

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Washington State Department of Fish and Wildlife
c/o Chris Gourley, Biologist
600 Capitol Way North
Olympia, WA 98501
- Requests/File Nos:** Shoreline Substantial Development/Variance/Conditional Use
Permit, PL13-0050
Critical Areas Variance, PL13-440
Administrative Special Use, PL13-0441
- Location:** South end of Wylie Road on Fir Island, within NE1/4 Sec. 26,
T33N, R3E, W.M. Parcel #16120.
- Shoreline Designation:** Rural
- Land Use Designation:** Public Open Space of Regional/Statewide Importance (OSRSI)
- SEPA Compliance:** DNS by WDFW issued January 25, 2013. No Appeal.
- Public Hearing:** April 9, 2014. Testimony by Staff and Applicant. One member of
the public testified. Planning and Development Services (PDS)
recommended approval.
- Decision/Date:** The application is approved, subject to conditions. April 30, 2014.
- Reconsideration/Appeal:** (1) A Request for Reconsideration of the shorelines decisions may
be filed with PDS within 5 days of this decision. The shorelines
decision may be appealed to the Board of County Commissioners
by filing an appeal with PDS within 5 days of the date of decision
or decision on reconsideration, if applicable.
(2) A Request for Reconsideration of the critical areas and special
use decisions 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 decision or decision 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. The Washington State Department of Fish and Wildlife (WDFW) seeks permission to build a pump house and install pumps to maintain water levels in Wiley Slough to reduce agricultural flooding.
2. The site is within the Skagit River delta at the south end of Wylie Road on Fir Island, within NE1/4 Sec. 26, T35N, R3E, W.M. The Shoreline environment designation is Rural. The land use designation is Public Open Space of Regional/Statewide Importance (OSRSI).
3. The Wiley Slough lies within WDFW's Skagit Wildlife Area. Agricultural fields are adjacent to the north. Just south of the slough are a road and dike separating the slough from an estuary containing tidally influenced saltwater. This estuarine area is regarded as part of the Skagit River delta.
4. The slough has a tide gate at the southwest end intended to maintain water levels within a holding pond area. However, as the application states, the tide gate "does not function ideally." Excessive water retention has resulted in the flooding of agricultural land. The subject project is intended to relieve this situation.
5. The project will involve excavation of a wet well for pumps in the bank of Wiley Slough and the construction of a structure to house the pumps. Activities will include a temporary excavation of the dike, installation of pumps and pipes, and the extension of utility lines. Two pumps are contemplated -- one at the time of building the pump house and the other installed later.
6. The project will allow the pumping of up to 16,000 gallons per minute (gpm) through the dike from Wiley Slough into the estuary on the other side. (Each pump individually will be capable of pumping 8,000 gpm.)
7. The pump house will be a wood framed structure with a metal roof and siding. The construction will include steel floor framing and concrete on a metal deck held in place by four 16" steel pipe piles. A trash rack will be installed to keep debris from entering the pumps.
8. The pumps will discharge via pipes through the dike. There will be a check valve on each pipe and tide gates will be placed on the outflow end of the pipes. At the outfall, a quarry spill dissipation pad will be installed to reduce erosion.
9. Two additional power poles are needed to extend the existing power line to the dike where it can be run underground to the project site. One pole will be north of the slough channel and the second will be located on the dike. Both will be inside the regulatory setback from the Ordinary High Water Mark of the slough.
10. Vegetation in the area is typical of lowlands influenced by tides and water retention. Cottonwood, spruce and red alder dominate. Shrubs are plentiful in undisturbed areas. For the

project, approximately six trees of 24-inch diameter are expected to be removed. New slopes created by the project will be seeded with a native seed mix.

11. The project will be visible from nearby farms and pedestrian trails. No space is available for vegetative screening. The building will be painted a natural color to blend with the surroundings.

12. By placing the structures adjacent to an existing dike, impacts on nearby wetlands and sensitive areas are largely avoided. The wet well and pump house will be within the buffer of a Category II wetland located across the dike within the river delta, but the negative impact on wetland functions and values will be negligible. The only direct wetland impact will be the roughly 20 by 40 feet needed for installation of the outfall and dissipation pad.

13. The project location is already accessible by vehicle using the existing road on top of the dike. A small graveled area will be established for parking vehicles as necessary for maintenance of the pumps. There will be negligible traffic impact.

14. The project is located within an area used for public recreation. The dike system will continue to be available to the public. No long-term interference with public access to the shoreline area will occur.

15. A Shoreline Substantial Development Permit is required for the project as a whole. A Shoreline Variance is needed because the project does not meet the setback of 150 feet for utilities within the Rural shoreline environment. A Shoreline Conditional Use Permit is needed for the above ground portion of the power lines.

16. An Administrative Special Use Permit is required here because the proposed facility is a minor utility within an OSRSI zone. The administrative approval is being handled separately.

17. An environmental checklist was prepared for this proposal and review was conducted pursuant to the State Environmental Policy Act (SEPA). WDFW issued a Determination of Non-Significance (DNS) on January 25, 2013. The DNS was not appealed.

18. A wetland delineation was submitted on April 16, 2013. A Biological Evaluation was completed on September 30, 2013. That latter concluded that the project is not likely to adversely affect any listed species.

19. The Staff Report analyzes this project in light of the requirements of the local Shoreline Master Program (SMP), including the criteria for substantial development, variance and conditional use permits. It concludes that the proposal, as conditioned, will be consistent with the applicable approval criteria. The Staff also analyzed the proposal against the Critical Areas variance requirements and concluded that the project, as conditioned, will meet those criteria. The Hearing Examiner concurs in the Staff's analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

20. Looking at the entire record, the Examiner is persuaded that the project has been designed to have the least impact possible on nearby critical areas. The project is, in fact, the continuation of a larger estuarine wetland restoration. Because the direct impacts of the project are minimal, no additional mitigation is needed.

21. The project was given proper notice, as was the public hearing. There was no public correspondence on the proposal.

22. One member of the public, Art Kendall, testified at the hearing on behalf of the Washington Waterfowl Association. He asserted that the locale selected for the pumps is not the best site because of aesthetic and environmental impacts. He argued that the discharged water could present water quality problems that would negate the value of the restored estuary for juvenile salmonids. He suggested increasing the capacity of a presently existing pump which discharges into the Skagit through a defined channel.

23. WDFW responded that the project would pump water to the same estuary as the alternative suggested, and that salmon exist in the whole estuary. The proposal adopted was selected after an evaluation of alternative sites. In WDFW's view, pumping at the proposed site will improve the opportunities for salmon refuge in the estuary. Dilution should take care of water quality concerns.

24. Under the review system in place, the optimum time for evaluating different sites is at the environmental review stage, when alternatives must be considered. There was no appeal of the DNS in this case. Given that, the review has shifted to whether the site selected meets relevant permit criteria. The Examiner was persuaded by the project proponents that the proposal at hand meets the standards for approval.

25. It was suggested that any approval in this case be made provisional pending obtaining other required permits. A condition of approval is that the applicant must obtain all required permits. The project cannot lawfully proceed while some are pending.

26. 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. SMP 90.06, 10.02, 11.02.

2. The requirements of SEPA have been met.

3. The project, as conditioned, meets the Critical Areas Ordinance Variance criteria. SCC 14.24.140(3).

4. The project, as conditioned, meets the Substantial Development Permit approval criteria. SMP 9.02.

5. The project, as conditioned, meets the Shoreline Variance criteria. SMP 10.03.
6. The project, as conditioned, meets the Shoreline Conditional Use criteria, SMM 11.03.
7. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain all other required approvals and shall abide by the conditions of same.
3. The applicant shall comply with all applicable state and local regulations.
4. The applicant shall submit a copy of this decision with any other permit applications.
5. If any modification of the project is contemplated, the applicant shall request a permit revision from PDS prior to the start of construction.
6. The shorelines approvals shall not be valid unless the project is commenced with two years of the final shoreline permit approval and completed within five years thereof.
7. The critical areas variance shall expire if the activity for which it is granted is not commenced within three years of final approval.
8. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit, Variance and Conditional Use Permit (PL13-0050) and the request Critical Areas Variance (PL13-0440) are approved, subject to the conditions set forth above.

DONE, this 30th day of April, 2014.



Wick Dufford, Hearing Examiner

Transmitted to Applicant and parties April 30, 2014.

See Notice of Decision, Page 1, for appeal information