

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a Shoreline Substantial Development Permit, and a Shoreline Variance by **Mount Baker Council, Scouting America**

PL24-0242 (SSD/SVAR)

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant, Mount Baker Council, Scouting America, desires Shoreline Substantial Development and Shoreline Variance permits on order to construct a picnic shelter and fire watch tower approximately 110 feet from Lake Challenge.

Decision: The requested Shoreline Substantial Development, and Shoreline Variance permits are granted, subject to conditions of approval.

INTRODUCTION

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

FINDINGS OF FACT

I.

Applicant: Mount Baker Council, Scouting America
1715 100th Place SE, Suite B
Everett, WA 98206

Contact: Richard Good

1010 State Avenue, Box 467
Marysville, WA 98270

Site Address: 26027 Walker Valley Road

Assessors Account Number: 340532-4-001-0008

Parcel Number: P30594

Legal Description: NE1/4 SE1/4, SECTION 32, TOWNSHIP 34 NORTH, RANGE 5 EAST,
W.M., LESS RD

Lot Size: 645 Acres

Zoning: Secondary Forest-Natural Resource Lands

Application Date: Shoreline Variance Application - July 10, 2024
Updated Shoreline Variance Application – October 25, 2024

Determination of Completeness: August 7, 2024

Shoreline Designation: Rural

Statewide Significance: No

SEPA Review: Determination of Non-significance issued January 23, 2025

Notice Information: Notice of Application published in the Skagit Valley Herald –
September 12 and 19, 2024
Revised Notice of Application published in the Skagit Valley Herald –
November 7 and 14, 2024
Notice of Hearing published in the Skagit Valley Herald –
May 15, 2025

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act
 - RCW 36.70B, Local Project Review
 - RCW 90.58, Shoreline Management Act of 1971 (“SMA”)
- Washington Administrative Code (WAC)
 - WAC 173-14, Department of Ecology
 - WAC 197-11, SEPA Rules

- WAC 246-272A, On-Site Sewage Systems
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.06 – Permit Procedures
 - SCC 14.10 – Variances
 - SCC 14.16 – Zoning
 - SCC 14.16.420, Secondary Forest-Natural Resource Lands (SF-NRL)
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.26 – Shoreline Management Master Program
 - SCC 14.32 – Stormwater Management
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (SMP)
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Hearing Examiner’s Rules of Procedure (SCRE), as authorized by Skagit County Commissioners per Resolution #R20240280 on 12/16/24

Hearing Date: 5/30/25 at 9:00 AM

Testifying Parties of Record:

Leah Forbes, AICP, Sr. Planner
 Skagit County Planning & Development Services
 1800 Continental Place
 Mount Vernon, WA 98273

Robert Noble
 Mount Baker Council, Scouting America
 1715 100th Place SE, Suite B
 Everett, WA 98206

Joseph Scott Suchan
 Mount Baker Council, Scouting America
 1715 100th Place SE, Suite B
 Everett, WA 98206

Hearing Examiner Exhibit List:

1. Board of Adjustment Written Order, dated August 12, 1971

2. Conditional Use Permit, dated June 22, 1992
3. Protected Critical Area Site Plan (PCA) recorded AF#202108,160120, dated August 16, 2021
4. SEPA Environmental Checklist, June 27, 2024
5. Shoreline Substantial Development Permit Application, dated June 27, 2024
6. Site Plan
7. Notice of Development Application, dated July 10, 2024
8. Shoreline Variance Narrative
9. Revised Notice of Development Application, dated October 25, 2024
10. Determination of Non-Significance, dated January 23, 2025
11. Aerial Photos of the Site
12. Notice of Public Hearing, dated May 13, 2025
13. Staff Report, dated May 21, 2025
14. Revised Staff Report, dated May 30, 2025
15. E-mail chain ending in Chris Luerkens on 10/24/24
16. E-mail chain ending in Kevin Nichols on 10/25/24

II.

The Applicant is requesting approval for a Shoreline Substantial Development and Shoreline Variance application for construction of a 68' x 24' open air picnic shelter and a 70-foot-tall fire watch tower with a 20' x 20' base. A suspended walkway would extend from the fire watch tower to a 5' x 18' stairway blockhouse. The structures would be located outside of a 110-foot buffer imposed by the PCA¹ adjacent to the lake. The proposed picnic shelter and fire watch tower are roughly in the center of the camp acreage within the core developed area.

The proposed shelter is nearly identical to the one permitted with Shoreline Substantial Development Permit PL20-0210 and constructed under building permit BP20-0193. That shelter is shown on the site plan to the north of the currently proposed buildings.

As proposed, both structures require a Shoreline Substantial Development Permit. The proposed 70-foot fire watch tower requires a Shoreline Variance to exceed the maximum allowed height of 25 feet.

III.

¹ Ex. 3

The Skagit County Planning and Development Services Staff (the “Department”) have recommended approval of the requested Shoreline Substantial Development and Shoreline Variance permits in a “Revised Staff Report” (Ex. 14).

The Applicant has indicated there are no factual or legal inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed by the Department.

The Findings of Fact and Conclusions of Law in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

IV.

SCHE §14 grants parties the right to object to evidence and to cross-examine witnesses. In the case at hand, with full knowledge of the evidence being admitted, no objection by the applicant or the Department was made to any of the 16 exhibits that were admitted into the record.

V.

Any Conclusion of Law below 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.

Scope of Hearing, Jurisdiction, & Interpretation of Law

Whenever possible, development applications are consolidated and reviewed according to the highest standard of all of the permits, with some exceptions outlined in the law.² In this case the highest application level is Level II, and so all are to be reviewed by the Hearing Examiner.³

The project is located within 200 feet of the designated shoreline area and is therefore subject to the requirements of the Skagit County Shoreline Master Program (SMP). The requirements of the SMP and the need for an application by the developer of the project shall apply to every person, natural or

² SCC 14.06.060

³ SCC 14.06.120

unnatural, business entity, association, or government entity who wishes to develop or make use of lands, wetlands, and waters which fall under the jurisdiction of the SMA; real property ownership is not a requirement.⁴

The Hearing Examiner has jurisdiction to hear and decide requests for shoreline substantial development permits,⁵ shoreline conditional use permits,⁶ and shoreline variances.⁷

All of these matters fall under the SMP, which directs:

...the [SMA] is exempted from the rule of strict construction; the [SMA] and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the [SMA] and this Master Program were enacted and adopted, respectively.⁸

Zoning & Shoreline Restrictions at issue

The purpose of the Secondary Forest—Natural Resource Lands (SF-NRL) district is to provide a transitional area between the Industrial Forest—Natural Resource Lands zone and Rural zoned lands designated primarily for residential use and other non-forestry uses.⁹ Campground uses are permitted uses in this zone.¹⁰

The area falls within the shoreline jurisdiction extending 200-feet from Lake Challenge and is also subject to a 110-foot critical areas buffer imposed by the PCA.¹¹ Picnic shelters and watch towers, such as those proposed, require a shoreline substantial development permit as they are not exempt uses¹² and the fair market value exceeds \$8,504.¹³

The project site falls within the Rural Shoreline Designation, which has been designated to typify “low overall structural density and low to moderate intensity of uses. Primary uses include activities related to agriculture, residential development, outdoor recreation, and forestry operations.”¹⁴ The watch tower’s proposed height exceeds the 25 foot restriction in a rural shoreline designation for recreational uses that

⁴ See generally SMP Chapter 2

⁵ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, and 9.07

⁶ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, 9.07, and 11.02

⁷ SCC 14.06 *et. al.*, 14.06.050(1)(b), 14.06.120, and 14.10.020(3); SMP §§8.07(1)(a), 9.06, 9.07, and 10.02

⁸ See also RCW 90.58.900

⁹ SCC 14.16.420(1)

¹⁰ SCC 14.16.420(2)(b)

¹¹ Ex. 3

¹² See generally SMP §2.05

¹³ WAC 173-27-040(2)(a)

¹⁴ SMP §6.04(3)

are more than 100 feet from the OHWM.¹⁵ Consequentially the project would need a variance to proceed.

II.

Shoreline Substantial Development

Any person wishing to undertake substantial development on shorelines shall apply to the Administrator for a substantial development permit.¹⁶ This proposed use is within 200 feet of a shoreline and thus a Shoreline Substantial Development Permit is required.

A shoreline substantial development permit shall be granted only when the proposed development is consistent with the following criteria:¹⁷

- a. Policies and regulations of the Skagit County Shoreline Master Program;
- b. Applicable policies enumerated in [the SMA] ¹⁸ in regard to shorelines of the state and shorelines of statewide significance; and
- c. Regulations adopted by the Department of Ecology pursuant to the SMA.

These will be examined in reverse order, as they tend to go from more specific to less specific.

The policies outlined by the SMA, are ranked in preferential order as follows: ¹⁹

- 1. Recognize and protect the statewide interest over local interest;
- 2. Preserve the natural character of the shoreline;
- 3. Result in long term over short term benefit;
- 4. Protect the resources and ecology of the shoreline;
- 5. Increase public access to publicly owned areas of the shorelines;
- 6. Increase recreational opportunities for the public in the shoreline;
- 7. Provide for any other element [required by the local Shoreline Master Program].²⁰

As conditioned, the proposed use in its totality is consistent with the policies enumerated in the first six of the overarching policies of the SMA. The final element of the SMA criteria will be examined in the next two sections section, but otherwise the proposed use in its totality is consistent with the policies enumerated in the SMA.

The SMP Goals, the last of which is not directly applicable, are as follows:

¹⁵ SMP §7.12 at Table R

¹⁶ SMP §9.01(1)

¹⁷ SMP §9.02(1)

¹⁸ RCW 90.58.020

¹⁹ RCW 90.58.020

²⁰ "...as defined in RCW 90.58.100 deemed appropriate or necessary."

1. **Shoreline use** - To allow for compatible uses of the shorelines in relationship to the limitations of their physical and environmental characteristics. Such uses should enhance rather than detract from or adversely impact, the existing shoreline environment.
2. **Conservation** - To preserve, protect, and restore the natural resources of Skagit County's shorelines in the public interest and for future generations. These natural resources include but are not necessarily limited to fish, wildlife, vegetation, and natural features found in shoreline regions. Only renewable resources should be extracted and in a manner that will not adversely affect the shoreline environment.
3. **Public access** - To provide safe, convenient, properly administered and diversified public access to publicly owned shorelines of Skagit County without infringing upon the personal or property rights of adjacent residents. Such access should not have an adverse impact upon the environment
4. **Circulation** - To permit safe, adequate, and diversified transportation systems that are compatible with the shorelines, resulting in minimum disruptions to the shoreline environment.
5. **Economic development** - To promote and encourage the optimum use of existing industrial and economic areas for users who are shoreline dependent and shoreline related and can harmoniously coexist with the natural and human environments; and, subsequently, to create similar areas as need arises with minimum disruption of the shorelines.
6. **Recreation** - To encourage the provision and improvement of private and public recreation along the shorelines of Skagit County only to the extent that the environment is not impaired or degraded.
7. **Historical/Cultural/Educational** - To identify, protect, and restore those shoreline areas and facilities that are of historical, cultural or educational value. Public or private organizations should be encouraged to provide public access and protection of such areas and facilities.
8. **Restoration and enhancement** - To restore and enhance those shoreline areas and facilities that are presently unsuitable for public or private access and use.
9. **Implementation Process** - Provide an efficient system for shoreline permit applications which would eliminate unnecessary duplication of effort or jurisdictional conflicts, yet assure complete coordination and review. Provide a process to periodically update the inventory, goals, policies, and regulations to achieve responsiveness to changing attitudes and conditions.²¹

As conditioned, the proposed use in its totality is consistent with the policies enumerated in the overarching policies of the SMP.

²¹ SMP §4.02

In conclusion, after reviewing the files and testimony, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Shoreline Substantial Development criteria. Consequently, subject to proposed conditions of approval, the Shoreline Substantial Development Permit should be approved.

III.

Shoreline Variances

The Hearing Examiner is authorized to hear, review and pass consideration on variance permits from the regulations of this SMP.²²

Variances from the application of specific bulk, dimensional or performance standards set forth in the SMP may be permitted where there are extraordinary or unique circumstances relating to the property; this is for circumstances where the strict implementation of the SMP would impose unnecessary hardship and such compliance with the SMP would prohibit reasonable use of the property.²³

As the dimensions proposed do not meet the restrictions described above under the Shoreline Master Program, a variance would be required.²⁴

Shoreline Variances fall into two categories, those for uses that fall above the OHWM and those that are located either waterward of the OHWM or within marshes, bogs or swamps as designated pursuant to WAC 173-22. The latter have an additional requirement to meet such “[t]hat the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.”²⁵

In the case at hand, the proposed use involves development landward of OHWM. This means a Shoreline Variance can only be granted if it meets the less stringent criteria as follows:

- a.** That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes 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.

²² SMP §10.02(1)

²³ SMP §10.01

²⁴ SMP §7 at “Table RD” on 7-110

²⁵ Compare SMP §§10.03(1) and (2)

- 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 requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.²⁶

And, in addition to the above criteria the Hearing Examiner must consider the cumulative impact of additional requests for like actions in the area.²⁷

The strict application of the bulk, dimensional or performance standards set forth in the SMP precludes a reasonable use of the property not otherwise prohibited; and that hardship is specifically related to the property's unique conditions, given the long-standing pre-existing use of this property for a recreational scout camp which pre-exists the current zoning regulations, having operated in 1972. The granting of this decision is not likely to result in additional neighboring development that would not be permitted otherwise.

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Shoreline Variance criteria. Consequently, subject to proposed conditions of approval, the Shoreline Variance Permit should be approved.

IV.

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

DECISION

Shore Substantial Development and Shoreline Variance permits as described in the Staff Report shall be granted to Mount Baker Council, Scouting America, at a site addressed as 26027 Walker Valley Road, subject to the following conditions:

1. Obtain all appropriate Building Permits.
2. The project must be commenced within 2 years of the shoreline variance approval and completed within 5 years (WAC 173-27-090(2)).

²⁶ SMP 10.03(1)

²⁷ SMP 10.03(3)

3. The applicant must strictly adhere to the project information (site diagram) submitted for this proposal. If the applicant proposes any modification of the subject proposal, they shall notify Planning & Development Services prior to the start of construction, or otherwise as soon as possible, in order for the Administrator to make decisions in accord with SCC 14.26, 9.13.
4. Inadvertent Discovery Plan. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist, 360-586-3088) and the following Nations' Tribal Historic Preservation Offices should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s):

Upper Skagit Indian Tribe
Scott Schuyler, Cultural Resources
sschuyler@upperskagit.com
Phone: 360-854-7009

Swinomish Indian Tribal Community
Josephine Jefferson, THPO
jjefferson@swinomish.nsn.us
Phone: (360) 466-7352

Samish Indian Nation
Jackie Ferry, THPO
jferry@samishtribe.nsn.us
Phone: 360-293-6404 ext. 126

NOTICE OF POTENTIAL REVOCATION & PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation.

Complaints regarding a violation of this permit's conditions should be filed with Skagit County Planning and Development Services. Violations of permit conditions may result in revocation (or modification) of the permit, administrative action under SCC 14.44 (including monetary penalties), and the violations being declared a public nuisance.

Shoreline Warnings

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL TWENTY-ONE (21) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW

90.58.140(6) OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C) and WAC 173-27-190.

Any shoreline substantial development, conditional use or variance permit may be rescinded by Skagit County and/or the Department of Ecology upon the finding that a permittee is in non-compliance with the permit and any conditions, terms or standards attached thereto. Procedure shall follow those outlined in SMMP §9.13.

FURTHER, in addition to incurring civil liability under SCC Ch. 14.44 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 or the State Shoreline Management Act 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. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof.

Pursuant to WAC 173-27-090(2) this permit shall expire within two years of the date of its approval and a new permit will be required if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to WAC 173-27-090(3) it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE SKAGIT COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the Skagit County Board of Commissioners pursuant to the provisions of SCC 14.06.410. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner, as provided in SCC 14.06.410(13) or SCC 14.06.120(9), as applicable; for shoreline permit applications, by filing notice of appeal within five days of the decision.

More detailed information about reconsideration and appeal procedures are contained in the
Skagit County Code Title 14.06 and which is available at
<https://www.codepublishing.com/WA/SkagitCounty/>

DATED June 4, 2025,



Rajeev D. Majumdar
Skagit County Hearing Examiner