

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Equilon Enterprises/Shell Puget Sound Refinery
c/o John While
8505 South Texas Road
Anacortes, WA 98221

Agent: AECOM
Jeff Walker
1111 3d Avenue
Seattle, WA 98101

Request: Critical Areas Variance, PL20-0181

Location: 8505 South Texas Road, between Fidalgo Bay and Padilla Bay,
within Sec. 34, T35N. R2E. W.M. Parcel No: 33502.

Land Use Designation: Anacortes Urban Growth Area – Urban Development District

Summary of Proposal: To expand an existing impounding basin at Shell Puget Sound Refinery to provide additional capacity for stormwater runoff. The expansion would reduce the standard 50-foot buffer for an adjacent Category IV wetland to 15 feet.

Public Hearing: November 18, 2020 via telephone and Microsoft Teams.
Testimony by Planning and Development Services (PDS) staff and Applicant’s agent. No public testimony.

Decision/Date: The application is approved, subject to conditions.
December 15, 2020

Reconsideration/Appeal: 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. Shell Puget Sound Refinery proposes to expand an existing impounding basin to provide additional capacity for stormwater runoff.
2. The project will be located on the refinery site on March Point between Fidalgo Bay and Padilla Bay, within Sec. 34, T35N, R2E, W.M. The parcel number is P33502.
3. The impounding basin is situated between the Burlington Northern Santa Fe railroad spur on the west and a refinery access road on the east.
4. The existing basin provides temporary storage in the event of a crude release and detention of stormwater from the adjacent slope to the east. Stormwater detained in the basin is periodically pumped and conveyed to water storage tanks where it is added to the refinery's wastewater recycling system.
5. After heavy rain events in the last several years, the impounding basin has filled to nearly its maximum design capacity with the pump operating at its maximum flow rate.
6. The existing basin measures approximately 280 feet by 65 feet with a capacity of 86,607 cubic feet of storage. A study determined that the best alternative for reducing the risk of overflow would be to simply expand the basin. The expansion would increase the size of the basin by 10,000 square feet and increase its capacity by 46,500 cubic feet.
7. Given existing constraints, the only possible direction for expanding the basin is to the south. However, the basin can only be extended south approximately 103 feet on its east edge and 117 feet on its west edge due to the presence of two liquid natural gas (LNG) pipelines. Because of this, the basin must be about 79 feet wide to provide the needed capacity. This will require the basin's west edge to extend 35 feet into the standard 50-foot buffer for a Category IV wetland.
8. The project will impact approximately 6,160 square feet (0.14 acre) of buffer habitat. There is no practicable alternative to the proposed location, size and configuration of the basin expansion that would not require realignment of existing access roads, the railroad spur or LNG pipelines. Such realignment of linear features would result in substantially greater critical area impacts.
9. The new capacity is designed according to the Washington State Department of Ecology Stormwater Manual for Western Washington for a 100 year, 24-hour storm. The proposed size of the impounding basin is the minimum necessary to provide the needed storage capacity.
10. AECOM prepared a site assessment and mitigation plan using best available science.

The area to be affected provides a low-quality wetland buffer dominated by invasive species, including Himalayan blackberry and Canada thistle. The buffer mitigation plan provides improved protection to other wetlands on the property by enhancing 10,000 square feet of buffer adjacent to a Category IV slope wetland roughly 500 feet to the east of the proposed basin expansion. The enhanced buffer will be monitored for five years to ensure successful establishment of successful plantings.

11. Notice of Development Application was published on August 6, 2020. Notification by mail was provided to all property owners within 300 feet of the property. One comment letter was received. The letter favored the proposal.

12. The public hearing was held on due notice. No public testimony was offered. County agencies and departments expressed no concerns. The City of Anacortes expressed no concerns.

13. The Staff evaluated the application in light of the Critical Areas Variance approval criteria and determined that, as conditioned, the proposal meets the criteria. 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.

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 these proceedings. SCC 14.24.140(1)(b).
2. The proposed variance complies with the relevant criteria for approval of a Critical Areas Variance. SCC 14.24.140.
3. The granting of the variance will be in harmony with the general purpose and intent of the Unified Development Code and consistent with SCC 14.10.040.
4. Any finding herein which may be deemed a conclusion is hereby adopted as such.

CONDITIONS

1. The proposal 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 all required permits and abide by the conditions of same.
3. The recommendations of the Buffer Mitigation Plan prepared by AECOM, dated February 2020 shall be considered conditions of approval

4. Mitigation plantings shall be monitored for a minimum of five years.
5. The project shall comply with development requirements of the City of Anacortes.
6. A Protected Critical Area site plan shall be recorded with the County Auditor's Office prior to submittal of the building permit application.
7. The applicant shall comply with all local and state local regulations.
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.
9. If the applicant proposes any modification of the subject proposal, as approved, it shall notify Planning and Development Services prior to the start of construction.
10. Failure to comply with any permit condition may result in permit revocation.

ORDER

The requested Critical Areas Variance (PL20-0181) is approved, subject to the conditions set forth above.

SO ORDERED, this 15th day of December, 2020.



Wick Dufford, Hearing Examiner

Transmitted to Applicant, County staff and interested parties December 15, 2020.