

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Seattle City Light
P. O. Box 34023
Seattle, WA 98124

North Cascades National Park
7180 Ranger State Road
Marblemount, WA 98267

File No: PL05-0748

Request: Shoreline Substantial Development Permit
and Variance

Location: Copper Creek Take Out (CCTO) facility,
south side of SR 20, immediately east of
milepost 111.5, east of Marblemount,
within a portion of SW1/4 Sec 22 and SE1/4
Sec 21, T36N, R11E, W.M.

Land Use Designation: Zone: Industrial Forest-Natural Resources Lands
Shoreline: Conservancy

Summary of Proposal: To improve a boat launch facility by creating
separate ingress and egress roads, upgrading
the existing vault toilet, adding pre-cast concrete
tread for traction in the launching and
retrieval of boats, and relocating parking further
from the river.

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

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Seattle City Light and North Cascades National Park seek a Shoreline Substantial Development and Variance Permit to authorize improvements in the Copper Creek Take Out Facility (CCTO) located within the Ross Lake National Recreation Area.

2. The CCTO is situated on the south side of Highway 20, immediately east of milepost 111.5, east of Marblemount. It lies within a portion of the SW1/4 Sec 22 and SE1/4 Sec 21, T36N, R11E, W.M. The site is zoned Industrial Forest-Natural Resource Land. The shoreline environment designation is Conservancy.

3. The CCTO provides access to the Skagit River by recreational outfitters, private citizens, and on occasion rescue organizations. While within the Ross Lake National Recreation Area, the parcel is owned by Seattle City Light. It is administered by the National Park Service.

4. Current conditions at CCTO are not adequate to satisfy demand. It is currently accessed by a narrow road, which serves as both ingress and egress. Large vehicle access is tight. Turning around is difficult. Parking is next to the water. At the water's edge is a 40-foot long gravel boat ramp. There is an existing vault toilet.

5. The proposal is to improve traffic flow by converting the lower end of the existing road to a one-way ingress to the launch ramp and, then, construct a new one-way exit road that will create a loop before rejoining the existing road. Turn-arounds will be eliminated. The new egress will be approximately 250 feet long and 12 feet wide.

6. The existing parking lot near the boat launch ramp will be moved back from the riverbank to a location along the ingress road that is greater than 150 feet from the Ordinary High Water Mark (OHWM) of the river.

7. The existing vault toilet will be replaced and upgraded to a facility that uses solar technology to minimize odor and waste.

8. The boat ramp will be improved by adding a series of pre-cast concrete planks to improve traction for launching and retrieval operations. This is being done primarily to facilitate Search and Rescue operations.

9. Funding for this project is being provided by Seattle City Light as part of recreation-related mitigation monies for continued operation of the Skagit River Hydroelectric Project.

10. Under the Shoreline Management Act (SMA), the proposed facilities meet the definition of substantial development. Construction of such facilities within the

statutory shorelands (200 feet from the OHWM) require a Shoreline Substantial Development Permit. The Conservancy shoreline designation requires a setback for developments of 150 feet from the OHWM. The first 50 feet of the proposed outbound lane will lie within this setback. Therefore both a Shoreline Substantial Development Permit and a Shoreline Variance are being sought.

11. Notice of the application was duly post and published. An outfitter submitted the only comment letter, urging that attention be paid to providing adequate parking.

12. Because of the project's proximity to the river shore, a Fish and Wildlife Habitat Conservation Area Site Assessment Report was submitted pursuant to the Critical Areas Ordinance. The report recommended a number of mitigation measures to be taken during construction, as well as management and maintenance practices. With these measures, the project is thought likely to have a minimum adverse impact on fish and wildlife habitat. The County will require that if adverse impacts are identified, the areas affected shall be immediately restored to their previous function and value following construction.

13. Review under the State Environmental Policy Act (SEPA) resulted in the issuance of a Mitigated Determination of Non-Significance (MDNS) by Skagit County on August 10, 2006. The MDNS was not appealed. It contained the following conditions:

[a] The applicant shall utilize all temporary erosion/sedimentation control measures and best management practices as necessary in order to prevent runoff sediments and construction debris from entering Skagit River during all phases of construction in accordance with the Skagit County Drainage Ordinance SCC 14.32.

[b] The applicant shall comply with Northwest Air Pollution Authority requirements.

[c] The applicant shall comply with all relevant provisions of the Skagit County Critical Areas Ordinance, title 14.24.

[d] The subject proposal shall comply with the Skagit County Shorelines Management Master Program and the Shoreline Management Act RCW 90.58.

[e] The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request a permit revision from [Planning and Development Services] prior to the start of construction.

[f] The applicant shall receive an approved Fill and Grade permit from Skagit County prior to the start of construction.

[g] The applicant shall comply with the mitigation measures recommended in the Fish and Wildlife Site Assessment dated April 4, 2006 and prepared for Seattle City Light.

[h] The applicant shall contact the Washington Department of Natural Resources to determine if a forest practice application will be required.

14. Noting that this project involves an upgrade to an existing facility, the Staff analysis of the proposal under the Shoreline Master Program (SMP) concluded that the proposed improvements are likely to have a minimum adverse impact to the shoreline environment. The applicant has submitted a mitigation plan which includes plantings that will re-establish native shoreline vegetation in the vicinity of the existing launch ramp.

15. Because the development is within a Conservancy designation, the County urged that the project not involve any expansion of recreation activities at the site. Adding picnic facilities that would increase impacts was discouraged. The resulting plan is a scaled-down proposal.

16. Variances from the Skagit County Shoreline Management Master Program for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- 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.

17. The Staff Report analyzes the application against these criteria and determines that, as conditioned, the project will be consistent with them. 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 project will advance the important SMA policy of facilitating access for the public to the shore. The CCTO is the only public boat ramp along the 15-mile stretch of the upper Skagit River between Newhalem and Marblemount. Parking and vehicle access have been a long-time problem at CCTO. Strict application of the shoreline setback would preclude construction of the first 50 feet of the outbound lane, preventing an environmentally-benign change that will significantly improve public access. The project is specifically related to unique conditions of the site that cause inadequate access to and from the launch area.

19. The CCTO is surrounded by large tracts of public land, mostly undisturbed, old-growth forest managed for purposes of conservation and recreation. The proposal will be compatible with other activities in the area and will not constitute a grant of special privilege. It will, in fact serve the public interest by improving access to the shore for public recreation and for rescue operations.

20. 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 these proceedings.

2. The requirements of SEPA have been met.

3. Under the SMP, boat launches are permitted in Conservancy environments, subject to the policies and regulations of the Shoreline Act and the Master Program. The proposal for improving the CCTO, as conditioned, is consistent with these policies and the regulations. Accordingly, the requirements for a Substantial Development Permit have been met.

4. The building of a portion of the exit road within the 150 foot shoreline setback meets the criteria for granting a Shoreline Variance.

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

CONDITIONS

1. The applicants shall construct the project as proposed in the application, except as the same may be modified by these conditions.

2. The applicants shall obtain any other permits that may be required.

3. The applicants shall comply with the conditions of the MDNS issued on August 10, 2006, including in particular the mitigation measures contained in the Fish and Wildlife Site Assessment, dated April 4, 2006.

4. The applicants shall comply with all relevant State regulations, including water quality standards in Chapter 173-201A WAC (surface waters) and Chapter 173-200 WAC (ground waters), and minimum environmental noise levels in Chapter 173-60 WAC.

5. The applicants shall comply with all relevant County regulations, including Chapter 14.24 SCC (Critical Areas Ordinance), Chapter 14.16 SCC (Zoning Ordinance), and Chapter 14.42 (Drainage Ordinance).

6. The applicants shall obtain a grading permit for the proposed road construction, prior to the start of construction.

7. Consistent with the Skagit County Shoreline Master Program, no parking area shall be allowed within 150 feet of the OHWM of the Skagit River.

8. Plantings shall be made, as needed, to re-establish native vegetation in the vicinity of the launch ramp.

9. The proposal shall comply with the Shoreline Management Act, Chapter 90.48 RCW, and the Skagit County Shoreline Master Program, Chapter 14.26 SCC.

10. If after construction, adverse shoreline impacts are identified, the applicants shall restore the affected areas to their original function and value.

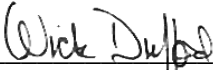
11. If the applicants propose any modification of the subject proposal, they shall request a permit revision from Planning and Development Services prior to construction.

12. The applicants shall obtain a forest practice conversion permit from Skagit County and the State Department of Natural Resources prior to construction.

13. The project must be commenced within two years and completed with five years of the effective date of the shoreline permits.

DECISION

The requested Shoreline Substantial Development Permit and Shoreline Variance are granted, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: March 19, 2007

Date Transmitted to Applicants: March 19, 2007

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.

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.