

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner's attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where



applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the Applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner's decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The Applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record **within 14 days from the date of this decision**. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing at the Public Assistance Counter of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: 3000 Rockefeller Avenue M/S 604, Everett, WA 98201) **on or before March 19, 2013**, and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00) for each appeal filed; PROVIDED, that the fee shall not be charged to a department of the County. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

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 shall be 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 his 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. [SCC 30.72.080]

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 the case.

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

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Staff Distribution:

Department of Planning and Development Services: Randy Middaugh

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.

PARTY OF RECORDS REGISTER  
11-103756-LU CASCADE MATERIALS  
SNOHOMISH BOISOLIDS PROJECT  
RESCHEDULED HEARING: FROM  
JAN 16 TO FEB 20, 2013  
9:00 am – 12:30 pm

PACIFICA POPLARS INC  
3600 LYSANDER LANE 2ND FLOOR  
RICHMOND BC V7B 1C3

STATE OF WA DEPT OF ECOLOGY  
LAURIE DAVIES  
PO BOX 47600  
OLYMPIA WA 98504-7900

CROSS VALLEY WATER DISTRICT  
GARY HAJEK  
8802 180TH ST SE  
SNOHOMISH WA 98296-4804

JOHN MISICH  
7115 LOWELL-SNOHO RIVER RD  
SNOHOMISH WA 98296

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SNOHOMISH HEALTH DISTRICT  
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EVERETT WA 98201-3900

DR. SALLY BROWN  
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KURT BARTELHEIMER  
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