

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicant:** City of Anacortes  
Attn: G. Matt Reynolds  
P. O. Box 547  
Anacortes, WA 98221
- Request/File No:** Shoreline Substantial Development Permit for water line,  
PL09-0290
- Location:** Shoreline of Padilla Bay on March's Point within the Anacortes  
Urban Development District. The line will run along East  
March's Point Road and North Texas Road, within a portion of  
Sections 33 and 34, T35N, R2E, W.M.
- Shoreline Designation:** Rural
- Summary of Proposal:** To install about 8,600 lineal feet of new 24-inch diameter water  
line within road right of way, connecting to the water main within  
the Shell and Tesoro oil refineries.
- SEPA Compliance:** The City of Anacortes issued a Mitigated Determination of Non-  
Significance (MDNS) on September 28, 2009. The MDNS was  
not appealed.
- Public Hearing:** After reviewing the report of Planning and Development Services  
(PDS), the Hearing Examiner conducted a public hearing on April  
28, 2010. There was no public testimony.
- Decision:** The application is approved, subject to conditions.
- Appeal:** As provided in the Skagit County Shoreline Master Program,  
Section 13.01, a request for reconsideration may be filed with  
PDS 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 PDS within five (5) days  
after the date of decision or decision on reconsideration, if  
applicable.
- Online Text:** The entire decision can be viewed at:  
[www.skagitcounty.net/hearingexaminer](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. The City of Anacortes seeks to install a new 24-inch diameter ductile iron water main on March's point. Approximately 4,300 linear feet of the proposed water line will be located within 200 feet of the shore of Padilla Bay.

2. The new water main will extend north from the existing 36-inch diameter water line located at the intersection of East March's Point Road and South March's point Road. It will be laid within the right of way of East March's Point Road for approximately 4,000 linear feet to the intersection of East March's Point Road and North Texas Road. Then, the line will proceed west within the right of way of North Texas Road about 4,600 linear feet to the existing 20-inch diameter water main within the Shell and Tesoro oil refineries.

3. The proposed utility will be located within a portion of Sections 33 and 34, T35N, R2E, W.M., within the Anacortes Urban Development District. The portion within shoreline jurisdiction, near Padilla Bay, is designated Rural under the local Shoreline Master Program (SMP). The new pipeline will be incorporated into the City of Anacortes regional water supply system.

4. The applicant proposes to excavate a trench approximately six feet wide and six feet deep and to install the water line below grade. The excavation will result in the removal of approximately 11,500 cubic yards of soil. After the water line is installed, approximately 5,000 cubic yards of structural fill will be placed in the trench around the water line. Another 6,500 cubic yards of excavated soil will then be returned to the trench to fill it up. The excess of excavated material will be removed to an approved disposal site.

5. The proposed project will include the removal of the existing 36-inch concrete culvert beneath East March's Point Road which connects to the bay to the Whitmarsh salt water estuary. The culvert will be replaced with two 102-inch wide x 62-inch high concrete culverts. The effect will be to improve tidal flow into the marsh, enhancing the hydrologic connection between the estuary and the bay to the benefit of foraging and rearing habitat for anadromous fish.

6. The project site within the right of way of East March's Point Road, near the shore, is on a relatively flat terrace above the bay. Beyond the road, the terrain slopes downhill steeply to the shore on the east. The water line will be on the west side of the road and geotechnical evaluation predicts no destabilization of the bank. At the intersection of East March's Point Road and North Texas Road where the line turns west, there will be a joint designed to prevent separation if settlement occurs.

7. The existing line to the refineries was built in the mid-1950s when the refineries themselves were being built. It is a 20-inch diameter line with a thin wall and over the years it has experienced occasional leakage. Now after some 60 years, the line needs to be replaced. Though the new line is slightly larger, no significant increase in water consumption at the refineries is anticipated.

8. The application was determined to be complete on January 5, 2010. Notice was properly given. There has been no public comment. There was no public testimony at the hearing. The development schedule calls for the project to be initiated and completed during the summer of 2010.

9. No impacts on aesthetics, surrounding land use, traffic or parking are anticipated as a result of the installation. The application was circulated to various County departments, none of which objected. The Department of Public Works noted that a utility (right-of-way) permit must be obtained. Other comments are included as conditions of approval.

10. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued by Anacortes as lead agency on September 28, 2009. The MDNS was not appealed. It contained the following conditions:

- All local, state and federal permits shall be secured prior to any work taking place.
- The culvert crossing and fish passage restoration element shall be implemented consistent with the Washington State Department of Fish and Wildlife and Army Corps of Engineers permitting requirements.
- Best Management practices shall be employed at all times.

11. Because of the presence of fish and wildlife conservation areas within 200 feet of the proposed water line, the applicant provided an Informal Endangered Species Act (ESA) Consultation report by the U.S. Army Corps of Engineers. Based on the proposed mitigation measures and the location of the water line within the existing roadway, the project will likely result in improved conditions for fish and wildlife over current conditions. The County, relying on State DFW and Corps evaluations, has provided Critical Areas approval on condition that if the installation results in any impact to critical areas or associated buffers, those areas shall be immediately repaired and restored to their previous function and value.

12. PDS reviewed the proposal under the policies and regulations of the Shoreline Master Program (SMP) and determined 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.

13. Once complete, the new line, within existing rights of way, is not likely to have any adverse shoreline impact. The route of the line avoids sensitive areas and minimizes developmental encroachment on shoreline areas. Existing buffers and vegetation along East March's Point Road will not be disturbed. Unlike a chemical or petroleum pipe line, the proposed water line poses little risk to shoreline resources.

14. 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 of this proceeding. SMP 8.07.

2. The requirements of SEPA have been met.

3. As conditioned, the proposal is consistent with the applicable policies and regulations of the local Shoreline Master Program (SMP).

4. The proposal does not violate the policies of the Shoreline Management Act, nor any regulation of the Department of Ecology relating to shorelines or shoreline permits.

5. Accordingly, the criteria for approval of a Shoreline Substantial Development Permit has been met. SMP 9.02.

6. 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 comply with all conditions of the MDNS issued in this matter. (See Finding 10.)

3. The applicant shall comply with the conditions of permits issued by the Department of Fish and Wildlife and the Corps of Engineers.

4. The applicant shall comply with Northwest Clean Air Agency requirements.

5. Excess excavated material shall be removed from the project site and disposed of at an approved location. If a County permit is required for use of such disposal site, it shall be obtained.

6. The applicant shall comply with all applicable County, State and Federal regulations, including but not limited to Chapters 173-200 and 173-201A WAC (surface and ground water quality), Chapter 173-60 WAC (maximum environmental noise levels), Chapter 14.32 SCC (temporary erosion/sedimentation control measures), Chapter 14.24 SCC (critical areas).

7. A right-of-way permit shall be obtained from Skagit County Department of Public Works prior to initiating work on the proposed water line. A copy of the utility right-of-way permit shall be submitted to PDS, referencing PL09-0290.

8. Any disturbance to Whitmarsh marine estuary shorelines or Padilla Bay shorelines, including disturbance of vegetation, shall be immediately restored to pre-construction functions and values.

9. Fire hydrants, as required in accordance with the Skagit County Coordinated Water System Plan, shall be provided.

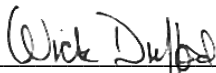
10. The project shall be completed within two (2) years of the date of final approval of this permit and shall be completed within five (5) years thereof or the permit shall become void.

11. Failure to comply with any condition may result in permit revocation.

### **DECISION**

The requested Shoreline Substantial Development Permit (PL09-0290) is approved, subject to the conditions set forth above.

**DONE** this 12th day of May 2010.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant on May 12, 2010.

### **RECONSIDERATION/APPEAL**

See page 1, Notice of Decision.