

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Washington Department of Fish and Wildlife
c/o Jennifer Friebel
P. O. Box 1100
LaConner, WA 98257

Request/File Nos: Shoreline Substantial Development Permit, PL14-0027
Special Use Permit, PL14-0024

Location: Shores of Skagit Bay and Skagit River delta, Fir Island Farm, at
15802 Fir Island Road, within Sec. 22, T33N, R3E, W.M.
Parcel nos: P15992, P15997, P15998, P15999, P16000, P16001, P16002,
P16003, P16004, P16006, P16007, P16008, P16009, and P16011

Shoreline Designation: Rural/Shoreline of Statewide Significance
Land Use Designation: Agriculture-Natural Resource Land/Open Space of Regional/
Statewide importance

Summary of Proposal: To restore the tidal ecosystem processes and connectivity of the
Skagit delta by setting back the existing flood dike and tide-gate
infrastructure. The project will restore 127.5 acres of complex tidal
marsh and 17.4 acres of tidal channels.

SEPA Compliance: Washington Department of Fish and Wildlife (WDFW) issued a
Mitigated Determination of Non-Significance (MDNS) on February 6,
2014. No appeal.

Public Hearing: February 11, 2015. Testimony by County and WDFW. Public
testimony by Dike District #22, Audubon Society and Nature
Conservancy -- all in favor.

Decision/Date: The application is approved, subject to conditions. March 5, 2015.

Reconsideration/Appeal: (1) Shoreline permit decision. Request reconsideration within 5 days
of this decision. Appeal to Board of County Commissioners within 5
days of this decision or decision on reconsideration, if applicable.
(2) Special Use permit decision. Request reconsideration within 10 days
of this decision. Appeal to Board of County Commissioners within 14
days of this decision or decision on reconsideration, if applicable.

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

FINDINGS OF FACT

1. The Washington Department of Fish and Wildlife (WDFW) seeks a Shoreline Substantial Development permit and a Special Use Permit to engage in habitat restoration work in the Skagit River delta, adjacent to Skagit Bay.

2. The project seeks to restore approximately 127.5 acres of complex tidal marsh and 17.4 acres of tidal channels. The goal is to increase annual Chinook smolt production. Snow goose management and public access will be maintained.

3. Agricultural drainage, flood protection and protection from saltwater intrusion will be provided for farmland remaining at the project site, for the adjacent neighboring farms, and for farms within the central drainage watershed of Fir Island.

4. The project is identified for restoration in the 2005 Skagit Chinook Recovery Plan as well as a near-term priority restoration project in the Skagit Delta Tidegates and Fish Initiative Implementation Agreement among the Western Washington Agriculture Association, the National Marine Fisheries Service and WDFW.

5. The Fir Island Farm site is located at 15802 Fir Island Road, within Sec. 22, T33N, R3E, W.M. It is presently managed by WDFW as a snow goose reserve, providing wintering snow goose access to winter wheat crops, fresh water and refuge until the birds depart in mid-April. During spring and summer other commodity row crops are cultivated. Agriculture on site is carried out under a lease to a neighboring farm.

6. The agricultural potential of the farm is maintained through a system of flood dikes, drainage watercourses and tide gates managed by Skagit County Consolidated Diking District #22 (Dike District 22) in consultation with WDFW. Watching wildlife is encouraged at the farm through a driveway access, parking lot and short dike-top trail.

7. The project area is south of Fir Island Road between Brown Slough and Dry Slough. No Name Slough and Claude O. Davis Slough are within the interior of the site. The plan is to take out a seaward section of the present dike and replace it with a new dike structure farther inland. The area opened up would be transformed into a permanent estuarine wetland.

8. Estuarine wetlands where freshwater and saltwater mixing occurs provide important habitat for juvenile salmonids. The project would significantly increase this type of habitat in the river delta area.

9. The project will involve the removal of about 3900 lineal feet of existing coastal flood dike and the construction of about 5900 lineal feet of new setback dike. A new 7-acre interior drainage storage pond will be built on the landward side of the new setback dike with provisions for discharge to be pumped into the delta. A more detailed project description is set forth in the Staff Report at pages 4, 5, and 6.

10. The project description reviewed includes the installation of an underground power line to the proposed pump house. Rather than placing that line in the eastern temporary haul road. WDFW asked at the hearing that the project description be changed to state that the line will be placed in the shoulder of the existing access on the west side of the property. By this reference, the requested change in project description is made.

11. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued by WDFW for this project on February 6, 2014. Conditions of the MDNS are as follows (numbering rather than bullets used):

Snow Geese

1. The boundary of WDFW's existing snow goose reserve will be retained.
2. Hunting will continue to be prohibited at WDFW's snow goose reserve.
3. 120 acres of WDFW's snow goose reserve will continue to be share cropped to a local farmer.
4. The share crop agreement will include a requirement for the farmer to plant, at a minimum, 130 acres of additional farmed winter snow goose forage.
5. The restored tidal marsh habitats will provide foraging, resting and nesting habitats for wildlife species including snow geese.
6. Construction activities will be minimized between November and April to avoid disturbing snow goose use of the site.

Bald Eagles

1. Construction activities will be minimized within 660 feet of an existing eagle nest during the breeding season.
2. WDFW will develop an eagle management plan that protects the eagle nest and nesting activity if disturbance above background conditions occurs within 660 feet of the existing eagle nest during the nesting season.

Fish

1. Construction activities associated with removal of the existing dike and activities on the bay side of the existing dike will not occur February 15 through July 31 of any year for protection of migrating juvenile salmonids. De-fishing will occur following approved protocols for in-water work within existing interior drainages 300 feet from the existing tide gates in Claude O. Davis Slough, consistent with the Skagit Drainage and Fish Initiative.
2. Appropriate best management practices will be implemented during construction to protect fish life.
3. 127 acres of new tidal marsh habitats and 17.7 acres of new tidal channels that provide critical rearing habitat for a variety of fish species including juvenile Chinook salmon will be created.
4. The restored area is expected to produce approximately 65,000 Chinook salmon smolts annually.

Agriculture

1. Flood protection for the agricultural fields and residences of Fir Island will be enhanced through the construction of a new engineered setback dike designed to provide protection during predicted extreme winter storm events and for medium level 50 year sea level rise prediction for the area.
2. Drainage for the adjacent farms and agriculture fields within the No Name Slough watershed on Fir Island will be maintained through the construction of new tide gates in No Name Slough, a new drainage storage pond adjacent to No Name Slough, a new pump station in the new drainage storage pond, and a new drainage connection between the drainage storage pond and Dry Slough.
3. The restoration project has been designed to minimize impacts to the drainage in Brown Slough. A new spur dike along the eastern shoreline of Brown Slough will be constructed

- to reduce the project related impacts to the drainage of Brown Slough.
4. The restoration project has been designed to minimize impacts to the drainage in Dry Slough. A new tide gate in Dry Slough will be constructed to address project related impacts to the drainage in Dry Slough.
 5. Groundwater wells have been installed in adjacent farm fields to monitor project effects on groundwater.
 6. Water surface level monitors have been installed in Brown Slough, Dry Slough, and No Name Slough to monitor the project effects of surface drainage.
 7. An adaptive management plan will be developed in consultation with the local diking district where actions will be identified to address unexpected impacts to the agricultural drainage.

Water Quality

1. Residential wells will not be impacted by the project.
2. Appropriate water quality best management practices will be implemented at the project site during construction.
3. Areas of the project site disturbed during construction will be re-vegetated to stabilize the soils and minimize sediment inputs to the watercourses and bay.
4. The restored tidal marsh will provide biofiltration benefits.

Public Access and Recreation

1. The access road to the existing public parking lot will be retained though its route may be slightly modified.
2. The existing public parking lot will be retained.
3. Existing watchable wildlife recreation activities will be retained.
4. The existing point destination dike top trail will be retained and enhanced.

12. At the hearing WDFW requested that construction work be permitted on weekends as well as during the week. Due to the scale of the project and the possibility of weather-related interference with construction, the option to work on weekends should be provided. A condition to this effect has been added.

13. The development area is within a designated flood hazard area. A floodplain development permit application is under review (FP14-0079). This permit must be approved prior to the issuance of grading and building permits.

14. Notice of the application was published, mailed and posted in February of 2014 as required by law. Prior to hearing, five comment letters were received. Three opposed the proposal essentially because it would involve the loss of some agricultural land. Two supported it, including the Audubon Society.

15. The application was circulated to various County Departments. None had critical comments. A Hydraulic Project Approval for the restoration project was issued by the WDFW on December 1, 2014, setting forth detailed conditions for construction.

16. The shoreline area involved here is designated as a Shoreline of Statewide Significance under the Shoreline Management Act, Chapter 90.58 RCW. Specific preference on such shorelines is given to preserving the natural character and protecting the ecology and resources of the shoreline. Policies for such shorelines call for uses that result in long-term benefits to the people of the state and increasing

public access. The subject restoration proposal appears to further the aims for which Shorelines of Statewide Significance were set aside.

17. Staff reviewed the project under the Skagit County Shorelines Management Master Program (SMP) policies and regulations for dredging, landfills, shore defense works, shoreline stabilization and flood protection, and utilities. Staff found that, as described and conditioned, the proposal would be consistent with the SMP.

18. The Staff review noted the conformity of the project with the Skagit Drainage and Fish Initiative and emphasized the cooperative work of WDFW with Dike District 22. Staff noted that although the agricultural use onsite will change, the proposal will provide additional drainage improvements and protection from saltwater intrusion to support surrounding agricultural uses. Construction of the new interior drainage pond will provide flood storage capacity for displaced farm drainage. The Dike District testified in favor of the project on the basis of the drainage improvements it will provide.

19. All on-site project activities are permitted activities under the SMP, if conditioned as provided by the MDNS and the conditions of this approval. The Hearing Examiner concurs with the Staff analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

20. The portions of the proposal that require a Special Use Permit are the restoration of habitat and construction of the pump station, a minor utility, within the Agriculture-Natural Resource Land zone. The Staff reviewed the application against the Special Use Criteria of SCC 14.16.900(1) and determined that, as conditioned, the project would be consistent with them. Again the Hearing Examiner concurs and adopts the staff analysis.

21. The existing Comprehensive Plan designations within the area are open space of regional significance (OSRSI) and agriculture of long-term commercial significance (Ag-NRL). The project will enhance the open space while providing improved drainage for the adjacent agricultural fields. Habitat enhancement and restoration projects are expressly allowed as Special Uses in the Ag-NRL zone (SCC 14.16.400(4)(d)).

22. The pump station is a minor utility. It fits exactly the provisions of SCC 14.16.400(3)(g) which allow minor utility development "including those that are a necessary part of a salmon recovery or enhancement project, including stormwater management projects, where there is no other viable parcel of non-agricultural land to locate the project" See also SCC 14.16.500(4)(g).

23. 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 14.06.050(1)(b)(ii).

2. The requirements of SEPA have been met.

3. The project, as conditioned, meets the requirements for the approval of a Shoreline Substantial Development Permit. SMP 9.02. It is consistent with the policies of the Shoreline Management Act, the policies and regulations of the SMP and state shoreline permit regulations.

4. The project, as conditioned, meets the requirements for approval of a Special Use Permit. SCC 14.16.900(1). It is compatible with existing and planned land use; it will not cause adverse environmental effects; impacts on long-term agricultural production will be minimized; it will maintain the character of the rural area.

5. 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 modified by Finding 10 above, and as otherwise modified by these conditions.

2. The applicant shall obtain all other required approvals and shall abide by the conditions of same.

3. The applicant and its contractors shall comply with all conditions in the MDNS issued February 6, 2014, as set forth in Finding 11 above.

4. The applicant and its contractors shall comply with all applicable state and local regulations, including but not limited to, temporary erosion/sedimentation control measures in accordance with Chapter 14.32 SCC, zoning ordinance requirements (Chapter 14.16 SCC), state surface and ground water quality standards (Chapter 173-200 and 173-201A WAC) and maximum environmental noise levels (Chapter 173-60 WAC).

5. The project shall be commenced within two years of approval and shall be completed within five years thereof.

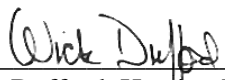
6. If any modification of the project is contemplated, the applicant shall request a permit revision from PDS prior to the start of construction.

7. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development Permit (PL14-0027) and Special Use Permit (PL14-0024) are approved, subject to the conditions set forth above.

DONE, this 5th day of March, 2015.



Wick Dufford, Hearing Examiner

Transmitted to Applicant March 5, 2015.

See Notice of Decision, Page 1, for appeal information.