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Skagit County Auditor

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
700 S. SECOND STREET, ROOM 100  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: MDNS Appeal PL21-0108

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: Dike District 12

PARCEL NO(S): P34955, P34970, P34971, and P34973

LOCATION: 13757 Josh Wilson Road, between Josh Wilson Road to  
the south and Rector Road to the north, within a portion  
Sec. 29, T35N, R3E, W.M.

Permits Plus Receipt(s) Dated:

**BEFORE THE HEARING EXAMINER FOR SKAGIT COUNTY**

In the Matter of the Appeal of	)	
	)	
<b>SKAGIT COUNTY DIKE,</b>	)	<b>FINDINGS OF FACT,</b>
<b>DRAINAGE, AND IRRIGATION</b>	)	<b>CONCLUSION OF LAW</b>
<b>IMPROVEMENT DISTRICT NO. 12</b>	)	<b>AND ORDER</b>
	)	
vs.	)	<b>PL21-0108</b>
	)	
<b>SKAGIT COUNTY and</b>	)	
<b>APEX FARMS,</b>	)	
_____	)	

This matter came on for hearing before the undersigned Hearing Examiner on July 14, 2021 and July 21, 2021. John A. Shultz, Attorney at Law, represented the Appellant Dike District, Timothy D. Schermetzler, Attorney at Law, represented the Respondent Apex Farms. Jason D’Avignon, Deputy Prosecuting Attorney, represented Skagit County. Brandon Black, Planning Manager presented the project at hearing.

Exhibits were admitted, witnesses were sworn and testified, argument was heard. Based on the record made, the Examiner enters the following:

**FINDINGS OF FACT**

1. Apex Farms is seeking preliminary plat approval for the Bayview Estates Long CaRD land division. (PL19-0113).
2. On January 26,2021, Skagit County Planning and Development Services (PDS) issued a mitigated negative threshold determination (MDNS) under the State Environmental Policy Act (SEPA) in regard to the preliminary plat application.
3. On February 26, 2021, Skagit County Dike, Drainage and Irrigation Improvement District No. 12 (Dike 12) filed an appeal of the MDNS.
4. On July 1, 2021, PDS issued a Staff Report on the preliminary plat application recommending its approval with 65 recommended conditions.
5. Pursuant to SCC 14.06.070(2)(d), the appeal was combined with and processed at the same time as the public hearing on the underlying development permit.
6. The proposed subdivision includes 33 residential lots on approximately 167 acres. Thirty two (32) of the residential lot will be one acre in size, clustered in the northeast portion of the site. The site is on Bayview Ridge, west of the Farm to Market Road and north of Josh Wilson Road.

7. Dike 12 includes the drainage basin and tributaries of No Name Slough which discharges to Padilla Bay. Drainage and flood infrastructure in the basin is managed by Dike 12. The proposed subdivision lies upstream of No Name Slough.

6. The appeal raises two issues: (a) Should the MDNS be amended or withdrawn and re-issued, in order to include additional information, and (b) was it appropriate for the applicant to rely on a full dispersion analysis.

7. Dike 12 asserts that development of the proposed plat will contribute additional erosion from off-site drainage in the No Name Slough basin, an area that has recently experienced severe flooding.

8. The District argues the MDNS was fatally flawed for failure to take into account provisions of the Bay View Watershed Stormwater Management Plan. As a result, the District maintains that the MDNS ignored project-specific cumulative impacts to lowland streams and to Dike 12 facilities and infrastructure.

9. The Bayview Plan calls for flow control at new developments to match the predevelopment rate up to the 100-year storm duration. Stormwater mitigation, according to the District, should be at least be equivalent to the mitigation that would result from construction of the Marihugh Road Regional Detention Pond and the Marihugh Road Bypass Pipeline and Outfall as outlined in the Bay View Study plan

10. The site historically was largely cleared. The District maintains that the entire site should be returned to a forested condition in order to quality for fully dispersed runoff. Under the proposal, more than 65% of the property (excluding wetlands) will be retained in a forested or native condition.

11. The Applicant's response to the District was simply that it's professionally prepared drainage analysis concludes that the project will result in no-offsite impacts from stormwater runoff.

12. According to the Applicant, the design will result in full dispersion of stormwater on site, implementing the Department of Ecology Manual BMP T5.30. The testimony of Applicant's expert was particularly compelling on this point.

13. The conclusion by the Applicant's consultant that full dispersion will be achieved was confirmed on review by the County's Stormwater Technician. The Hearing Examiner finds that the preponderance of evidence supports this conclusion.

14. Accordingly, the likelihood of any off-site stormwater drainage impacts was effectively refuted. There was no need to refer to the Bayview Plan.

15. There is no argument that the County erred procedurally. A SEPA checklist was prepared and reviewed.

16. Any conclusion here which may be deemed a finding is hereby adopted as such.

**CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this appeal.
2. The County's MDNS must be afforded substantial weight. RCW 43.21C.090.
3. Environmental factors were considered in a manner sufficient to amount to prima facie compliance with the procedural requirements of SEPA.
4. On the record, the Examiner is not convinced that the issuance of an MDNS was clearly erroneous. Under the facts, the County did not err in failing to address the Bay View Plan.
5. The appellant did not present sufficient credible evidence to leave the Examiner with a definite and firm conviction that the project will have a significant environmental impact. *Norway Hill Preservation and Protection Ass'n v. King County Council, 87 Wn.2d 267 (1976).*
6. Any finding herein which may be deemed a conclusions is hereby adopted as such.

**ORDER**

The appeal is denied. The County's MDNS is sustained.

**DONE**, this 12<sup>th</sup>, day of August, 2021.

  
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Wick Dufford, Hearing Examiner

Transmitted to Appellant, Applicant, County Staff, August 12, 2021.