



Notice and Order to Abate Hearing Examiner Decision

Planning & Development Services · 1800 Continental Place · Mount Vernon WA 98273
360-416-1320 · www.skagitcounty.net/planning

CODE2025-
0009

Part 1 Property Owner Information

Property Owner Sergey Y Kasko

Mailing Address 7530 Portal Way

City Custer, WA

Zip 98240

Phone _____

Part 2 Site Information

Address of Violation 23475 River Rd, 23521 River Rd, ☐ Same as Mailing Address

Parcel Number(s) P37619, P37600, P37628, P37621

Legal Description _____

Part 3 Findings of Fact

The Administrative Official has issued the following findings of fact relating to code violations on your property:

1. On 4/9/2025, Skagit County sent an Order to Abate (hereinafter "Notice") outlining violations of the Skagit County Code. See Attachment A.
2. This Notice was appealed to the Skagit County Hearing Examiner on 7/14/2025.
3. The Notice was affirmed by the Hearing Examiner on 10/29/2025. See Attachment B.
4. The Hearing Examiner decision was not appealed and is now a final order.
5. The Hearing Examiner made the following findings. See Section VII, Page 9 of Attachment B
6. A site inspection conducted by Randy Johnson on 2/6/2026, revealed that the violation(s) persist and corrective actions have not been taken or completed.
7. Skagit County Code 14.09.330(2) subjects any person who violates SCC Titles 14 or 15, or any order issued pursuant to SCC Titles 14 or 15, to a civil penalty of \$100 per day for each continuous violation, and/or a civil penalty of \$1,000 per day for each continuous flood hazard violation pursuant to SCC 14.34. Such penalties shall be assessed until the violation is corrected and the Administrative Official is notified.

Part 4 Conclusions of Law

The Administrative Official has found you in violation of the following provisions of Skagit County Code:

- ☒ You remain in violation of Skagit County Code 14.09.220 for failure to correct the violation specified in the Order to Abate.
- ☐ You remain in violation of Skagit County Code 14.09.220 and civil penalties in the amount of \$100.00 per day, per violation, will commence starting on _____.
- ☒ You remain in violation of Skagit County Code 14.09.220 and civil penalties in the amount of \$1,000.00 per day for a flood hazard violation, per violation, will commence starting on March 1st, 2026.

Part 5**Corrective Action Ordered**

You are hereby ordered to take the following action to abate the above violations:

1. It has been ordered by the Skagit County Hearing Examiner that the violation be abated, and you notify the Administrative Official. This Supplemental Notice and Order to Abate assesses civil penalties up to \$1,000.00/day for each violation for as long as the violation exists as stated in Part 4 Conclusions of Law.

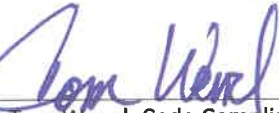
Part 6**Penalty**

Skagit County assesses a civil penalty up to \$1,000.00 for each day that any violation noted above continues past the date(s) noted in Part 5 Corrective Action Ordered. Skagit County assesses penalties if the violation continues past the deadline(s) noted above even if the violation is eventually corrected, and refers penalties to a collection agency when necessary.

Part 7**Disclosures**

If the required corrective work is not commenced or completed, the Administrative Official may cause the work to be done. Any county costs incurred to abate the violation(s) may be charged as a public nuisance lawsuit filed in Skagit County Superior Court. Which may also include a Public Nuisance Lien and Special Tax Assessment. A Public Nuisance Finding may violate the terms of your real estate loan and Deed of Trust or Mortgage. It may cause your lender to start foreclosure proceedings against your property. If you have any questions about that, please contact your lender.

Issued By



Tom Wenzl, Code Compliance Officer

Date





Administrative Order to Abate Violation

Planning & Development Services - Code Compliance Unit
1800 Continental Place - Mount Vernon WA 98273
voice 360-416-1320 - www.skagitcounty.net/planning

Attachment A

Case Number
CODE2025-
0009

Property Owner

Name Sergey Kasko Mailing Address 635 Rainbow Dr

City Sedro-Woolley, WA Zip 98284 Phone

COPY

Additional Responsible Persons

☒ No additional persons known

Name Mailing Address

City Zip Phone

Site of Violation ☐ Same as Owner Mailing Address

Address 23475 River Road City Sedro-Woolley, WA Zip 98284

Parcel No(s) P37619 Zoning Rural Business

Background

The Administrative Official has issued the following findings of fact relating to code violations on your property:

1. 1-15-2025- request for investigation received for filling of a wetland.
2. 1-17-2025- Site visit conducted by CCO Schrader. Fill has been brought and piled onto the property. Lots of new junk vehicles have been brought onto the property.
3. 2-6-2025- Notice of violation sent to owner for a fill and grade and junk violations.
4. 3-21-2025- Site visit conducted by Schrader. Both violations are still evident.
5. 4-4-2025- No contact from owner.

Description of Violation(s)

Based on our investigation, the Administrative Official has found you in violation of the following specific provision(s) of Skagit County Code.

Violation 1: 14.16.945 Prohibited uses. (2) Storage of Junk. No person may use more than 500 square feet of a lot or parcel of land for the depositing, sorting, refining, baling, dismantling, or storage of junk except when conducted entirely within an enclosed structure or with a special use permit for that purpose.

Violation 2: SCC14.34.190(1) (1) Prohibit encroachments including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer licensed in the State of Washington is provided demonstrating, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice as well as the "Procedures for No-Rise Certification" as published by FEMA, that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. Additionally, Skagit County reserves the right to

have this analysis reviewed by a qualified third party to be selected by the County. The cost of such review, if any, shall be the responsibility of the applicant.

Corrective Action Ordered

You are hereby ordered to take the following action to abate the above violations:

Correction 1: Remove imported fill and junk to a level below 500 square feet all by 5-4-2025.

5-11-2025

Civil Penalties

You are hereby ordered to pay the following civil penalties:

- ☐ \$100 per day, per violation, from date violation occurred until the violation is abated and you have notified the Administrative Official. SCC 14.44.330(2)(a)
- ☐ For flood hazard violation, \$1,000 per day per violation from date violation occurred until the violation is abated and you have notified the Administrative Official. SCC 14.44.330(2)(c)
- ☐ For critical areas or drainage violations, the amount of _____. SCC 14.44.330(2)(b)

If you do not take the corrective action described above to abate the violations by the specified deadlines, you will be liable for the following additional civil penalties:

- ☐ \$100 per day, per violation, until the violation is abated and you have notified the Administrative Official. SCC 14.44.330(2)(a)
- ☒ For flood hazard violation, up to \$1,000 per day per violation. SCC 14.44.330(2)(c)
- ☐ For critical areas or drainage violations, the amount of _____. SCC 14.44.330(2)(b)

Due to a new and separate violation within one year of resolution of prior violation:

- ☐ All penalties normally imposed are doubled. SCC 14.44.330(2)(d)

Voluntary Compliance Agreement. The County and the violator may enter into a binding Voluntary Compliance Agreement to correct the violation by a specified deadline with a reduction or waiver of civil penalties. Contact the Department for more information. SCC 14.44.310.

Reduction in civil penalties. The Administrative Official may reduce a civil penalty if the violator cooperates with efforts to correct the violation. SCC 14.44.330(2)(e).

Failure to comply with this order. If you do not fully comply with this order by the deadlines, Skagit County may do the following:

- Issue supplemental orders to pay accrued civil penalties. SCC 14.44.330(3)(b).
- Refer unpaid civil penalties to a collection agency 30 days after service of this order. Per RCW 19.16.500, Skagit County or collection agency may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. SCC 14.44.330(3)(c).
- Record a certificate of non-compliance against your property, which may make it difficult to sell your property.
- Refer this matter to the Prosecuting Attorney's office for further enforcement action including criminal charges, an injunction, or the collection of civil penalties.
- If you do not fully correct the violation, Skagit County may do the work itself. Any County costs incurred to abate the violation(s) may be charged as a public nuisance lien against your property. A public nuisance lien may violate the terms of your real estate loan and Deed of Trust or Mortgage. It may cause your lender to start foreclosure proceedings against your property. If you have any questions about that, please contact your lender.

Additional Disclosures.

- You may have to pay additional enforcement fees equal to 100% of the cost of the application fees, and 200% of the cost of critical areas fees, for any permits required by code enforcement actions. Resolution R20110111.
- Skagit County may deny any other permits you apply for on the same site until the violation is corrected and payment of any civil penalties is complete. SCC 14.44.360
- If you commit a new and separate violation within a year after the resolution of a prior violation, you may be subject to double the civil penalties normally imposed for such violation. SCC 14.44.330(2)(d).

Effective date. This order is effective upon service. Service is the date of mailing via certified mail. SCC 14.44.220(2)(e) and (3)(b).

Appeal. This order becomes final unless you file an appeal to the Skagit County Hearing Examiner, with the required fees, within 14 days of service. Appeal forms are available from, and must be submitted to Skagit County Planning and Development Services. Appeals are processed as appeals of Level I decisions under Skagit County Code 14.06.110. Failure to appeal may constitute waiver of all rights to appeal the order.

No verbal agreements. The Administrative Official may only rescind or modify this order in writing.

If you have any questions regarding this order, please contact the undersigned at (360) 416-1343.

Issued By

Brian Schrader, Code Compliance Officer

Date

4/4/2025

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

COPY

re: Appeal of an Administrative Order to Abate
Violation, CE25-0009 by Sergey Kasko

APL 25-0008

Appeal from CE25-0009

**FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND DECISION**

SUMMARY OF APPLICATION AND DECISION

Application: The Appellant, Sergey Kasko, is appealing an Administrative Order to Abate Violation issued by Skagit County Planning & Development Services to remove imported fill and junk to a level below 500 square feet by May 11, 2025, as otherwise they are in violation of the Chapter SCC 14.34 Flood Control measures.

Decision: The Administrative Appeal of CE25-0009 is denied.

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.

Appellants/Property Co-Owner: Sergey Kasko
7530 Portal Way
Custer, WA 98240

Applicant/Property Co-Owner: Vadim Kasko
656 Kline Road
Bellingham, WA 98226

Site Address: 23475 River Road
Sedro Woolley, WA 98284

Assessor's Parcel No(s) , Lot Size, Zoning:

350425-0-013-0001 (P37600), 7.03 acres, Rural Business\Ag-NRL
350425-4-017-0007 (P37610), 1.20 acres, Ag-NRL
350425-0-024-0008 (P37619), 2.15 acres, Ag-NRL
350425-0-025-0007 (P37620), .21 acres, Ag-NRL
350425-0-026-0006 (P37621), 2.04 acres, Ag-NRL
350425-0-031-0009 (P37628), 0.24 acres, Rural Business\Ag-NRL

Lot Size: Cumulative 12.87 acres

Comprehensive Plan Designation: Ag-NRL

Adjacent Land Uses: Ag-NRL zoned. Farmlands east and west. One residential parcel NW zoned Ag-NRL. Recreational properties south along river, also zoned Ag-NRL.

Shoreline Presence: The parcels lie within the Rural Conservancy – Skagit Floodway designation.

Critical Areas Presence: Properties lying within Floodway are designated as Critical Areas SCC 14.24.010

Application Date: Appeal *filed*: July 14, 2025

Notice Information: Administrative Order to Abate, *issued* April 4, 2025

Administrative Order to Abate, posted on property April 9, 2025
Date to appeal Administrative Order to Abate extended to July 15, 2025
(Ex. 9)

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 86.16, Floodplain Management
- Washington Administrative Code (WCC)
 - WAC Title 173-158, Flood Plain Management
 - WAC 222-16-030, Water Typing 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 14.09, Enforcement Procedures
 - SCC 14.09.290 - Appeals
 - SCC 14.09.340 - Abatement
 - SCC 14.16 – Zoning
 - SCC 14.12.100 – Rural Business (RB)
 - SCC 14.13.100 - Agricultural—Natural Resource Lands (Ag-NRL)
 - SCC 14.24, Critical Areas
 - SCC 14.24.060 – Authorizations required
 - SCC 14.34, Flood Damage Prevention
- 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 Office of the Hearing Examiner Rules of Procedure for Hearings (SCRPH), as authorized by Skagit County Commissioners per Resolution #R20080511 on 11/24/08

Hearing Date: August 22, 2024, continued to October 24, 2025

Participating Parties of Record:

Jason D`Avignon, Deputy Prosecutor
Skagit County Prosecutor's Office
Courthouse Annex
700 S. 2nd Street, Suite 300
Mount Vernon, WA 98273

David Cottingham, Attorney
Cottingham Law Office, PS

PO Box 2249140
Bellingham, WA 98229

Thomas Wenzl, Code Enforcement Officer
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Brian Schraeder, former Code Enforcement Officer
c/o: Thomas Wenzl, Code Enforcement Officer
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Randall Scott Johnson, Flood Plan Manager and Building Official
Skagit County Planning & Development Services
1800 Continental Place
Mount Vernon, WA 98273

Sergey Kasko
635 Rainbow Drive
Sedro-Woolley, WA 98284

Vadim Kasko
686 Kimi Road
Bellingham WA

Hearing Examiner Exhibit List:

1. Administrative Order to Abate, *issued 4/4/25*
2. Request for Investigation, *dated 1/14/25*
3. ERTS Report
4. Aerial Photos 2021 thru 2025
5. Investigator Reports
6. Notice of Violation, *dated 2/6/25*
7. Email from Vadim Kasko re posted AOA, *dated 5/11/25*
8. Fill and Grade application from Vadim Kasko, undated attached to Ex. 7
9. Email to Vadim and Sergey Kasko extending AOA appeal period, *dated 6/30/25*
10. Department Appeal Filing Record, *dated 7/24/25*
11. Response to AOA submitted by Vadim with AOA appeal, *undated*
12. FEMA FIRM Floodplain map 530151 0255D (full map)
13. FEMA Firmette Floodplain map 530151 255D (detail area)
14. FEMA FIRM Floodway map 530151 0005 (full map)

15. FEMA Firmette Floodway map 530151 0005 (detail area)
16. Skagit GIS Floodway Map
17. Photo of AOA posting, *dated 4/9/25*
18. Skagit County Hearing Examiner Decision, PL23-0324, Abandoned Use Determination, *entered 12/7/23*
19. Staff Report, *dated 7/29/25*
20. Notice of Appearance of Cottingham for Appellants, *filed 8/21/25*
21. Appellant's Memorandum in Support of Dismissal, *filed 8/22/25*
22. Appellant's Signature Page and Appendix in Support of Dismissal, *filed 8/22/25*
 - a. Ex. A, E-mail of Vadim Kasko, *dated 7/30/25*, **not admitted**
 - b. Ex. B, E-mail of Thomas Wenzl, *dated 3/17/23*, **not admitted – admitted as Ex.24-A**
 - c. Ex. C, Declaration of Tim Burger in Skagit Superior Court Case # 24-2-00730-29, *dated 3/15/25*, **not admitted**
23. Continuance Order, *entered 8/22/25*
24. Appellant's Opening Brief *and* Supplemented Errata Page filing, both *filed 9/11/25*
 - a. Ex. A, E-mail of Thomas Wenzl, *dated 3/17/23*
 - b. Ex. B, Pages 1 and 8 of Skagit Motion to Dismiss in Skagit Superior Court Case # 24-2-00730-29, **not admitted**
 - c. Ex. C, Portion of Transcript of 1/23/24, **not admitted**
 - d. Ex. D, Portion of Transcript of 5/21/24 in Skagit Superior Court Case # 24-2-00730-29, **not admitted**
 - e. Ex. E, Declaration of Tim Burger in Skagit Superior Court Case # 24-2-00730-29, *dated 3/15/25*, **not admitted**
25. Skagit County Response to Appellant's Memorandum in Support of Dismissal and Opening Brief, *filed 9/24/25*
26. Appellant's Reply Brief, *filed 10/3/25*

II.

The property in question exists within a flood zone and a mapped floodway,¹ which is a Federal Emergency Management Agency ("FEMA") designated area where water inundation is expected.²

The Appellant, Sergey Kasko as well as co-owner Vadim Kasko, purchased this property in April of 2022, former home of 'Arts Auto Wrecking', which was in business until the end of 2016.³ The property was (mostly) cleaned up, licenses and permits were terminated or expired, and the property was no longer maintained for use as an auto wrecking yard.⁴ Vadim Kasko testified they relied on their realtor and the seller that they would have a valid preexisting use.

¹ Ex. 16

² Testimony of Johnson

³ Ex. 19 at 9

⁴ Ex. 18 at 10

The property was purchased by the Kaskos with the intent to resurrect 'Arts Auto Wrecking', even adopting the former name. Since purchase, the Kaskos have continued to bring vehicles to the property and assert they have a pre-existing non-conforming right to do so.⁵

Following the process set out in SCC 14.16.880, the Hearing Examiner determined the use of automobile wrecking had been abandoned in PL23-0324 on 12/7/23.⁶ This decision was affirmed by the Skagit Board of County Commissioners. That matter has been appealed to the Skagit County Superior Court under LUPA.⁷ While this is not the issue currently before the Hearing Examiner, it is offered as context to the current use of the property.

The Superior Court has not ordered any stay of the Hearing Examiner's decision in PL23-0324, nor have these proceedings been stayed despite there being a long two month extension of time for the final hearing date during which a stay order could have been sought.⁸

III.

On 1/14/25, the Skagit County Planning & Services Department's Code Compliance Office received a 'Request for Investigation' regarding dump truck loads of fill being brought to the properties, specifically "Multiple dump trucks a day have been importing fill all week long and placing fill in wetlands and floodway".⁹ On 1/15/25, a report was filed with the Department of Ecology regarding the same activity, specifying "Filling of wetlands. Multiple dump trucks a day have been importing fill material and placing it in a wetlands and a floodway. No BMPs in place. Significant mud also being tracked out onto River Road."¹⁰ Code Compliance Officer Brian Schrader was given these reports and went to investigate.

On 1/17/25, Officer Schrader made a visit to the property and observed that fill and new piles of junk had been imported and was piled on the property. In oral testimony at the hearing Schraeder described the piles of dirt material as observable from the road on his first visit. He determined that Kasko had imported fill and junk into the floodway without a no-rise certification, and had more than 500

⁵ Ex. 19 at 9

⁶ Ex. 18

⁷ Skagit Superior Court Case # 24-2-00730-29

⁸ Ex. 23

⁹ Ex. 2

¹⁰ Ex. 3

square feet of such material on the property, estimating there were “four dump truck loads” of fill visible from the road. He also determined they had no validly issued flood permit for the activity.¹¹

Historical aerial photos from 1938, 1969, 1998, and for every two years since 2021 until 2025, and the personal observation of Wenzl from 2023, do not reveal the presence of these mounds of fill or the junk pre-existing where it was observed.^{12, 13} Such fill, whether, earth, building material, or junk such as old vehicles dug up out of the earth is fill that can interrupt the flow of water in a flood¹⁴ and pose a risk of being swept downstream by water, forcing water onto other properties, or spreading pollutants to other properties.¹⁵

On 2/6/25, a letter was sent to Sergey Kasko outlining the violation of importing fill to Floodway SCC 14.34.190, as well as citing a ‘Junk storage’ violation of SCC 14.16.945(2), and requested that the property owner remedy this situation by 3/6/25.¹⁶

On 3/21/25, Schreder made subsequent visit and observed that “the land appeared to be graded...” with the piles having been spread about with signs of fresh turned earth.¹⁷

Vadim Kasko testified at the Final Hearing that it was not dirt, but crushed concrete, asphalt, and gravel for general road maintenance on the property, and that he did not spread it out, but that the fresh churned earth was just the result of vehicles churning up the earth. There was contrary testimony by Vadim in cross-examination that the material was being stored there for a contractor doing work elsewhere and that the material was taken away by the contractor. Sergey Kasko testified the material was brought in to maintain roads and that they did not have a no-rise certificate. Piles of crushed concrete, asphalt, and gravel are fill. Turning over and grading the earth is land disturbance.

On 4/4/25, an Administrative Order to Abate (“AOA”) was sent with a compliance date of 5/11/25,¹⁸ and was posted on the property on 4/9/25.¹⁹ Vadim Kasko testified that they saw the posted notice. The AOA cited two violations a prohibition on storing junk under SCC 14.16.945 and for a prohibition on encroachments including fill under SCC 14.34.190, but only ordered Kasko to “Remove

¹¹ Testimony of Schraeder

¹² Ex. 12-15

¹³ Testimony of Wenzl

¹⁴ Testimony of Wenzl

¹⁵ Testimony of Johnson

¹⁶ Ex. 6

¹⁷ Testimony of Schraeder

¹⁸ Ex. 1

¹⁹ Ex. 17

imported fill and junk to a level below 500 square feet...”²⁰ For purposes of mitigating increased flood risk in the context of SCC 14.34, Skagit Flood Plain Manager Randall Johnson testified that junk or any other movable substance that takes up volume and displaces volume that has been imported is “fill.”

On 5/11/25, Kasko sent an email to a Code Enforcement Officer, Wenzl, with an attached Fill and Grade Permit Application, but the application was completed and mostly consisted of a statement in which he argued that he is exempt from Floodway regulations based on pre-existing use rights.²¹ There is no other evidence in the record that Kasko otherwise attempted to obey the AOA, nor is that the place to file an application.

IV.

The Skagit County Planning and Development Services Staff (the “Department”) have explained their rationale in a “Staff Report re: Appeal of Administrative Order” issued on 7/29/25 (“Staff Report,” **Ex. 19**).

The Applicant has contested the legal conclusions in the Staff Report’s findings or conclusions and argues that this order of abatement denies him reasonable use of the property.

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.

V.

No public comments were received by the Office of the Hearing Examiner prior to the hearing, or at the hearing itself.

VI.

SCHE §14 grants parties the right to object to evidence and to cross-examine. In the case at hand, after a review of the record and hearing objections of the parties to admission to particular evidence, 26 exhibits that were admitted into the record, but **Sub-Exs. 22 (a through c) and Sub-Exs. 24 (b through e)** were not admitted on hearsay, best evidence, and relevance grounds.

²⁰ **Ex. 1 at 2**

²¹ **Ex. 7 and 8**

VII.

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.

In addition to or as an alternative to any other judicial or administrative remedy, the Director may order any person who creates or maintains a violation of SCC Title 14 or 15 to correct the violation; the “AoA,” commonly known as an Order to Abate Violation.²² Enforcement of the Flood Damage Prevention chapter is also referenced as an inherent part of the Director’s duties.²³ An Order to Abate Violation is an enforcement action which is an administrative order under SCC 14.09.²⁴

Appeals of administrative orders issued per SCC 14.09 are Type 1 cases that appeals of which are heard by the Hearing Examiner.²⁵ The appellants bear the burden of proving that the issuance of the order was “clearly erroneous.”²⁶ To find the Department’s decision clearly erroneous, the Hearing Examiner must be “left with the definite and firm conviction that a mistake has been committed.”²⁷

II.

The purpose of the Rural Business Zone is “intended to provide reasonable expansion and change of use opportunities for existing isolated nonresidential uses in the rural area that provide job opportunities for rural residents and that are not consistent with the other commercial and industrial Comprehensive Plan designations and zones.”²⁸

The purpose of the Agricultural—Natural Resource Lands district is to “provide land for continued farming activities, conserve agricultural land, and reaffirm agricultural use, activities and

²² SCC 14.09.140 and 14.09.340(1); e.g. Ex. 1

²³ See SCC 14.34.130

²⁴ SCC 14.09.340(1)

²⁵ SCC 14.06.150-1 (at “Administrative order issued per SCC Chapter 14.09”) and 14.09.290

²⁶ SCC 14.06.410(6)

²⁷ Lauer v. Pierce County, 173 Wn.2d 242, 253 (2011) (*quoting Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011)).

²⁸ SCC 14.12.100(1)

operations as the primary use of the district. Nonagricultural uses are allowed only as accessory uses to the primary use of the land for agricultural purposes.”²⁹

The property is also in a floodway and subject to SCC 14.34 Flood Damage Prevention Rules.

III.

The Appellant as argued as a potential defense to the lack of conformity with the current zoning and flood control regime, which is that of being a preexisting nonconforming use, commonly known as a “grandfathered” use. A lawful preexisting nonconforming use is a “use of land, legally permitted or established at the time of the adoption of the ordinance...” that does not conform to the allowed uses; such uses “shall be permitted to continue.”³⁰ Such uses are not allowed to expand or be altered.³¹

There is, however, no evidence of lawful permitted use, and in fact an explicit Hearing Examiner finding that there is no preexisting use remaining intact,³² and no stays of that decision otherwise.

Regardless of whether there is a preexisting use or not, the AoA does not deny the appellant a reasonable use of the property for any permitted or allowed use in these zones; what the order of abatement does is enforce the SCC 14.34 Flood Damage Prevention rules that are in place and would in fact be applicable to even permitted or preexisting activities.

The purpose of SCC 14.34 is to:

...promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruption;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;

²⁹ SCC 14.13.100(1)

³⁰ SCC 14.16.880(1)

³¹ SCC 14.16.880(1)(c)

³² Ex. 18

- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard;
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (9) To retain the natural channel, shoreline, and floodplain creation processes and other natural floodplain functions that protect, create, and maintain habitat for threatened and [endangered species](#);
- (10) To prevent or minimize loss of hydraulic, geomorphic, and ecological functions of floodplains and stream channels.

It is the purpose of this Chapter to protect the public health, safety and welfare in those areas subject to periodic inundation due to flooding, and to minimize losses due to flood conditions in the specific areas subject to this Chapter by utilizing the methods and provisions set forth herein.³³

There is nothing in the Chapter that indicates that even if there were a permitted or pre-existing use, it would not have to comply with the Flood Damage Prevention regulations. Indeed, part of the regulations primary intents is to alert potential buyers like the Kaskos to this situation and to “[t]o ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.”³⁴

Even if there was a pre-existing use, such use “does not render it immune from reasonable regulations pursuant to the police power in the interest of the public health, welfare and safety.”³⁵ Nothing in this hearing has established the evidence of any pre-existing use that is separate or different from the lawful process that dealt with these issues before, and there is no legal basis either way to demonstrate that the Appellant would not need a flood control permit to import fill, or that the Appellant had complied with the AoA.

SCC 14.34.100 states in no uncertain terms that a floodplain project permit “flood permit” “shall” be obtained for almost all activities, and the Appellant’s arguments about this being routine

³³ SCC 14.34.030

³⁴ SCC 14.34.030(7 and 8)

³⁵ Rhod-A-Zalea & 35th, Inc. v. Snohomish County, 136 Wn.2d 1, 11 (1998) (*quoting Dock Watch Hollow Quarry Pit, Inc. v. Township of Warren*, 142 N.J.Super. 103, 361 A.2d 12, 20 (1976)) (In which Snohomish County required property owner, who had valid nonconforming use for peat mining, to obtain grading permit pursuant to county building code for excavation and fill activities, and Supreme Court held “vested rights doctrine” was inapplicable, and (2) owner was subject to grading permit requirement, as grading requirement was reasonable police power regulation and there was no indication that complying with grading requirement would terminate owner’s existing nonconforming use.).

maintenance which is exempted is not supported by the evidence in the record including imported mounds of fill or storage of fill, especially when looked at versus the historical uses and pictures of the site in recent time. Further as this is in a floodway, the restrictions are even tighter:

14.34.190 Standards for development activities in floodways.

Located within areas of special flood hazard established in SCC 14.34.050 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwater that carries debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer licensed in the State of Washington is provided demonstrating, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice as well as the “Procedures for No-Rise Certification” as published by FEMA, that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge. Additionally, Skagit County reserves the right to have this analysis reviewed by a qualified third party to be selected by the County. The cost of such review, if any, shall be the responsibility of the applicant.

And thus is a “No-Rise Certification” also required, which was also not obtained by the Appellant, despite the activities demonstrated by the totality of the evidence.

The facts admitted into the record yield persuasively and convincingly that there is no error on the part of the Department, and the Appellant violated the law, did not remedy the situation, and did not obey the AoA much less follow any other permitting requirements.

IV.

Setting the facts aside, Kasko has argued a number of procedural or equitable legal arguments, however, including:³⁶ that the County’s AoA enforcement constitutes a violation of their right to mandatory consolidation,³⁷ that the County has generally waived its rights to enforce,³⁸ that the prior

³⁶ This paragraph references citations in Exs. 21, 24, and 26, but not exhaustively and in every instance, as Kasko has argued many things, sometimes several times in each brief, and all instances are not captured.

³⁷ Ex. 21 at 2, Ex. 24 at 17

³⁸ See generally Ex. 21, 24, and 26

Hearing Examiner decision in PL23-0324 should be vacated,³⁹ that this matter interferes in a Skagit Superior Court matter,⁴⁰ that this constitutes a civil rights violation,⁴¹ mootness,⁴² “Deprivation of Due Process,”⁴³ infringement on their U.S. First Amendment rights,⁴⁴ fraud and misrepresentation on the part of the County,⁴⁵ and violations of the Appellant’s right to open administration of justice under the Washington Constitution.⁴⁶

Demand for Consolidation

While this was ruled on orally at the hearing, a review of the record show no need for consolidation under SCC 14.06.160. The purpose of consolidation is to:

- (a) Avoid duplication of review processes;
- (b) Integrate the project permit and SEPA environmental review processes;
- (c) Facilitate public comment on a project, where public comment is appropriate; and
- (d) Comply with RCW 36.70B.060 and 36.70B.120.

There are no other pending projects or permits that have been successfully filed or appealed that would make sense to consolidate with this matter for any of the above reasons. Consolidation does not mean that any and all permits hereafter are forever stayed and bound together as long as some land use is affecting property, especially where final review has already occurred in prior matters. This is an enforcement action and is a discrete matter.

Claims of Fraud or Misrepresentation

To the extent that these claims do not deal with crimes or torts (see next section), but go to evidence, the Hearing Examiner has seen no credible and persuasive evidence of the concealment of evidence, reliance, or duplicitousness on the part of the Department.

Lack of Jurisdiction to Hear Constitutional Claims, Criminal Claims, Torts, or Federal Claims

³⁹ Ex. 24 at 18

⁴⁰ Ex. 24 at 1

⁴¹ Ex. 24 at 6 (*re*: 42 USC §1983)

⁴² Ex. 24 at 9

⁴³ Ex. 26 at 2

⁴⁴ Ex. 26 at 1

⁴⁵ Ex. 24 at 2, Ex. 26 at 2

⁴⁶ Ex. 24 at 3, Ex. 26 at 6

The Hearing Examiner notes that constitutional claims, crimes, or torts of any nature lie outside the Hearing Examiner's jurisdiction. The Hearing Examiner will presume that the County code, and the Washington State law regulating Flood Control, which the County code reflects, are consistent with the Constitution of the State of Washington and the Constitution of the United States. The Hearing Examiner believes he has afforded the parties an opportunity to be heard that is consistent with the County code and with principles of procedural due process. Any further constitutional issues lie outside the Hearing Examiner's jurisdiction.

Mootness

The Hearing Examiner has seen no credible and persuasive evidence of the matter having been remedied and moot and indeed heard conflicting testimony from the Appellant's witnesses that the material was still on the property, albeit moved or used, and also taken away by a contractor that had been storing them, the latter of which there was no evidence or documents thereof.

Waiver

The Hearing Examiner has also seen no colorable claim that the County has waived their right to enforce. The Appellant repeatedly points to an e-mail from Wenzl, dated 3/17/23,⁴⁷ as giving them permission to run a junkyard, and collaterally therefore be allowed to have and import fill onto their property without a flood permit. Both parts of that compound argument are incorrect. The latter for reasons articulated above: all properties and activities in the floodway are subject to regulation. The former because: a reasonable and plain reading of that evidence, which was confirmed by the testimony of Wenzl, does not give rise to the argument of the Appellant that this e-mail constitutes a grant of authority or permission or recognition of rights claimed by the Appellant re: their arguments about a pre-existing use. The e-mail very clearly denies the idea that the pre-existing use can continue as is; there is no reasonable basis on the part of the Appellant to believe Wenzl has the power to bypass the legal permitting process that the Appellant eventually availed himself on in PL23-0324; the e-mail clearly says such activity could only be done with "today's standards,"; and it is not a communication or official representation made to the Appellant but an in-house discussion which is not a Director decision. This paragraph in particular is intended to be integrated in the Findings of Fact supporting this decision.

⁴⁷ Ex. 24-A

Vacation of Prior Hearing Examiner Decision

The Office of the Hearing Examiner lacks jurisdiction to *sua sponte* vacate past hearing examiner orders past the reconsideration period. Beyond that, it was made abundantly clear that that matter was appealed and is actively in the hands and jurisdiction of the Skagit Superior Court.

V.

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

The Appeal of the Administrative Order to Abate numbered CE25-0009 is denied.

ABATEMENT WARNINGS

See generally SCC 14.09 and the Disclosures in the Administrative Order to Abate Violation.

NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF THE 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.

- A.** Type 1 decisions are appealed to Skagit Superior Court, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Superior Court must be filed with the Superior Court within 21 calendar days of the final decision of a hearing examiner pursuant to RCW 36.70C.040(C).
- B.** Type 2 and 3 decisions are appealed to the Skagit County Board of Commissioners, pursuant to the provisions of SCC 14.06.150-1; Appeals to the Skagit County Board of Commissioners require filing of a written notice of appeal within 14 calendar days of the final decision of a hearing examiner for most decisions, *but* Shoreline permit decisions require filing a notice of appeal within five days of the decision per the same ordinance as provided in SCC 14.06.410(3).

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 this 29th day of October 2025



Rajeev D. Majumdar
Skagit County Hearing Examiner