

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2009-0002
Application for)
)
BP Cherry Point Refinery) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit to install safety improvements to provide alternate emergency egress routes and refuge facilities at the existing BP Cherry Point Refinery pier. The proposed project includes the installation of a new gangway, five radiant heat shields, two storage lockers, a ladder down to the water surface and re-orientation of an existing stairway.

Decision: The requested permit is granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

I.

PRELIMINARY INFORMATION

Applicant: BP Cherry Point Refinery

Property Location/Address: 4519 Grandview Road
Blaine, Washington 98230

Legal Description: Section 13, Township 39N, Range 01W, W.M.
Assessor’s Parcel No. 395113-448166

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Cherry Point Management Area

Shoreline of Statewide Significance: Yes

Zoning: Heavy Impact Industrial (HII)

Comprehensive Plan: Major Port/Industrial Urban Growth Area

Subarea: Cherry Point/Ferndale

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.12	Cherry Point Management Area Designation
SMP 23.40	Shoreline of State-Wide Significance
SMP 23.60.01	Shoreline Substantial Development Permit Criteria
SMP 23.100.17	Cherry Point Management Area Policies and Regulations

SEPA Review: Determination of Non-Significance (DNS) issued on May 6, 2009

Legal Notices: Published – June 11, 2009
Mailed – June 4, 2009

Hearing Date: June 24, 2009

Parties of Record:

BP Cherry Point Refinery
Attn: Petur Sim
4519 Grandview Road
Blaine, Washington 98230

Chad Yunge
Planning and Development Services

Exhibits:

- 1 Land Use Application
 - 1-1 Supplemental Application
 - 1-2 BP Cover Letter, dated April 30, 2009
 - 1-3 Receipt
 - 1-4 Letter of Complete Application, dated May 4, 2009
 - 1-5 Property Owners within 300-feet
 - 1-6 Notice of Application
 - 1-7 Form letter, dated April 30, 2009 to property owners
 - 1-8 Email from Yunge to Magner re: Application under new SMP
- 2 Staff Report, dated June 9, 2009
- 3 Vicinity Map
- 4 Site Plans
- 5 Aerial Map of Vicinity
- 6 Project Graphic Notes
- 7 Certificate of Mailing, dated June 4, 2009
- 8 Legal Notice, dated June 11, 2009

II.

The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit #2, dated June 9, 2009, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

III.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such. Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Permit for the proposed installation of safety improvements to provide alternate emergency egress routes and refuge facilities at the existing BP Cherry Point Refinery pier.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated June 9, 2009. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Shoreline Substantial Development Permit is hereby granted to BP Cherry Point Refinery for installation of safety improvements to provide alternate emergency egress routes and refuge facilities at the existing BP Cherry Point Refinery pier, located at 4519 Grandview Road, Blaine, Washington. The permit is granted subject to the following conditions:

1. The proposed developments shall be consistent with the scope and site plans, dated April 28, 2009, and approved by this Shoreline Substantial Development Permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The Applicant shall contact the Building Services Division of Whatcom County Planning and Development Services to obtain a building permit for construction of applicable portions of the proposed project as determined by Building Services.
3. The Applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to obtaining the above required Building Permit.
4. The project shall comply with all applicable Federal, State and local laws and regulations.

5. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
6. Any portion of the proposed development in contact with water shall be constructed of materials such as concrete, steel, or other materials that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable State agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited.
7. Any new exterior lighting shall be designed and operated to prevent hazards for public traffic.
8. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.19.A.3.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000. Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten business days of the date of the decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 1st day of July 2009.

Michael Bobbink, Hearing Examiner



June 9, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
BP Cherry Point Refinery
For a Shoreline Substantial Development

SHR2009-00002

FINDINGS, CONCLUSIONS,
AND RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a Shoreline Substantial Development Permit to install safety improvements to provide alternate emergency egress routes and refuge facilities at the existing BP Cherry Point Refinery pier. The proposed project includes the installation of a new gangway, five radiant heat shields, two storage lockers, a ladder down to the water surface and re-orientation of and existing stairway.

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: BP Cherry Point Refinery
4519 Grandview Road
Blaine, Washington 98230

Property Location/Address: 4519 Grandview Road
Blaine, Washington 98230

Legal Description: Section 13, Township 39N, Range 01W, W.M,
Assessor's Parcel No.: 395113-448166

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Cherry Point Management Area

Shoreline of State-Wide Significance: Yes

Zoning: Heavy Impact Industrial (HII)
 Comprehensive Plan: Major Port/Industrial Urban Growth Area
 Subarea: Cherry Point/Ferndale

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70 Administration

Applicable Shoreline Program Provisions:

	SMP 23.20	Goals and Objectives
	SMP 23.30.12	Cherry Point Management Area Designation
	SMP 23.40	Shoreline of State-Wide Significance
	SMP 23.60.01	Shoreline Substantial Development Permit
Criteria		
	SMP 23.100.17	Cherry Point Management Area
Policies and		Regulations

SEPA Review: Determination of Non-Significance (MDNS) issued on May 6, 2009.

III. FINDINGS

The applicant is requesting approval of a Shoreline Substantial Development Permit to install the following safety improvements, hereafter referred to as the Emergency Egress Enhancement Project (EEEP), to the existing BP Cherry Point Refinery (BP) Pier:

North Wing:

- The existing stairway access to the north dock shelter will be modified to allow personnel to exist to the north away from process hazards rather than to the south (current orientation).
- Two new radiant heat shields (approximately 6-feet by 80-feet and 6-feet by 90-feet) will be installed between the north wing and Breasting Dolphin one and between Breasting Dolphins 1 and 2. One new radiant heat shield (approximately 10-feet by 10-feet) will be installed on the existing platform outside of the door of the north dock shelter. Additionally, a new heat shield (approximately 6-feet by 6-feet) and storage locker for emergency equipment and safety gear (approximately 4-feet by 2-feet will be installed on the existing deck of Mooring Dolphin No. 1.

South Wing:

- A new 300-square foot metal gangway (approximately 5-feet by 60-feet), will be installed over-water between the south personnel shelter landing and the south dolphin walkway. The proposed gangway has been designed with a minimum of 60-percent void space to minimize potential over-water shading.
- A new heat shield (approximately 6-feet by 6-feet) and a new storage locker (approximately 4-feet by 2-feet) for emergency equipment and safety gear will be installed on the existing deck of Mooring Dolphin No. 4.
- A new caged emergency access/egress ladder (approximately 4-feet by 22-feet) will be installed from the south dolphin walkway down to water level on the northeast side of Mooring Dolphin No. 4.

Installation and assembly of the above referenced gangway and ladder at the South Wing may require temporary construction and use of a limited amount of scaffolding. In the event that scaffolding is required, the placement and duration of use will be limited to the minimum amount necessary to complete the associated tasks. All materials, improvements, and equipment necessary for completion of the project will be transported to the project areas via the existing pier. No in-water work is proposed as part of this project.

The primary goal of the EEEP is to improve the long-term operational safety of the BP shipping facilities for refinery personnel.

The project areas are located on the North and South Wings of the existing BP pier facility. Existing structure in the vicinity of the project areas consist of the North and South Wings, north and south operations (personnel) shelters, mooring dolphins and walkways, loading arms and platforms, and accessory structures, infrastructure and equipment. The BP pier and associated infrastructure are located within the developed perimeter of the BP refinery and zoned for Heavy Impact Industrial (HII) use. The upland areas contain existing refinery infrastructure such as security/maintenance offices, tanks, pipeways, laydown spaces, access roads as well as a multi-use recreational activity area. Adjacent properties are also zoned for HII use and are currently undeveloped.

Pursuant to 23.60.01.A, a Shoreline Substantial Development Permit is required for the above proposal is not specifically exempt per 23.60.02.2.

IV. CONCLUSIONS

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with the following criteria:

- A. All regulations of the SMP appropriate to the shoreline designation and the type of use or development activity proposed shall be complied with, except those bulk and dimensional standards, which have been modified by approval of a Shoreline Variance Permit.**

The subject parcel is located within the Cherry Point Management Area (CPMA) and according to 23.90.01, shall be subject to the regulations found in SMP 23.100.17 and shall not be subject to the regulations found in Chapters 9 and 10 unless otherwise specified in 23.100.17.

It has been determined that the proposed project meets the applicable regulations enumerated in 23.100.07. The existing BP refinery pier is a water dependent industrial facility and an allowed use per 23.100.17.B.1 (Allowed Use). The proposed project does not trigger a nexus to provide public access as required by 23.100.17.B.2 as the pier is an existing permitted development and the nature of the project does not generate a demand for such access per 23.90.08 (Public Access).

The existing BP pier is located within a Habitat Conservation Area (HCA) pursuant to the Whatcom County Critical Areas Ordinance (CAO – Title 16.16) which is incorporated by reference within the SMP pursuant to 23.10.06.A. According to the applicant, the new over-water infrastructure was designed with input from the Washington State Department of Fish and Wildlife (WDFW) to address concerns related to over-water shading from the expanded structures. This approval recommendation has been conditioned that a Hydraulics Project Approval (HPA), as well as any necessary approvals from other applicable agencies, be obtained prior to start of construction. Pursuant to 16.16.215.A, this administrator has determined that the permit conditions imposed by such agencies will satisfy the requirements of the CAO and is thus consistent with the regulations outlined in 23.100.17.B.3 (Critical Areas).

B. All policies of the SMP appropriate to the shoreline designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of the SMP.

The subject parcel is located within the Cherry Point Management Area (CPMA) and according to 23.90.01, shall be subject to the policies found in SMP 23.100.17 and shall not be subject to the policies found in Chapters 9 and 10 unless otherwise specified in 23.100.17.

It has been determined that the proposed project meets the applicable regulations enumerated in 23.100.07. The BP refinery pier is a water dependent industrial operation consistent with the purpose and intent policies outlined in 23.100.17.A.1 and 23.100.17.A.2. As stated previously, public access is not applicable to this development proposal and the project has been determined to result in a no net loss of shoreline ecological functions and processes, and thus consistent with the policies of 23.100.17.A.4 and 23.100.17.A.5, respectively.

23.100.17.A.5 states that all development should be designed to avoid or minimize negative visual impacts on the scenic character of the area and to ensure visual compatibility with adjacent non-industrial zoned properties. The BP facility is located adjacent to industrial-zoned properties within the CPMA.. The BP pier is currently developed with significant infrastructure associated with refinery operations. Based on the scale of the existing infrastructure, the distance of the area development from shore and the height of the existing pier from the water surface, the proposed project is not believed to represent an adverse visual impact from neighboring properties or from the water.

C. For projects located on shorelines of statewide significance, the policies of Chapter 4 shall also be adhered to.

The marine waters of Whatcom County, including the water column and bedlands, are classified as shorelines of statewide significance pursuant to RCW 90.58.030(2)(e) as enumerated in 23.40.02. 23.40.03 states that statewide interest should be recognized and protected over the local interest in shorelines of statewide significance. The County shall review all development proposals within shorelines of statewide significance for consistency with RCW 90.58.020 and the policies listed in 23.40.03.A through N.

Based on the nature of the BP refinery operations, location of the proposed infrastructure and conditions associated with this approval recommendation, staff believes that the proposed project is consistent with the policies for development within shorelines of statewide significance listed in 23.40.03.A through N.

D. In the granting of all Shoreline Substantial Development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

As described previously within this staff report, the proposed over-water improvements to the existing BP refinery pier were designed with input from WDFW. The proposed new over-water gangway will be located approximately 15-feet above the water surface during high tide cycles and has been designed to allow for 60% light passage. Based on the design of the structure and as conditioned within this approval recommendation, staff does not believe that the proposal represents an adverse environmental impact to the shoreline environment, and as such no cumulative impacts are anticipated for additional requests from adjacent industrial pier operations within the CPMA.

V. PUBLIC COMMENTS

This office has received no public comment regarding the proposed project.

VI. AGENCY COMMENTS

This office has received no agency comment regarding the proposed project.

VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a Shoreline Substantial Development permit subject to the following conditions of approval:

1. The proposed developments shall be consistent with the scope and site plans (dated April 28, 2009) approved by this shoreline substantial development permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.

2. The applicant shall contact the Building Services Division of Whatcom County Planning and Development Services to obtain a building permit for construction of applicable portions of the proposed project as determined by Building Services.
3. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to obtaining the above required Building Permit.
4. The project shall comply with all applicable federal, state and local laws and regulations.
5. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
6. Any portion of the proposed development in contact with water shall be constructed of materials such as concrete, steel, or other materials that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited.
7. Any new exterior lighting shall be designed and operated to prevent hazards for public traffic.
8. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.19.A.3.

Report prepared by:

Chad Yunge
Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services