

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicants: Paul Rosasco and Winnie McNamara
9213 Marshall Road
Bow, WA 98232

File No: PL06-1140

Request: Shoreline Substantial Development Permit

Location: 9209 Marshall Road on the shore of Samish Bay. The property is located within a portion of Sec. 27, T36N, R2E, W.M.

Parcel Nos: P47280 and P747219

Shoreline Designation: Rural Residential

Summary of Proposal: To install a tram allowing direct access to the beach via a system that does not impinge upon the bank. The area has a history of geologic instability. The system would span 182 linear feet, with a 25' x 6' cable lift deck at the top and a lower terminus on tidelands secured by two deadman anchors. The anchors would be situated about 25.6 feet waterward of the Ordinary High Water Mark (OHWM).

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on August 27, 2008.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Paul Rosasco and Winnie McNamara (applicants) seek a Shoreline Substantial Development Permit to build a tram from the top of the bank to the beach on property abutting Samish Bay.

2. The location is 9209 Marshall Road, within a portion of Sec. 27, T36N, R2E, W.M. The Shoreline Designation is Rural Residential. The parcel numbers are P47280 and P47219.

3. The property is approximately 1.3 acres in size. There is an existing single family residence behind the top of the bluff overlooking Samish Bay. The bluff is approximately 114 feet above sea level. The average slope is 104% (46.1 degrees).

4. The bluff supports a moderately dense growth of conifers and scattered mixed deciduous trees and native shrubs. Drainage from the residence goes to French curtain drains that are tied to pipes running directly to the beach. The bank is geologically unstable and shows signs of several previous landslides.

5. The cable system will span 182 linear feet, the entire vertical length of the steep bank. The structure will not touch the bank at any point. The idea is to by-pass the unstable bank.

6. The cable lift deck at the upper end of the tram will be cantilevered over the edge. It will include a pair of anchored rails supporting a winch and hoisting mechanism. The waterward side of the lift deck will be supported on two 24-inch diameter concrete piles each in turn supported by six 3-inch pipe pin piles that are driven to practical refusal. The back of the lift deck will be supported by the motor box, a buried concrete structure, 7 feet wide and 3.5 feet deep.

7. Sloughing is not expected at the top of the bank. But if it is experienced, there is room at the site to move the lift deck farther back.

8. The lower end of the cable will be connected to two deadman anchors buried into the underlying till and installed by hand. The anchors will be located approximately 25.6 feet waterward of the Ordinary High Water Mark (OHWM). After installation the anchors will be tested to insure that they hold under loaded conditions.

9. The system will be built by Accumar Corporation, a company which has had success with similar structures since 1981. The system is identical to a neighboring one which has experienced no problems. The facility is a form of elevator and will have to pass initial and periodic safety inspections by the State Department of Labor and Industries.

10. The tram will be located just one foot from the sideline of the property boundary with the Claypool property. The Claypools intend to share the tram with the applicants and are committed to contributing to the costs of installation and maintenance.

11. Because of the proposal's proximity to Samish Bay, the Staff determined that it required a Fish and Wildlife Site Assessment. A Geotechnical Report was required because of the presence of unstable soils.

12. A Geotechnical Site Reconnaissance report, dated May 10, 2006, was prepared by Western Geotechnical Consultants Inc. The report identified the surface soils and located the point of refusal at a depth of 3.2 feet. The report recommended use of pins driven to the point of refusal for support of the upper platform.

13. A Fish and Wildlife Site Assessment Report and Geotechnical Report, dated April 9, 2007, was prepared by Edison Engineering. The Geotechnical Report tested soil strength at numerous locations on the bluff, noting that the surface soils consist of a very dense silt/sand mixed with gravel. Bluff erosion, it was concluded, is generally caused by wave action. Such action increases the steepness of the lower slope and removes support for soils higher up. As the lower bluff steepens, soils higher on the slope overcome their root holding capacity and slide toward the shore.

14. The Geotechnical Report said that the tram system as proposed "will be founded on soil that will remain stable for the proposed 50-year life of the structure."

15. The Fish and Wildlife Site Assessment determined that the project will likely have no significant environmental impacts. Indeed, the installation of the tram will probably result in a net gain to the Habitat Conservation Area. This will be realized because of the abandonment of the existing trail down the bluff.

16. The existing trail down to the beach has experienced problems from erosion and sliding, is difficult to maintain, and constitutes a danger to users. A condition of approval of the proposed system will be the abandonment of the trail.

17. Construction of the facility will necessitate only minimal vegetation removal.

18. In its review Planning and Development Services analyzed the proposal as shoreline dependent. Under the local Shoreline Master Program (SMP), "shoreline dependent use" is defined as "any reasonable use that requires a shoreline or water surface location because of its functional nature, including but not limited to navigation, ports, marinas, docks, piers, floats, boat fueling stations, shipyards, seafood harvest, aquaculture, recreational boating and swimming, and research and observation of natural shoreline phenomena." SMP 3.03(S)(8).

19. Various County Departments were notified and either had no comment or expressed no concerns. The Building Department noted that a building permit will not be required for the upper deck.

20. A letter of support was received from John Boyes of 4629 Samish Point Road who has already installed a tram of the same type. He said that they find their tram “to be extremely friendly to the fragile bank between our home and the beach.”

21. The Department of Ecology wrote expressing concerns about the location of the lower anchor seaward of the OHWM and about the Staff’s determination that the structure is water dependent. In subsequent correspondence the DOE indicated that its environmental and safety concerns had been resolved on further review of the facts.

22. The Skagit River Cooperative likewise expressed opposition to any structure that requires development in the intertidal zone. After consulting with the applicant, they withdrew their position to this application.

23. After environmental review, the County issued a Mitigated Determination of Non-Significance (MDNS) on August 9, 2007. The MDNS was not appealed.

24. As a shoreline dependent use, the proposed development meets the dimensional requirements of the SMP. The Staff recommends approval.

25. 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 proceeding. SMP 9.06.

2. The requirements of SEPA have been met.

3. The proposal is a “substantial development” within shorelines of the state and requires a Shoreline Substantial Development Permit. RCW 90.58.030, 90.58.140.

4. The Examiner concludes that the proposal is a “shoreline dependent use” as that term is defined by the SMP. See SMP 3.03(S)(8). Its function is to provide access to the water. It requires a shoreline location because of its functional nature.

5. The proposed tram system is an “accessory development or use” subordinate to the primary residential use of the site. See SMP 3.03(A)(1). Under the residential chapter of the SMP, “accessory facilities common to residential development shall meet the setback requirements of Table RD, EXCEPT for docks, floats, boat launch ramps, and other uses determined to be shoreline dependent.” SMP 7.13.(2)(B)(3).

6. Because it is “shoreline dependent” the proposal need not meet the setback standards the SMP and does not require a Shoreline Variance.

7. SMP 7.13(2)(B)(4)(b) prohibits accessory facilities on accreting, eroding, slumping, or geologically unstable shorelines. This proposal proposes to bypass the geologically unstable bluff and is located on what appear to be stable soils. As noted, the upper lift deck and motor box can be moved landward in the unlikely event that such action is determined to be necessary at a later date.

8. The SMP sets forth criteria for approval of Substantial Development Permits at SMP 9.02. The criteria require that the development be:

- (1) Consistent with the Master Program
- (2) Consistent with the Shoreline Act’s policies, set forth in RCW 90.58.020
- (3) Consistent with rules adopted by the Department of Ecology.

9. The subject proposal meets these criteria. It is consistent with the SMP. It follows the Shoreline Management Act policies favoring water access and recreational use of shorelines. No conflict with Department of Ecology rules has been identified.

10. The proposed tram system should be approved with conditions.

11. 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 altered by these conditions.

2. The existing trail shall be abandoned and allowed to re-vegetate. If re-vegetation does not occur, supplementary planting shall be performed.

3. The applicants shall comply with all recommendations in the Geo-Technical and Fish and Wildlife report, dated April 10, 2007, prepared by Edison Engineering.

4. The applicants shall comply with all recommendations in the Geotechnical Site Reconnaissance, dated May 10, 2006, prepared by Western Geotechnical Consultants.

5. The conditions of the MDNS issued on August 9, 2007, shall be met.

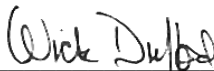
6. Best management practices shall be used to minimize sedimentation to the marine shore during and after construction.

7. Any other required permits shall be obtained.
8. The proposal shall comply with all applicable state and local regulations, including provisions of the local Shoreline Master Program.
9. The project shall be commenced within two years of final approval and shall be completed within five years thereof or the permit shall become void.
10. Failure to comply with any permit conditions may result in permit revocation.

DECISION

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

DONE this 12th day of September, 2008.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: September 12, 2008

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.