

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Edison Fields, LLC
c/o Greg Hinton, Co-owner
1950 Discovery Heights Drive
Bellingham, WA 98226

Contact: C.K. Eidem, Biologist
Ducks Unlimited
17700 SE Mill Plain Blvd.
Vancouver, WA 98683

Request: Special Use Permit, PL21-0134

Location: 6415 Farm to Market Road, within a portion of Sec. 4, T35N, R3E,
W.M. Parcel No: P33793.

Zoning: Agricultural Natural Resource Lands (AG-NRL)

Summary of Proposal: A “farm enhancement” project on 156+ acres of land involving (1) excavation of three swales, (2) excavation of five shallow depressions, and (3) installation of three new water control berms each with agri-drains and about 40 linear feet of 24-inch diameter pipe. The purpose is to control the depth and timing of water in the fields for both agricultural purposes and wildlife habitat.

Public Hearing: July 28, 2021. Testimony by Planning and Development Services (PDS) and Applicant’s representative. One member of the general public and a representative of the Skagit Conservation District testified.

Decision/Date: The application is approved, subject to conditions.
August 17, 2021

Reconsideration/Appeal: Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision, or decision on reconsideration if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Edison Fields, LLC seeks a Special Use Permit for a farm enhancement project to improve water management capabilities on 156 acres of land near Bow.
2. The site is located at 6415 Farm to Market Road, within a portion of Sec. 4, T35N, R3E, W.M. The parcel number is P33793.
3. The site is flat, consisting of agricultural land that is actively farmed. The zoning is Agricultural Natural Resource Land (Ag-NRL).
4. A conservation easement for the property was approved in 2020. The easement, under SCC 14.16.860, places a permanent restriction on the property in the form of an agricultural preservation agreement.
5. The project is, in part, a habitat enhancement and restoration project, requiring a Hearing Examiner Special Use Permit.
6. Much of the property currently floods in winter. The project will improve drainage with the creation of new farmable swales and depressional areas and with the installation of new structures in existing ditches to control water levels. Each of these structures will each consist of a berm, a foundation of gravel and rock, an inline water control structure (agri-drain) and about 40 linear feet of 24-inch diameter pipe.
7. The result will be an expanded drainage network used seasonally to control the depth and timing of water in the fields for both agricultural purposes and wetland ecosystem services. The latter include groundwater recharge, wildlife habitat, and nutrient cycling. The project will not change land use, reduce tillable acreage nor alter cropping patterns.
8. The application was filed on March 12, 2021 and deemed complete on April 8, 2021. Notice of the application was published in a newspaper of general circulation, posted on the subject property and mailed to property owners within 300 feet of the property.
9. A Mitigated Determination of Non-Significance (MDNS) was issued on June 3, 2021. The MDNS was not appealed. Its conditions are as follows:
 - 1) Temporary erosion/sedimentation control measures, as approved by Skagit County Planning and Development Services, shall be in place prior to the placement of any fill material. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Stormwater Management Ordinance. Said measures shall remain in place until the completion of the project.
 - 2) No track out dirt is permitted. For the duration of construction activities, the applicant sweep track out dirt and debris from county roadways/right of ways adjacent to the subject property.
 - 3) The applicant shall comply with Northwest Clean Air Agency (NWCAA)

requirements.

4) The applicant shall comply with the provisions of Chapter 14.32 of the Skagit County Code, the Skagit County Stormwater Management Ordinance, as it relates to increased runoff resulting from additional impervious surfaces. Best Management practices shall be utilized throughout the life of the project.

5) The applicant shall comply with all Fire Code Standards.

6) An engineered soil compaction report shall be required for all structures placed on fill material.

7) The applicant shall comply with all relevant provisions of 14.24 of the Skagit County Code (Skagit County Critical Areas Ordinance).

8) The proposal and site development, shall comply with all applicable requirements of SCC 14.16 and specifically SCC 14.16.400 and 14.16.400(4).

9) This project may be subject to one of Ecology's National Pollutant Discharge Elimination System (NPDES) permits. A Construction Stormwater General or Industrial Permit may be required by the Department of Ecology (WSDOE) for this project. Contact WSDOE Bellingham Field Office at (360) 715-5200.

10. Critical areas review will be determined via jurisdictional substitution. The project is currently under review by the U.S. Army Corps of Engineers, Washington Department of Ecology and Washington Department of Fish and Wildlife.

11. The application was routed to various County offices. Their responses are reflected in conditions of approval.

12. Two letters and one citizen's public testimony opposed the issuance of the Special Use Permit. The project, it was argued, would alter natural drainage, promote salt water intrusion and ultimately reduce farmland. The assertion was also made that more waterfowl in the area could damage crops.

13. The applicant responded that the project has been professionally designed to allow the continuation of farming without converting the property to wetlands. The applicant maintained that the result will be better drainage management and, on the issue of salt water intrusion, said the following:

Saltwater intrusion is not currently known in the fields or existing ditches and this work should not exacerbate potential saltwater intrusion, primarily because grading will not be lower than the existing farm ditches. To reach salty ground water, we would need to intercept it by digging lower than the existing ditches. Moreover, we believe this work will inhibit saltwater intrusion by charging the upper portion of the soil with ponded freshwater keeping denser salty ground water lower in the soil profile and away from the surface.

14. Skagit County Drainage and Irrigation District #16 noted that the applicant modified the design in response to District concerns. However, the District asked that the applicant be required to coordinate the operation of drainage control structures with the Drainage District to prevent downstream impacts.

15. The Skagit Conservation District wrote in support of the project, pointing out that the project seeks to enhance drainage in the interest of agricultural viability. They noted that the swales and water control structures can be managed to trap and settle sediments that would otherwise be flushed into drainage ditches and then into Samish Bay where it could negatively affect commercial shellfish farms.

16. The Western Washington Agricultural Association stated that the project appears to meet the test of non-interference with adjacent agricultural operations, but noted a need for post-project monitoring by the County.

17. The Staff reviewed the project against the criteria for Special Use Permit approval and determined that, as conditioned, the project would be consistent with the criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is, by this reference, incorporated herein as though fully set forth.

18. The Examiner finds that the preponderance of evidence supports a conclusion that the project will improve water management at the site for both farming and habitat enhancement.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over these proceedings. SCC 14.16.900(1)(b).
2. The requirements of SEPA have been met.
3. The proposal, as conditioned, meets the approval criteria for a Special Use Permit. SCC 14.16.900(1)(b)(v).
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

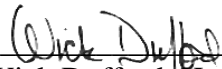
1. The proposal shall be carried out as described by the application materials, except as the same may be modified by these conditions.
2. The applicant shall comply with all conditions of the Mitigated Determination of Non-Significance, issued on June 3, 2021. (See Finding 9 above.)
3. A grading permit shall be secured prior to work.

4. Construction shall comply with Chapter 14.32 SCC (Stormwater Management). An engineering analysis and drainage plan, prepared by an engineer licensed in the State of Washington will be required.
5. A floodplain development permit is required.
6. Prior to grading permit approval, the applicant shall provide documentation of project approval from one of the agencies with control under jurisdictional substitution.
7. The applicant shall obtain all other required permits and approvals and abide by the conditions of same.
8. If construction equipment is accessing the property off of Farm to Market Road, the applicant shall install a construction entrance 50 feet long.
9. Prior to grading permit application, the applicant shall pay reimburse the County for the cost of mailings and newspaper publications.
10. If any artifacts or human remains are found upon excavation, Planning and Development Service, the Samish Tribe and the Washington Department of Archaeology and Historic Preservation shall immediately be notified and work in the immediate area shall cease.
11. Noise levels shall not exceed those standards established by State and County regulations.
12. The applicant shall comply with all other applicable State and County Regulations, including but not limited to Chapters 173-200 and 173-201A WAC (Ground and Surface Water),
13. Best management practices shall be implemented during grading, excavation and all construction activities.
14. Development and implementation shall be carried out in coordination with Skagit County Drainage and Irrigation #16.
15. This permit shall be void if the use approved has not been established or a grading permit obtained within two years of approval.
16. Failure to comply with any permit condition may result in permit revocation. SCC 14.16.900(1)(b)(iii).

ORDER

The requested Special Use Permit (PL21-0134) is approved, subject to the conditions set forth above.

SO ORDERED, this 17th, day of August, 2021.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County Staff and Interested Parties August 17, 2021.