

SKAGIT COUNTY HEARING EXAMINER

re: Appeal of Kasko of
Administrative Order to Imposing Fines
re: 23475 River Road

No.: APL 2026-0007
of CODE 2025-0009

PREHEARING BRIEF

The Skagit County Department of Planning and Development Services respectfully submit this prehearing brief. The Appellant, Sergey Kasko, has failed to timely abate code violations for importing fill into the floodway. The Department appropriately issued the Notice and Order to Pay Fines ("NOPF") and Kasko provides nothing to undermine its validity.

I. ISSUES

1. Was it clear error for the Director, or his designee, to issue the April 2, 2026, Notice & Order to Pay Fines?

1.1 Was the notice proper and "Final," when there is related litigation ongoing in other jurisdictions?

1.2. Additionally, was the notice proper when there were ongoing attempts to remediate the situation?

II. APPLICABLE LAW

SCC 14.09.220 authorizes administrative orders to compel correction of violations and payment of penalties. While the general civil penalty is \$100 per day,¹ violations of chapter 14.34 SCC (Flood Damage Prevention) are subject to civil penalties of up to \$1,000 per day.²

III. STANDARD OF REVIEW

Appeals are governed by SCC 14.06.410. "The appellant bears the burden of demonstrating that the decision on the application was clearly erroneous."³ A

¹ SCC 14.09.330(2)(a).

² SCC 14.09.330(2)(c).

³ SCC 14.06.410(6).

decision is clearly erroneous if the Examiner is “left with the definite and firm conviction that a mistake has been committed.”⁴

IV. BACKGROUND

The subject property is located in a designated FEMA Floodway and Special Flood Hazard Area.⁵ The importation of fill and other material, such as junk, into the floodway is highly regulated.⁶ Thus, when Kasko imported fill, it resulted in code enforcement issuing an administrative order to abate (AOA) that required the removal of imported fill and junk.⁷ This AOA was appealed, but was affirmed by the Hearing Examiner.⁸

The Hearing Examiner’s decision was followed by a “Notice of Order to Abate,” which warned that daily civil penalties of \$1,000 per day for flood hazard violations would commence on March 1, 2026, if the violation was not abated.⁹ There are no facts that any abatement has occurred; the fill has not been removed.¹⁰ The County issued the NOPF on April 2, 2026, assessing \$31,000 in fines for the month of March (31 days).¹¹

V. ARGUMENT

The AOA is a final, binding order that established the violation exists.¹² The NOPF is merely the enforcement of that final order’s penalty provisions.¹³ That there is ongoing litigation related to the abandonment of automobile wrecking on the property has no impact whatsoever on whether the NOPF is final. The issue in that

⁴ *Lauer v. Pierce County*, 173 Wn.2d 242, 253 (2011) (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn.2d 820, 829 (2011)).

⁵ Exh. 5.

⁶ SCC 14.24.190.

⁷ Exh. 11.

⁸ Exh. 5.

⁹ Exh. 13.

¹⁰ Exh. 7.

¹¹ Exh. 7.

¹² Exh. 12.

¹³ Exh. 7.

matter concerns the abandonment of a specific pre-existing non-conforming commercial use, not the floodway regulations.

While the Appellants may be working to remedy the situation, the fact remains that the fill remains on the property in violation of the code. The code requires physical abatement (removal) or a no-rise certificate, an intent to abate is insufficient. The \$1,000 daily civil penalty is the standard rate for floodway violations as authorized by the Skagit County Code and should stand.

VI. CONCLUSION

The County requests that the Hearing Examiner deny the appeal and sustain the Notice and Order to Pay Fines, as the Appellant remains in active violation of a final order.

DATED this 24th day of July, 2026.

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, I filed the foregoing **Prehearing Brief** and **Staff Report** with the Skagit County Hearing Examiner via email to the Hearing Coordinator at HEhearings@co.skagit.wa.us and served this document, and/or otherwise provided, the document via that same email to:

- Lisa Chu-Greenough, Hearing Coordinator, at lisachug@skagitcountywa.gov
- David C. Cottingham, Attorney for the Appellant, at davidcottingham@msn.com

Dated this 24th day of July, 2026, at Mount Vernon, Washington.



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