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

DOCUMENT TITLE: ORDER ON SHORELINE SUBSTANTIAL DEVELOPMENT VARIANCE
SL 00 0067

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: SKAGIT COUNTY PUBLIC WORKS

ASSESSOR PARCEL NOS: P35093

ABBREVIATED LEGAL DESCRIPTION: located within Section 31, Township 35 North,
Range 3 East, W.M., Skagit County, Washington.

SKAGIT COUNTY HEARING EXAMINER
STATE OF WASHINGTON

In the Matter of the Application of)
SKAGIT COUNTY PUBLIC)
WORKS DEPARTMENT)

SL00-0067

For a Shoreline Substantial Development)
And Variance Permit to Reroute a Storm)
Water Drainage System into a Centralized)
Culvert, Emptying Directly into Padilla)
Bay)

Findings of Fact,
Conclusions of Law,
And Decision

THIS MATTER relates to an application for shoreline approvals filed by the Skagit County Department of Public Works. The application came on for hearing on May 24, 2000, upon due notice. Daniel Downs represented the Skagit County Planning and Permit Center. Pete Landry appeared for the applicant. Testimony was heard from members of the public.

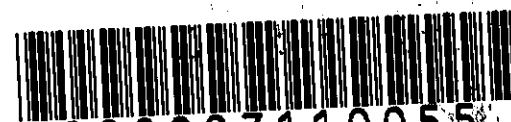
On the basis of the testimony heard, the exhibits admitted and arguments made, the following is entered:

FINDINGS OF FACT

1. The Skagit County Department of Public Works (applicant) seeks a Shoreline Substantial Development and Variance Permit in order to build stormwater drainage improvements. The project involves rerouting stormwater into a centralized culvert which will cross the 100 foot utility-line setback and empty directly into Padilla Bay.

2. The project begins just northeast of the intersection of Josh Wilson Road and Third Street, proceeds north on the east side of Third Street to C Street, turns west along the south and north side of C Street going under Bayview Edison Road and then into Padilla Bay. The proposal is within Sec. 31, T35N, R3E, W.M.

3. Existing stormwater drainage in the rural village of Bayview will be collected into a 3 by 4 foot box culvert and conveyed to the south end of the Skagit County/ Department of Ecology boat launch. The discharge from this box culvert will occur in cobbles and drain gravel placed above mean higher high water and then flow into the bay in a natural course that mimics a stream's alluvial fan. Along C street the water will traverse a six-foot wide bioswale, designed to remove pollutants and sediment from storm flows prior to discharge. Adjacent to the outflow from the culvert, rootwads, native vegetation, and log booms will help to create a natural look.



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4. The designation for the affected shoreline areas is Rural Residential above the Ordinary High Water Mark (OHWM) and Aquatic below the OHWM. Under the Shoreline Management Act (SMA), the shorelines of Padilla Bay are shorelines of statewide significance. The Comprehensive Plan designation for the area is Bayview Rural Village. The zoning landward of the OHWM is Residential.

5. A Fish and Wildlife Site Assessment/Habitat Management Plan prepared for the project identified no significant potential negative impacts and found that the project would be likely to improve the quality of water flowing into the bay. The Technical Team had no comments.

6. A Mitigated Determination of Non-significance (MDNS) under the State Environmental Policy Act (SEPA) was issued on March 30, 2000. The MDNS was not appealed.

7. The project is being undertaken to upgrade drainage facilities in an area where there have been numerous complaints about existing facilities. It is expected to alleviate roadway flooding and property damage and to improve roadway safety. The project will occur entirely within County road right of way and is not expected to have any impact on neighboring private properties.

8. The proposal qualifies as substantial development on shorelines of the state and requires a shoreline substantial development permit. For approval of such a permit, the Skagit County Shoreline Master Program (SMP), Section 9.02, requires that the development be 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;
- c. Regulations adopted by the Department of Ecology pursuant to the Act [WAC 173-27].

9. The Staff Report contains an analysis which determines that the proposed project conforms with the above criteria, including the policies for shorelines of statewide significance. The Examiner concurs in this analysis and adopts the same.

10. The applicable SMP regulations are those for "Utilities." Utility development is a permitted use, subject to specified general requirements. One of these requirements is a 100 foot setback from the OHWM for utility lines not buried beneath the surface. Because the drainage system will cross this setback area above ground, a variance is required.

11. The SMP at Section 10.03(1) contains standards for shoreline variances for development landward of the OHWM. The applicant must prove:



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- a. That the strict application of the bulk, dimensional or performance standards set forth in this Master Program precludes or significantly interferes with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, for example, from deed restrictions or the applicant's own actions.
- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.
- d. That the variance does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.

In the granting of variance permits, the cumulative impact of additional requests for like in the area is to be considered.

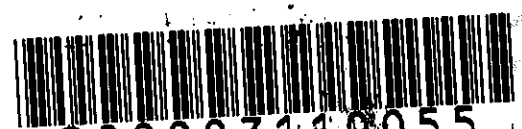
12. The Staff Report thoroughly analyzes the project against these criteria and concludes that the project meets them. The Examiner concurs in this analysis and adopts the same.

13. As noted, at its lower end, the proposed drainage system design seeks to mimic the conditions of a natural stream, rather than using culverts all the way to the bay. This environmentally friendly approach could not be used if the preference for buried utility lines of the SMP were strictly applied. The overall effect of the project should be to alleviate past flooding problems that have resulted from undersized culverts. The system improvements proposed will slow surface water runoff and improve the quality of the discharge.

14. Ownership and use questions relating to the Department of Ecology's interest in the boat launch have been resolved to the satisfaction of the agencies involved.

15. Area residents expressed concerns about the cost, the routing and the effectiveness of the proposed project. The Examiner is persuaded that alternative routes were adequately considered and that the chosen design represents the most effective project consistent with reasonable cost. The facilities should not increase hazards of erosion in the area of the boat launch

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 subject matter of the proceeding.
2. The requirements of SEPA have been met.
3. The findings support a conclusion that, as conditioned, the project will meet the criteria for approval for a shoreline substantial development permit and a shoreline variance permit.
4. The following conditions should be imposed.
 - (a) The permittee shall comply with the Fish & Wildlife Site Assessment recommendations in regards to management and maintenance of the project. This includes mowing the bioswale once to three times a year and the removal of pollutant retaining sod every three to five years.
 - (b) The applicant shall comply will all conditions required by the MDNS issued March 30, 2000.
 - (c) Public Works shall be responsible for any damages to the boat launch that may occur as a result of this project.
5. Any finding herein which may be deemed a conclusion is hereby adopted as such.

DECISION

The requested shoreline substantial development and variance permit is granted, subject to the conditions set forth in Conclusion 4 above.

Wick Dufford

Wick Dufford, Hearing Examiner

Date of Action: July 10, 2000

Copies transmitted Applicant: July 10, 2000

Attachment: Staff Report



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1
2
3 SKAGIT COUNTY PLANNING & PERMIT CENTER
4

5 FINDINGS OF FACT
6
7

8 REVIEWING AUTHORITY: Skagit County Hearing Examiner
9

10 PUBLIC HEARING DATE: May 10, 2000
11

12 APPLICATION FOR: Shoreline Substantial Development/Variance #PL 00-
13 0067.
14

15 APPLICATION DATE: February 7, 2000
16

17 APPLICANT: Skagit County Public Works Department
18 1111 Cleveland Ave
19 Mount Vernon, WA 98273
20

21 PROJECT DESCRIPTION: The applicant requests a Substantial Development/Variance
22 as required by the Skagit County Shoreline Management Master Program (SCSMMP)
23 for: rerouting of a storm water drainage system into a centralized culvert per SCSMMP
24 Chapter 10. The SCSMMP in 7.18 Table U requires that non-buried utility lines maintain
25 a 100 foot setback from the OHWM in the Rural Residential shoreline designation. The
26 discharge from the culvert will occur above the Mean Higher High Water (MHHW) mark
27 of 7.7 feet and flow into Padilla Bay mimicking a naturally flowing stream. A 6-8 foot
28 wide bioswale will collect the water upstream to minimize anthropogenic pollutants and
29 sedimentation from entering Padilla Bay. The outflow culvert will incorporate rootwads,
30 native vegetation, and log booms to facilitate water quality.
31

32 PROJECT LOCATION: The proposed project begins just northeast of the intersection of
33 Josh Wilson Road and 3rd Street, proceeds north on the east side of 3rd Street to C Street,
34 turns west along the south and north side of C Street going under Bayview Edison Road
35 into Padilla Bay, within a portion of Section 31, Township 35 North, Range 3 East,
36 W.M., Skagit County.
37

38
39 RECOMMENDATION: Approval, with conditions stated at the end of the report.
40

41 EXHIBITS:
42

- 43 1. Staff Report
44 2. February 7, 2000, Shoreline Variance application, a narrative, JARPA, ownership
45 certification and site plans and SEPA checklist.
3. February 24, 2000 & March 2, 2000, Notice of Development Application.



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- 1 4. March 14, 2000 "Informal Sub-tidal Benthic Macroinvertebrate Study on Drainage
2 Outflows in the Rural Village of Bayview, Washington, prepared by Josh Wilson of
3 Skagit County Public Works.
- 4 5. March Fish & Willie Report Addendum prepared by Pete Landry of the Skagit
5 County Public Works Department.
- 6 6. March 30, 2000 Mitigated Determination of Non-Significance (MDNS) issued by
7 Skagit County.
- 8 7. March 16, 2000 letter of concern from Dale Jenkins of 12638 C street Mount
9 Vernon, WA 98273.
- 10 8. March 20, 2000 letter of concern from Norman Jenkins of 11545 Walker Road,
11 Mount Vernon, 98273.
- 12 9. March 13, 2000 letter of concern from Douglas Ramey of 11132 3rd street, Mount
13 Vernon, 98273.
- 14 10. April 21, 2000 e-mail from Pete Landry to Daniel Downs.
- 15 11. February 25, 2000 "Town of Bayview Drainage Improvement Project: Critical
16 Areas Ordinance review", prepared by Jonas Winbolt.

17
18 STAFF FINDINGS:

- 19
20 1. The application has been advertised in accordance with Section 9.04 of the Skagit
21 County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
22
- 23 2. The subject property is within the jurisdiction of the Washington State Shoreline
24 Management Act and the SCSMMP.
25
- 26 2. The subject proposal is located within Padilla Bay and is designated as Aquatic
27 below the OHWM and Rural Residential above the OHWM in the SCSMMP. The
28 zoning landward of the OHWM is Residential and the Skagit County
29 Comprehensive Plan designation is Bayview Rural Village.
30
- 31 3. The area directly adjacent to Padilla Bay is designated by the FEMA maps as V4
32 with an elevation of 9 feet. The remainder of the proposed route is located outside
33 of FEMA flood risk designations.
34
- 35 4. The Coastal Zone Atlas of Washington, contains the following information
36 regarding the site: Geology – Till Nonsorted, Slope Stability – Stable, Coastal
37 Flooding – UF (not subject to), Sand & Gravel – G2 – Gravel quantity sufficient
38 for mining, Coastal Drift –bearing southeasterly, Land Cover – Commercial-
39 Residential.
40
- 41 5. Staff determined that the subject proposal required a Fish & Wildlife Site
42 Assessment/Habitat Management Plan as required in 14.06.510 & 520 of the
43 Skagit County Critical Areas Ordinance. The report identified no significant
44 potential negative impacts and found that the proposal would be likely to improve
45 water quality flowing into the Bay. The Informal Sub-tidal Benthic
46 Macroinvertebrate Study on Drainage Outflows in Rural Village of Bayview,



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1 Washington, identified the proposed site for the outflow as the one with the most
2 diversity of macro invertebrate species present. A notice for Technical Team
3 review was forwarded to the appropriate agencies with a March 27 to
4 April 15 comment period. No comments were received.
5

6 6. The application was reviewed in accordance with the State Environmental Policy
7 Act guidelines (WAC 197-11 and RCW 43.21C). Skagit County Planning and
8 Permit Center, acting as Lead Agency, issued a Mitigated Determination of Non-
9 Significance on March 30, 2000, subject to the following conditions:
10

- 11 A) The subject proposal shall comply with the Skagit County Shorelines Master
12 Program and the Shoreline Management Act RCW 90.58. In doing so, the
13 applicant shall receive a "Shoreline Substantial Development Permit."
- 14 B) Best management practices shall be used to protect water quality and prevent
15 any negative impacts upon the tidelands or native vegetation in the shoreline
16 area during construction.
- 17 C) The applicant shall strictly adhere to the project information (site diagram)
18 submitted for this proposal. If the applicant proposes any modification of
19 the subject proposal, he/she shall request a permit revision from this office
20 prior to the start of construction.
- 21 D) The applicant shall receive an approved fill and grade permit from Skagit
22 County prior to the start of construction.
- 23 E) The applicant shall receive an approved Hydraulic Project Approval from the
24 Washington State Department of Fish and Wildlife prior to start of
25 construction.
- 26 F) The applicant shall contact the Army Corps of Engineers (206-674-3495)
27 prior to the start of construction in regards to additional permitting.
- 28 G) The applicant shall strictly adhere to the project information (site diagram)
29 submitted for this proposal. If the applicant proposes any modification of
30 the subject proposal, he/she shall request a permit revision from this office
31 prior to the start of construction.
32

33 7. Several comments were received regarding the proposal. Major concerns
34 included:

- 35 A) The first public meeting did not address numerous questions concerning
36 the location of the project, what a bioswale is and why can't the project
37 stay in the current location.
- 38 B) 95% of the Bayview drainage problems are east of the project area.
- 39 C) Upland culverts are too small and the drainage system should run along
40 Josh Wilson Road to the Bay.
- 41 D) The new system is not needed.

42 Peter Landry, of the Skagit County Public Works department, responded in a
43 April 20, 2000 e-mail to Daniel Downs regarding the comments submitted (see
44 exhibit # 10.
45



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1 8. Staff determined that the proposal is located on a Shoreline of Statewide
2 Significance thereby requiring the necessity of reviewing the proposal with the
3 following policies:

4 a. The statewide interest should be recognized and protected over the local
5 interest.

6 b. The natural character of shorelines of statewide significance should be
7 preserved.

8 c. Uses of shorelines of statewide significance should result in long term
9 benefits to the people of the state.

10 d. The natural resources and ecological systems of shorelines of statewide
11 significance should be protected.

12 e. Public access to publicly owned areas in shorelines of statewide significance
13 should be increased.

14 f. Recreational opportunities for the public should be increased on shorelines of
15 statewide significance.

16 *Staff has determined that the proposal does not conflict with any of the afore*
17 *stated policies.*

18
19 9. The proposal does not qualify as an exemption from a Substantial Development
20 Permit upon reviewing the exemptions allowed in WAC 173-27-040(2)(a-o) and
21 will cost more than \$2,500.00 dollars.
22

23 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

24
25 Staff determined that the subject proposal was required to be reviewed for consistency with
26 SCSMMP Chapter 7.18 Utilities as defined in Chapter 3.03. The entire Chapter 7.18 of the
27 SCSMMP regarding Utilities is included as Attachment "A" of the staff report, staff has
28 summarized the policies involved.
29

30 Staff determined that the proposal does not conflict with the **general policies** regarding,
31 Coordination, Existing use areas, Joint Use, Multiple use, Natural resources processes, and
32 other uses, Location, Solid Waste avoidance of sensitive areas, Hazardous areas,
33 Petroleum/chemical pipelines and electrical transmission cables, Design and Impacts.
34

35 Staff further determined that the proposal complies with all SCSMMP **regulations**
36 regarding Rural Residential, Existing use areas, Prohibited utility developments,
37 Floodplains, Floodways, Underground utilities, Shore defense works, Parking areas and
38 access roads, Screening and buffer areas, Landfills, Underground utility lines, Surface utility
39 lines, Aerial utility lines, and Tabular Regulations **except** shoreline setbacks.
40

41 The following inserts from the Regulation section are considered below with staff notes
42 in italics:
43

44 2. REGULATIONS

45 A. Shoreline Area

46 (2) Rural Residential



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1 Utility development is permitted subject to the General and Tabular Regulations ...
2 (C) Tabular Regulations
3 *Table U (1)(a) for Rural Residential requires a 100-foot setback from the OHWM for*
4 *utility lines that are not buried beneath the surface. Because the proposal is to build the*
5 *drainage system above ground within the 100 foot setback the variance is required.*
6 *The proposal therefore requires a variance from the 100-foot shoreline setback requirement*
7 *for non-buried utility lines.*

8
9 10. The SCSMMP, Chapter 10 Variances, sets forth the criteria for granting Shoreline
10 Variance Permits. Section 10.03(1) - Criteria for granting shoreline variance permits
11 reads: Variance permits for development to be located landward of the ordinary
12 high water mark (OHWM), except within areas designated marshes, bogs or
13 swamps pursuant to Chapter 173-22 WAC, may be granted provided the applicant
14 can meet all the following criteria; the burden of proof shall be on the applicant.

- 15
16 a. **That the strict application of the bulk, dimensional or performance**
17 **standards set forth in this Master Program precludes or significantly**
18 **interferes with a reasonable use of the property not otherwise**
19 **prohibited by this Master Program.**

20 *Strict application of the dimensional standards for this proposal would*
21 *force the proposal to use culverts for the storm water drainage all the way*
22 *to the Bay, thereby undermining a major part of the purpose of the*
23 *proposed design in attempting to mimic "natural", not manmade*
24 *conditions.*

- 25
26 b. **That the hardship described above is specifically related to the**
27 **property and is the result of unique conditions such as irregular lot**
28 **shape, size or natural features and the application of this Master**
29 **Program and not, for example, from deed restrictions or the applicant's**
30 **own actions.**

31 *The hardship is due to the SCSMMP's emphasis on encouraging buried*
32 *utility lines. In most cases, utility lines for carrying gas, oil, electricity and*
33 *sewage would preferably be buried within the shoreline environment.*
34 *However, this proposal deals with the modification of an existing storm*
35 *water drainage system by attempting to restore it to a more natural*
36 *condition in order to mimic a small stream.*

- 37
38 c. **That the design of the project will be compatible with other permitted**
39 **activities in the area and will not cause adverse effects to adjacent**
40 **properties or the shoreline environment designation.**

41 *Storm water drainage has been compatible with other permitted activities in*
42 *the area. All construction activity in route to the Bay is within County right-*
43 *of way and the cumulative impact to the area should be positive by way of*
44 *alleviating flooding problems that have occurred on adjacent properties in*
45 *the past due to undersized culverts.*
46



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- 1 d. That the variance authorized does not constitute a grant of special
2 privilege not enjoyed by the other properties in the same area and will
3 be the minimum necessary to afford relief.

4 *The issuance of a variance for this proposal would be consistent with*
5 *numerous restoration efforts that have occurred statewide in an attempt to*
6 *design storm water drainage systems that better mimic natural conditions*
7 *and enhance water quality.*

- 8
9 e. That the public interest will suffer no substantial detrimental effect.

10 *The public interest may be best served by utilizing storm water drainage*
11 *design that slows surface water runoff prior to discharging into Padilla Bay*
12 *thereby enhancing water quality in Padilla Bay.*

13
14
15 RECOMMENDATION

16
17 Based on the above findings, the Skagit County Planning and Permit Center would
18 recommend for **approval** of a Shoreline Variance Permit subject to the following
19 conditions:

- 20
21
22
23 1. The applicant shall comply with the Fish & Wildlife Site Assessment
24 recommendations in regards to Management & Maintenance of the proposal. This
25 includes mowing the bioswale once to three times a year and the removal of
26 pollutant retaining sod every three to five years.
27 2. The applicant shall comply with all conditions required by the MDNS issued on
28 March 30, 2000 and listed within this report.

29
30
31
32
33
34 Prepared By: DD

35 Approved By:

36 Date: April 20, 2000

37 Amended:



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