

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Washington State Department of Transportation (WSDOT)
P. O. Box 330310
Seattle, WA 98133-9710 NB-0138

File No: PL07-0576

Request: Shoreline Substantial Development Permit and
Shoreline Variance

Location: Adjacent to SR 20 within WSDOT right-of-way, along
the shore of Lake Campbell on Fidalgo Island, and within
portions of Secs 5, 7, 8 and 18, T24N, R2E, W.M.

Shoreline Designation: Rural Residential and Rural

Summary of Proposal: The project is referred to as the SR20 Quiet Cove Widening
Stage 2 project. It involves, among other things, expanding
the highway within 150 feet of the Ordinary High Water
Mark (OHWM) on the east shore of Lake Campbell. The
road alignment has been changed to avoid filling wetlands
but total avoidance was not possible. Wetland creation/
enhancement adjacent to Fidalgo Bay is proposed as
mitigation.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on February 13, 2008.

Decision: The application is approved subject to conditions.

FINDINGS OF FACT

1. The Washington State Department of Transportation (WSDOT) proposes improvements to State Route (SR) 20 in the vicinity of the east end of Lake Campbell in the central portion of Fidalgo Island, south of the City of Anacortes.

2. The project is called the SR 20 Quiet Cove Widening Stage 2 Project. It will occur within WSDOT right-of-way within portions of Secs 5,7,8 and 18, T34N, R2E, W.M. The affected shoreline is designated Rural Residential and Rural under the local Shoreline Master Program (SMP). Land use in the area is primarily low-density residential, recreational, open space and scattered commercial.

3. Basically the project is designed to widen SR 20 to 12 foot lanes and 4 foot shoulders to improve safety for both vehicles and bicycles. Stage 2 involves improvements between Milepost (MP) 45.05 and the SR 20 Spur (Fidalgo Bay Road) at MP 47.87, as follows:

(1) Vertical and horizontal road realignments, lane and shoulder widening, intersection rechannelization, and the addition of a left turn pocket at the intersection of Almida Vista Place and SR 20.

(2) Restriping of several intersections to allow a right turn only from SR 20 to north Lunz Road, and a right turn only from south Miller Road onto SR 20. East bound (left turn only) lanes are proposed at the intersections SR 20 with Gibraltar and Miller Roads.

(3) Wetland creation/enhancement located north of SR 20 directly adjacent to Fidalgo Bay, in accordance with U.S. Army Corps of Engineers approval.

(4) Stormwater treatment via construction of ecology embankments and detention/treatment ponds.

4. A portion of the proposed improvements are within 150 feet of the Lake Campbell shoreline. The closest approach to the lake is within 15 feet of the Ordinary High Water Mark (OHWM). The local Shoreline Master Program (SMP) requires a setback of 150 feet for roads and highways in the Rural Residential designation. The setback is 200 feet in the Rural designation.

5. Within the shoreline zone, work will include road re-alignment, road widening, intersection re-channelization, culvert extensions and sight distance and clear zone improvements. The present roadway is within the regulatory setbacks and a hillside to the east prevents significant movement of the project to the east. WSDOT advised the County that “the alignment has been changed to avoid fill[ing] the wetlands adjacent to the Lake Campbell but total avoidance was not possible.” A Shoreline Variance was requested because “an alternative route was not feasible.”

6. The project is located within the Similk Bay watershed. Meadow Creek flows southeast from Lake Campbell crossing under SR 20 at MP 44.70, eventually entering Similk Bay. Another unnamed stream has been noted southwest of the SR 20/Miller Road intersection. Twenty-three wetlands were identified and delineated for the project by WSDOT biologists. Some of the wetland area is adjacent to the east shore of Lake Campbell.

7. The filling will impact both wetlands and their buffers. Direct wetland impacts will be limited to a little over a half acre. Also, as a result of the project, Lake Campbell will receive runoff from 2+ acres of additional impervious surface that will be detained and treated in a detention pond (Pond D) before being discharged to the lake through a series of culverts and grass-lined ditches. The pond will be located adjacent to the lake near the Campbell Lake Road/SR 20 intersection. In addition to the pond, ecology embankments for enhanced treatment of highway runoff will be constructed adjacent to the lake.

8. The proposed left turn pocket from SR 20 to Almida Vista Place has been designed to be widened asymmetrically to avoid impacts to Lake Campbell.

9. The instant project is a portion of a larger safety improvement project that extends from Quiet Cove Road to Fidalgo Bay. At MP 48.40, on Fidalgo Bay within the City of Anacortes, a wetland will be constructed to mitigate for wetland impacts from the entire project. The mitigation will create 1.39 acres of emergent and scrub shrub wetland and enhance 0.45 acres of such wetland. The mitigation effort will meet State Department of Ecology standards and will constitute compliance with the County's Critical Areas Ordinance. The work has been authorized by a Shoreline permit issued by the City of Anacortes.

10. Details of the mitigation plan are shown in exquisite detail in a "*Final Wetland Mitigation Report: SR 20 Quiet Cove to SR 20 Spur Safety Improvement (MP 44.65 to MP 47.87)*" dated April 2007.

11. Transportation facilities are permitted in both the Rural and Rural Residential Environments under the SMP, subject to general regulations and dimensional limits. The regulations call for such facilities to be located landward of "backshore marshes." Assuming this older terminology encompasses what are modernly termed "wetlands," the regulation constitutes a performance standard which needs to be covered in any Shoreline Variance approval.

12. Geotechnical recommendations were submitted by the WSDOT Geotechnical Division on November 3, 2005 and August 6, 2007. A 2:1 slope in the bank near Almida Vista Place will be built accompanied by aggressive erosion control and rapid immediate establishment of vegetation on the cut slope.

13. The Meadow Creek bridge crossing (Stage 1) and the culvert for the unnamed stream have been approved as to fish protection through a Hydraulic Project Approval issued by the State Department of Fish and Wildlife. The project as a whole has been given a Water Quality Certification by the Department of Ecology. The U.S. Army Corps of Engineers has issued a Section 404 (Clean Water Act) Nationwide Permit. The latter requires that WSDOT must implement and abide by ESA requirements set forth in the “*Biological assessment: SR 20 Quiet Cove Road Vicinity to SR 20 Spur Vicinity,*” dated August 2005. These various permits, plus the geotechnical recommendations, adequately address the SMP requirements for erosion control.

14. Variances from the SMP for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for 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 the adjacent properties or the shoreline environment designation.
- d. The variance granted 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. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

15. The Staff Report analyzes the proposal in light of these criteria and determines that, as conditioned, it 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 project is merely an enlargement what is already there. The SMP encourages the use of existing transportation corridors. The road widening within the shorelands will not occur on the lake side of the road. But, the hillside to the east poses a substantial barrier to moving the road out of shorelines jurisdiction. The modest impact to wetlands will be adequately compensated for by the building of the new wetland area.

17. WSDOT issued a Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) on March 31, 2006. An Addendum was issued on April 21, 2006. The DNS was not appealed.

18. There was no written public comment on the project proposal.

19. The public hearing was held on February 13, 2008 on due notice. At the hearing, concern was expressed about the difficulties of getting coherent notice for projects involving multiple government agency approvals. Questions were asked about provisions for turns onto south Miller Road, turns onto and from Gibraltar Road, and no-pass striping. These comments concerned portions of the project outside of the area affected by the proposed Shoreline Substantial Development Permit and Variance. Nonetheless WSDOT representatives were present and took note of the remarks.

20. 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.

2. Because the project is located within WSDOT right-of-way, it will not require a Special Use Permit or other zoning authorization. RCW 47.01.260(1).

3. The use of a mitigation area within the City of Anacortes to achieve compliance with the County's Critical Areas Ordinance is permitted under the jurisdictional substitution provision of the code. SCC 14.24.040(3).

4. The proposal, as conditioned, is consistent with the criteria for a Variance from the shore setback for Lake Campbell and from the requirement to locate transportation facilities landward of "backshore marshes." SMP 10.03.

5. With the approval of the Variance, the project, as conditioned, will be consistent with the policies and regulations of the SMP and with policies of the Shoreline Management Act. Accordingly, a Shoreline Substantial Development Permit may also be granted. SMP 9.02.

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

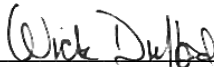
CONDITIONS

1. The project shall be built as described in the application materials except as the design may be altered by these conditions.
2. The project shall conform to the conditions of all permits obtained for the undertaking.
3. The project shall comply with all relevant Federal, State and County regulations, including but not limited to State Water Quality Criteria for Surface Water and for Groundwater, the County Drainage Code and the SMP.
4. The project shall be commenced within two years of the date of final approval and shall be completed within five years thereof, or the variance shall become void.
5. Failure to comply with any conditions may result in permit revocation.

DECISION

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

DONE this 11th day of March, 2008.



Wick Dufford, Hearing Examiner

Date Transmitted to Applicant: March 11, 2008

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with Planning and Development Services within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within 14 days after the date of the decision, or decision on reconsideration, if applicable.

DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.