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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: ORDER ON SHORELINE PERMIT SL 03 0365 and  
SPECIAL USE PERMIT SU 03 0664

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: SKAGIT COUNTY PUBLIC WORKS

ASSESSOR PARCEL NOS: P42717, P42704, P111523, P111522 & P111521

LEGAL DESCRIPTION: : The proposed improvements are to be located within the right-of-way and easements of Emmanuel Lane, Concrete, Washington; within a portion of Section 15, Township 35 North, Range 7 East, Skagit County, WA.

**BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

**FINDINGS, CONCLUSIONS AND DECISION**

**Applicant:** Skagit County Department of Public Works  
1800 Continental Place  
Mount Vernon, WA 98273

**File Nos:** PL03-0365 (Shorelines)  
PL03-0664 (Special Use)

**Request:** Shoreline Substantial Development Permit  
Special Use Permit

**Location:** Within easements across private property and the right-of-way of Emmanuel Lane, all within a portion of Sec 15, T35N, R7E, W.M.

**Land Use Designations:** Shoreline -- Rural  
Comprehensive Plan -- Rural Resource - Natural Resource Land

**Summary of Proposal:** To install a minor storm water drainage utility, consisting of 1,200 linear feet of 18-inch diameter drain pipe within Emmanuel Lane right-of-way and within a 30-foot easement on private property owned by Ms. Jemma Matthews. The project will discharge near Grandy Creek. It will replace an existing failing infiltration system.

**Public Hearing:** After reviewing the report of the Planning and Permit Center, the Hearing Examiner conducted a public hearing on October 15, 2003.

**Decision:** The application is approved, subject to conditions.



## FINDINGS OF FACT

1. The Skagit County Department of Public Works (applicant) seeks to construct a minor storm water utility within a portion of Sec. 15, T35N, R7E., W.M.

2. The project will involve the installation of approximately 1,200 linear feet of 18-inch diameter drain pipe buried within the right-of-way of Emmanuel Lane (a private road) and within a 30-foot easement on private property owned by Ms. Jemma Matthews. Several catch basins will also be installed.

3. The purpose of the new drainage facility is to replace a failing infiltration system.

4. The majority of the pipeline will parallel the private road. Only 268 feet will run across the Matthews' land. Only the last 70 feet of the storm water line will be within shoreline jurisdiction. The County has obtained the necessary easements.

5. The discharge point will be on the ground at the edge of an alluvial terrace about 130 feet from Grandy Creek. From the discharge point, the storm water will migrate toward the creek either via sheet flow or by forming a meandering swale. The surface flow is expected to improve the water quality of the storm water before it reaches the creek.

6. The area is designated Rural Resource-Natural Resource Land (RRc-NRL) under the Comprehensive Plan and is within a Rural environment under the local Shoreline Master Program (SMP). The surrounding properties are in single-family residential use and agricultural use.

7. The project will benefit residences located on Emmanuel Lane. Houses located in the adjacent short plat are experiencing crawl-space inundation and saturated surface soils during the wet season. Previous attempts to address the problem, including infiltration, have been unsuccessful.

7. Grandy Creek is a Type I stream. The stream and its riparian buffer are a critical area under the Critical Areas Ordinance.

8. The anticipated peak flow of the proposed system is less than 3.5 cubic feet per second (cfs). The applicant states that this will be a nominal addition of storm water to a Type I stream and will have a negligible effect.

9. This conclusion is based on a Site Assessment prepared by Jeff McGowan, Salmon Habitat Specialist for the Public Works Department. He determined that flow exiting the drainage pipe will not have the volume or velocity to cause damaging erosion to the riparian areas adjacent to the creek. The project should have essentially no impact on the functions and values of the critical area, if appropriate mitigation steps are taken.



10. Most of the project area is currently in pasture, meaning that the disturbance of vegetation during construction will be limited. The pipe trench will be covered and the surface will be re-vegetated as soon as work is complete. Best management practices for erosion control will be practiced during construction.

11. The Planning and Permit Center Staff performed critical areas and general environmental review and concluded that the project, with the recommended mitigation, will not result in a net loss of riparian habitat function, nor will it significantly degrade water quality.

12. A Determination of Non-Significance (DNS) under the State Environmental Policy Act was issued for this project on August 14, 2003. No comments were received. The DNS was not appealed.

13. The SMP allows utilities in Rural shorelines. Existing right-of-way corridors are to be used in so far as possible. Buried lines, such as those proposed for the subject project, are exempt from the standard shore setback.

14. By definition, the proposal is minor utility. Such facilities are permitted on RRc-NRL lands by Administrative Special Use Permit.

15. The criteria for special uses are set forth in SCC 14.16.900(2)(b)(v), as follows:

- (a) The proposed use will be compatible with existing and planned land use and comply with the Comprehensive Plan.
- (b) The proposed use complies with the Skagit County Code.
- (c) The proposed use will not create undue noise, odor, heat, vibration, air and water pollution impacts on surrounding, existing or potential dwelling units, based on the performance standards of SCC 14.16.840.
- (d) The proposed use will not generate intrusions on privacy of surrounding uses.
- (e) Potential effects regarding the general public health, safety and general welfare.
- (f) For special uses within ... Agricultural-Natural Resource Lands ... the impact on long-term natural resource management and production will be minimized.
- (g) The proposed use is not in conflict with the health and safety of the community.
- (h) The proposed use will be supported by adequate public facilities or services



and will not adversely affect public services to the surrounding areas, or conditions can be established to mitigate adverse impacts on such facilities.

16. The Staff Report analyzes the application in light of the requirements of the SMP and of the special use criteria and finds that, as conditioned, the project will comply with the relevant standards. The Hearing Examiner concurs with these analyses and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

17. Sentiment expressed by residents of the neighborhood was in favor of doing this work and doing it soon.

18. 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 persons and the subject matter of this proceeding. The Administrative Special Use Permit application was, by virtue SCC 14.06.060, considered by the Examiner in a consolidated hearing with the Shoreline Substantial Development Permit.

2. The Public Works Department applied for the Administrative Special Use Permit under protest. The Examiner expresses no opinion as to whether such a permit is legally required of the agency for this type of project.

3. The requirements of SEPA have been met.

4. The proposal, as conditioned, is consistent with the policies of the Shoreline Management Act as set forth in RCW 90.58.020. By avoidance of adverse impacts on critical areas it fulfills the shoreline protection aims of the Act.

5. The proposal is likewise consistent with the SMP, and in particular with the provisions relating to Utilities. SMP 7.18. No conflict with any state regulations adopted for shorelines was identified.

6. Accordingly, the criteria for issuance of the Shoreline Substantial Development Permit are met. SMP 9.02, RCW 90.58.140(2).

7. The proposal, as conditioned, meets the criteria for Special Use Permit approval. SCC 14.16.900(2)(b)(v).

8. The following conditions should be imposed;



(1) The project shall be installed as described in the application, except as the project description may be modified these conditions.

(2) The pipe shall be located no closer than 130 feet landward of the Ordinary High Water Mark (OHWM) of Grandy Creek. No disturbance of the critical area buffer shall occur within 130 feet of the OHWM of Grandy Creek.

(3) The mitigation plan of the Site Assessment of Jeff McGowan, dated September 5, 2003, shall be implemented, to wit:

- (a) The project shall be done in August or September when conditions are anticipated to be dry.
- (b) All disturbed ground within the pasture area shall be hydroseeded.
- (c) BMPs for erosion control shall be implemented as necessary.
- (d) Bioengineering techniques shall be used to stabilize and re-vegetate the bank area at the pipe outlet. This may include coco matting or coir cloth and willow waddles.
- (e) Native woody vegetation shall be used to replant the disturbed area adjacent to the pipe outlet. This replanting shall be done within six months of project completion.

(4) Monitoring shall be conducted to insure the success of the mitigation plan. A mitigation monitoring report shall be submitted to the Planning and Permit Center annually for two years beginning December 15, 2004.

(5) Copies of all relevant easement agreements, including those required to provide access, shall be recorded with the County Auditor. Copies of the recordings shall be submitted to the Planning and Permit Center and shall reference File Nos: PL033-0365 and PL03-0664.

(6) The project shall be commenced within two years of permit approval.

(7) Temporary erosion and sedimentation control measures shall be in accordance with Chapter 14.32 SCC Drainage.

(8) The applicant shall comply with surface and ground water quality requirements as set forth in Chapters 173-201A WAC and 173-200 WAC. Best Management Practices shall be used to prevent water quality degradation.

(9) The applicant shall comply with all regulations and requirements of the Northwest Air Pollution Authority.

(10) The applicant shall comply with all relevant provisions of the Unified Development Code, including Chapter 14.24 Critical Areas and Chapter 14.16 Zoning.



(11) The application shall comply with Chapter 173-60, Maximum Environmental Noise Levels.

(12) Failure to comply with all conditions of the issued permits may result in their revocation.

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

### DECISION

The requested Shoreline Substantial Development Permit and Special Use Permit are approved, subject to the conditions set forth in Conclusion 8 above.



Wick Dufford, Hearing Examiner

Date of Action: November 5, 2003

Date Transmitted to Applicant: November 5, 2003

### RECONSIDERATION/APPEAL--SPECIAL USE

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.120(9), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within 14 days after the date of the decision, or decision on reconsideration, if applicable.

### RECONSIDERATION/APPEAL--SHORLINES

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with the Planning and Permit Center within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Planning and Permit Center within five (5) days after the date of decision, or decision on reconsideration, if applicable.

