

**SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT
STAFF REPORT**

DATE: June 20, 2012
PROJECT: Shoreline Substantial Development SMA 1-12 – an application for a shoreline substantial development permit for the maintenance, elevation maintenance, repair, post-flood repair, backsloping, critical facility protection, installation of keyways, sheet pile walls, restoration, and to improve the existing Levee within the City Limits of Burlington and Dike District #12 to conform to the plans, standards and specifications of the “City of Burlington and Dike District #12 Levee Certification Project.”
LOCATION: Skagit River Shoreline District City Limits
APPLICANT: Dike District #12
STAFF: Margaret Fleek, Planning Director

REQUEST: An application has been filed with the City of Burlington for a shoreline substantial development permit for the maintenance, elevation maintenance, repair, post-flood repair, backsloping, critical facility protection, installation of keyways, sheet pile walls, restoration, and to improve the existing Levee within the City Limits of Burlington and Dike District #12.

The Project is the construction phase of the first Project Action identified within the “Final Environmental Impact Statement to Adopt a Strategic Program for Comprehensive Flood Hazard Mitigation in the Burlington Urban Area and Adjacent Land with a Range of Structural and Non-structural Components”, Final Environmental Impact Statement issued July 16, 2010.

BACKGROUND: Environmental review for the proposed project was completed on July 16, 2010 and no appeals were filed.

The City of Burlington does not have an adopted Shoreline Master Program that is specific to the community at this time. A Shoreline Master Program for Burlington has been drafted, and a public hearing conducted before the Burlington Planning Commission. Final revisions are being drafted and the total package will go to the Department of Ecology for final review prior to adoption by the City Council.

At the time the Shorelines Management Act was passed, the only point of Burlington that touched the Skagit River shoreline was the Wastewater Treatment Plant outfall. Since then, about 2.5 miles of Skagit River shoreline have been annexed. The shoreline area is subject to the Skagit County Master Program until a local program is adopted. The Skagit River Shoreline is designated as "Rural" Shoreline Environment and the River itself is designated "Aquatic".

The major issue with any construction in the water is the Endangered Species Act listing of the Chinook Salmon and the threatened habitat of Bull Trout. Levee vegetation is regulated under PL84-99, the Corps of Engineers levee maintenance standards. Following an Endangered

HEARING EXAMINER

EXHIBIT 18

Species Act Section 7(a) 2 Formal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Skagit River, vegetation management standards that comply with the Endangered Species Act riparian buffer standards have been successfully negotiated among the regulatory agencies and the Diking Districts. Major levee repairs and reconstruction have been completed in 2011 to address flood damage and existing structural issues with the portion of the levee from the Old Highway 99 Bridge to the west. Work includes substantial plantings and installation of Large Woody Debris (LWD) to meet ESA requirements. References are available for Biological Opinions issued by National Marine Fisheries Services and the US Fish and Wildlife Service.

Public access along the levees and the river is insured through a solid Interlocal Agreement with the City and Dike District #12.

After the 1995 flood, a proposal was put forward to acquire 100+ acres of vacant land along the river to construct a secondary levee system in the northeastern area. The plan has been adjusted over time to structurally improve the existing levee in this reach to provide 100-year flood protection with a long overtopping backslope, clay keyway, and wide top. The land has been acquired is used as a community park (Skagit River Park). Removing floodplain land from development is the first step; constructing an improved levee segment is in process.

In the western area (not part of this shoreline permit), an interim setback of approximately 500 feet from the landward toe of the levee has being established for all new construction that allows for existing open space, parks and agriculture uses, to facilitate a future levee setback of an additional five hundred feet along the three bridge corridor in the City Limits. The current design is to construct a new setback levee meeting federal levee accreditation standards, leaving the existing levee in place for public access and providing for interior drainage, until such time as a technically and scientifically correct recommendation is feasible on removal of the old levee to increase the channel migration zone without adverse effects.

For the most part, the shorelines consist of the levee system. There are two public fishing areas, at the Gardner Road street end and along Whitmarsh Road between the Railroad bridge and the Mount Vernon/Burlington bridge. The regional Wastewater Treatment Plant has its location and outfall into the River between the fishing areas. There are two storm water outfall locations, each of which has a pump station. There is an existing pier that is owned by a local sports fishing club who moor their boats at the site and lease the land from Dike District #12. There are several existing older homes, accessory structures for agriculture uses, and the access driveway to a trailer park designed for quick evacuation. There are three bridges and a road. There is no commercial or industrial activity of any kind along the shoreline, other than the Wastewater Treatment Plant. There is vacant land in agricultural use, and the large area along the river for an outdoor community park.

Increased demand for sanitary sewer service on a regional basis focused attention on expanding the Wastewater Treatment Plant, including a switch from chlorine to ultraviolet disinfection and a major focused program for industrial pretreatment and commercial retrofit, a significant water quality improvement at the Skagit River outfall. The plant has 100-year flood protection.

FINDINGS:

Project design has been reviewed and approved by the team of engineers and geotechnical consultants that are taking responsibility for levee certification in Burlington. This levee work will bring the eastern reach of the levee system up to a 25-year flood protection level. At such time as there is concurrence on the hydrology of the 100-year flood event, the levee will easily be increased in height to meet FEMA accreditation standards.

RECOMMENDATION: Grant the shoreline substantial development permit for the project, subject to the following conditions:

1. Comply with requirements of Corps of Engineers, Department of Fish and Wildlife and Department of Ecology permit conditions including Biological Opinions pursuant to the Endangered Species Act.
2. Provide temporary construction measures to control erosion and siltation of the project site, including timing of construction activity to minimize wetland impacts.
3. All development, construction, and use of the levees shall be consistent with the policies, regulations, and permit requirements of the Shoreline Management Act and the Skagit County Shoreline Master Program, along with consistency with the proposed Burlington Shoreline Master Program (whether or not specifically outlined in this staff report); and any other applicable local, state, or federal regulations and/or permit requirements.



MINUTES OF THE PLANNING COMMISSION

June 20, 2012

Council Chambers, City Hall
833 S. Spruce Street, Burlington, WA

MEMBERS: Rebecca Lowell, Marianne Manville-Ailles, Jana Vater, Ken Frye, Brian Hanson, Rock White and Sally Straathof

STAFF: Margaret Fleek

The meeting was called to order by **Lowell**. Flag Salute. Motion by **Manville-Ailles/Frye** to approve the meeting minutes of May 16, 2012 as written. Motion carried.

PLAN REVIEW

1700 BURLINGTON BOULEVARD

PANERA BREAD COMPANY

DALE PINNEY OF FIRST WESTERN DEVELOPMENT, APPLICANT

Plan review of proposed Panera Bread at the old Copeland Lumber site. **Fleek** stated the project received Conditional Use Permit approval on December 8, 2011 for two drive-through uses (Panera Bread and a bank). The bank deal did not work out and they are looking for another tenant. The new development will include a connection between this site and the strip mall to the south for better traffic circulation, trimming up the landscaping on the Copeland site.

Manville-Ailles asked if the connection between Panera lot and strip mall has been reviewed and approved by the Technical Review Committee and Engineer. **Fleek** - yes, it was reviewed and approved prior to the conditional use permit public hearing.

Dale Pinney (applicant), 1st Western Development, 2000 Lake Ballinger Way, Suite 104, Edmonds, WA - concurs with the Staff Report. They have an agreement with strip mall to south to create a connection between the two sites.

Lowell has a concern with allowing the vacant lot fronting Burlington Boulevard to remain as a gravel parking lot until it is developed as gravel piles tend to accumulate on vacant lots. **Fleek** stated the applicant has some options on another tenant; all utilities will be installed so it will be a ready-to-go building package. **Fleek** suggested placing a No Parking sign on the lot. **Manville-Ailles** asked if the landscaping along Burlington Boulevard is going to be installed prior to development. **Fleek** stated landscaping along Burlington Boulevard will occur at the time of development.

Motion by **Frye/Vater** to approve plan review. Motion carried.

PLAN REVIEW

1700 BURLINGTON BOULEVARD

OFFICE/WAREHOUSE BUILDING FOR PUGET SOUND PIPE SUPPLY

WHITFIELD MITZEL LLC, APPLICANT

Plan review of proposed 100 square foot warehouse building for Puget Sound Pipe Supply. This was the site of a proposed storage condominium project consisting of units with a total area of approximately 65,000 square feet in

Manville-Ailles returned to the Planning Commission.

**PUBLIC HEARING
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT #1-12
DIKE DISTRICT #12, APPLICANT
SEMRAU ENGINEERING, REPRESENTATIVE**

Public hearing on Shoreline Substantial Development permit for Dike District #12 for maintenance, elevation maintenance, repair, post-flood repair, backsloping, critical facility protection, installation of keyways, sheet pile walls, restoration and to improve the existing levee within the city limits of Burlington and Dike District #12 to conform to the plans, standards and specifications of the City of Burlington and Dike District #12 Levee Certification.

Fleek explained the project is the construction phase of the first Project Action identified within the "Final Environmental Impact Statement to Adopt a Strategic Program for Comprehensive Flood Hazard Mitigation in Burlington Urban Area and Adjacent Land with a Range of Structural and Non-structural Components", Final Environmental Impact Statement issued July 16, 2010, co-lead with the Dike District #12; we also asked Skagit County to be co-lead, but they declined.

Project design has been reviewed and approved by the team of engineers and geotechnical consultants that are taking responsibility for levee certification in Burlington. This levee work will bring the eastern reach of the levee system up to a 25-year flood protection level. At such time as there is concurrence on the hydrology of the 100-year flood event, the levee will easily be increased in height to meet FEMA accreditation standards.

Public hearing opened.

John Semrau, Semrau Engineering, 1005 Digby Road, Mount Vernon – has worked on portions of this project since about 1997. This permit is for the area between Whitmarsh Road and Gardner Road.

Lowell asked if citizens will be able to gain access to and walk (legally) on top of levees. *Fleek* explained the trail on the dike is included in our adopted Bike/Pedestrian Plan and we have an agreement with Dike District #12 as part of a previous Shoreline permit to allow public access.

Lorna Ellestad, Dike District #12 Commissioner, 14169 Avon Allen Road, Mount Vernon – looks forward to working with Burlington to continue to set the standard for levees.

Public hearing closed.

Motion by *Manville-Ailles/White* to approve the Shoreline Substantial Development Permit subject to the following conditions:

1. Comply with requirements of Corps of Engineers, Department of Fish & Wildlife and Department of Ecology permit conditions including Biological Opinions pursuant to the Endangered Species Act.
2. Provide temporary construction measures to control erosion and siltation of the project site, including timing of construction activity to minimize wetland impacts.
3. All development, construction, and use of the levees shall be consistent with the policies, regulations, and permit requirements of the Shoreline Management Act and the Skagit County Shoreline Master Program, along with consistency with the proposed Burlington Shoreline Master Program (whether or not specifically outlined in this staff report); and any other applicable local, state, or federal regulations and/or permit requirements.

Motion carried.