

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Michael Matthias
1107 Vernon Road
Lake Stevens, WA 98258

Agent: Tina Mirable
Advanced Environmental Solutions
1500A East College Way #506
Mount Vernon, WA 98273

Request/File No: Shoreline Substantial Development Permit, PL09-0486

Location: Shore of east end of Lake Cavanaugh at 35193 Phipps Drive,
within SW1/4 Sec. 25, T33N, R6E, W.M.

Shoreline Designation: Rural Residential

Summary of Proposal: To construct a boardwalk from an existing residence to the lake
and to build a floating dock on the lakeshore.

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) issued on
March 25, 2010. No comments. No appeal.

Public Hearing: August 18, 2010. No public testimony. Planning and
Development Services (PDS) recommended approval.

Decision: Approval, subject to conditions.

Date of Decision: September 1, 2010

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within five
days of this decision. The decision may be appealed to the Board
of County Commissioners by filing an Appeal with PDS within
five days of the date of the decision or decision on reconsideration,
if applicable (SMP 13.01).

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OF FACT

1. Michael Matthias (applicant) seeks a Shoreline Substantial Development permit to build a boardwalk and a dock on the shoreline of Lake Cavanaugh.

2. The property is located at the eastern end of the lake at 35193 Phipps Drive, within the SW1/4 Sec. 25, T33N, R6E, W.M. The parcel numbers is P66473.

3. The parcel is a platted lot approximately 60 feet wide by approximately 200 feet deep. The environment designation under the local Shoreline Master Program (SMP) is Rural Residential. Access is via a private driveway off of Phipps Drive.

4. The lot is heavily encumbered by a Category II Lacustrine Wetland. An existing 316 square-foot cabin sits approximately 30 feet from the wetland edge and approximately 120 feet from open water. Associated with the cabin is a ramp in front leading to the parking area. The parcel currently contains an outhouse and about 1120 square feet of gravel parking.

5. The proposal is to build a boardwalk from the residence across the wetland to the lake, and to build a modest floating dock at the end of the boardwalk.

6. The boardwalk will be approximately 150 feet long and six feet wide. Construction will involve the installation of 38 two-inch diameter steel pin piles. The completed structure will be less than 30 inches above grade. The dock will be 24 feet long and 10 feet wide.

7. The area in the vicinity of the subject property is largely developed with single family residences and recreational cabins. The applicant intends to construct an addition to the cabin and install water and septic facilities. These activities do not require a shoreline permit.

8. In March of 2007 a critical areas violation was reported after vegetation was removed and fill was placed in the wetland. This violation was addressed in a site assessment by Advanced Environmental Solutions in September Of 2007. A monitoring report dated June 9, 2009 indicates that all fill was removed from the wetland and the disturbed areas were re-vegetated.

9. A Notice of Development Application was posted, published and mailed in February 2010 as required by law. Only one public comment was received. It expressed concerns over potential impacts to local beaver populations. Applicant and Staff are convinced that the project is unlikely to disturb beavers. No den/dam will be removed. A Hydraulic Project Approval, conditioned on protection of aquatic life, has been sought from the Department of Fish and Wildlife. The United States Army Corps of Engineers has advised that no permit is required from them for the project.

10. Environmental review under the State Environmental Policy Act (SEPA) was conducted and a Mitigated Determination of Non-Significance (MDNS) was issued on March 25, 2010. No comments were received. The MDNS was not appealed. The conditions imposed by the MDNS are:

- (a) Temporary erosion/sedimentation control measures, as approved by Skagit County Public Works, shall be in place prior to the disturbance of the site. The applicant shall maintain all temporary erosion/sedimentation control measures in accordance with the Skagit County Drainage Ordinance. Said measures shall remain in place until completion of the project.
- (b) The applicant shall comply with Northwest Clean Air Agency requirements.
- (c) The applicant shall comply with the provisions of Skagit County Code (SCC) 14.32 (Drainage Ordinance).
- (d) The applicant shall comply with Fire Code Standards.
- (e) The applicant shall comply with all relevant provisions of SCC 14.24 (Critical Areas Ordinance).
- (f) The proposal shall comply with all applicable requirements of SCC 14.16 (Zoning).
- (g) The applicant shall receive all applicable state and federal permits before beginning any phase of construction.
- (h) The proposal shall comply with all recommendations of the site assessment prepared by Advanced Environmental Solutions (AES) dated September 2007 and all subsequent amendments to that initial report.
- (i) The mitigation performed in April and May 2009 shall be maintained and monitored as recommended by the June 9, 2009 AES report.

11. The application was distributed to various departments. A septic permit (SW09-0291) has been approved for the property, but the system has not yet been installed. The system approved is a type designed to have minimum impact on upland vegetation where installed. An "S" certificate for lake withdrawal will be required for any building permit. No other outstanding concerns were noted.

12. The proposed boardwalk is necessary to allow the current owner wheelchair access across the wetland to the proposed dock. The dock will allow lake access for recreation. Multiple use or expansion of existing docks is not an option in this case. Use of a mooring buoy is not feasible in that wheelchair access to boating is the object.

13. The instant project provides a means for access to the lake, including wheel chair access, without significant wetland disturbance. Vegetation will likely grow up to mask any views of the boardwalk, so that it will not create a visual intrusion.

14. The project will be consistent with the dimensional requirements of the SMP. The proposed dock and boardwalk will meet the eight-foot shoreline side setback requirement. The dock will be less than the average length of docks within 300 feet of the side property lines. The boardwalk and dock height will be less than three feet in height above the Ordinary High Water Mark. The dock will be of open pile design and will meet the width limitation of 10 feet.

15. The Examiner finds that the project will resolve all critical areas issues:

- (a) The project will have minimum adverse impact to the fish and wildlife of

the habitat conservation area (HCA).

(b) The activity will not significantly degrade surface or groundwater.

(c) The intrusion into the fish and wildlife HCA and its buffers will be fully mitigated.

(d) The activity will be consistent with the SMP.

16. 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 9.06.

2. The requirements of SEPA have been met.

3. The requirements of the Critical Areas Ordinance have been met. See SCC 14.24.540(5).

4. The development is consistent with the policies and regulations of the SMP and with the policies of the Shoreline Management Act. No conflict with shoreline regulations adopted by the Department of Ecology has been identified. As conditioned the project meets the criteria for Shoreline Substantial Development Permit approval. SMP 9.02.

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

CONDITIONS

1. The project shall be constructed and maintained 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. (See Finding 10.)

3. The applicant shall comply with all relevant state and local regulations, including those related to water quality.

4. The applicant shall obtain all necessary permits prior to construction and shall abide by the conditions of same.

5. If any portion of the boardwalk exceeds 30 inches above grade, a building permit shall be obtained prior to construction.

6. If any modification of the project is desired, the applicant shall apply to PDS for a permit revision.

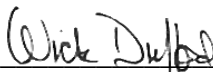
7. Construction shall commence within two years of the issuance of the Shoreline Substantial Development permit and shall be completed within five years thereof.

8. Violation of any permit conditions may result in permit revocation.

DECISION

The proposed Shoreline Substantial Development Permit (PL09-0486) is approved, subject to the conditions set forth above.

DONE this 1st day of September, 2010.



Wick Dufford, Hearing Examiner

Transmitted to Applicant on September 1, 2010.

See Page 1, Notice of Decision, for Reconsideration and Appeal information.