

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Washington State Department of Transportation (WSDOT)
Cheryl McNamara, Rail Division
320 Maple Park Avenue SE
PO Box 47407
Olympia, WA 98507-4704

Contact: WSDOT
Kristin Murray
460 Stuart Road
Bellingham, WA 98226-1204

Request/File No: Shoreline Substantial Development Permit, PL14-0043

Location: Intersection of Dike Road and Stackpole Road, within the SE1/4 Sec. 1, and NE1/4 Sec. 12, T33N, R3E, W.M.

Shoreline Designation: Rural

Summary of Proposal: To make improvements to the intersection of Dike Road and Stackpole Road, in connection with the closure of the Hickox Road crossing to accommodate an extension of the Mount Vernon Rail Siding

SEPA Compliance: Determination of Non-Significance (DNS) by WSDOT, February 10, 2014. No appeal.

Public Hearing: June 25, 2014. Testimony by Staff and Applicant and one member of the public. Remanded July 9, 2014. Planning and Development Services (PDS) responded to remand on July 14, 2014 and recommended approval.

Decision/Date: The application is approved, subject to conditions. July 22, 2014.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within 5 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 5 days of the date of decision or decision on reconsideration, if applicable.

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

FINDINGS OF FACT

1. The Washington Department of Transportation (WSDOT), Rail Division, seeks a Shoreline Substantial Development Permit to authorize improvements to the intersection of Stackpole Road and Dike Road as part of a project to extend the existing Mount Vernon Rail Siding.

2. The project involves the closure of the Hickox Road crossing to general traffic. In the future the use of this crossing is to be limited to emergencies.

3. The matter came on for hearing before the Hearing Examiner on June 25, 2014. A resident of the project area testified, raising the question of the traffic impact of the closure of the Hickox Road crossing.

4. There being nothing in the record submitted regarding this issue, the Examiner remanded the matter to PDS for an evaluation of the matter.

5. PDS responded on July 14, 2014, advising that the question of closing the crossing and its traffic impacts had been previously adjudicated before the Washing State Utilities and Transportation Commission. Additional documents were submitted providing a substantial portion of the record of this prior proceeding. The WSDOT letter of July 14, 2014 supplying these documents and the documents themselves are hereby admitted to this record, as Exhibit N.

6. The prior record amply supports the closure, subject to allowing emergency use.

7. The siding extension project is proposed for the purpose of improving Amtrak Cascades passenger rail service and schedule reliability within the Pacific Northwest Rail corridor. The rail infrastructure improvements will occur within the Burlington Northern Santa Fe (BNSF) railway right-of-way extending northerly from north of Stackpole Road and passing through the Hickox Road crossing.

8. The Mount Vernon Rail Siding is the designated meet/pass location for the Amtrak Cascades passenger route between Seattle and Vancouver, BC. Currently the siding has a capacity of about 6,075 feet. This short length necessitates reduced train speeds and fails to provide adequate capacity for a freight train to use the siding to clear the mainline when necessary for passenger train operations.

9. The proposed siding improvements will add approximately 4,700 linear feet of rail siding. The existing railroad berm to the east will be widened approximately 40 feet.

10. In connection with the siding improvements, provisions will be made at the usually-closed Hickox Road crossing for vehicles to turn around.

11. At the same time, improvements will be made at the intersection of Dike Road and Stackpole Road to accommodate cross-valley traffic needs. The changes proposed will improve the radius of the intersection allowing for safe use by additional traffic. Small amounts of right-of-way acquisition will be needed for construction the roadway improvement.

12. The only portion of the project located within shoreline jurisdiction is in the vicinity of the Dike Road/Stackpole Road intersection within the existing Skagit County road right-of-way. There will be minor impacts on existing traffic at the intersection during construction of the intersection improvements.

13. A small portion of the project area to the southeast of the existing intersection is currently farmed. The area to the northeast of the intersection is not actively used by the adjacent property owner. Overall the project will have minimal effect on surrounding agricultural land use.

14. Pursuant to the State Environmental Policy Act (SEPA), WSDOT prepared an environmental checklist in January of 2014 and subsequently issued a DNS on February 10, 2014. The DNS was not appealed.

15. The subject development is within a designated flood hazard area and will require a flood plain development permit. The proposed intersection improvements are not expected to adversely affect the flow of floodwaters.

16. A wetland reconnaissance was completed by a WSDOT biologist. No wetlands were found at the intersection of Stackpole Road and Dike Road. Critical areas staff reviewed the project and determined that the isolated portion of the buffer affected does not provide significant buffer functions or additional protection of the riparian area.

16. The intrusion of the roadway improvements into the 200 foot inland reach of the Shorelines Act is small, limited to the landward side of the existing road on the landward side of the existing Skagit River dike. The impact of the subject project on shoreline management concerns is close to zero.

17. The application was circulated among County departments and no adverse comments were received. The Health Department requested that a condition be added regarding the protection of a possible well located to the south of Hickox Road.

18. The Staff Report analyses the proposal in light of the requirements of the local Shoreline Master Program and finds that the proposed intersection changes are consistent with it. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report and subsequent Staff response to remand are by this reference incorporated herein as though fully set forth.

19. Notice of this development and of the hearing was properly given as required by law.

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 subject matter of this proceeding. SMP 9.06.
2. Because of the prior adjudication of the closure of Hickox Road, the Hearing Examiner is estopped from considering this issue here.
3. The proposed intersection improvements at Stackpole Road and Dike Road constitute a substantial development and require a substantial development permit. RCW 90.58.140.
4. The requirements of SEPA have been met.
5. The project complies with the County's Critical Areas Ordinance, Chapter 14.24 SCC.
6. The project is consistent with the relevant policies and regulations of the County's Shoreline Master Program, SMP 7.17.
7. The proposal is consistent with the policies of the Shoreline Management Act (RCW 90.58.020), and with the shorelines regulations adopted by the Department of Ecology (Chapter 17-27 WAC).
8. The proposal, as conditioned meets the criteria for granting a Shoreline Substantial Development Permit. SMP 9.02.
9. In addition to transportation concerns, the citizen who testified at the hearing raised matters of policy regarding the environmental impacts of some types of rail transport. The Hearing Examiner has no jurisdiction to consider such issues in the context of this proceeding.
9. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be carried out as described in the application materials, except as the same may be modified by these conditions.
2. The applicant shall obtain a floodplain development permit and a grading permit. The applicant shall obtain any other required approvals and shall abide by the conditions of same.
3. If the well identified as Well Log ID#74519 is located within 100 feet of the proposed rail expansion, BNSF and WSDOT shall confirm that there will be no impacts.
4. The applicant shall comply with all local and state regulations.

5. The applicant shall submit a copy of this decision with future permit applications affecting this project.

6. The project shall be commenced within two years of the final approval of the Shoreline Substantial Development Permit and completed within five years thereof.

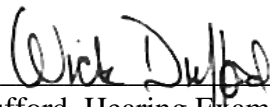
7. If any modification of the project is contemplated, the applicant shall request a permit revision from PDS prior to the start of construction.

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

DECISION

The requested Shoreline Substantial Development Permit (PL13-0423) is approved, subject to the conditions set forth above.

DONE, this 22nd day of July, 2014.



Wick Dufford, Hearing Examiner

Transmitted to Parties of Record July 22, 2014

See Notice of Decision, Page 1, for appeal information.