

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant: Tesoro Refining and Marketing Company, LLC
c/o Rebecca Spurling
10200 West March Point Road
Anacortes, WA 98221

Requests/File Nos: Shoreline Substantial Development/Variance Permit, PL14-0030
Critical Areas Variance, PL14-0031

Location: Tesoro refinery at 10200 West March Point Road, on the shore of Padilla Bay, within a portion of Sec. 28, T35N, R2E, W.M. Parcel number P32993.

Shoreline Designation: Rural

Land Use Designation: Anacortes Urban Development District

SEPA Compliance: Mitigated Determination of Non-Significance (MDNS) dated June 17, 2014. No appeal.

Public Hearing: November 5, 2014. Testimony by Staff and Applicant. Testimony in opposition by Evergreen Islands. Planning and Development Services (PDS) recommended approval.

Decision/Date: The application is approved, subject to conditions. November 14, 2014.

Reconsideration/Appeal: (1) A Request for Reconsideration of the shorelines decisions may be filed with PDS within 5 days of this decision. The shorelines decisions may be appealed to the Board of County Commissioners by filing an appeal with PDS within 5 days of the date of decision or decision on reconsideration, if applicable.
(2) A Request for Reconsideration of the critical areas decision may be filed with PDS within 10 days of this decision. The critical areas decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 days of the date of 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. Tesoro Refining and Marketing Company, LLC, seeks permits to expand parking at Tesoro's refinery on March Point.
2. The site is on the shoreline of Padilla Bay. The refinery is located at 10200 West March Point Road, within a portion of Sec. 28, T35N, R2E, W.M. The parcel number is P32993,
3. The shoreline environment designation of the site is Rural. The land use designation is Anacortes Urban Development District.
4. The lot to be modified is the Gate 20 lot. The proposal is to expand the parking area approximately 225 feet to the east and 275 feet to the south. The expansion will extend to approximately 65 feet from the Ordinary High Water Mark (OHWM) of Padilla Bay at its closest point. March Point Road is located between the proposed parking lot expansion area and the shore.
5. The project will increase the parking area from 500 spaces to 1,350 spaces and enlarge lot coverage from 5.6 acres to 12.2 acres. The area around the existing parking lot is currently used for cattle grazing.
6. The purpose is to accommodate refinery personnel during peak work events, such as intensive maintenance events that occur every two to three years.
7. The northern two-lane access from March Point Road will be made wider by one lane. A second access to March Point Road will be built at the southern end of the expanded lot. These changes are intended to improve the efficiency of entry and exit.
8. Vegetation and top soil will be removed and the expansion area will initially be covered with gravel. Later, in the dry season, the lot will be paved. Surface water runoff from the lot will be directed to three vegetated water quality treatment bioswales, each of which will discharge through a separate culvert under March Point Road to Padilla Bay. The culvert located just south of the northern access will be enlarged from a 12 inch diameter to an 18 inch diameter. The other two culverts will remain as they are.
9. The project will require the filling of 0.21 acres from two Category IV wetlands and the elimination of 1.02 acres of a Category III wetland's buffer. Mitigation will include the creation of 0.32 acres of new wetlands and a 110 foot buffer around the mitigation site, including an additional 1.02 acre of buffer, to compensate for the buffer area lost. The new wetlands will be located approximately 3,200 feet south of the parking lot, 500 feet inland of Padilla Bay.
10. The parking lot expansion is a substantial development under the terms of the Shoreline Management Act and requires a Substantial Development Permit.
11. The local Shoreline Master Program (SMP) requires a 100 foot setback from the OHWM for access roads. No numerical setback is established for parking lots, but they are supposed to be located landward of the primary facility of the activity. The development here is located approximately 65 feet from the OHWM. Because the access road is less than 100 feet from the OHWM and the parking lot is waterward of the primary facility, a shoreline variance is required

12. The Critical Areas Ordinance (CAO) requires a critical areas buffer of 100 feet from the OHWM of Padilla Bay and a buffer of 110 feet from a Category III wetland. Accordingly, a critical areas variance is required.

13. Notice of the application was published April 1, 2014 and May 1, 2014. Comments were received from the Washington Department of Ecology and the United States Army Corps of Engineers. Stormwater management and wetland mitigation components of the project were revised in response to these comments.

14. A Mitigated Determination of Non-Significance (MDNS) pursuant to the State Environmental Policy Act (SEPA) was entered on June 17, 2014. The MDNS was not appealed.

15. The conditions of the MDNS, in general, require compliance with state, local and federal regulations, the acquisition of other necessary permits and appropriate construction practices to avoid off-site impacts.

16. A Cultural Resources Report and an Archaeological Investigation Report were professionally prepared. Although historic and archaeological sites are present with the vicinity, no historically significant archaeological sites are present within the parking lot expansion area. No further archaeological work was recommended for the project.

17. CH2MHill produced several impact evaluation documents: A Fish and Wildlife Assessment dated January 23, 2014; a Biological Evaluation (January 2014) and addendum (May 9 2014); a Wetland Delineation and Ditch Assessment dated April 11, 2014; and a Wetland Impact Assessment and Wetland Mitigation Plan dated May 2014.

18. The primary refinery facilities are located within the upland portions of the peninsula. It is not possible to locate the parking lot landward of the refinery.

19. The site assessment and mitigation plan were prepared using best available science. Given site conditions, the project provides for reasonable development of the property with the least possible impact on nearby critical areas. The variances sought are the minimum that will make possible the reasonable use of use of the land. With the mitigation proposed, the project will not create significant adverse critical areas impacts. The inability to meet standard dimensional requirements is not the result of actions by the property owners in changing boundary lines. The variances sought are justified to cure special circumstances and not for the economic convenience of the applicant.

20. The project is located across March Point Road from the bay. Under the circumstances the fact that the shoreline buffer will be only 65 feet wide will have no impact on shore conditions. The area naturally contains multiple wetlands. The proposed parking lot expansion cannot be located elsewhere without directly impacting other critical areas. It cannot be located outside shoreline jurisdiction. The parking use is an existing one, compatible with the industrial uses of the area. The project does not constitute a grant of special privilege and is the minimum necessary to afford relief. Due to the pre-existing location of March Point Road, cumulative impacts on the shoreline habitat from requests for like actions in the area are not anticipated.

21. Letters of concern were received from three sources. A resident of the area was concerned with increased traffic. Public works responded that March Point Road is adequate to handle the additional parking and traffic generated by this project. The applicant expressed the view that the improved in and out facilities will relieve traffic congestion.

22. The Skagit System Cooperative expressed fears for surf smelt egg incubation if shore shading trees are removed. The County responded that aerial photography shows that no such impacts are likely here.

23. Evergreen Islands noted that the shorelines involved here are Shorelines of Statewide Significance under the Shoreline Management Act. They pointed out that Tesoro was able to build a "Unit Train Unloading Facility" outside of shoreline jurisdiction and asked why this could not also be done with this parking lot on these specially protected shorelines.

24. The applicant stated that moving the parking lot inland would encroach more substantially on critical areas. The proposed lot expansion is entirely on the landward side of March Point Road and, therefore does not significantly increase effects at the water's edge. The Examiner finds that the values underlying the policies for Shorelines of Statewide Significance are not affected by this project.

25. The Staff Report analyzes the application in light of the relevant shoreline and critical areas requirements and finds that, as conditioned, it should be approved. 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.

26. The Examiner finds that the reasons set forth in the application justify the granting of the variances sought. These variances are the minimum that will make possible the reasonable use of the land. Granting them will be in harmony with the general purpose and intent of Unified Development Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction of the subject matter of this proceeding.
2. The requirements of SEPA have been met.
3. The project, as conditioned, meets the criteria for approval of a Shoreline Substantial Development Permit. SMC 9.02
4. The project, as conditioned, meets the criteria for approval of a Shoreline Variance. SMC 10.03.
5. The project, as conditioned, meets the criteria for approval of a Critical Areas Variance. SCC 14.24.130(3), SCC 14.10.030.
6. 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 modified by these conditions.

2. The applicant shall comply with all conditions set forth in the Mitigated Determination of Non-Significance dated June 19, 2014.
3. The applicant shall obtain all other required approvals and abide the conditions of same.
4. The applicant shall comply with all applicable federal, state and county regulations, including but not limited to requirements for temporary erosion/sedimentation control
5. The applicant shall fully implement the mitigation proposed in the application materials and shall provide annual monitoring reports for a period of five years to confirm that the mitigation has been successful.
6. If areas on the shore are disturbed by construction activities, the disturbed areas shall be replanted with native vegetation. All wetlands disturbed by facility construction shall be restored and replanted with appropriate self-sustaining native wetlands vegetation.
7. The applicant shall record a Protected Critical Area (PCA) agreement for both the parking lot expansion area and the proposed mitigation site. The PCA for both locations may be recorded as one document.
8. Aesthetic impacts shall be minimized. The applicant shall submit a vegetation screening plan with the grading application. The parking lot shall be screened from view of shoreline areas and adjacent properties through planting of native self-sustaining vegetation. The area shall be planted within six months of completion of the parking lot expansion. The plantings shall be functionally screening views within two years of planting.
9. Off-site impacts of lighting shall be minimized. Lighting will be directed inward into the site.
10. This decision, if approved by the Department of Ecology, shall be submitted with the grading permit application.
11. The project shall be commenced within two years of final approval and shall be completed within five years thereof. This time period includes the time for mitigation of wetland impacts.
12. If any modifications of the project are contemplated, the applicant shall request and obtain permit revisions from PDS prior to starting construction.
13. Failure to comply with any permit condition may result in permit revocation.

DECISION

The requested Shoreline Substantial Development and Variance Permit (PL14-0030) and Critical Areas Variance (PL14-0031) are approved, subject to the conditions set forth above.

DONE, this 14th day of November, 2014



Wick Dufford, Hearing Examiner

Transmitted to Applicant and Parties of Record: November 14, 2014.

See Notice of Decision, Page 1, for appeal information