

**NOTICE OF DECISION
BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

Applicant: Washington State Department of Fish and Wildlife
c/o Chris Gourley
600 Capitol Way North
Olympia, WA 98501

Requests: Shoreline Substantial Development Permit—PL19-0101
Critical Areas Variance –PL19-0096

Location: 5834 Campbell Lake Road, within SE1/4 Sec. 12, T34N,
R1E, W.M; Parcel No: P19274

Land Use Designations: Shorelines: Rural
Zoning: Rural Reserve

Summary of Proposal: Replacement of existing failed boat ramp with a new ramp consisting of articulated concrete planks secured to each other and anchored into the substrate. Alongside the ramp will be a series of boarding floats connected at the landward end to a concrete abutment. The floats will extend parallel to the ramp a total length of 68 feet with the final waterward section set at 90 degrees to form an “L” shape. A 345 square-foot picnic shelter will be erected on the upland and a replacement vault toilet will be installed. The driveway and parking area will be resurfaced and a grass filter strip will placed between the parking area and the shore.

Public Hearing: July 24, 2019. Testimony by Leah Forbes for Planning and Development Services (PDS). and by Chris Gourley for Applicant. Public testimony by John Semmerau, Konrad Kurp and Andy Culbertson. Ryan Espegard, Attorney at Law, provided legal argument on behalf of Andy Culbertson.

Decision/Date: The application is approved, subject to conditions. August 20, 2019.

Reconsideration/Appeal: Shorelines: Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 5 days of this decision or decision on reconsideration if applicable.
Zoning: Reconsideration may be requested by filing with PDS within 10 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 14 days of this decision or decision on reconsideration if applicable.

Online Text: The entire decision can be viewed at:
www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. The Washington State Department of Fish and Wildlife (applicant) seeks to upgrade boat launching and boarding facilities on the south shore of Lake Campbell.

2. The site is on Fidalgo Island at 5834 Campbell Lake Road, within SE1/4 Sec. 12, T34N, R1E, W.M. The parcel number is P19274. The shoreline designation of the property is Rural. The zoning designation is Rural Reserve.

3. The property is a long narrow parcel extending from the road through a grassy area to a gravel parking lot and the launching facility at the water's edge. Currently the boat ramp is in such disrepair that its use have been blocked. Moreover, the current ramp does not reach deep enough water for most boats and trailers.

4. The proposal is to renovate the facility on the shore as follows: a) install a new launching ramp consisting of articulated concrete mats, filling voids in the mats with clean gravel; b) secure mats to each other and anchor to substrate; c) install four boarding floats alongside the ramp (three 6' x 20,' one 8' x 20') connected at the landward end to a 6' x 24' concrete abutment; (d) between the concrete abutment and the ramp insert a 2' x 24' concrete slab; (e) place the waterward boarding float to form a 90° angle with the other floats; (f) install three 8' diameter steel piles.

5. The project will include a minor amount of cut and fill activity resulting in 464 cubic yards of additional materials on site. The current boat ramp will be removed with an excavator. The area around the existing ramp and its approach will be regraded. If there is any excess material it will be hauled off site to an approved location. Most, if not all, the in-water work will occur at low water conditions. A cofferdam may be required to exclude water to allow the concrete to cure. The steel piles will be installed using an impact hammer.

6. Immediately upland of the boat launch, the space will be reconfigured to provide a grassy filter strip between the parking area and the shore. About six inches of top soil will be added for the grassy area and this addition will take out some asphalt, resulting in impervious surfaces on site being slightly reduced overall. The conversion of pavement to grass will mitigate for buffer impacts.

7. On the upland, the project will include the addition of an ADA accessible picnic shelter and a replacement of the present vault toilet. The picnic shelter will be 345 square feet in size on a 15' x 23' pad, and will provide cover from the elements which is currently unavailable at the site. The shelter site is in an area historically used for parking.

8. Along the approach from the road to the area reserved for parking is a long linear grassy strip that has for many years been used as a landing zone for hang gliders launched on Mount Erie. The only structure in the landing area is the vault toilet at the

lower end. This will be replaced by a new structure which intrudes about 4 feet past the existing structure.

9. Notice of Development application was published on March 21, 2019. Notification by mail and posting were accomplished as required by law. Five comment letters were received.

10. One of the comment letters supported the continued use of the site for hang glider landing. Under the facts, it does not appear that the project will pose significant new hazards to the hang gliders. They will be able to continue to use the landing area.

11. Three letters, all from members of the same family, expressed concerns about offsite parking and after-hours use of the ramp area. These have been ongoing problems. The proposal provides parking space adequate for normal boat launch and recovery operations. There will be no facilities for long-term moorage. The float is conceived as merely an aid to launching and landing. The ramp will be open to the public only during daytime hours. Thus, while the proposal will improve the boat launch facilities, it will not deal directly with existing problems with use of the site and its environs.

12. The other letter, from Andy Culbertson, a neighbor, maintained that the project would lead to a dramatic increase in use of the boat launch to the detriment of the lake and surrounding properties. He also posed legal objections that: (1) the proposal is an unlawful expansion of a non-conforming use; (2) the dock is not designed to facilitate low-impact uses; and (3) the variance will confer a special privilege by allowing the picnic shelter in the middle of a wetland buffer. In addition, he raised an issue concerning legal boundaries of the site and asked that WDFW be required to maintain existing drainage ditches.

13. Culbertson's prediction of increased use of the launching and recovery facilities appears plausible. There is nothing in the record concerning the likely level of usage for the improved facility.

14. Skagit County Parks and Recreation Director Brian Adams wrote a letter stating that the project will simply bring the facility up to acceptable standards for public use and that the various features of the project are not an expansion of use at the park. As to the new shelter, he said, "The shelter isn't of a size that will accommodate an expanded use. The shelter will simply offer a sun-safe protection zone in an expansive underused greenspace in which picnic tables were provided in the past."

15. At the hearing, John Semrau, Chairman of the County's Parks and Recreation Advisory Board testified in favor of the project. He showed that the State bought the property in 1956 and stated that boating from the site began as long ago as 1964. He said that the property entered the park system in 1987 with the County partnering with the State. He noted that this project is consistent with County efforts to upgrade park facilities in order to meet ADA standards.

16. Ryan Espegard, an attorney retained by Mr. Culbertson presented a legal argument asserting that the boat launch is presently classified as a “regional park,” making it a non-conforming use under the zoning code. He noted the prohibition against enlarging non-conforming uses and cited the policy discouraging their survival. Parks Director Adams’ letter states that the Lake Campbell facility does not meet the definition for a regional park and has been misclassified in the Comprehensive Parks Plan. He said the error will be corrected in the next iteration of the parks plan, scheduled for completion in December.

17. Culbertson testified that he has been a next-door neighbor to the site since 1989 and indeed has used the lake for water skiing and other recreation since he was six years old. He reiterated concerns about illegal parking in the vicinity. He argued that the boat launch should be revamped, but not as currently planned. He contended that the float will concentrate boats and render the site less safe. He opposed the addition of the float and of the shelter, asked for maintenance of drainage ditches at the site, and urged enforcement to prevent access to the site at night.

18. Chris Gourley, testifying for Fish and Wildlife, said that the float is a necessity for funding the project because it provides ADA access to the water. The replacement vault toilet and the picnic shelter are likewise considered ADA accessibility amenities for the existing boat launch.

19. The Hearing Examiner requested the County to respond in writing to the legal argument provided by Mr. Espegard. The response, dated August 7, 2019, has been reviewed by the Examiner.

20. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued for the project on November 29, 2018. The DNS was not appealed.

21. A portion of the site is within a designated flood hazard area. The replacement vault toilet will be located outside of the mapped floodplain. The proposed shelter and project grading will require a floodplain development permit.

22. The launch site is within a fish and wildlife habitat conservation area under the Critical Areas Ordinance, but, under the Staff’s analysis, is seen as allowed use within such an area or its buffer.

23. Stormwater review will be completed with the grading and floodplain permits.

24. The improvements to the site will consist mainly of repairing existing facilities and making the site ADA accessible. The 3370 square foot grass filter strip to be added between the parking area and the shore will mitigate any adverse impacts to critical areas onsite. The requested reduction of the critical areas buffers (100 feet from

shore and 110 feet from wetland) to allow construction of the shelter is the minimum necessary to make possible ADA compliant use of the park.

25. The Staff Report recommends approval of the application under both the Shoreline Master Program and the Critical Areas Variance criteria. The Staff Report is hereby incorporated herein as though fully set forth.

26. 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. SMP 9.06, SCC 14.24.140.

2. The requirements of the State Environmental Policy Act (SEPA) have been met.

3. The site does not meet the definition of “regional park.” Rather, it is in fact a “specialized recreation area.” See SCC 14.04.020 under definition of “park.” It’s mischaracterization in the Comprehensive Parks and Recreation Plan was simply an error and does not operate to define the use.

4. In the Rural Reserve zone, a park classified as a “specialized recreation area” is allowed by permit as an Administrative Special Use. SCC 14.16.320(3)(k).

5. Thus, this pre-existing park is an allowed use under the zoning code, not a nonconforming use.

6. However, there is nothing in the record to show that a permit has ever been obtained to legitimize the use of this “specialized recreation area” as an authorized Administrative Special Use.

7. Therefore, as part of the approval process, an Administrative Special Use Permit must be obtained. Once, the park use is authorized, then this particular project within it can proceed.

8. The proposal involves a dock designed to facilitate low-impact use for noncommercial recreation and is, thus, allowed within a fish and wildlife habitat conservation area. SCC 14.24.540(5)(b).

9. The Staff reviewed the application under the local Shoreline Master Program (SMP) and concluded that the project, as conditioned, is consistent with the applicable

criteria for a Shoreline Substantial Development permit. SMP 9.02. The Examiner concurs with this analysis and adopts the same.

10. The Staff reviewed the application under the Critical Areas Variance requirements and concluded that the project, as conditioned, is consistent with the applicable approval criteria. SCC 14.24.140(3). The Examiner concurs with this analysis and adopts the same.

11. In particular, ADA compliance is included within the concept of reasonable use of the site. The proposed improvements to achieve this compliance are the minimum needed to make possible this reasonable use. See SCC 14.24.140(3)(e).

12. This decision relates to approval of the project under applicable land use regulations. The Examiner has no authority to review or adjudicate property boundaries.

13. 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. All required permits shall be obtained and their conditions adhered to.

3. Temporary erosion/sedimentation control measures shall be used in accordance with applicable regulations.

4. The applicant shall demonstrate the ability to comply with applicable drainage requirements with the submittal of the grading permit. The applicant shall be responsible for maintaining the site's drainage system.

5. The applicant apply for and receive a Special Use Permit for use of this park. The permit shall make appropriate provisions for securing the park from use after dark.

6. The applicant and its contractors shall comply with all relevant County and State regulations, including but not limited to, Chapters 173-201A and 173-200 WAC (surface and ground water quality), Chapter 173-60 WAC (noise), Chapter 14.32 (stormwater management).

7. The project shall be commenced within two years of final Shoreline permit approval and completed within five years thereof.

8. The critical areas variance shall expire if the use or activity for which it is granted is not commenced within three years of final approval. Knowledge of the expiration date is the responsibility of the applicant.

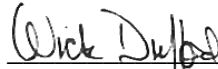
9. A copy of this decision shall be submitted with the building and grading permit applications.

10. If the applicant proposes any modification of the subject proposal, it shall notify Planning and Development Services prior to the start of construction.

11. Failure to comply with any condition of approval may result in permit revocation.

DECISION

The applications for a Shoreline Substantial Development Permit (PL19-0101) and for a Critical Areas Variance (PL19-0096) are approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Transmitted to applicant, staff and interested parties, August 20, 2019.