

## NOTICE OF DECISION

### BEFORE THE SKAGIT COUNTY HEARING EXAMINER

**Applicant:** Washington Department of Fish and Wildlife  
c/o Loren Brokaw  
16018 Mill Creek Boulevard  
Mill Creek, WA 98012

**Request/File No:** Special Use Permit, PL13-0419

**Location:** Samish River Unit of Skagit Wildlife Area, west of the Samish River, immediately southeast of the intersection of Bay View-Edison Road and Bent Needle Lane, approximately one mile southwest of the Town of Edison. The property is within a portion of Sec. 5, T35N, R3E, W.M.

**Land Use Designation:** Agricultural Natural Resource Lands (Ag-NRL)

**Summary of Proposal:** To diversify habitat and restore natural functions to benefit wildlife in a 103.9 acre field separated from the Samish River by a dike.

**SEPA Compliance:** A Determination of Non-Significance (DNS) was issued by the Department of Fish and Wildlife (WDFW) on October 22, 2013.

**Public Hearing:** June 11, 2014. Testimony by County, WDFW and US Department of Agriculture staff. Seven members of the public testified -- all in opposition. Planning and Development Services (PDS) recommended approval.

**Decision/Date:** The application is approved, subject to conditions. 6/30/2014

**Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 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 State Department of Fish and Wildlife (WDFW) seeks a Special Use Permit to engage in a project to diversify wetland habitat and restore natural functions to benefit wildlife on land located near the Town of Edison.

2. The proposed project is located in the Samish River Unit (commonly referred to as the Welts Unit) which is part of WDFW's Skagit Wildlife Area. The site comprises 103.9 acres located west of the Samish River immediately southeast of the intersection of Bay View-Edison Road and Bent Needle Lane, with a portion of Sec. 5, T35N, R3E, W.M.

3. The project area is a currently fallow farm field of four adjacent parcels. The parcel numbers are P33820, P33842, P33817, and P120961. The area is bordered on the east by the Samish River but is separated from the river by a dike. The dike, which is managed by the local diking district, will not be altered as part of the project. The property is bordered on the north and west by Bay View-Edison Road.

4. On three of the four properties involved, the Natural Resources Conservation Service (NRCS), an entity of the Federal government, owns a permanent easement which requires the property to be managed consistent with its Wetland Reserve Program. The instant proposal calls for hydrologic and vegetation restoration work to implement the terms of this program. The portion of the property without the NRCS easement is proposed for a 0.7 acre parking area. The easement was granted prior to acquisition of the property by WDFW.

5. The project involves creating depressions, swales, basins, and mounds. The work will include planting native plants, installing habitat log structures, removing drain tiles, and creating a moist soil management area for wildlife. Spoils will be used to create the parking area and a pad for a portable toilet.

6. The site is disconnected from the adjacent river and bay by the dike and by roads. The area has drain tiles that lead to ditches on the north and west ends of the property. The site is flat and contains little woody vegetation. It currently supports primarily grasses and invasive species.

7. The property is not now heavily used by the public for recreation, though some waterfowl hunting and wildlife viewing does occur there. No parking area is available. There are no trails on the property. However, the bordering dike is much used by fishermen when salmon are running in the river.

8. Four private residences are situated near the northern border of the project site, separated from it by Bay View-Edison Road. Adjacent properties to the east, west and south are agricultural and open space. The westerly neighbor is the Teal Gun Club, LLC.

9. Constructing the project will involve the use of heavy earth-moving equipment, such as excavators, front end loaders, bulldozers and dump trucks. All spoils will remain on site and

be used to create planting mounds (not to exceed 18" inches in height), as well as to provide the base for the parking area.

10. In the northeastern portion of the property, approximately 10 habitat logs will be placed in the swales/basins which will be excavated to a depth to contain semi-permanent water.

11. Filling and excavating will take place in the westerly portion of the property, an area described in the Environmental Checklist as "prior converted wetland that is currently drained with drain tiles that lead to ditches." The checklist says that "no less than 150 feet of each drain tile line will be removed and topography will be altered to diversify habitat."

12. Existing drainage ditches on all four side of the property perimeter will be retained and maintained. As the project is designed, elimination of the interior drain tiles will not result in increased drainage off of the property. Runoff is expected to collect on site in excavated swales and semi-permanent ponds where it will either evaporate, infiltrate into the water table below grade, or enter existing perimeter ditches which will continue to function as before. Because the project will increase the ability of the site to retain water, it is expected to have a positive impact on the quantity of runoff from the property.

13. The project is not expected to adversely affect the behavior of flood waters. During flood events that do not overtop the dike, water will continue to drain through a series of flood/tide gates in the northeast corner of the property. These run through the dike into the Samish River.

14. In the southeastern part of the property, a "moist soil management area" will be created to develop hydrology for the growth of vegetation attractive to wildlife. Using farm equipment, the area will be mowed and disked to develop conditions favorable to desired crops. A water control structure may be installed to manage the hydrology of this area.

15. During construction, a temporary erosion and sediment control plan will require the use of Best Management Practices, including the seeding of soils exposed by construction and installation of silt fences at the interface of exposed soils and drainage ditches.

16. Planting areas will be prepared by removing invasive plants (mainly blackberries) and possibly by disking the land to help establish desirable plant species. Initial planting will occur in the first planting season following earth moving activities. Monitoring, maintenance and re-establishment will be undertaken for two consecutive years following the initial planting. Over time, invasive and noxious vegetation will continue to be monitored and controlled.

17. The property will be managed by staff members of Skagit Wildlife Area, who will visit the site as needed. The heaviest public use is expected in late summer during the Chinook run, although the area will be open to the public all year during daylight hours. An Operations and Management Plan has been developed which includes adding signs to clarify property boundaries for the public and a schedule of site inspections related to the functioning of the restoration effort.

18. The area is part of the Pacific Flyway for migratory birds. The site is currently part of the Waterfowl Quality Hunt Program which allows limited access hunting. The plans tentatively call for installing a system of trails. Their final location has not been determined. Details on uses and on how such uses will be managed are to be addressed separately from the instant restoration permit process.

19. Users of the site and of the adjacent dike currently park on the road shoulder. The availability of the new parking area is likely to alleviate some of the conflicts between users (particularly fishermen) and neighboring land owners. The parking lot will be adjacent to the Bay View-Edison Road near the northwest corner of the property. It will be capped with gravel and connected to the road by a driveway underlain by a culvert for the existing drainage ditch. There will be space for about 50 cars. The proposed toilet will be placed on a pad next to the dike near the northeast corner of the property. The hope is that it will reduce another source of local complaint.

20. In the past, the property was used for agriculture, as evidenced by the existing drain tiles. A variety of crops were grown, including oats, barley, wheat, broccoli, cauliflower, pumpkins, potatoes and grass. However, according to the Environmental Checklist, "the site reportedly was not actively farmed for several years prior to purchase by WDFW and NRCS due to unproductive soils." The easement to NRCS was granted by the previous owner, David Welts, on August 8, 2003. So, it would appear that there has been no agricultural use of the property for around 15 years.

21. The terms of the conservation easement on the property generally prohibit its use for the "planting or harvesting of any crop." But there is a provision by which the NRCS could authorize periodic haying or grazing if such activities were found to be consistent with long-term protection and enhancement of the wetland environment. The instant application does not deal one way or the other with such a possibility.

22. Review was conducted under the State Environmental Policy Act (SEPA). The WDFW issued a Determination of Non-Significance (DNS) on October 22, 2013. While a number of comment letters were received, the DNS was not appealed.

23. Prior to the public hearing on this matter, the County received eleven letters from the public opposing the Special Use Permit, including letters from the Western Washington Agricultural Association and Skagitonians to Preserve Farmland. Five letters from the public favoring the project were received, including a letter from the Skagit Audubon Society. At the hearing seven members of the public testified against the proposal.

24. The principal concerns of the opponents were the possibility of adverse drainage impacts and the loss of agricultural land. Additional issues raised were impacts by users (trespass, nuisance) on neighboring properties, the spread of noxious weeds, whether the site is large enough for safe hunting, impacts on traffic, and the possibility that West Nile virus may be carried by mosquitoes living on the wetter property.

25. The Hearing Examiner finds the explanation of the applicant regarding drainage impacts to be persuasive. The plan adequately provides against increased off-site drainage.

26. No reason appears for concluding that plans for the ongoing and continuous prevention and control of noxious weed growth will not be successful. There is no evidence in the record one way or another about the likelihood that West Nile virus will be brought to the site.

27. Similarly there is nothing in the record to suggest that trespass and nuisance-like behavior will be exacerbated by the proposed use. Some of the problems of the past may be alleviated by the existence of the parking lot and the portable toilet. The parking lot should to some degree reduce roadway congestion in the area during fishing season.

28. Furthermore, it is important to note that the program for public use of the property remains undecided and will be subject to a separate review process. The instant application relates to the physical changes sought for the purposes of habitat restoration. Whether hunting should be allowed or what sort of trail system should be created are matters for another day.

29. The key question left to be addressed is the loss of agricultural land. The local citizens who decry the removal of land from agricultural use have every reason to be concerned with current trends. However, this particular property is not a good candidate for drawing the line. While a variety of crops were grown there in the past, agricultural use on the property appears to have ceased prior to creation of the NRCS easement that was executed 11 years ago. And while the easement could allow limited agricultural use (haying, grazing), it effectively eliminates the possibility of restoration of the wide-ranging crop patterns of the past.

30. The overriding fact is simply the existence of the easement. It cannot be ignored. As a practical matter it is not likely to go away. Significant government funds were spent to place the easement on the property in a free market deal with a private landowner. WDFW acquired the property only after the encumbrance had been created.

31. The use of Ag-NRL property for habitat and restoration projects is explicitly allowed as a Special Use under the zoning code, SCC 14.16.400(4)(d). The only question relevant here, then, is whether the project proposed meets the approval criteria for Special Uses. These are set forth at SCC14.16.900(1)(b)(v). The Staff Report analyzes the application in light of each of the special use criteria and finds that, as conditioned, the proposal is 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.

32. The central inquiry for a proposed Special Use is whether it can be carried out in a way that is compatible with the dominant use allowed in the zone. Here the question is whether the restoration of habitat can occur compatibly with agriculture on surrounding lands. The Comprehensive Plan allows such a use if it can be shown that it "does not have an adverse impact on hydrologic functions, drainage infrastructure or the ongoing agricultural use of adjacent properties." The Examiner is persuaded that this showing has been made. The restoration will not interfere with neighboring agriculture.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SCC 14.06.050(b)(ii).
2. The requirements of SEPA have been met.
3. The project, as conditioned, will be consistent with criteria for approval of a Special Use Permit. SCC 14.16.900(1)(b)(v).
4. 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 an access permit for the parking lot.
3. Prior to construction, the applicant must obtain a grading permit.
4. The applicant shall obtain any other approvals required and shall abide by the conditions of same.
5. The applicant shall apply with all applicable federal, state and local regulations, including but not limited to Chapter 14.32 SCC (Drainage), Chapter 14.24 SCC (Critical Areas), Chapter 14.16 SCC (Zoning), SCC 14.16.840 (performance standards), Chapter 173-60 WAC (noise), Chapters 173-200 and 173-201A (surface and ground water quality).
6. The presence of invasive and noxious vegetation on site shall be monitored and controlled on an ongoing basis.
7. The effective operation of the perimeter drainage ditches shall be maintained and their functionality shall be monitored on an ongoing basis.
8. All outstanding planning review fees shall be paid prior to final approval.
9. The applicant shall address issues of public use of the property, including whether hunting should continue to be allowed, the creation of trails, and discouragement of trespass on neighboring properties, in a separate forum open on adequate notice to full public participation.
10. All outstanding planning review fees shall be paid prior to final approval.

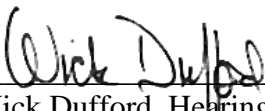
10. The Special Use Permit shall be void if work is not started within two (2) years of the date of this decision, or if the use is abandoned for a period of one (1) year.

11. Failure to comply with any condition may result in revocation, suspension or modification of the Special Use Permit by the Hearing Examiner.

### **DECISION**

The requested Special Use Permit (PL13-0419) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 30<sup>th</sup> day of June, 2014.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant and Parties of Record on June 30, 2014.

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