

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Phyllis Woolworth
2857 Congress Road
Pebble Beach, CA 93953

File No: PL04-0935

Request: Shoreline Substantial Development Permit

Location: 4217 Forest Lane on Guemes Island bordering the shore of Padilla Bay, within a portion of Sec. 6, T36N, R1E, W.M.

Shoreline Designation: Rural

Summary of Proposal: To place approximately 2,800 cubic yards of fill to create a new grade level for the construction of a single family residence, garage and parking area.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on July 27, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Phyllis Woolworth (applicant) seeks to install fill material to raise the grade level of the site of a proposed single family residence, garage and parking area on her shoreline lot on Guemes Island.
2. The property is Parcel #108026, located on the north end of the island, just north of Guemes Resort, adjacent to the waters of Padilla Bay. The address is 4217 Forest Lane. The parcel is within a portion of Sec. 6, T36N, R1E, W.M.
3. The property is about five acres in size. There are about 200 feet of shoreline. The parcel is approximately 1000 feet deep. The inland (western) portion is over 100 feet above sea level. The area of the proposed fill is 4 to 6 feet above sea level. The bluff starts to rise at approximately 175 feet west of the Ordinary High Water Mark (OHWM).
4. The parcel is in an area designated as a Rural environment by the Skagit County Shoreline Master Program (SMP). It is also located in an A7 FEMA floodplain designation. Because of this designation, the elevation of the base of the new residence must be 10 feet above mean sea level.
5. The proposal is to place 2,800 cubic yards of fill over a 15,000 square foot area inland of the OHWM. The fill will be an average of five feet in depth. Placement of the fill will permit the base of the planned structures to be over 10 feet above mean sea level. The fill will be gently sloped down to existing grade along the edges, creating the appearance of a naturally elevated area.
6. The applicant wishes to build the house on grade for handicapped access. Elevating the house above grade with steps up to the house would not meet this accessibility requirement.
7. Analysis by the County concludes that the proposed fill will not disturb natural drainage on the lot. The fill is to be placed uniformly on the highest portions of the shore, preserving the existing runoff pattern. The area directly adjacent to the property to the north will be left undisturbed to allow runoff to go to the beach as it has historically.
8. A Fish and Wildlife Site Assessment and Wetland Delineation was prepared by Rupert P. Schmitt, Biologist, in May of 2002. An addendum to this report was submitted on April 8, 2005 addressing the issue of the fill and providing a planting plan.
9. The investigation determined that a Category II Wetland and a Type 4 stream are located in the north portion of the parcel. The wetland is behind the top of the bluff. The stream disappears into the gravel and soil on the bluff. An exempt wetland was identified and delineated at the toe of the existing slope on the property.

10. The area of the project is within 200 feet of the OHWM and therefore within a Fish and Wildlife Habitat Conservation area. The area disturbed by the fill consists of sand and gravel and is vegetated with a variety of herbaceous plants and scattered shrubs. The fill to be used will primarily come from soils that were excavated to install the existing driveway. These soils are not clay based. The fill and areas immediately adjacent to the residence and access road will be replanted after construction.

11. The project will be set back more than 50 feet from the OHWM. It will not have an adverse effect on the Fish and Wildlife Habitat Conservation Area. The wetlands and stream will be preserved and the fill will have no effect on them. Critical areas and buffers are protected through a recorded Protected Critical Area (PCA).

12. The Department of Public Works has requested that the applicant provide civil plans showing before and after contours and cross sections. The civil plans should address stormwater issues. A stormwater drainage plan prepared by a civil engineer has been already been submitted.

13. A septic permit (SW03-0531) has been issued for the project. The drainfield is located at higher elevation up the hill. Health officials had no concerns about the subject proposal.

14. Construction of the proposed structures will need to comply with standards enforced by the Building Department. The requirements for the foundation will depend on analysis conducted by the Building Official.

15. Flood capacity, flow and direction will not be adversely affected by the proposal.

16. On May 15, 2005, a Mitigated Determination of Non-Significance (MDNS) was issued under the State Environmental Policy Act (SEPA). The MDNS was not appealed.

17. Three public comment letters were received. They expressed concerns about disrupting the drainage pattern and the type of fill to be used. Public testimony echoed these concerns. The project design effectively addresses these matters. One commenter was worried about impacts to blue herons, but no known blue heron nesting sites will be affected.

18. 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 and the persons of the proceeding.

2. The requirements of SEPA have been met.
3. The proposed fill exceeds the exempt amount and constitutes a substantial development under the Shoreline Management Act. See WAC 173-27-040(2)(g).
4. Under SMP 9.02, a Substantial Development Permit shall be granted only when the proposed development is consistent with the policies and regulations of the Shoreline Management Act and of the local shoreline master program.
5. In the instant case, the policies and state regulations of the Act are adequately carried out by the provisions of the SMP.
6. Under SMP 7.06(2)(A)(3), landfills are permitted in Rural shoreline environments subject to general regulations.
7. The general regulations forbid landfills below the OHWM, and where flood capacity would be adversely affected. Landfills containing polluting materials are prohibited. Erosion control for the affected area is required. SMP 7.06(2)(B). The project, as conditioned, will not violate the regulations.
8. The SMP policies for landfills (SMP 7.06(1)) state that landfills should not:
 - a. Adversely alter natural drainage patterns, currents, river and tidal flows.
 - b. Interfere with or adversely affect floodwater flows and capacities.
 - c. Create conditions that would endanger public health and safety.

Under the facts, the proposal, as conditioned, will be consistent with these policies.

9. The proposal meets the criteria for approval of a Shoreline Substantial Development Permit if the conditions set forth below are imposed.
10. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project as carried out shall be generally consistent with the project information provided with the application.
2. The applicant shall obtain all other necessary approvals and abide by the conditions thereof. This includes a Fill and Grade Permit, as well as Building Permits for the structures.

3. The applicant shall adhere to all of the conditions of the Mitigated Determination of Non-Significance (MDNS), dated May 12, 2005. These include a requirement to use all temporary erosion/sedimentation control measures and best management practices as necessary to prevent runoff sediments and construction debris from affecting adjacent properties during all phases of construction in accordance with Chapter 14.32 SCC (Drainage Ordinance).

4. The project shall be carried out consistent with the recommendations of the Fish and Wildlife Site Assessment and Wetland Delineation, as amended April 8, 2005. The planting plan shall be implemented and Planning and Development Services shall be contacted to provide an on-site inspection in the third growing season after the date of final approval of the project. The planting plan shall be recorded with the County Auditor prior to the issuance of a Building Permit.

5. The Fill and Grade Permit shall include engineered civil plans that address control of stormwater, erosion, and sedimentation in accordance with Chapter 14.32 SCC (Drainage Ordinance).

6. Building Permits for the residence and garage shall comply with all applicable building codes and regulations.

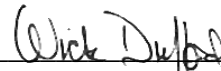
7. Any significant alteration of the project shall be submitted to Planning and Development Services for review and approval.

8. The project must be started within two years of the date of final approval and finished within five years thereof, or the permit shall become void.

9. Failure to comply with any condition of the permit may result in its revocation.

DECISION

The requested Shoreline Substantial Development Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: September 2, 2005

Date Transmitted to Applicant: September 2, 2005

RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.