

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Washington State Department of Natural Resources (DNR)
c/o David Vagt, Dredge Material Management Program Manager
1111 Washington St. SE, MS 47027
Olympia, WA 98504-7027

Request/File No: Shoreline Substantial Development and Conditional
Use Permit Renewal, PL11-0087

Location: Seabed approximately one mile south of Cypress Island and
1.5 miles west of Shannon Point, Latitude 48 degrees 30.87
minutes north, Longitude 122 degrees 43.56 minutes west.

Shoreline Designation: Aquatic

Summary of Proposal: To renew permission for use of the location as a regional disposal
site for uncontaminated dredged material. Approval would allow
continuance of a use that began in 1990.

SEPA Compliance: Determination of Non-Significance (DNS) by DNR, dated
March 1, 2011. No appeals.

Public Hearing: September 14, 2011. Public testimony positive. Planning and
Development Services (PDS) recommended approval.

Decision: Approval, subject to conditions.

Reconsideration/Appeal: A Request for Reconsideration may be filed with PDS within five
days of this decision. The decision may be appealed to the Board
of County Commissioners by filing an Appeal with PDS within
five days of the date of the decision or decision on reconsideration,
if applicable.

Online Text: The entire decision can be viewed at:
[www.skagitcounty.net/hearing examiner](http://www.skagitcounty.net/hearing_examiner)

FINDINGS OR FACT

1. The Washington State Department of Natural Resources (DNR) seeks renewal of an existing Shoreline Substantial Development/Conditional Use Permit (PL01-0494).
2. The permit will allow continued use of a dredged material disposal site on the state-owned seabed below open water in Rosario Straits approximately one mile south of Cypress Island and 1.5 miles west of Shannon Point, at Latitude 48 degrees 30.87 minutes north, Longitude 122 degrees 43.56 minutes west. The site is designated as Aquatic by the local Shoreline Master Program. It is also a Shoreline of Statewide Significance.
3. The site has been used for disposal of uncontaminated dredge spoils from regional dredging projects since 1990. Permission has been granted for limited terms (first for five years, then for ten) to allow for periodic evaluation. Conditional Use approval is required for open water disposal.
4. The site serves as an alternative to upland disposal and is used only for the disposal of material from aquatic environments. The materials proposed for disposal must meet or exceed rigorous testing and suitability requirements prior to the granting of regulatory permission for disposal. The materials must be shown not to be potentially harmful to biological resources. Approval of suitability for disposal is by joint action of the U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, Washington State Department of Ecology and DNR.
5. The subject renewal is sought to meet anticipated long-term disposal needs associated with navigation, port construction, and routine maintenance dredging in the surrounding area.
6. The disposal location is in 130 feet of water and its use has no significant impact on navigation or other use of the surface. The site is a 6,000 foot diameter circle within which dredged materials are meant to disperse with the currents. This is accomplished by allowing releases by bottom-dump barge only within a 3,000 foot diameter circle around the central point of the site.
7. No waste material is allowed to be discharged during disposal. Monitoring of the site is required during disposal to insure that no material other than dredged material found suitable for unconfined, open-water disposal is discharged.
8. Experience from use of the site has shown that the dispersal expectations are being met. No substantial build-up of materials has occurred. Moreover, there is no evidence of contamination at the site or elsewhere in the vicinity. After 21 years of monitoring, no significant adverse impact to the biota at the subject site as a result of soils disposal has been detected.
9. According to a Biological Assessment performed in connection with this application, the site possesses low habitat value. There is no critical habitat for threatened or endangered species including newly listed rock fish species. The impacts on essential fish habitat are not predicted to be substantial if required protocols for transport, timing, and purity are followed.

Requirements for ongoing monitoring will be continued.

10. An Environmental Impact Statement was written in 1989 prior to the initial authorization of the site. This Statement was adopted in 1991 in connection with a previous renewal. For the instant renewal, DNR prepared an Environmental Checklist and issued a Determination of Non-Significance (DNS) on March 1, 2011. The DNS was not appealed.

11. A Notice of Development for this application was posted and published on April 28, 2011. No comment letters were received.

12. The application was circulated to various County departments. Comments received concerned only the need to insure that no degradation of water quality occurs. Critical Areas approval was given by jurisdictional substitution, through which the approval of other agencies may be accepted as satisfying the County's critical areas requirements. (See SCC 14.24.040(3).)

13. The Staff Report analyzes the application in light of the requirements of the Shoreline Master Program (SMP) and determines that, as conditioned the project will be consistent with the program. 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. The SMP at Subsection 7.04(1)(C)(1)(e) states a policy for disposal at sites in areas protected from "submarine currents, stratification and turbulence that would cause shifting and dispersal of soils." Read in context, the Examiner finds that this policy is intended to prevent the possible spread of contamination from disposal. Because of the purity of materials deposited, this has not proven to be a matter of concern at this site. The Biological Assessment indicates that the high dispersal at the subject site is actually an ecologically positive characteristic supporting its selection.

15. One member of the public testified, basically approving of the disposal program as it has been conducted but urging greater ease of access to monitoring data. Attention was directed to the continuing need to protect sensitive resources, such as abalone, which are found in the vicinity.

16. 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 subject matter of this proceeding.
2. The requirements of SEPA have been met.
3. The project, as conditioned below, is consistent with the policies and regulations of the SMP and the Department of Ecology. It meets the criteria for approval of a Shoreline Substantial Development Permit. SMP 9.02.

4. Dredge spoil disposal in the Aquatic shoreline environment requires Conditional Use approval. SMP 7.04(2)(A)(6). Here the Conditional Use approval criteria of SMP 11.03 are met. The proposed use will be consistent with the SMP and Shorelines Act; it will not interfere with normal public use of public shorelines; it will be compatible with other uses in the area; it will not cause unreasonable adverse effect to the Aquatic environment; the public interest will be served.

5. The statutory preferences for Shorelines of Statewide Significance, RCW 90.58.020, are not violated.

6. Continued monitoring and a ten year permit life are appropriate. An effort should be made to make program data more readily available to the public.

7. 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 altered by these conditions.

2. If any modification of the proposal is proposed, a permit revision shall be applied for from PDS.

3. The applicant and its contractors shall comply with all applicable local, state and federal regulations, including but not limited to state water quality standards as set forth in Chapters 173-201A and 173-200 WAC.

4. The manager of the Rosario Strait dredge spoils discharge site shall be the Washington State Department of Natural Resources. The manager shall be responsible for operation of the site and compliance with all conditions.

5. The testing and monitoring procedures of the Dredged Material Management Program (DMMP) shall be adhered to in connection with all dredge disposal at the site.

6. The manager shall provide on-line access to all records of testing and monitoring performed, as well as information regarding users of the site. This shall be accomplished by providing the County, and on request, members of the public, with an internet link to a site containing this data.

7. The site shall be available for dredge spoils discharge in the calendar period from June 16 to March 16, unless further restricted by additional federal or state permit conditions.

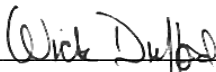
8. This permit shall have a term limit of 10 years from the date of approval. No use of the site after the end of the permit term shall be permitted until the permit is renewed.

9. Failure to comply with any conditions of this permit may result in permit revocation.

DECISION

Application PL11-0087 for a Shoreline Substantial Development/Conditional Use Permit is approved, subject to the conditions set forth above.

DONE this 27th day of September, 2011



Wick Dufford, Hearing Examiner

Transmitted to Applicant on September 27, 2011

See Notice of Decision, Page 1, for Reconsideration and Appeal information.