



200201090005

Skagit County Auditor

1/9/2002 Page 1 of 12 8:50AM

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

DOCUMENT TITLE: Order on Shoreline Substantial Development/Variance Permit
Application SL 01 0639

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: PUGET SOUND REFINING CO.

ASSESSOR PARCEL NO: P#33018

ABBREVIATED LEGAL DESCRIPTION: The proposed project is located adjacent to Fidalgo Bay on the March Point peninsula, within a portion of Section 29 Township 35 North, Range 2 East, W.M., Skagit County, Washington.

UNOFFICIAL DOCUMENT

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)	
PUGET SOUND REFINING CO.)	PL01-0639
)	
For a Shoreline Substantial Development)	FINDINGS OF FACT,
and Variance Permit to Install Emergency)	CONCLUSIONS OF LAW
Power Facilities for a Refinery Wharf)	AND DECISION
On March Point.)	
)	

THIS MATTER, an application for shoreline permits, came on regularly for hearing on December 12, 2001, after due notice. Daniel Downs, Shoreline Administrator, appeared for the Planning and Permit Center. Aura Cuellar represented the applicant, Puget Sound Refining Company.

From the testimony taken, the exhibits admitted, and the argument made, the following is entered:

FINDINGS OF FACT

1. Puget Sound Refining Company proposes to install a 500 kilowatt generator, an automatic transfer switch, a 900-gallon double walled above-ground tank, and a step up transformer to provide 2400 volts to its March Point wharf facility in emergency power shortage situations.
2. The project is located adjacent to Fidalgo Bay on the north end of the March Point peninsula within a portion of Sec. 29, T35N, R2E, WM. The area is designated Urban in the County's Shoreline Master Program (SMP).
3. The area is within the Anacortes Urban Growth Area. The City of Anacortes zoning map shows the site as Heavy Manufacturing. The proposed use would be allowed under Anacortes' zoning. The City had no comment on the proposal.
4. The most waterward of the proposed facilities will be setback about 25 feet from the ordinary high water mark (OHWM) of the bay. The standard shore setback is 100 feet at this location and so a variance is required.
5. The subject property is now used as a secure access area to the company's wharf. A guardhouse, security fence with electronically operated gate, chain link fence, and 18 parking spaces currently exist on site.
6. Within the site are an existing electrical transformer and power transmission poles for conveying power to the dock. The aerial distribution system is subject to



interruptions resulting in the inability to load and unload product. Economically this can cost as much as \$50,000 per day.

7. The proposed generator will be a standby unit that will automatically restore power to the dock in the event of an interruption. The associated diesel storage tank will be placed within a concrete basin providing more than 100% containment. The new generator will be placed on a 193 square foot concrete pad, and a 169 square foot concrete pad will be installed for the new transformer, switch and electrical controls. Containment will also be provided for the transformer. All of the facilities will be within 100 feet of the OHWM.

8. A Fish and Wildlife Site Assessment was prepared pursuant to the Critical Areas Ordinance. The site is already heavily impacted. The Report did not identify significant additional adverse impacts to the bay or adjacent shoreline from the proposal. Recommendations were made for action to mitigate such insignificant adverse impacts as might occur.

9. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued by the County on October 30, 2001. The MDNS was not appealed. The conditions of the MDNS were as follows:

- a) The subject proposal shall comply with the Skagit County Shorelines Master Program and the Shoreline Management Act, RCW 90.58, and all portions of Skagit County Code Title 14.
- b) The applicant shall strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, he/she shall request a permit revision from this office prior to the start of construction.
- c) The applicant shall strictly adhere to the mitigation and management and maintenance recommendations as described in the Fish and Wildlife Assessment prepared by Puget Sound Refining dated August 2001. The report identified temporary impacts to the area during construction and recommended the utilization of best management practices such as silt fencing. A concrete 100% containment basin is to be utilized to prevent leakage of fuel to the Fidalgo Bay.
- d) The applicant shall inspect all structures of the proposal for possible fuel containment failure or hazard to the public or the Bay and document the results quarterly to be provided to the County upon request.
- e) The applicant shall prepare a mitigation plan that involves the removal of noxious weeds (Himalayan blackberry) from the vicinity prior to permit approval.

10. No public comments were received regarding the proposal.



11. At the hearing the applicant presented the Noxious Weed Removal Plan required in the MDNS. The plan calls for the affected area to be replanted with selected native vegetation after the blackberry plants are removed.

12. The generator needs to be located next to the wharf in order to be within a secure facility and to safely tie into the existing wharf electrical system. Its location within the shore setback is dictated by the location of existing infrastructure as well as the practicalities of serving an over-the-water wharf.

13. The facilities involved are permitted in association with port and industrial development that is allowed at this site by the SMP. Under all the circumstances, the proposal represents a reasonable use of the property that would be significantly interfered with if the dimensional requirements of the Master Program were strictly applied.

14. For development landward of the OHWM, the criteria for approval of a variance are set forth at SMP 10.03(1). The applicant must prove:

- a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- d. That the variance does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, the cumulative impact of additional requests for like in the area is to be considered.

15. The Staff Report analyzes the project in light of these criteria and determines that the project will meet them. The Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.



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 parties and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The proposal, as conditioned, complies with the Critical Areas Ordinance.

4. As conditioned the project will be consistent with the criteria for granting a Shoreline Substantial Development Permit. SMP 9.02

5. As conditioned, the project will meet the criteria for a variance from the 100-foot shore setback. SMP 10.03(1).

6. The following conditions should be imposed.

(1) The applicant shall comply with all conditions stated in the MDNS issued on October 30, 2001 (see Finding 9 above).

(2) Construction material and other debris shall not be allowed to enter the water.

(3) All spoils resulting from the project shall be disposed of at County-approved upland locations and shall not be disposed of in wetland, stream or riparian areas.

(4) The project must be started within two (2) years of the date of the Department of Ecology's approval and finished within five (5) years or the shoreline permit shall become void.

(4) Failure to comply with the conditions of the permit may result in its revocation.

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



200201090005

Skagit County Auditor

DECISION

The requested Shoreline Substantial Development and Variance Permit is approved, subject to the conditions set forth in Conclusion 6 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: December 31, 2001

Copy Transmitted to Applicant: December 31, 2001

Attachment: Staff Report

RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center 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 the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.



200201090005

Skagit County Auditor

1
2
3 **Skagit County Planning & Permit Center Staff Report**
4

5
6 **REVIEWING AUTHORITY:** Skagit County Hearing Examiner
7
8 **PUBLIC HEARING DATE:** December 12, 2001
9
10 **APPLICATION FOR:** Shoreline Substantial Development/Variance Permit
11 #PL01-0639
12
13 **APPLICATION DATE:** August 23, 2001
14
15 **APPLICANT:** Puget Sound Refining Company.
16
17 **ADDRESS:** PO.Box 622
18 8505 S. Texas Road.
19 Anacortes, WA 98221
20
21 **PARCEL#:** P#33018
22

23 **PROJECT DESCRIPTION:** To install a 500 Kilowatt generator, automatic transfer switch, a
24 1,000-gallon double walled above ground tank, and a step up transformer to provide 2400
25 volts to the wharf facility in emergency power shortage situations. The proposed
26 improvements would be located as near as 25 feet from the OHWM.
27

28 **PROJECT LOCATION:** The proposed project is located adjacent to Fidalgo Bay on the
29 March Point peninsula, within a portion of Section 29 Township 35 North, Range 2 East,
30 W.M., Skagit County.
31

32 **EXHIBITS**
33

- 34 1. Staff report.
35 2. August 23, 2001 Shoreline Substantial Development/Variance Permit application
36 materials.
37 3. September 20 & 27th 2001 Notice of Development.
38 4. August 24, 2001 Fish & Wildlife Habitat Conservation Area Site Assessment and
39 Habitat Management Plan prepared by Puget Sound Refining.
40 5. October 17, 2001 additional information provided to Skagit County from Paresh
41 Parekh of Puget Sound Refining Company.
42 6. October 30, 2001 Mitigated Determination of Non-Significance (MDNS).
43
44
45



200201090005

Skagit County Auditor

1
2
3
4
5 **STAFF FINDINGS:**
6

- 7 1. The application has been advertised in accordance with Section 9.04 of the Skagit
8 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
9
- 10 2. The subject proposal is located adjacent to Fidalgo Bay and is designated as Urban in
11 the SCSMMP. The entire area is designated as Anacortes Urban Growth Area in the
12 Skagit County Comprehensive Plan Heavy Manufacturing in the City of Anacortes
13 zoning map.
14
- 15 3. Staff determined that the subject proposal required a Fish & Wildlife Site Assessment
16 and Habitat Management Plan as required in 14.24.510 of the Skagit County Critical
17 Areas Ordinance. The Fish & Wildlife Site Assessment and Management Plan was
18 prepared by the applicant's personnel and dated August 2001. The report did not
19 identify any adverse impacts to the to Fidalgo Bay or the adjacent shoreline. The risks
20 of negative impacts from erosion during construction are to be minimized by the
21 utilization of best management practices. Potential negative impacts from diesel
22 leaking from the proposed tank is to be minimized by building a concrete
23 containment berm surrounding the tank which will insure that fuel leakage would not
24 enter the Bay.
25 The report was submitted to the appropriate agencies for the Technical
26 Interdisciplinary Team in conjunction with the SEPA routing per SCC 14.06.530(2)
27 and dated from October 30, 2001 to November 16th, 2001. No comments were
28 received.
29
- 30 4. The application has been reviewed in accordance with the State Environmental Policy
31 Act guidelines (WAC 197-11 and RCW 43.21C). Skagit County Planning and Permit
32 Center, acting as Lead Agency, issued a Mitigated Determination of Non-
33 Significance on October 30, 2001, subject to the following conditions:
34
- 35 a) The subject proposal shall comply with the Skagit County Shorelines Master
36 Program and the Shoreline Management Act RCW 90.58 and all portions of Skagit
37 County Code Title 14.
38 b) The applicant shall strictly adhere to the project information (site diagram)
39 submitted for this proposal. If the applicant proposes any modification of the
40 subject proposal, he/she shall request a permit revision from this office prior to the
41 start of construction.
42 c) The applicant shall strictly adhere to the mitigation and management and
43 maintenance recommendations as described in the Fish & Wildlife Site Assessment
44 prepared by Puget Sound refining and dated August 2001. The report-identified
45 temporary impacts to the area during construction and recommends the utilization



1 of best management practices such as silt fencing. A concrete 100%
2 containment basin is to be utilized to prevent leakage of fuel to the Fidalgo Bay.

3 d) The applicant shall inspect all structures of the proposal for possible fuel
4 containment failure or hazard to the public or the Bay and document the results
5 quarterly to be provided to the County upon request.

6 e) The applicant shall prepare a mitigation plan that involves the removal of noxious
7 weeds (Himalayan blackberry) from the vicinity prior to permit approval.

8
9 5. No public comments have been received regarding the proposal.

10
11 6. Staff determined that the proposal is not located on a Shoreline of Statewide
12 Significance.

13
14 7. The Proposal does not qualify as an exemption from a Substantial Development Permit
15 upon reviewing the exemptions allowed in WAC 173-27-040(2)(a-o) and will cost more
16 than \$2,500.00 dollars.

17
18 8. The proposal use is allowed in the Heavy Manufacturing zone of the City of Anacortes
19 which allows such activity per 14.04.16(A) of the Anacortes zoning ordinance.
20
21
22

23 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

24
25 Staff reviewed the proposal for consistency with SCSMMP Chapter 7.11 Ports and Industry as
26 defined in Chapter 3.03. Staff determined that the proposal does not conflict with the general
27 policies regarding, Feasibility, Port industries, existing facilities, new developments, public
28 access, location and design, Transportation and Utilities, water quality, log storage and
29 Transport, Impacts. Staff further finds that the proposal does not conflict with the regulations
30 regarding: Types of industry, zoning, joint facility use, Floodway, Accessory development,
31 Non-conforming uses, screening and buffer areas, air and water quality, waste treatment and
32 disposal, drainage and runoff, Petroleum products and hazardous materials. Staff has further
33 determined that the proposal complies with all SCSMMP regulations regarding shoreline areas
34 except shoreline setbacks.
35

36 2. Regulations:

37 A. Shoreline Area

38 (1) Urban

39 (a) Port and industrial development is permitted subject to General and Tabular Regulations.
40

41 C. Tabular Regulations: Table PI

42 (1) Urban -- The setback from the OHWM is 100 feet.

43 *The shoreline setback variance request is 87 feet, as 100 feet is the minimum required.*
44



1 9. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting
2 Shoreline Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance
3 permits reads:
4

5 Variance permits for development to be located landward of the ordinary high water
6 mark (OHWM), except within areas designated marshes, bogs or swamps pursuant to
7 Chapter 173-22 WAC, may be granted provided the applicant can meet all the
8 following criteria; the burden of proof shall be on the applicant.
9

10 a. **That the strict application of the bulk, dimensional or performance**
11 **standards set forth in this Master Program precludes or significantly**
12 **interferes with a reasonable use of the property not otherwise prohibited**
13 **by this Master Program.**

14 *The proposal is located within an existing fenced secure area that controls*
15 *access to the loading dock. The applicants have stated that the reason for the*
16 *proposed location is due to the necessity of having the emergency power and*
17 *fuel as close to the wharf as possible.*
18

19 b. **That the hardship described above is specifically related to the property**
20 **and is the result of unique conditions such as irregular lot shape, size or**
21 **natural features and the application of this Master Program and not, for**
22 **example, from deed restrictions or the applicant's own actions.**

23 *The hardship is due to uniqueness of the activity (i.e. a wharf facility) and the*
24 *importance of maintaining a steady flow of power close to the facility at all*
25 *times when product is being transported via the existing fuel lines. Ownership*
26 *of the facility has changed since the wharf, guardhouse, and fenced in security*
27 *area were constructed so that the current hardship was not caused by the*
28 *applicant.*
29

30 c. **That the design of the project will be compatible with other permitted**
31 **activities in the area and will not cause adverse effects to adjacent**
32 **properties or the shoreline environment designation.**

33 *The surrounding area is mainly utilized by the two refineries and has been*
34 *industrial in makeup since the 1950's. The proponents have proposed measures*
35 *to insure 100 % fuel containment in the case of a leak. No comments contesting*
36 *the Fish & Wildlife report findings have been submitted via the Technical team*
37 *review or through SEPA.*
38

39 d. **That the variance authorized does not constitute a grant of special privilege**
40 **not enjoyed by the other properties in the same area and will be the**
41 **minimum necessary to afford relief.**

42 *The issuance of a variance for this proposal would be consistent with the*
43 *industrial uses in the March Point area. Therefore, staff does not find the*
44 *proposal to be a "grant of special privilege" to the applicant.*
45



1 e. That the public interest will suffer no substantial
2 detrimental effect.

3 *Any possible detrimental effects however remote should be mitigated through*
4 *compliance with the conditions placed on the development as recommended by*
5 *staff and the environmental consultant as well as containment facilities the*
6 *applicant has recommended for the fuel storage.*

7
8
9
10
11
12 **RECOMMENDATION**

13
14 Based on the above findings, the Skagit County Planning & Permit Center would recommend
15 **Approval** of the development as proposed **with the following conditions:**

- 16
17 1. The applicant shall perform all conditions as stated in the Mitigated
18 Determination of Non-Significance issued on October 30, 2001 and subject to
19 the following conditions:
- 20 a) The subject proposal shall comply with the Skagit County Shorelines Master
21 Program and the Shoreline Management Act RCW 90.58 and all portions of
22 Skagit County Code Title 14.
- 23 b) The applicant shall strictly adhere to the project information (site diagram)
24 submitted for this proposal. If the applicant proposes any modification of
25 the subject proposal, he/she shall request a permit revision from this office
26 prior to the start of construction.
- 27 c) The applicant shall strictly adhere to the mitigation and management and
28 maintenance recommendations as described in the Fish & Wildlife Site
29 Assessment prepared by Puget Sound refining and dated August 2001. The
30 report-identified temporary impacts to the area during construction and
31 recommends the utilization of best management practices such as silt
32 fencing. A concrete 100% containment basin is to be utilized to prevent
33 leakage of fuel to the Fidalgo Bay.
- 34 d) The applicant shall inspect all structures of the proposal for possible fuel
35 containment failure or hazard to the public or the Bay and document the
36 results quarterly to be provided to the County upon request.
- 37 e) The applicant shall prepare a mitigation plan that involves the removal of
38 noxious weeds (Himalayan blackberry) from the vicinity prior to permit
39 approval.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

2. All spoils resulting from the proposal shall be disposed of at County-approved upland locations and shall not be disposed of in wetland, stream or riparian areas.
3. The subject proposal shall adhere to project specifications contained in the engineering drawings, except as allowed pursuant to the conditions contained in this staff report.
4. Skagit County approval of this proposal is based upon written approval from the Washington State Department of Ecology. The project must be started within two (2) years of the date of the Department of Ecology's approval and finished within 5 years or the shoreline permit will become void.
5. The subject proposal shall comply with the Skagit County Shorelines Management Master Program and the Shoreline Management Act RCW 90.58.

Prepared by: DD
Approved by:
Date: December 10, 2001.


200201090005
Skagit County Auditor
1/9/2002 Page 12 of 12 8:50AM