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Kathy Hill, Skagit County Auditor

1/7/2000 Page 1 of 6 8:37:35AM

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

DOCUMENT TITLE: ORDER ON SHORELINE APPLICATION SL 99 0446

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: SKAGIT COUNTY PUBLIC WORKS

ASSESSOR PARCEL NO: P42959

ABBREVIATED LEGAL DESCRIPTION: located within the SW ¼ of Section 18, Township 35 North, Range 7 East, W.M., Skagit County, Washington.

**SKAGIT COUNTY HEARING EXAMINER**  
**STATE OF WASHINGTON**

In the Matter of the Application of )		
<b>SKAGIT COUNTY PUBLIC WORKS</b> )		SL 99-0446
)		
For a Shoreline Substantial Development/ )		Findings of Fact,
Conditional Use Permit To Permanently )		Conclusions of Law
Authorize an Emergency Bank Stabilization )		And Decision
Project Previously Conducted to Combat )		
Accelerated Bank Erosion On the North )		
Side of the Skagit River Adjacent to )		
Cape Horn Road )		
_____ )		

THIS MATTER relates to an application of the Department of Public Works for a bank stabilization project. The application came on for hearing on December 8, 1999, after due notice. The Skagit County Planning and Permit Center was represented by Daniel Downs. Peter Landry appeared for the Department of Public Works. Members of the public were given an opportunity to be heard.

Testimony was taken, exhibits were admitted and argument was made. On the basis thereof, the following is entered:

**FINDINGS OF FACT**

1. In the spring of 1999, the Department of Pubic Works installed three rock deflectors projecting from the north bank of the Skagit River, directly adjacent to Cape Horn Road, in an effort to prevent the accelerated undercutting of the bank by high flows. Behind each deflector, an array of cable anchored logs was installed to improve fish habitat. The project was constructed on the authority of an Emergency Letter of Permission issued by the United States Army Corps of Engineers in February and an emergency exemption from shoreline permit requirements issued by the County on March 1.

2. Pursuant to WAC 173-27-040(d) and under the terms of the emergency exemption, Public Works now seeks the permit that would have been required under the Shoreline Management Act had there been no emergency.

3. The development is located on Cape Horn Road at mile 0.5. This is within the SW1/4, Sec. 18, T35N, R7E, WM. The shoreline designation is Rural. Because of the high volume of flow, the banks of the Skagit at this point are Shorelines of Statewide Significance.



4. The rock deflectors installed consist of heavy riprap and levee rock. Deflectors #1 and #3 extend 30 feet into the river and 15 feet into the river bank. Deflector #2 extends 45 feet into the river and 15 feet into the bank. All three have a height of 18 feet and a width of 42 feet. There is 115 feet between Deflectors #1 and #2 and 95 feet between #2 and #3. Ninety-five (95) feet further downstream 50 tons of riprap were used to armor the bank. Approximately 20 large logs, each about 50 feet in length, were placed behind each deflector and cabled to anchor rocks. A total of 3,100 cubic yards (7,000 tons) of rock were used overall.

5. In addition to the placement of the rock and logs, re-grading of vertical cut banks to at least a 1:1 slope is proposed, followed by immediate stabilization through erosion control measures and revegetation with native plants. The planned erosion control measures will include placement of a brush mattress and a jute mat over exposed soils. Revegetation will involve planting the entire slope above the rock toe with native plants. Smaller trees and bushes will be planted on the bank itself within the brush mattress and jute mat. Larger trees will be planted above. Species used will be those naturally occurring in the area, such as willow, western redcedar, red-osier dogwood, snowberry, salmonberry, red alder and bigleaf maple. The unfinished erosion control and revegetation features of the project will be completed by the Spring of 2000.

6. The additional erosion control and revegetation were recommendations contained in a Geotechnical Report and Fish and Wildlife Assessment prepared by Public Works pursuant to the Critical Areas Ordinance (CAO). The report was issued on September 7, 1999.

7. A Mitigated Determination of Non-Significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on September 16, 1999. Conditions of mitigation included the erosion control and revegetation recommendations of the CAO Report. The MDNS was not appealed.

8. The geotechnical evaluation supports the need for the project in order to protect the adjacent roadway. The fish and wildlife analysis provides adequate assurance that the placement of the logs will mitigate fish habitat concerns by providing needed shade and cover.

9. The Skagit County Shoreline Master Program (SMP) establishes criteria and standards for the issuance of shoreline permit. Under SMP 9.02, a Shoreline Substantial Development Permit shall be granted only when the proposed development is consistent with:

- a. Policies and regulations of the Skagit County Shoreline Master Program; and
- b. Applicable policies enumerated in RCW 90.58.020 in regard to shorelines of the state and shorelines of statewide significance; and
- c. Regulations adopted by the Department of Ecology pursuant to the Act (WAC 173-14).



10. The Examiner finds that the policies of the Shoreline Management Act, as set forth in RCW 90.58.020, considered independently, are adequately carried out in this case by application of the policies and regulations of the local master program.

11. Chapter 173-14 WAC has been superseded by Chapter 173-27 WAC. The chapter contains the Department of Ecology's permit regulations. The review criteria set forth therein for Substantial Development Permits are substantially the same as those set forth in SMP 9.02. The SMP policies for shorelines of statewide significance are identical to those listed in the statute.

12. Shoreline stabilization and flood protection are a permitted use in the Rural environment, subject to the general regulations of SMP 7.16. The Staff Report analyses the application for consistency with these regulations and concludes that the project meets them. The Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

13. Channel modifications are a conditional use under the SMP. Because of the projection of the deflectors into the stream, conditional use approval is also needed here. For listed conditional uses, such as this proposal, SMP 11.03 establishes the following criteria for approval:

- a. That the proposed use will be consistent with the policies of this Master Program and policies of RCW 90.58.020.
- b. That the proposed use will not interfere with the normal public use of public shorelines.
- c. That the proposed use of the site and design of the project will be compatible with other permitted uses in the area.
- d. That the proposed use will cause no unreasonable adverse effects to the shoreline environment designation in which it is located.
- e. That the public interest suffers no detrimental effect.

In addition the cumulative effect of additional requests for like actions in the area is to be considered. See also WAC 173-27-160.

14. The Examiner finds that the project meets the conditional use criteria. The normal public use of this shoreline includes use of the roadway. This project does not interfere with such use, it protects it. No other uses in the area will be interfered with. Impacts on the environment are benign. Indeed, there is reason to think that fish habitat is being improved. The public interest on both the state and the local is served over the long term by this kind of flood protection activity. In similar circumstances the approval of like actions would not thwart shoreline management policies.



15. No written comments from members of the public were received on this application. No members of the public testified. No consulted agencies objected.

16. 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 parties and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The findings support a conclusion that the development is consistent with the applicable SMP criteria for approval of a Shoreline Substantial Development/Conditional Use Permit, if conditioned as follows:

(1) The project shall be built and maintained in accordance with the application and accompanying materials, including in particular the site diagram submitted.

(2) All other required permits and approvals shall be obtained and complied with.

(3) All necessary best management practices and construction techniques shall be used to prevent erosion-sedimentation from occurring within natural or manmade water bodies, adjacent property and public rights-of-way.

(4) The conditional use approval granted herein is contingent upon written approval by the State Department of Ecology.

(5) The applicant shall comply with all conditions set forth in the MDNS, issued September 16, 1999. This includes the provisions for erosion control and re-vegetation set forth in the Geotechnical Report and Fish and Wildlife Assessment.

(6) Success of the plantings shall be monitored. A 60 percent survival rate of plants placed in the upper bank shall be maintained by replacement of dead plants for the first two years after permit issuance.

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



## DECISION

The Shoreline Substantial Development/Conditional Use Permit is **APPROVED**, subject to the conditions set forth in Conclusion 3 above.

Wick Dufford  
Wick Dufford, Hearing Examiner

Date of Action: December 9, 1999.

Copies transmitted to Applicant: December 9, 1999

Attachment: Staff Report and Findings

## RECONSIDERATION/APPEAL

This decision shall become final five (5) days from the date of this Order unless a request for reconsideration or an appeal is filed in accordance with Section 13.01 of the Skagit County Shoreline Master Program. After the decision becomes final at the County level, it must be approved by the State Department of Ecology. Upon approval or denial by Ecology, review may be sought from the State Shorelines Hearing Board, pursuant to the provisions of RCW 90.58.180.

