

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** Washington State Department of Fish and Wildlife  
c/o Larry Peck  
600 Capitol Way North  
Olympia, WA 98501-1091
- Request:** Shoreline Substantial Development/Variance Permit  
PL 18-0045
- Location:** 6595 North Green Road, within SE1/4 Sec. 6, T35N,  
R4E, W.M.
- Shoreline Designation:** Rural
- Summary of Proposal:** Replace hatchery intake, fish ladder and weir at the Samish River location of the Samish River Hatchery. The project includes construction of a small mechanical building.
- SEPA Compliance:** Determination of Non-Significance (DNS) issued by WDFW. October 4, 2017.
- Public Hearing:** January 23, 2019. Testimony by Planning and Development Services (PDS) staff and applicant. Question re: downstream effect by Public Works director. Applicant stated little downstream effect likely.
- Decision/Date:** The application is approved, subject to conditions. February 11, 2019
- Reconsideration/Appeal:** Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to the County Commissioners by filing with PDS within 5 days of decision or decision on reconsideration if applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. The Washington State Department of Fish and Wildlife seeks approval for renovations at the Samish Hatchery.

2. Hatchery operations are conducted at two locations, one on Friday Creek and the other on the Samish River. The hatchery is a major contributor of Fall Chinook for Puget Sound, producing between 20,000 and 30,000 adult fish annually.

3. At the Friday Creek site fish are sorted, eggs are collected and hatched and fry are reared. The Friday Creek site has been in continuous use by the State for rearing and releasing salmon since 1914.

4. The brood stock collection and acclimation pond, weir and fish ladder are located on the Samish River and were constructed in 1943. A ½ acre pond was created to increase the hatchery's rearing capacity and improve brood stock collection to maximize egg take potential. The facility is equipped with a pump house, spawning shed, fish sorter and a fish return tube.

5. The instant proposal is to replace features of the Samish River site. The location is at 6969 North Green Road, north of the city of Burlington. The Parcel numbers are P35897, P35879, P35851, P35815, and P35792. The property is within the SE1/4 Sec. 6, T35N, R4E, W.M. The zoning is Rural Reserve. The shoreline designation is Rural.

6. Much of the hatchery's in-river infrastructure was constructed over 60 year ago. The existing fixed weir requires constant onsite monitoring and necessitates significant annual instream dredging.

7. The project seeks to correct deficiencies, to improve facility efficiency and to restore critical natural stream function characteristics through the following:

- (a) Renovation of the water intake screening structure and screens;
- (b) Renovation of the fish ladder;
- (c) Renovation of the river fish weir, introducing automated control of water levels.

8. The renovations will meet WDFW and NOAA (National Oceanic and Atmospheric Administration) criteria for safe passage of fish. The automated controls of water levels for water intake and fish ladder operations will allow for natural dispersion of sediment, gravel and woody debris upstream and downstream of the hatchery.

9. The fish ladder will be replaced to provide vertical steps that do not exceed a six inch rise. The current ladder consists of 12 inch steps.

10. The existing fixed weir will be replaced with four 20-foot wide Obermeyer gates automated to improve water delivery to the fish ladder and hatchery intake. The gates will form

an adjustable, bottom-hinged, pneumatically actuated weir. During high flows the gates will be down and fish will navigate the river. At these times stream functions will be restored through the passage downstream of woody debris, stream sediment and gravel.

11. The adjustable weir will be in a lowered free-flowing condition most of the time. Annually it will be raised for about 90 days between August 1 and November 1 to capture upstream migrating anadromous fish. If earlier floods occur in October before seasonal hatchery operations are complete, the weir crest will be adjusted selectively.

12. The project also includes installation of streambank protection measures and channel restoration actions to improve rearing and holding habitat. A dredging component will involve river channel regrading and placement of flow control structures to keep the thalweg toward the right bank of the channel. The project will involve 6840 cubic yards of excavation and 3270 cubic yards of fill. Upland area currently vegetated with non-native plants will be restored with native vegetation.

13. Surrounding land use consists of agricultural fields adjacent to the property and in the general vicinity. A gravel pit is located across the river to the south. Residential properties and a campground are located to the north. The project is not expected to change existing aesthetics or to adversely influence neighboring uses.

14. An approximately 300-square-foot mechanical building will be constructed about 50 feet from the Ordinary High Water Mark (OHWM) of the river. This building will house the compressor needed for operating the Obermeyer gates and the air burst system which cleans the screens. If this building were located farther from the OHWM, a larger pump would be needed, causing strain to the piping system. The location of the building will have no adverse effects on adjacent properties or the existing shoreline environment.

15. The development schedule calls for work to commence this summer and conclude at the end of September 2020.

16. In addition to the permits sought here, the project will require building permits, a floodplain development permit, Section 404 US Army Corps of Engineers permit, Hydraulic Project Approval from WDFW and Section 401 Water Quality Certification from the Washington State Department of Ecology

17. Technical studies for this project include a Biological Assessment, a Critical Areas Report, a Geotechnical Report and a No-Rise Analysis.

18. The No-Rise Analysis demonstrated that the project will not increase the regulatory base flood water surface elevation. The Critical Areas Report showed that the combination of permit requirements and proposed mitigation measures will ensure no significant impact to critical areas function and values. Overall environmental review resulted in the issuance on October 4, 2017 of a Determination of Non-Significance (DNS) by WDFW under the State Environmental Policy Act (SEPA).

19. A cultural resources assessment was performed and no archeological resources were found. In the event such materials are encountered during the project, work is to be halted until the materials can be assessed.

20. The County Staff analyzed the project under the local Shoreline Master Program. They found that, as conditioned, the proposal will be consistent with the applicable shoreline policies and regulations for aquaculture and for dredging. The Staff likewise found that the mechanical building cannot be located at or beyond the 75-foot setback from the OHWM and still meet the needs of the hatchery. Setting the building back 50 feet is the minimum necessary to afford relief. The Hearing Examiner concurs with these findings and adopts the same. The Staff Report is, by this reference, incorporated herein as though fully set forth.

21. Public notice of the project and the hearing were given as required by law. No public comments were received. At the hearing the Public Works Director asked about the impacts of the project on downstream flows. The applicant said little effect on downstream flows is likely.

21. The changes contemplated by this application are in the public interest and can be accomplished without appreciable threat to the public health, safety and welfare or to the shoreline environment.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 9.07, SMP 10.02(3).
2. The requirements of the State Environmental Policy Act (SEPA) have been met.
3. As conditioned the proposed Shoreline Substantial Development and Variance Permit meets the relevant approval criteria. SMP 9,02, SMP 10.03(1).
4. 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. All required permits shall be obtained and their conditions shall be adhered to.
3. The applicant shall carry out the recommendations of the various technical studies performed.
4. To prevent erosion and sedimentation, the project must use best management practices (BMP's) to the extent practical. The BMP's must be updated as site conditions warrant to

prevent sediment from leaving the site and entering the waterway. All BMPs must be monitored between construction phases.

5. All areas disturbed during construction shall be restored with native vegetation.

6. The applicant (and its contractors) shall comply with all applicable State and local regulations, including but not limited to, Chapter 14.32 SCC (stormwater management), Chapters 173-200 WAC and 173-201A WAC (water quality), Chapter 173-60 WAC (noise).

7. The project shall be commenced within two years of final shoreline approval and completed within five years thereof.

8. The applicant shall submit a copy of this decision with any building permit application.

9. If the applicant proposes any modification to this proposal, it shall notify Planning and Development Services prior to the start of construction.

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

### **DECISION**

The application for a Shoreline Substantial Development and Variance Permit (PL18-0045) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 11<sup>th</sup>, day of February, 2019.



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Wick Dufford, Hearing Examiner

Transmitted to applicant and staff, February 11, 2019.