

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Dike District #3  
PO Box 324  
Conway, WA 98238

**Agent:** Josh Axthelm  
Axthelm Construction  
PO Box 2947  
Mount Vernon, WA 98273

**File No:** PL09-0192

**Request:** Special Use Permit

**Location:** 20894 Dike Road, within a portion of the SE1/4SW1/4 Sec.  
18, T33N, R4E, W.M.

**Parcel No:** P16756

**Land Use Designation:** Agricultural-Natural Resource Land

**Summary of Proposal:** To construct a pre-engineered 50' x 80' x 18' building for dike maintenance, flood control, equipment storage and administrative support activities. The building will replace an existing nonconforming building at roughly the same location.

**Public Hearing:** After reviewing the report of Planning and Development Services, the Hearing Examiner conducted a public hearing on August 26, 2009.

**Decision:** The application is approved, subject to conditions.

## **FINDINGS OF FACT**

1. Dike District #3 seeks a permit to construct a building from which to conduct its flood fighting and dike maintenance operations.

2. The project will be located at 20894 Dike Road, within a portion of SE1/4SW1/4 Sec. 18, T33N, R4E, W.M. The site is on the west side of the intersection of Fir Island Road and Dike Road. The zoning designation is Agricultural-Natural Resource Land.

3. The property is basically rectangular and encompasses approximately 12 acres. The east property line along Dike Road measures approximately 1275 feet. The south line along Fir Island Road is about 816 feet. The Skagit River runs along the west property line (about 900 feet). The north property line measures approximately 104 feet.

4. There is a dike running north/south that takes up about 2/3 of the property. The parcel is basically flat. There is an existing 3,750 square-foot building on the southern portion of the site. A gravel parking lot is located north of the building and a driveway runs along the building's south side. There is a barn in the north half of the property (on the waterward side of the dike), and a drainage ditch and slough pump station on the south. An access road leads from the existing building to a boat launch on the river.

5. Because it is adjacent to the river, the property is within designated shorelines and subject to the local Shoreline Master Program. On April 27, 2009, the County issued an exemption from the Shoreline Substantial Development Permit requirement for this project.

6. The new building will replace the existing one in the same area of the lot. It will contain offices, equipment storage space, a meeting room, a kitchen and break room and a restroom. The proposed location will be about 50 feet from Dike Road and 260 feet from Fir Island Road. The Skagit River flows about 450 to the west of the building site. Parking will be provided on the north side of the building with two marked stalls and four unmarked stalls. Additional parking will be available in the existing gravel lot.

7. The proposed building will be a two-story structure. The overall dimensions will be 50' x 80' x 18'. The first floor will contain an approximate 50' x 50' shop, a 21' x 28' conference room/kitchen/dining area, and restrooms. The second story will contain two offices – one 18' x 28' and the other 18' x 22'. The existing septic system will be upgraded. No new impervious surface will be added.

8. The old building is leaking, sagging and has an uneven foundation and floor. The new facility will simply replace it with a more modern and functional structure. The use of the facility will not change. Such use will be on an "as needed" basis.

9. Under the Skagit County Code, the proposed new building will constitute a “major public use” – a public facility that contains 3,000 or more square feet of gross floor area. There is no record of a permit for the existing building, so it is regarded as non-conforming. This current permitting process will make the new building conforming.

10. The Dike District has used this property since the early 1900’s and actually took possession in the late 1970’s. The site is well-suited to the flood fighting function because it is essentially as high as the dike. The parcel was created with fill and there is no land there in agricultural use.

11. Therefore, construction of the new building will take no land out of production and will have no direct impact on farming. However, indirectly it will provide a considerable benefit to agriculture in the area by facilitating the District’s flood protection activity. The District describes the building as an “agricultural support mechanism.” There is no viable alternative site on non-resource designated land for this public use.

12. The Staff has concluded that landscaping is required to soften and enhance the appearance of the proposed structure.

13. The criteria for Special Use Permit approval are set forth at SCC 14.16.900(1)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing, or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety, and general welfare.
- (f) For special uses in ... Natural Resource Lands ..., the impacts on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.

(h) The proposed use will be supported by adequate public facilities and services and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

14. The Staff Report analyzes the application in light of the above criteria and finds that, as conditioned, the project 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.

15. The application was deemed complete as of May 19, 2009 and notices were made as required by law. No public comments were received.

16. Environmental review was conducted pursuant to the State Environmental Policy Act (SEPA). As a result, a Determination of Non-Significance (DNS) was issued on May 29, 2009. The DNS was not appealed.

17. The building is supplied by adequate public services and will not make significant additional demands on the capacity of such services.

18. The application was circulated to County departments. Their comments are reflected in conditions of approval. At the hearing the applicant appeared through Brad Smith, Commissioner, and Josh Axthelm, the designer/contractor. The latter advised that a Fish and Wildlife Assessment has been submitted. Final critical areas review will be conducted at the building permit stage. A Protected Critical Area (PCA) will be established and recorded.

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. SCC 14.06.050(1)(b).

2. The requirements of SEPA have been met.

3. Major public uses related to the providing emergency services may be located on Agricultural-Natural Resource Land where there is no other viable parcel of non-resource designated land to serve the affected area. SCC 14.16.400(4)(f). Under the facts, this standard is met.

4. As conditioned the project will meet the standards for Special Use Permit issuance. SCC 14.16.900(1)(b)(v).

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

### **CONDITIONS**

1. The project shall be constructed and maintained as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all necessary approvals, including building permits.

3. The applicant shall comply with the provisions of SCC 14.16.870, Notification of Development Activities on or Adjacent to Designated Natural Resource Lands.

4. The project shall comply with Chapter 14.34, Flood Damage Prevention.

5. The applicant shall submit a conceptual landscaping plan with the building permit application. An approved plan shall be required for final project approval.

6. The landscaping shall comply with SCC 14.16.830(5), general landscaping standards.

7. Septic approval shall be required for building permit approval.

8. No maintenance shall occur in the proposed building and cleaning shall occur on hard surfaces that collect and treat runoff.

9. Applicant shall comply with all other relevant County, State and Federal regulations and statutes, including, but not limited to Chapter 173-60 WAC (noise), SCC 14.16.840 (noise, vibration, light), Chapters 173-210A WAC and 173-200 WAC (surface and ground water quality), Chapter 14.32 SCC (drainage). Ventilation shall not be addressed by open doors or windows.

10. A PCA shall be required with the building permit and shall be recorded and filed as required by law.

11. All outstanding permit fees shall be paid prior to final approval of the building permit.

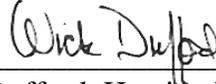
12. Planning and Development Services shall be notified within 30 days after any change in ownership of the parcel through submission of a letter to the Planning Director referencing permit number PL09-0192.

13. The project shall be commenced within two years of permit approval.
14. Failure to comply with any condition may result in permit revocation.

**DECISION**

The requested Special Use Permit is approved, subject to the above conditions.

**DONE** this 15th day of September, 2009.



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Wick Dufford, Hearing Examiner

Date transmitted to Applicant: September 15, 2009.

**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.