

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Ron Bryson
27339 South Skagit Highway
Sedro-Woolley, WA 98284

File No: PL07-0256

Request: Shoreline Substantial Development Permit

Location: 27103 South Skagit Highway within a portion of Sec. 34, T35N, R5E, W.M.

Parcel No: P40643

Shoreline Designation: Rural

Summary of Proposal: To place 3,207 cubic yards of fill to establish a building site meeting floodplain elevation requirements. To authorize the excavation of 2,100 cubic yards of earth for the creation of two ponds.

Public Hearing: After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on August 8, 2007.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. Ron Bryson (applicant) seeks a Shoreline Substantial Development Permit to place fill and to authorize excavation within the floodplain of the Skagit River.
2. The proposal relates to a triangular five-acre parcel on the north side of the South Skagit Highway. The parcel number is P40643. The address is 27103 South Skagit Highway. The site is within a portion of Sec. 34, T35N, R5E, W.M.
3. The Skagit River is located approximately 700 feet northwest of the site. Along this stretch of the river, the entire floodplain is included within the designated “shoreline” area and is subject to the permit requirements of the local Shoreline Master Program (SMP).
4. The applicant seeks to obtain permit approval for the previous excavation of Pond A (21,330 square feet) and Pond B (8,934 square feet). The excavation amounted to 2,100 cubic yards. The material was kept on site, creating a hill adjacent to the road. The applicant also seeks permit approval to retain this hill and increase its size by importing an additional 1,107 cubic yards of fill. The combined total of fill material (3,207 cubic yards) will be formed into a building platform for a single family residence.
5. A former owner applied in 1997 for permission to proceed with a similar proposal. This application (PL97-0032) was denied on the basis of a conclusion that the entire site was an “associated wetland.” This decision was not appealed.
6. In connection with the subject application, a site inspection was conducted on February 14, 2007 by County Staff and a wetland specialist from the Department of Ecology. They concluded that only a small area in the extreme west portion of the site is a wetland. The majority of the parcel is not.
7. The area affected by the work described in the application is not within the river’s floodway.
8. A Fish and Wildlife and Wetland Habitat Site Assessment, dated March 10, 2007, was prepared by Skagit Wetlands & Critical Areas LLC. The assessment identified an 18,400 square foot scrub-shrub wetland in the west corner of the property, rating it as Category III. The buffer of such a wetland is 50 feet.
9. The Assessment also identified a stream (Salmon Creek) on the northern border of the property. This “stream” is a channel that was dug by the County Public Works Department in the 1970’s for flood control purposes. Though manmade, it qualifies as a Type III stream because it receives natural flows from upstream areas. The buffer for such a stream is 100 feet.

10. The Assessment suggested averaging with respect to the buffer for Salmon Creek in order to accommodate Pond A. In addition, a planting program was proposed, calling for 55 Western Red Cedar and Sitka Spruce to be installed in a 4,000 square foot area directly adjacent to the wetland and stream buffers. Monitoring to achieve an 85% survival rate after five years was recommended.

11. A Grading Permit (BP06-0931) has been sought and is being held in abeyance pending the outcome of this shoreline permit proceeding. Public Works noted that the applicant must meet all the conditions of the Grading Permit and future Access Permit.

12. Public Works requested that a 20-foot open space be allowed every 40 feet along Salmon Creek to allow County Staff to maintain the ditch.

13. Other County Department's consulted made comments that can be accommodated as conditions of approval.

14. Although the application was prompted by an enforcement proceeding, there was no public comment on the proposal. There was no public testimony at the hearing.

15. The Staff has reviewed the project for consistency with the master program provisions relating to landfills and has determined that, as conditioned, this development will be consistent with them. 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.

16. The work will not encroach on any critical areas. Appropriate limitations on the landfill material and provisions for erosion control will be required.

17. Environmental review was carried out pursuant to the State Environmental Policy Act (SEPA). A Mitigated Determination of Non-Significance (MDNS) was entered on May 10, 2007. No comments were received on the MDNS. The MDNS was not appealed.

18. After the current review of the site, the Staff's conclusion is that the wetland report made in the late 90's was simply incorrect.

19. 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 persons and the subject matter of this proceeding. SMP 9.06.

2. The requirements of SEPA have been met.
3. An exemption normally covers the placement of fill for a residence within the shoreline area. But the exemption only extends to 250 cubic yards of grading. WAC 173-27-040(2)(g). This project far exceeds the exemption and is therefore subject to the Substantial Development Permit requirement. See RCW 90.58.030(3), 90.58.140(2).
4. The SMP allows Substantial Development Permits to be issued only when the project is consistent with the policies and regulations of the SMP, the policies of the Shoreline Management Act, and the shorelines regulations of the DOE. SMP 9.02.
5. In this case, the policies of the Act and the regulations of DOE are adequately carried out by the provisions of the local SMP.
6. The project is consistent with the master program regulations for landfills. Appropriately conditioned landfills are permitted in the Rural shoreline designation. Such landfills are not to be located in wetlands or floodways. See SMP 7.06.
7. As conditioned, the proposal meets the criteria for approval of a Shoreline Substantial Development Permit.
8. 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 and as described and conditioned by the Fill and Grade Permit (BP06-0931).
2. The application shall obtain all other necessary permits, including an Access Permit.
3. The applicant shall use the site plan submitted on March 21, 2007, and shall adhere to the recommendations of the Fish and Wildlife Site Assessment dated March 10, 2007.
4. The additional fill shall meet the regulatory standards of the Model Toxics Control Act as set forth in Chapter 173-340 WAC.
5. Appropriate provisions shall be taken to control erosions and sedimentation.
6. The planting and monitoring plans shall be implemented within one year of building permit issuance. Plantings along Salmon Creek shall provide 20-foot spaces every 40 feet to allow for ditch maintenance.

7. The Protected Critical Area shall be accurately mapped and recorded with the County Auditor prior to approval of a building permit issuance.
8. The project must be commenced within two years of the date of final permit approval and completed within five years thereof or the permit shall become void.
9. Failure to comply with any condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit is approved, subject to the conditions set forth above.



Wick Dufford
Wick Dufford, Hearing Examiner

Date of Action: August 14, 2007

Date Transmitted to Applicant: August 14, 2007

RECONSIDERATION/APPEAL

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