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Kathy Hill, Skagit County Auditor

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AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: DECISION ON ADMINISTRATIVE APPEAL
AP 99 0383

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: ARVID MOSTAD

ASSESSOR PARCEL NO: P73537, P73538, P20419, 20420

ABBREVIATED LEGAL DESCRIPTION:
14895 Gibraltar Road, Anacortes, WA; within Sections 17 and 20, Township 34 North,
Range 2 East, W.M., Skagit County, Washington

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the matter of:)	
Administrative Appeal AP 99 0383)	Findings of Fact
of ARVID MOSTAD)	Decision
for:)	No. AP 99 0383
Appeal of an Administrative Determination of)	
the Planning Director concerning a shoreline)	
matter)	
_____)	

THIS MATTER having come regularly before the Skagit County Hearing Examiner for a Public Hearing under an administrative appeal filed with the Skagit County Planning and Permit Center on behalf of the Applicant appealing a decision by the Planning Director as described in the attached Report and Findings of that department and located at 14895 Gibraltar Road, Anacortes, WA; within Sections 17 and 20, Township 34 North, Range 2 East, W.M., Skagit County, Washington;

Assessor Parcel Nos: P73537, P73538, P20419, P20420

And, notice having been given to all parties and all matters in the file having been considered together with the testimony, evidence, and exhibits in open hearing and made a part of the record in this matter; the Hearing Examiner makes the following findings of fact.

FINDINGS OF FACT

1. August 11, 1999 was fixed as the date of the public hearing and the Hearing Examiner held a public hearing on that date.
2. All persons present at the Public Hearing were given an opportunity to present evidence and testimony, and all correspondence received was made a part of the record.
3. The following were made exhibits at the public hearing:
 - a. July 28, 1999 Memorandum Daniel Downs to Hearing Examiner
 - b. June 10, 1999 letter Arvid Mostad to Hearing Examiner, Appeal of Arvid Mostad with attachments, May 11, 1999 letter Arvid Mostad to Tom Karsh, May 28, 1999 letter Tom Karsh to Arvid Mostad



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- c. August 9, 1999 letter Arvid Mostad to Hearing Examiner, attached diagram with signatures
 - d. Letter Arvid Mostad to Hearing Examiner dated August 11, 1999, received after hearing was closed
4. The applicant's property is located within the Rural Residential zone as set forth in the Skagit County Shoreline Management Master Program ("SMP").

ISSUE PRESENTED

In a letter dated May 11, 1999 appellant posed the following question: "Does my application for my proposed single family home construction on an existing residential lot at 14895 Gibraltar Road, on Fidalgo Island require that I submit the setbacks of the dwelling units within 300 feet of my property lines?" On May 28, 1999 the Skagit County Planning Director replied to the applicant stating, in part that " yes, you do need to submit/comply with the requirements of Chapter 7.13 Residential Development..." The applicant has appealed this administrative determination and in a letter to the Skagit County Hearing Examiner dated June 10, 1999 states that the definition of "residential development" within the SMP relates only to "the subdivision of land" where a single family residence is contemplated.

DISCUSSION

The SMP applies to the applicant's property pursuant to Section 2.01 and to the applicant pursuant to Section 2.02. Pursuant to Section 2.04(1), "all provisions [of the SMP] apply to any development as defined in Chapter 3, Definitions, All development and use of the shorelines of the state shall be conducted in such a manner to comply with this Master Program and the policies of the Act as required by RCW 90.58.140(1) *whether or not a shoreline permit is required for such development.*" (emphasis supplied). Moreover, the SMP provides that not only new but existing development is covered even if normally exempt, if the development "significantly expand[s] or initiate[s] new forms of activity, then such expansion or activity shall adhere to the policies, regulations and permit procedures of this Master Program." Section 2.04(2). Development is defined as "a use consisting of the construction or exterior alteration of structures..." Section 3.03, Definitions. "Substantial Development" means "any development of which the total cost or fair market value exceeds \$1,000..."¹. *Id*

Based on the foregoing, the construction of a single family residence in excess of \$2,500 meets the definition of both development and substantial development, although the construction of a single family residence is exempt under Section 2.05 (f). However, the exemption only applies to the requirement that an applicant obtain a substantial development permit since the provision states that an exemption from the substantial development permit requirements:

¹ Substantial Development has been changed to \$2,500 by amendment to the Shoreline Management Act. Section 3.03 Definitions



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“DOES NOT CONSTITUTE AN EXEMPTION FROM THE POLICIES OF THE ACT, THE PROVISIONS OF THIS MASTER PROGRAM AND OTHER APPLICABLE LOCAL, STATE OR FEDERAL PERMIT REQUIREMENTS. (emphasis in original).
Notation following Section 2.05.

Again, it is abundantly clear that the construction of a single family residence, pursuant to Section 2.05, while exempt from the requirements for substantial development permit, is required to conform with the provisions of the SMP.

Section 3.03, Definitions, states that **“Residential development** is a subdivision of land for human occupancy normally in the structural forms of single family homes, trailers, mobile homes and parks, condominiums, multi-family units, and planned unit development (PUD).” The applicant contends that a narrow definition of “residential development” should be adopted such that only where property is being subdivided in anticipation of the construction of residential structures does the definition apply. Such a narrow definition would be inconsistent with numerous other conditions of the SMP. In particular, Section 7.13.1(1)(B) requires that the county “review *all* proposals for construction [of a single family residence] to determine if (3) the proposal is consistent with the intent, policies and regulations of the Act and this Program (RCW 90.58.140(1)).” (emphasis supplied) Notably, this provision is not limited to single family residences being constructed and reviewed in conjunction with a subdivision of land. Furthermore, the construction of a single family residence on an existing lot of record will take place on a “subdivision of land” obviously then (if not before) intended for residential purposes. The definition of residential development, to the extent it alludes to subdivisions of land, does not limit its application to subdivisions which are contemporaneous with building construction. Indeed, the provisions of Section 2.04 (2) allow the county to review a proposal and require its compliance with the SMP for the construction of a single family residence on a pre-existing subdivided lot since such construction would significantly expand or initiate new forms of activity.

Finally, the definition advanced by the appellant would remove the construction of single family residences from activities which are governed by the Shoreline Master Program and therefore allow residential development to take place on lots throughout the shoreline areas of Skagit County without regulation under the Shoreline Management Act. This would be contrary to the intent and requirements of the Shoreline Management Act as well as the county SMP. Provisions of the Shoreline Management Act specifically require that the County regulate all shorelands and certainly not at the exclusion of those shorelands which might be utilized for residential development.



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DECISION

Because the Hearing Examiner must construe the ordinance and its sections consistently and harmoniously, must construe the SMP in a manner which carries out the state Shoreline Management Act, and because the intent of the drafters is clear from a full reading of the ordinance, the appeal is denied and the decision of the Planning Director is affirmed.

SKAGIT COUNTY HEARING EXAMINER

BE Furlong
BRADFORD E. FURLONG, PRO TEM

Date of Action: 10/11/99



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