

NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

- Applicants:** Jeff and Melinda Van Den Top
16377 Taylor Road
Mount Vernon, WA 98274
- Request/File No:** Special Use Permit, PL10-0076
- Locations:** 16377 Taylor Road, northeast of Big Lake at the end of Taylor Road, within a portion of the SW1/4 Sec. 29, T34N, R5E, W.M.
- Land Use Designation:** Secondary Forest - Natural Resource Land
- Summary of Proposal:** To operate an outdoor shooting club. The main undertaking of the club will be to host a four-day Sporting Clays Tournament annually in August.
- SEPA Compliance:** Determination of Non-Significance (DNS) issued April 26, 2011. No appeals.
- Public Hearing:** June 22, 2011. Public testimony in opposition focused on issues of noise and traffic. Public testimony in favor focused on the quality of the operation and the positive economic impact of the annual shooting tournament. Planning and Development Services (PDS) recommended approval.
- Decision/Date:** Approval, subject to conditions. July 19, 2011.
- Reconsideration/Appeal:** A Request for Reconsideration may be filed with PDS within 10 days of this decision. The decision may be appealed to the Board of County Commissioners by filing an appeal with PDS within 14 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 OF FACT

1. Jeff and Melinda Van Den Top seek a Special Use Permit to operate an outdoor shooting club.
2. The primary purpose would be to authorize them to host a four-day sporting clays tournament to be held annually on their property in August. The event is officially titled the US Western Open.
3. The property is an 85 acre area located northeast of Big Lake at the end of Taylor Road. The address is 16377 Taylor Road. The parcel numbers are P30434 and P30437. The parcels lie within a portion of the SW1/4 Sec 29, T34N, R5E, W.M. The zoning is Secondary Forest-Natural Resource Land.
4. The permit application is to authorize a property use that has actually been carried out over the last several years. The instant proceeding is to determine that whether that use can be allowed on an on-going basis in the future and does not concern enforcement relating to past activity. However, if the activity is to be authorized, past experience can be instructive as to the appropriate limitations to place on it.
5. The applicants purchased the property in November 2006 from Port Blakely which had conducted a timber harvest on the property prior to the sale. Since then no other logging has been done. The western half of the property contains a single family residence and several outbuildings. The rest is undeveloped. There are thick stands of timber and areas of open meadow. Dense timber growth surrounds the property. The site was described as "park-like" by one witness.
6. The surrounding area is rural and sparsely populated. Neighboring properties include the Boy Scouts of America, the Washington Department of Natural Resources and four parcels designated Secondary Forest-Natural Resource Land which are owned by individuals. A witness said that there are eight homes within a quarter-mile to a mile from the subject property.
7. In the Secondary Forest-Natural Resource Land zone, the Development Code allows outdoor shooting clubs as a Hearing Examiner Special Use. SCC 14.16.420 (4)(m). The Code defines "shooting club" as an "activity or use of land or a facility for the purposes of discharging firearms in any organized fashion, such as a club or group, as opposed to an individual periodic discharge of a firearm." SCC 14.04.020. The proposed activity meets this definition.
8. Sporting clays is a modern hybrid of the traditional Olympic shotgun sports of skeet and trap. It is a form of clay pigeon shooting, in which targets are thrown in a variety of trajectories, angles, speeds, elevations and distances. A typical course consists of 10-18 stations, each station having a pair of clay-throwing machines or traps. The stations contain shooting stands, which are temporary wooden structures with a "window opening," designed to restrict gun movement in order to increase safety.

9. For the purposes of staging the Western Open the Van Den Tops call their enterprise the Top Gun Club. Participation in the tournament is by invitation only. The participants are expert shooters who come from all across the United States and from foreign countries. The evidence is convincing that the tournament is a world class event.

9. The event is usually held from Thursday to Sunday on the first weekend in August. The hours of competition are from 8:00 a.m. to 6:00 p.m. The number of competitors is to be limited to no more than 300. Each will fire 100 rounds per day.

10. The course consists of firing stands positioned for easy access along existing logging roads within the property which have been maintained by the applicants. Golf carts move competitors in groups of 2-6 from one stand to the next along a predetermined marked route. Referees are assigned to each stand to keep score, to assure grounds are kept clean and to enforce safety rules. The targets are released into the air by portable battery powered launchers. The settings are such that no target will fly over a body of water.

11. Safety precautions include requiring onlookers to remain behind the shooting stands at all times while shooting is in progress and enforcing the use of eye and ear protection. Visitors are not allowed to stray from the maintained roads within the site. Signs are used to make this requirement clear.

12. The event is managed by Mitchell's Clay Target Sports. Organizational staffing requires 10-20 adults on site during the working hours. In addition, up to 50 local teenagers are hired to assist with keeping the premises clean, to deliver materials from place to place and to help with directions and parking. No on-site water source is available. Wash stations are brought in and placed throughout the shooting course. Water for these stations is provided daily by Honey Buckets. Restroom facilities (including wheelchair accessible units) are imported in the form of port-a-potties. Two or three 30-yard dumpsters are rented for the event from Waste Management. The existing house and cabin on the premises may not be accessed by those attending the event.

13. Food on site is provided by licensed caterers who secure their own licenses and permits. They provide their own water and are responsible for compliance with Health Department regulations. The food venues are set up in the vicinity of the main parking area. At each shooting stand a wooden bench and picnic table is provided for the convenience of participants. Ice chests with bottled water and trash cans are also located at each stand.

14. Entry to and exit from the site is via a long private driveway off of Taylor Road. The parking areas are in the interior of the site and shrubs have been placed along the driveway to conceal cars from the road. Parking areas are clearly posted. The main location is an existing gravel parking area. A second locale is an unused open field which will be mowed and made available for overflow parking. Most of the competitors fly in to the event and rent cars to get to the site. Signs are used on Gunderson Road, at Taylor Road, and at the driveway to direct participants into the site and to the proper parking areas.

15. A certain number of participants come to the site in recreational vehicles. Parking space is provided along one of the maintained logging roads for 30-40 self-contained RV's. Owners must use off-site dump stations, the locations of which will be posted.

16. In addition to the annual competitive shoot, the applicants would like to continue to host 2-3 charity events each year. These would be limited to 3-5 people and last 3-4 hours on Saturdays, starting at around noon. Moreover, the applicants along with family and friends engage in occasional private shoots on Fridays and Sundays for a couple of hours in the afternoon.

17. The record reflects that the Western Open has much enthusiastic support among sports shooters who generally feel that the event is a significant local asset. Many emphasized the economic returns to Skagit County from spending by participants and family members who stay at local inns, eat in local restaurants and, often, extend their stays by traveling to nearby tourist attractions.

18. A number of residents of the vicinity of the event expressed opposition to it. Their main concerns are the noise from the shooting and the traffic on Taylor Road.

19. The noise source during the tournament is multiple 12 gauge shotgun blasts from multiple locations. The applicant provided some noise studies they conducted themselves during the 2010 competition. PDS required that these be evaluated by a professional acoustical engineer. Such an evaluation was made by JR Engineering of Everett. The engineer also visited the site himself during January 2011 and measured sound levels while Mr. Van Den Top and three friends fired guns at three of the stations, all in all discharging about 750 shots. In the engineers view, the maximum sound levels from the January exercise were levels that are representative for the shooting and measuring positions used. He concluded that the available evidence indicates that the Western Open held in 2010 complied with all applicable noise ordinances.

20. Ron Palmer of the Skagit County Health Department reviewed the report and stated that the existing noise surveys appear to show compliance with the applicable noise regulations (Chapter 173-60 WAC). However, he recommended that yearly monitoring be done and submitted to PDS. After receiving reports from at least two events, an evaluation can be made as to whether they need to be continued. In the event that one of the stations is shown to produce noise levels out of compliance, he recommended that it be taken out of use until the noise can be mitigated with the guidance of a noise professional to be compliant.

21. Notwithstanding the results of professional evaluation, neighbors of the site report being significantly bothered by the noise. They say the noise reverberates off hillsides and makes it unpleasant to be outside during the event. The all-day noise during the four-day event was described as nerve wracking because of its random frequency and unpredictable pattern.

22. Several of the opponents said they could perhaps tolerate a once-a-year four day event, but objected to the extra charity shoots. They said that they hear shooting all the time, not just four days a year, and feel that shooting on a regular basis should not be allowed.

22. These same neighbors think that the traffic situation is dangerous. They note that "out of towners" using the narrow Taylor Road often drive too fast and do not yield to local drivers. They are afraid that accidents will occur. They also complained about the times in the past when event participants have overshot the turn off and used their private driveways as turnaround spots.

23. The Staff Report notes that signs are placed around the event site to deter trespassing on neighboring properties. The applicant has posted on his website that speeds of 5-10 miles per hour should be used on the roads. The problem seems to be that in the past, the warnings have not been completely effective.

24. After reviewing the application, Public Works had no comments on traffic or road conditions.

25. Woven into the opposition to the instant permit application were two additional themes that have raised the ire of neighbors: (1) that the event has been held for several years without permission and without any effort by the County to answer complaints, and (2) that the applicants have staged these events without consulting with their neighbors.

26. The Staff Report analyzes the application in light of the approval criteria for Special Use Permits (SCC 14.16.900(1)(b)(v)) and concludes that the project, if properly conditioned, 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.

27. The key criterion is whether the proposed use will create "undue noise." If the noise is meeting relevant standards, it is difficult to conclude that it is "undue noise." The Examiner appreciates that during the event, the sounds of gunfire are highly annoying to those in the immediate neighborhood. However, he believes that the event is in many ways beneficial to the wider community -- providing recreational enjoyment to a large number of people, as well as widespread positive economic effects. He finds that, on balance, the localized impact of noise during the four-day event does not outweigh these benefits. He notes that monitoring will be required to insure that noise standards are met and that violation of those standards will not be tolerated.

28. As to the occasional charity shoots, the Examiner is hard pressed to understand how they can create more of a problem than the occasional firing of guns by the owners themselves and their guests -- an activity which requires no permit.

29. The traffic worries focus on a narrow time frame that occurs once a year. Though accommodating several hundred people on a road that is normally used by a handful is a source of inconvenience for nearby residents, the short-term traffic bulge was not shown to create dangers that cannot be effectively ameliorated by property event management. People can be posted to provide direction and warnings, in addition to signs.

30. Another concern expressed by several citizens was the impact of the shooting on wildlife. The evidence does not support a finding of significantly adverse impacts on wildlife.

31. 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. As conditioned, the proposal meets the criteria for approval of a Special Use Permit, SCC 14.16.900(1)(b)(v).

(a) The Comprehensive plan encourages recreation and appropriate enterprise in the rural areas.

(b) The use is permitted by Special Use Permit in the Secondary Forest-Natural Resource Land zone.

(c) The environmental impacts, including noise and traffic impacts, will be of short-term duration and not "undue."

(d) The one major four-day event yearly confined within the 85 acre tract, under the conditions imposed, will not intrude on the privacy of neighboring uses.

(e) The general public health, safety, and general welfare will be promoted by a benign recreational activity with positive impact on the economy of the area.

(f) The shooting event will not interfere with the long-term management of the property for timber production.

(g) The health and safety of the community will be protected by the provisions made respecting gun safety, sanitation, water and food.

(h) The event will place no added burden on public facilities. Public services are adequate to accommodate the use.

(i) The use will not change the character, landscape or lifestyle of the rural area.

4. The saving grace of this proposal is its short-term character on an annual basis. If the anticipated level of commotion were proposed for 365 days a year, we would have another case.

5. The applicants should make a concerted effort to get in touch with their neighbors, to inform them of when events are scheduled, to adjust schedules where there are conflicts with neighboring activities (e.g. home weddings, graduation parties), and to the extent possible to resolve matters of friction.

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

CONDITIONS

1. The shooting activities on the site shall be conducted as described in the application materials, except as the same may be modified by these conditions.
2. The applicants shall obtain all necessary permits and abide by the conditions of same.
3. The applicants shall comply with all applicable State and County regulations, including but not limited to Chapter 173-60 WAC (noise) SCC 14.16.840 (performance standards); Chapters 173-210A and 200 WAC (water quality).
4. Only one competitive shooting event may occur each calendar year. The event shall last no longer than four consecutive days. No shooting shall be allowed prior to 8:00 a.m. and after 6:00 p.m.
5. Participation in the annual shooting event shall be by invitation. The number of competitors in the annual shooting event shall not exceed 300.
6. No more than three charitable events may occur within a calendar year. Any such event shall be limited to no more than five shooters. Such events shall not last more than four hours.
7. Signs shall be posted on non-potable sources of water, warning that the water is not to be drunk. Bottled water shall be provided for all participants and guests.
8. The number of portable toilets on site during the event shall be in compliance with the Portable Sanitation Association International schedule. The units shall be maintained as needed.
9. Food shall be provided by approved permitted vendors/caterers per Chapters 246-215 WAC and 12.36 SCC. Hand wash stations shall be located near food areas as well as in other locations around the site.
10. Solid waste shall be handled as required by Chapter 12.16 SCC.
11. On site camping shall be limited to self-contained vehicles only. Per Chapter 12.20 SCC, signs shall be posted designating the nearest amenities for RV's.
12. Within 60 days after the completion of the competition event, a professionally prepared noise monitoring report shall be submitted to PDS. After two such reports have been evaluated, a determination will be made as to whether such monitoring needs to be continued. In the event that one of the shooting stations is shown to produce noise levels that exceed applicable standards, the station will be taken out of use until mitigated with the guidance of a noise professional to be compliant.

13. If lead shot is used, a lead remediation plan shall be submitted to and approved by the Skagit County Health Department.

14. The applicants shall erect signs and assign personnel as necessary to insure that persons attending the annual event take the correct routes to the site.

15. In event publicity, participants shall be encouraged to arrive on site during daylight hours, shall be informed of the necessity for driving slowly on Taylor Road, and shall be requested to treat resident drivers with courtesy.

16. At least two weeks beforehand, the applicants shall advise neighboring residents within a mile of the property boundaries of the date of any scheduled event, the approximate time it will commence and the length of time it will last.

17. The applicants are encouraged to consult with neighbors to discuss and, if possible, resolve conflicts over the conduct of shooting events.

18. PDS shall be notified by letter within 30 days of any change in ownership of the parcel. The letter shall reference Permit PL10-0076.

19. Per SCC 14.16.900(3), the applicants shall comply with the annual certification process, acknowledging in writing compliance with the permit approval, including any conditions.

20. All planning related fees including recording of the decision must be paid within 30 days of receipt of the invoice.

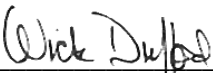
21. If the operation ceases for a period of one year, the permit shall be void.

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

DECISION

The request Special Use Permit (PL10--0076) is approved, subject to the conditions set forth above.

DONE this 19th day of July, 2011.



Wick Dufford, Hearing Examiner

Transmitted to Parties: July 19, 2011

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