

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Washington Department of Fish and Wildlife
c/o Marty Peoples, Engineering Division
600 Capitol Way North
Olympia, WA 98501

File Nos PL05-0134 (shorelines development)
PL05-0287 (special use)
PL06-1086 (shorelines variance)

Requests: (1) Shorelines Substantial Development Permit
(2) Special Use Permit
(3) Shorelines Variances

Location: Big Lake Boat Launch Access Area on West
Big Lake Boulevard, within a portion of Sec. 1,
T33N, R4E, W.M.

Land Use Designations: Shorelines: Rural Residential
Zoning: Rural Village Residential

Summary of Proposal: To improve the existing Department of Fish
and Wildlife public boat launch facility on the
west shore of Big Lake. Improvements include:
replacing existing boat ramp with a 12' by 64'
concrete mat boat ramp and relocating it onto
State property; constructing an 8' by 40' floating
dock adjacent to the boat ramp; paving about
5,000 square feet for parking areas and pathways
to improve wheelchair access; installing an ADA
accessible vault toilet adjacent to an ADA parking
pad; installing a catch basin, strip drain and bio-
filtration swale to filter runoff from impervious
surfaces; and planting riparian vegetation.

Public Hearing: After reviewing the report of Planning and
Development Services, the Hearing Examiner
conducted a public hearing on March 28, 2007.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. The Washington State Department of Fish and Wildlife (WDFW) proposes to install improvements to the public boat launch facility on the west shore of Big Lake.

2. The site is located on West Big Lake Boulevard, within a portion of Sec. 1, T33N, R4E, W.M. It is approximately two miles south of the northerly intersection of Big Lake Boulevard and State Route 9. The property is within areas zoned as Rural Village Residential. The portion within the shoreline jurisdiction is designated Rural Residential.

3. Skagit County and WDFW own adjacent parcels in the launch area. Historically both parcels have been managed by WDFW, through a lease arrangement with the County. The WDFW parcel is currently a gravel parking lot with an informal gravel launch ramp in the northeast corner. Next to this, on County land, is an existing, 12' by 24' concrete launch that is breaking apart and partially buried under a layer of gravel. Vault toilets associated with the launch facility are located across Big Lake Boulevard, requiring users to cross the street. The existing vault toilets are not in compliance with the ADA.

4. The site is bordered on the east by Big Lake. The County property is to the north and the WDFW property is to the south. Most of the total site is free of vegetation. To the north, south and west are rural single-family lots.

5. With the recent expiration of their lease with the County, WDFW is relocating the launch to its property and engaging in an overall upgrade of the facilities. All activities involved in the application are on the WDFW property. The proposal includes: (a) installing a new 12' by 64' boat ramp; (b) next to the new ramp, installing an 8' by 40' floating dock connected to the shore by a 40' gangway; (c) shoreward of the new ramp, paving approximately 5,000 square feet of upland; (d) at the back of the paved area, constructing an ADA accessible vault toilet; (e) along the shore south of the ramp and float, installing a catch basin, strip drain and bio-filtration swale to filter runoff from impervious surfaces. (f) in and along the swale, planting native vegetation.

6. Around the south edge and toe of the new ramp, approximately 635 square feet of Flex Mat will be installed to protect the ramp structure and prevent premature degradation. About 380 square feet of the new ramp will be above the Ordinary High Water Mark (OHWM).

7. The floats for the new dock will be encased in Styrofoam and will be watertight to prevent water logging. The dock will have wooden decking.

8. The new wheel-chair accessible vault toilet will occupy about 40 square feet.

The old vault toilets across the street (and their surrounding chain link fence) will be taken out. The gravel parking in space behind the new toilet will be retained.

9. The design will place the wheel-chair accessible toilet on paving, convenient to the new ramp and dock, and near two paved ADA approved parking areas – one large enough to accommodate a trailer.

10. The plantings in and around the bioswale will be of native species selected for tolerance of fluctuating water levels and dry summer conditions. Planting density will be based on accepted standards for mitigation projects. Monitoring of the plantings will be conducted for five years, with the ultimate goal of 80% survival.

11. The work sequence for the improvements will commence on the receipt of the required permits. In-water work will occur during a 45-day period, July 1 through August 15. Most upland work will occur after August 15 to minimize impacts on bald eagles. Pre-cast concrete slabs will be used to avoid pouring or curing concrete below ordinary high water. Erosion control and water quality Best Management Practices will be used to minimize turbid runoff.

12. WDFW produced a Fish and Wildlife Site Assessment, dated December 5, 2006. The Assessment determined that the project will have no new impacts, other than minimal temporary turbidity contained within a silt curtain during construction. They concluded that the design will: (1) avoid impacts to wetlands and vegetated area; (2) minimize impacts by reducing the boat-launch facility footprint; (3) mitigate, by restoring native vegetation in the existing launch area.

13. WDFW is convinced that the improved launching facilities will not result in an increase in the volume of users and in more traffic. Their experience has been that the installation of such facilities does not increase the user base.

14. The project was reviewed by the County's Critical Areas staff and approved, with the proviso that if the proposed improvements adversely affect critical areas or buffers, those areas shall be restored or mitigated to their pre-construction function and value.

15. The Health Department noted that the new vault toilet will require a septic permit and that state water quality standards will need to be met.

16. A letter from Skagit County Parks and Recreation, dated January 18, 2007, essentially endorsed the project. They pointed that the needs of some user groups are not now being met, noting in particular the users of rowing sculls. They asked that the local rowing club be consulted so that the facilities might be built to accommodate them.

17. As lead agency, WDFW conducted environmental review pursuant to the State Environmental Policy Act (SEPA) and issued a Determination of Non-Significance (DNS) on January 12, 2005. The DNS was not appealed.

18. One citizen's letter was received from George and Carole Bosler. They are the owners of property to the south of the site. George Bosler also testified at the hearing. The Boslers are concerned about the management and supervision of the site. They said they have been subjected to:

loud music well into the night, parties, profanity, nudity and the spectacle of various individuals using the Boat Launch as a public dressing room and toilet.

They said that, according to posted regulations, the Boat Launch is supposed to close at 10:00 p.m., but that the regulations have never been enforced. They also expressed concerns about speed and noise from jet skis and disregard of the no wake zone. They fear that it is just a matter of time before someone is hurt while swimming or boating.

19. Mike and Carolyn Bennett, owners the property adjacent to the County's land on the north, expressed concerns at the hearing similar to those raised by the Boslers. In addition, they asked for some maintenance of the County's overgrown easement next to their lot, to clean the area up. Both the Bennetts and the Boslers complained of lack of litter control.

20. The Bennetts and Boslers are largely concerned with matters not directly connected with the physical improvements WDFW wishes to make. However, they do not agree with the prediction that no increase in use and traffic will occur. They would like to see improved enforcement of existing rules on hours and boating behavior, as well as greater control of noise, alcohol and nudity.

21. Mrs. Bennett said that the existing deteriorated boat ramp on County property is not safe and that she believes it should be closed. The record discloses no County plans to remove that ramp or to close it.

22. Both WDFW and the County have responsibilities for law enforcement at this site. A WDFW spokesman noted that their Department does require an access sticker for use of the facilities and that an effort could be made to get their agents out there more often to police the site.

23. Fencing the launch area was proposed as a means for controlling access and discouraging trespass on neighboring properties. WDFW asserted that it is impractical for them to engage in daily opening and closing of a gate. It was further noted that parking and access are shared between the County and State properties and that there is no commitment on the part of the County to undertake fencing.

24. The applicant is seeking a Shoreline Substantial Development to undertake the proposed construction on the site. They are also asking for three separate Shoreline Variances – one to increase the impervious area of the site in order to achieve ADA compliance; a second to reduce the sideyard setback to accommodate the new boat launch ramp and paved area; the third to reduce the shore setback for the vault toilet.

25. In the Rural Residential environment, the SMP allows 60% site coverage surface for boat launch ramp facilities, imposes a side yard setback of 30 feet, and establishes a shore setback of 100 feet. SMP 7.07(2) (C) (Table M). The proposed project would result in 80% site coverage, a side yard setback of 10 feet, and a shore setback for the vault toilet of 75 feet.

26. Concurrently, the applicant is seeking a Special Use Permit to permit the proposed boat launch facility improvements in the Rural Village Residential zone.

27. Shoreline Substantial Development Permits may be issued when the proposal is consistent with the policies and rules of the Shoreline Management Act and with the provisions of the local Shoreline Master Program (SMP). SMP 9.02.

28. The Shoreline Variances applied for here are for development above the OHWM. Variances from the SMP for construction landward of the OHWM must meet the criteria set forth at SMP 10.03(1), as follows:

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for for example, from deed restrictions or the applicant’s own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.
- d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

29. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

30. The Staff Report analyzes the proposal in light of the criteria for Substantial Development Permit approval, Shoreline Variance approval and Special Use Permit approval. The Report concludes that, as conditioned, the proposal is consistent with all these 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.

31. Promotion of public access to shorelines is one of the major policies of the Shoreline Management Act. The proposed development clearly serves this policy. The in-water portions of the project are fully justified because they support water dependent uses. The proposed facilities will not be environmentally harmful and will involve a minimum of shoreline alteration. The bioswale and associated features are likely to help, not diminish, water quality. Moreover, providing improved water access to handicapped persons is in the public interest.

32. In theory, the proposal is compatible with other permitted uses in the area. Waterfront residential recreation and public boating are aspects of the same thing. The problem at this site with the behavior of the public is an existing problem and not one that will be created by the installation of an improved boat launch. However, this problem could be made worse, threatening to violate the compatibility requirement if there is a marked increase in unsupervised use of the new facilities. Lacking contrary evidence, the experience of WDFW that replacing facilities does not increase the user base is accepted by the Examiner. Nevertheless, an increased enforcement presence would certainly help to assure that compatibility of the permitted public use with existing neighboring residential uses is a reality in fact.

33. 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 persons and the subject matter of this proposal.

2. The requirements of SEPA have been met.

3. The project, as conditioned, meets the criteria for approval of a Shoreline Substantial Development Permit and the various Shoreline Variances applied for. SMP 9.02, 10.03(1).

4. The shoreline permits involved here are development permits. The Examiner does not understand that any of the construction contemplated will occur outside of the 200 foot shoreland zone. Therefore, he wonders if requiring a Special Use Permit for the same development is duplicative and unnecessary. Certainly a large number of shoreline developments have been authorized in this County without acquiring a separate Special Use Permit. Have all of these developments been permitted outright under the zoning code? The Examiner asks Planning and Development Services to examine its permit policy on this subject. If a Special Use Permit is really needed in this situation, the Examiner concludes that the project, as conditioned, will be consistent with the criteria of SCC 14.16.900(2)(b)(v).

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

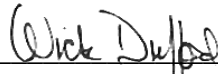
CONDITIONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain all other needed permits and approvals, including a septic permit and building permit for the new toilet, and a grading permit for the bioswale.
3. Temporary erosion/sedimentation control measures shall be used during construction in accordance with Chapter 14.32 SCC (Drainage).
4. The applicant shall comply with Northwest Clean Air Authority requirements.
5. The applicant shall comply with all relevant provisions of the Skagit County Code, including Chapter 14.24 SCC (Critical Areas) and Chapter 14.16 SCC (Zoning). If the development results in any adverse impact to critical areas or associated buffers, those areas shall be immediately repaired or mitigated to their previous function and value.
6. The applicant shall take all reasonable steps to insure that the bioswale and associated facilities are adequately maintained.
7. The applicant shall comply with all relevant State regulations, including Chapter 173-200 WAC and 173-201A WAC (surface and ground water quality).
8. The applicant shall comply with the Skagit County Shoreline Master Program, Chapter 14.26 SCC and the Shoreline Management Act, Chapter 90.58 RCW.
9. If the applicant proposes any modification of this project, a permit revision shall be requested and approved prior to the start of construction.
10. The applicant shall comply with mitigation measures recommended in the Fish and Wildlife Site Assessment, dated December 5, 2006. In particular the plantings identified, and the monitoring and maintenance of survival indicated shall be accomplished.
11. The applicant shall make every effort to provide increased surveillance and enforcement of rules and posted hours at the site.
12. The applicant shall supply a copy of this decision to the Skagit County Sheriff's Office and the Skagit County Department of Parks and Recreation.
13. The project shall be commenced within two (2) years of final approval and finished within five years thereof or the permits will become void.

14. Failure to comply with any of these conditions may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit, Shoreline Variances and Special Use Permit are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: April 11, 2007

Date Transmitted to Applicant: April 11, 2007

RECONSIDERATION/APPEAL - SHORELINES

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.

RECONSIDERATION/APPEAL - ZONING

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.