



199910150078

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10/15/1999 Page 1 of 11 11:39:56AM

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT
PERMIT SL 99 0375

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: SKAGIT COUNTY PARKS & RECREATION

ASSESSOR PARCEL NO: P20284

ABBREVIATED LEGAL DESCRIPTION:
10825 Josh Green Lane, a portion of Section 11, Township 34 North, Range 2 East,
W.M., Skagit County, Washington

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of:)	
Application of Skagit County Parks & Recreation)	No: SL 99-0375
for a SHORELINE SUBSTANTIAL)	
DEVELOPMENT PERMIT for Improvements)	Finding of Fact,
to the Swinomish Boat Launch)	Conclusions of Law,
Facility.)	And Order.
)	

THIS MATTER, an application for a Shoreline Substantial Development Permit, came on regularly before the Skagit County Hearing Examiner in a public hearing on September 8, 1999. The Skagit County Planning and Permit Center presented its Staff Report. Pete Mayer, the Project Manager, appeared for County Parks and Recreation (applicant). Members of the public were given an opportunity to testify.

Testimony was heard, exhibits were entered and argument was made. On the basis, thereof, the following is entered:

FINDINGS OF FACT

1. The Skagit County Parks and Recreation Department seeks a shoreline substantial development permit to make improvements to the existing Swinomish Boat Launch Facility.
2. The facility is located on Washington State Department of Transportation property directly under the SR 20 Duane Berentson Memorial Bridge. This location is at 10825 Josh Green Lane, within a portion of Sec. 11, T34N, R2E, W.M.
3. The facility is situated on the shoreline of the Swinomish Channel in a Rural shoreline environment designation.
4. The proposed improvements are to remove the existing float, to enlarge the existing ramp by six feet, and to install a new centered eight-foot wide float anchored with steel piling. The new configuration will allow two boat loadings or unloadings to occur simultaneously. Debris deflectors will be installed on either side of new double lanes. Upland improvements include a restroom, landscaping and signs.
5. The proposal is located within the 100 year flood plain and will require a flood plain development permit from the Planning and Permit Center. Additional permits may be required



199910150078

from the Washington State Department of Fish and Wildlife and the United States Army Corps of Engineers.

6. An environmental assessment and habitat management plan was prepared for the project by Reid Middleton. The report recommended mitigation measures to avoid or minimize potential effects on marine resources.

7. A Mitigated Determination of Non-Significance (MDNS) was issued by the County under the State Environmental Policy Act (SEPA) on April 22, 1999. The MDNS was not appealed.

8. The Skagit County Shoreline Management Master Program (SMP) establishes criteria and standards for the issuance of shoreline permits.

9. Under SMP 9.02 a Shoreline Substantial Development Permit shall be granted only when the proposed development is consistent with:

- a. Policies and regulations of the Skagit County Shoreline Master Program; and
- b. Applicable policies enumerated in RCW 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
- c. Regulations adopted by the Department of Ecology pursuant to the Act (WAC 173-14).

10. The Examiner finds that the policies of the Shoreline Management Act (RCW 90.58.020) considered independently, are adequately carried out in this case by application of the policies and regulations of the local master program. The shorelines in question are not shorelines of statewide significance.

11. Chapter 173-14 WAC has been superseded by Chapter 173-27 WAC. This chapter contains the Department of Ecology's Permit regulations. The review criteria set forth therein for Substantial Development Permits are substantially the same as those set forth at SMP 9.02.

12. The instant proposal is a permitted use in the Rural environment, subject to the general regulations. The Staff Report analyses the application for consistency with the substantive requirements of the master program, as set forth in SMP 7.10, Piers and Docks. The Examiner concurs with this analysis and adopts the same. The Staff Report is incorporated herein as though fully set forth.

13. No written comments from members of the public were received on this application. Two neighboring property owners testified at the hearing. In general they were supportive of the proposed improvements. However, concerns were expressed about problems of trespass on nearby private dike areas. The Parks and Recreation representative said that his department



would work with adjacent owners to insure that appropriate barriers, gates or signs are erected to address this concern.

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 parties and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The findings support a conclusion that the proposed development is consistent with the applicable SMP criteria for the approval of a Shoreline Substantial Development permit, if conditioned as follows:

a. The project shall be constructed in accordance with the application and accompanying materials, including in particular the site diagram submitted.

b. All other required permits and approvals shall be obtained. Any conditions contained in other permits or approvals shall be deemed conditions of this Substantial Development Permit and complied with as such.

c. The permittee shall use Best Management Practices to control runoff and prevent adverse effects to water quality. This includes but is not limited to installation of silt fencing.

c. All conditions set forth in the MDNS, issued April 22, 1999, shall be complied with.

d. The mitigation measures set forth in the June 1, 1999 report prepared by Reid Middleton shall be complied with.

e. All construction related debris shall be disposed of properly and legally. Any debris that enters the water shall be promptly removed.

f. Appropriate steps shall be taken to protect the adjacent private properties from trespass.



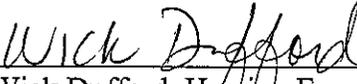
g. The project must be started within two (2) years of the date of approval or the shoreline permit will become void.

h. Failure to comply with all conditions of the issued permit may result in its revocation.

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

ORDER

The Shoreline Substantial Development Permit is APPROVED, subject to the conditions set forth in Conclusion 3 above.



Wick Dufford, Hearing Examiner

Date of Action: September 27, 1999

Copies transmitted to Applicant

9/27/99

Attachment: Staff Report and Findings

RECONSIDERATION/APPEAL

This decision shall become final five (5) dates from the date of this Order unless a request for reconsideration or an appeal is filed in accordance Section 13.01 of the Skagit County Shoreline Management Master Program.

After the decision becomes final, review may be sought from the State Shorelines Hearings Board pursuant to the provisions of RCW 90.58.180.



199910150078

Kathy Hill, Skagit County Auditor

10/15/1999 Page 5 of 11 11:39:56AM

1 REVIEWING AUTHORITY: Skagit County Hearing Examiner
2
3 PUBLIC HEARING DATE: September 8, 1999
4
5 APPLICATION FOR: Shoreline Substantial Development PL# 99-0375.
6
7 APPLICATION DATE: June 8, 1999
8
9 APPLICANT: Skagit County Parks & Recreation
10 315 S. Third Street
11 Mount Vernon, WA 98273
12

13 PARCEL # 20284
14
15

16 PROJECT DESCRIPTION: The proposal is to improve the existing Swinomish Boat
17 Launch Facility by removing the existing float, enlarging the existing ramp by 6 feet, and
18 placing a new centered 8 foot wide float anchored with steel piling. Debris deflectors will
19 be installed on either side of the new double lanes. Upland improvements include a
20 restroom, landscaping and signage.
21

22 The proposed project is located at the Swinomish Boat Launch Facility at 10825 Josh
23 Green Lane, within a portion of Section 11, Township 34 North, Range 2 East, W.M.,
24 Skagit County. The subject proposal is located on the shoreline of the Skagit River
25 designated Rural under the Shoreline Master Program.
26

27 PROJECT LOCATION: The proposed project is located at the Swinomish Boat Launch
28 Facility at 10825 Josh Green Lane, within a portion of Section 11, Township 34 North,
29 Range 2 East, W.M., Skagit County.
30

31 RECOMMENDATION: **Approval**, with conditions stated at the end of the report.
32

33 EXHIBITS:
34

- 35 1. Staff report
- 36 2. July 8, 1999 Notice of Development.
- 37 3. June 8, 1999, Shoreline Substantial Development application, JARPA, site diagram,
38 narrative, critical areas checklist, fact sheet.
- 39 4. June 8, Environmental Checklist.
- 40 5. July 1999, Critical Areas Staff Review.
- 41 6. July 27, 1999, Mitigated Determination of Non-Significance.
- 42 7. June 1, 1999 Environmental Assessment and Habitat Management Plan prepared by
43 Reid Middleton..
44
45
46


199910150078
Kathy Hill, Skagit County Auditor
10/15/1999 Page 6 of 11 11:39:56AM

1 STAFF FINDINGS:
2

- 3 1. The application has been advertised in accordance with Section 9.04 of the Skagit
4 County Shoreline Master Program (Master Program) and WAC 173-14-070.
5
6 2. The subject property is located within the jurisdiction of the Skagit County
7 Shoreline Management Master Program (SCSMMP) and is designated as
8 Agriculture under the current Skagit County Comprehensive Plan. The property is
9 designated as "Rural" according to the Skagit County Shorelines Management
10 Master Program Map.
11
12 3. The property is adjacent to the Swinomish Channel and is not designated as a
13 shoreline of Stateside Significance.
14
15 4. No comments have been received regarding the proposal.
16
17 5. The proposal is located within the 100 year flood plain and will require a flood
18 plain development permit from the Skagit County Planning and Permit Center.
19
20 6. Skagit County, acting as Lead Agency, issued a MDNS on April 22, 1999 with
21 the following conditions:
22
23 1. The subject proposal shall comply with the Skagit County Shorelines Master Program and
24 the Shoreline Management Act RCW 90.58. In doing so, the applicant shall receive a
25 "Shoreline Substantial Development permit."
26
27 2. The applicant shall receive an approved Hydraulic Project Approval from the Washington
28 State Department of Fish and Wildlife prior to start of construction.
29
30 3. Best management practices shall be used to protect water quality and prevent any negative
31 impacts upon wetlands or native vegetation in the shoreline area.
32
33 4. The applicant shall not store petroleum or hazardous products on the subject float.
34
35 5. The applicant shall contact the Army Corps of Engineers (206-674-3495) prior to the start of
36 construction in regards to additional permitting.
37
38 6. The applicant shall strictly adhere to the project information (site diagram) submitted for
39 this proposal. If the applicant proposes any modification of the subject proposal, he/she
40 shall request a permit revision from this office prior to the start of construction.
41
42
43 7. The subject proposal meets the definition of "Substantial Development" and
44 "Recreation" as defined under SMP Chapter 3.03 Definitions. Below are all
45 **applicable** portions of Chapter 7.10 Piers and Docks with staff comments marked in
46 *italics* for ease of reference:
47
48
49



199910150078

1 **7.10 PIERS AND DOCKS**

2 **1. POLICIES**

3 **A. General**

4 **(1) Feasibility**

5 Proposals for piers or wharves should exhibit the need or feasibility for such structures.

6 **(2) Uses**

7 Piers and docks should be allowed only for use by watercraft, water dependent and
8 related economic activities, water related public recreation, and emergency vessels.

9 **(3) Existing Facilities**

10 Multiple use and expansion of existing piers, wharves, and docks should be encouraged
11 over the addition and/or proliferation of new facilities.

12 **(4) Community or Joint Use**

13 All new or existing shoreline developments that propose new or additions to piers,
14 docks, and swim or recreation floats should provide such facilities for common, joint use
15 by appropriate development organizations, community residents, or users.

16 New developments include industrial, port, commercial, residential, or recreational
17 activities.

18 **(5) Public Access/Use**

19 Encourage pier and dock projects to provide for public access, docking, launching, and
20 use.

21 **(6) Water Quality, Fish, Shellfish, and Wildlife**

22 Piers and docks and their associated activities should conserve and enhance water
23 quality, fish, shellfish, and wildlife resources and habitats.

24 **(7) Mooring Buoys**

25 Mooring buoys for individual mooring of craft in areas where there are no or insufficient
26 docking facilities are preferred over the construction of individual shoreline docks.

27 **(8) Restoration**

28 Local programs and coordinated efforts among private and/or public agencies should be
29 initiated to remove or repair failing, hazardous, or nonfunctioning piers and docks and
30 restore such facilities and/or shore resources to a safe, usable state for commercial and
31 public recreation activities.

32
33 *The present approval supports numerous policies including, expansion of an existing*
34 *facility, restoration, and supporting continued public access.*
35

36 **B. Geohydraulics and Design/Location**

37 **(1) Marine and lake shores.**

38 a. Where geohydraulic processes are active (shore erosion and accretion, littoral drift),
39 piers and docks should allow for a maximum of littoral drift and should minimize
40 interference with basic geohydraulic processes.

41 b. If a bulkhead like base is proposed for a fixed pier or dock where there is net positive
42 littoral drift, the base should be built landward of the ordinary high water mark
43 (foreshore) or protective berms.

44 c. Piers and docks should not be located in estuaries and biologically productive
45 marshlands.

46 d. The use of mooring buoys should be preferred if proposed docking facilities for small



199910150078

Kathy Hill, Skagit County Auditor

1 boat and pleasure craft will adversely interfere with basic geohydraulic processes or
2 utilize valuable and unique shoreline resources.

3 (3) Floating and/or open pile construction should be utilized:

4 a. where geohydraulic processes are active

5 b. where shore trolling and commercial fishing is a significant activity

6 c. if there will be interference with currents, circulation, and aquatic life.

7 (4) Open pile piers and docks should not form groins or baffles that trap littoral drift,
8 adversely affect river channel form slid alignment, promote erosion, or significantly
9 interfere with fisheries resources and other aquatic life.

10 (5) Impacts

11 Piers and docks should be sited And designed to minimize all possible adverse impacts.

12 (7) Mooring Buoys and Swim Floats should be of the anchored, floating type, be located
13 out of main navigational channels and areas of intensive water surface use, and be
14 painted or designated to avoid being a hazard to other water users.

15
16 *Staff have determined that the design submitted concurs with the afore stated policies*
17 *and the added deflectors and lane will improve the safety and function of the launch*
18 *ramp.*

19
20 C. Docks

21 (2) The proposal is suitably located and designed and that all-potential impacts have been
22 recognized and mitigated.

23 (3) The proposal is consistent with the intent, policies and regulations of the Act and this
24 program (ROW 90.58.140(1)).

25
26 2. REGULATIONS

27 A. Shoreline Areas

28 (3) Rural

29 a. Docks, mooring buoys, and floats are permitted subject to the General Regulations.

30 b. Piers and wharves for port, industrial, or commercial purposes are permitted as a
31 conditional use.

32 c. Boathouses for private use shall be setback 50 feet landward of the OHWM and 50 feet
33 from side property lines.

34 (6) Aquatic

35 a. Piers, docks, mooring buoys, and floats are permitted according to the appropriate
36 upland Shoreline Area designation and the General Regulations.

37 b. Monobuoys, sea islands, and other floating or fixed bulk liquid or petroleum transfer
38 facilities are permitted as a conditional use.

39
40 *Staff has determined that the proposal is permitted subject to General Regulations.*

41
42 B. General

43 (1) Permit/statement of exemption

44 In order to assure that piers, dock, and related development are consistent with this
45 program as required by RCW 90.58.140 (1), no such development may commence on
46 shorelines without the responsible person having first obtained either a shoreline permit



199910150078

Kathy Hill, Skagit County Auditor

10/15/1999 Page 9 of 11 11:39:56AM

1 or statement of exemption from the county; provided, that no shoreline permit nor
2 statement of exemption shall be issued for a pier or dock on state owned tidelands or
3 shorelands without the applicant having a lease from the Department of Natural
4 Resources.

5
6 *The Department has determined that the proposal is not exempt from shoreline permit*
7 *requirements due to its being a public use.*
8

9 (2) Application information

10 Proposals for piers, docks, or floats shall submit the following information concurrently
11 with the Skagit County Application for Shoreline Management Substantial Development
12 Permit or Statement of Exemption: a. Ownership of tidelands, shorelands, or badlands.
13 b. Proposed location of piers or docks relative to property lines and OHWM.
14 c. Location and length of piers and docks on adjacent properties.

15 (12) Utilities

16 Overhead wiring or plumbing is not permitted on piers or docks. All utilities must meet
17 the standards of applicable Uniform Building and Electrical Codes.

18 (13) Petroleum and hazardous products storage and handling:

19 a. Bulk storage of gasoline, oil, and other petroleum products for any use or purpose is
20 not permitted on piers and docks. Bulk storage means nonportable storage in fixed
21 tankage.

22 Storage tanks for boat fueling facilities shall locate landward of the OHWM and meet the
23 policies and regulations for "Utilities, Chapter 7.18.

24 b. Docks, piers, and floats used for the transfer of bulk petroleum and/or other hazardous
25 products shall utilize technology and procedures to prevent spills and mishaps. Spill
26 cleanup facilities shall be available for prompt application at all piers and docks involved
27 in oil and hazardous products transfer.

28 (14) Safety

29 All piers, docks, mooring buoys and floats shall be
30 located, constructed, and designated with appropriate markings so as not to be a hazard to
31 public health, safety, and navigation and shall not materially interfere with normal public
32 use of the water and shorelines.

33
34 *The permit will be conditioned as to meet the above mentioned requirements regarding*
35 *fuel storage etc.*
36

37 8. Staff has determined that the subject request is consistent with the criteria for
38 granting Shoreline Substantial Development Permits.

39
40 9. The subject proposal falls under the jurisdiction of the Skagit County Critical
41 Areas Ordinance SCC 14.06, whereby, the applicant submitted a Critical Areas
42 checklist. Following the guidelines of SCC 14.06.520, staff determined that a fish
43 & wildlife site assessment was necessary. The analysis determined that the
44 proposal would constitute little net effect environmental impact to the shoreline or
45 the channel and that the mitigation measure stated in the June 1, 1999 Fish &
46 Wildlife report prepared by Reid/Middleton. These measures include removing



199910150078

Kathy Hill, Skagit County Auditor

1 treated floats and pilings, using the existing footprint in design, timing
2 construction for late summer for anadromous fish runs, and maximizing the
3 amount of construction performed at low tide.

4
5 **RECOMMENDATION**

6
7 Based on the above findings, the Skagit County Planning and Permit Center would
8 recommend for **approval** of a Shoreline Substantial Development Permit, subject to the
9 following conditions:

- 10
11 1. All development, construction, and use of the site shall be consistent with the
12 policies, regulations, and permit requirements of the Shoreline Management Act and
13 the Skagit County Shoreline Master Program (whether or not specifically outlined in
14 this staff report); and any other applicable local, state, or federal regulations and/or
15 permit requirements.
- 16
17 2. The applicant shall use Best Management Practices to control runoff and prevent
18 adverse effects to water quality. This includes but is not limited to installation of silt
19 fencing.
- 20
21 3. The project must be started within two (2) years of the date of this order or the
22 shoreline permit will become void.
- 23
24 4. The applicant shall comply with the conditions stated in the MDNS issued on April
25 22, 1999 and with the mitigation measures stated in the June 1, 1999 report prepared
26 by Reid/Middleton.
- 27
28 5. The applicant shall contact the Corp of Engineers to determine whether that agency
29 requires permits for the proposed activity.
- 30
31 6. The applicant shall obtain an HPA from the Washington State Department of Fish &
32 Wildlife to commencing construction.

33
34 Prepared By: DD
35 Approved By:
36 Date: