NOTICE OF DECISION

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

Applicant:	Skagit County Drainage District 21 c/o 5309 Shilshole Avenue NW, Suite 200 Seattle, WA 98107
Agent:	Scott Olmsted Environmental Science Associates 5309 Shilshole Aveue, NW, Suite 200 Seattle, WA 98107
Request:	Shoreline Substantial Development Permit, PL20-0221
Location:	At or near 13771 State Route 9, 14124 Beaver Lake Road, and 24618 Fonk Road. One parcel is within SE1/4 Sec. 11, two parcels are within SW1/4 Sec. 12 and one parcel is within NE1/4 Sec. 13, all in T34N, R4E, W.M. One parcel is within NW1/4 and one parcel is within NE1/4 Sec. 18, T34N, R5E, W.M. Parcel Nos: P24548, P24549, P24625, P24645, P30271, P30261.
Shoreline Designation:	Rural
Summary of Proposal:	Restoration and maintenance projects including: a) Turner Creek Channel and Habitat Improvements b) Turner Creek Sediment Trap Maintenance c) Turner Creek Realignment
Public Hearing:	By telephone on August 26, 2020. Testimony by Planning and Development Services (PDS) staff, by Applicant's agent, and by Skagit System Cooperative.
Decision/Date:	The application is approved, subject to conditions. September 9, 2020
Reconsideration/Appeal:	Reconsideration may be requested by filing with PDS within 5 days of this decision. Appeal is to the Board of County Commissioners by filing with PDS within 5 days of this decision, or decision on reconsideration if applicable.
Online Text:	The entire decision can be viewed at: www.skagitcounty.net/hearingexaminer

FINDINGS OF FACT

1. Skagit County Drainage District 21 seeks a Shoreline Substantial Development Permit to carry out several restoration and maintenance projects on Turner Creek.

2. The sites involved are at or near 13771 State Route 9, 14124 Beaver Lake Road and 24618 Fonk Road. One parcel is within SE1/4 Sec. 11, two parcels are within SW1/4 Sec. 12 and one parcel is within NE1/4 Sec. 13, all in T34N, R4E, W.M. One parcel is within NW1/4 and one parcel is within NE1/4, Sec. 18, T34N, R5E, W.M.

3. The parcel numbers are P24548, P24549, P24625, P24645, P30271 and P30261.

4. The project involves the area south of Clear Lake and Beaver Lake where Turner Creek flows generally to the west before joining the East Fork of Nookachamps Creek.

5. Properties within the project area are primarily in agricultural use and are designated Agricultural-Natural Resource Lands. The Beaver Lake Quarry and a sediment trap are on Rural Resource-Natural Resource Lands.

6. During the wet season, in recent years lower Turner Creek has experienced frequent floods, impacting multiple acres of surrounding farm and pasture land. Flooding on Beaver Lake Road has resulted in extended annual closures. The route is a primary emergency services and postal route.

7. Between Beaver Lake Road and the East Fork of Nookachamps Creek, lower Turner Creek was ditched and straightened in the l930's. This stretch of the creek is now a low gradient, shallow, linear system dominated by fine sediments, without riffles or pools. Reduced wetted stream depths now increase high summer stream temperatures and result in prolific growth of reed canary grass throughout most of the stream channel.

8. Flows between the upstream and downstream ends of the project area are affected by backwatering from the East Fork of Nookachamps Creek, which in turn can be backwatered from the main stem of the Skagit River.

9. The subject proposal is a part of an effort – also involving the East Fork of Nookachamps Creek – to reduce flooding while at the same time protecting fish habitat.

10. The area of Turner Creek included in the project begins at the sediment trap located immediately west of Elk Drive at the confluence of Turner Creek and an unnamed tributary. From there Turner Creek flows southwest and west about .4 mile before flowing under Beaver Lake Road just beyond which it is joined by another unnamed tributary. The Beaver Lake Quarry is on the south side of Turner Creek about .3 mile downstream of the road crossing. From there, the creek flows about a mile to the northwest joining the East Fork of Nookachamps Creek about 800 feet above the point where the latter flows under SR 9.

11. The presently proposed projects fall under three general headings:

    a) Turner Creek Channel and Habitat improvements
    b) Turner Creek Sediment Trap Maintenance
    c) Turner Creek Realignment

12. Turner Creek Channel and Habitat Improvements

    a) Channel and habitat improvements are planned for two reaches of Turner Creek: (i) from the area near the Beaver Lake Road crossing to a little beyond the quarry, and (ii) in a reach farther downstream just above the point where stream realignment will create a new confluence with East Fork Nookachamps Creek.

    b) The channel improvements involve dredging to increase flow capacity in both of the above reaches, as well as a segment of the unnamed tributary which flows into Turner Creek just west of Beaver Lake Road. The creek currently averages 10 feet in width and about four feet in depth. The dredging will increase the depth to 8 feet. In total about 0.8 miles of the 1.4 mile reach between Beaver Lake Road and the East Fork of Nookachamps Creek will be dredged.

    c) Approximately 700 linear feet of Turner Creek, adjacent to the quarry, will be relocated to the north of the existing channel, adding channel complexity by revising the current linear ditch . This will allow the re-establishment of riparian habitat on the south side of the stream.

    d) Fish habitat improvements include the creation of off-channel deeper water areas and increasing stream sinuosity. Further, to add habitat complexity, six wood structures will be installed within Turner Creek, three between Beaver Lake Road and the quarry, and three located further west upstream of the realignment project element.

13. Sediment Trap Maintenance

    The existing 10,000-square-foot sediment trap west of Elk Drive will be dredged to a depth of about 4 feet below existing grade. This maintenance activity will allow the trap to operate as designed and will reduce sediment downstream. It has been some years since such maintenance has been performed.

14. Turner Creek Realignment

    (a) This project element will relocate Turner Creek's confluence with the East Fork of Nookachamps Creek downstream from its current location to a point near the State Route 9 bridge. The realignment will lengthen the creek about 850 feet, using a relic Nookachamps side channel. Presently the lower

portion of Turner Creek slightly narrows and reduced stream depth results in frequent inundation of adjacent agricultural land.

(b) The realigned reach will be created at the eight-foot design depth. Reed canary grass will be removed. Excavated materials will be placed in an upland area or used to create hummocks. The stream banks will be planted. Impacts to existing trees will be minimized.

15. The proposed dredging will use a long reach excavator. A small excavator will be used to create the new stream channel within the relic stream channel. The excavation carried out will involve side casting and the spreading of spoils adjacent to the stream in a manner that will maintain wetland hydrology. Small channels will be formed within hummocks to allow flood waters to flow to and from the stream and to prevent fish stranding.

16. All work will be conducted within Fisheries' in-water work window and best management practices will be implemented to avoid or reduce impacts from dredging to stream habitat, fish and water quality.

17. The applicant has indicated that the proposed construction will begin as soon as possible, once all permits are received. The work will be confined to applicable time frames outlined in the permits.

18. Notice of Development Application was published on July 10, 2020, and again on July 16, 2020. Notification was posted and mailed to nearby property owners as required by law.

19. A Determination of Non-Significance (DNS) was issued for the project on August 6, 2020. The appeal period for the DNS ended September 3, 2020. No appeals were filed.

20. The application was circulated to County Departments. Their comments are reflected in conditions of approval.

21. During the cultural resources assessment most of the proposed project design elements were inundated and inaccessible. The consultant recommended a resurvey of the channel re-route once water levels have receded and also archeological monitoring of ground disturbing activities at each habitat restoration location.

21. The proposal was deemed exempt from floodplain permit requirements.

22. The project will occur in wetland habitats. Wetlands exist throughout the sediment trap site, and then from approximately 600 feet downstream of the Beaver Lake Road crossing to the end of the project, including the relic side channel which is to become the mouth of the stream.

23. The project will avoid wetlands to the extent practicable. The only permanent wetland impacts will involve the excavation of new channel in the areas where the creek will

be realigned. No suitable upland areas exist as alternatives and, therefore, these wetland impacts are unavoidable. No adverse impact to onsite streams is anticipated.

24. A number of other Federal and State agencies possess jurisdictional control over critical areas in the project area. The requirements of such agencies shall become County requirements through jurisdictional substitution.

25. The Staff evaluated the application in light of the approval criteria of the Skagit County Shoreline Management Master Program (SMP) and determined that, as conditioned, the project will be consistent with the criteria. The Hearing Examiner concurs with this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

26. Twenty six letters were received from the public favoring the project. The general tenor of the correspondence was that in recent times the flooding has been getting worse. The letters point out that road conditions are frequently treacherous, that agriculture is being interfered with, that lakefront access has been compromised, that trees are dying, that mosquitos have become a problem, and that fish habitat has been damaged. Particular concern was expressed about interference with road access and egress related to medical problems. One of the letters in general supporting the project was from the Upper Skagit Indian Tribe.

27. The Skagit River System Cooperative (SRSC), representing the Swinomish and Sauk-Suiattle tribes, opposed the current application, both in writing and in oral testimony. Their opposition focusses on the lower portion of Turner Creek where the relic channel will be used to redirect the creek and change its confluence with East Nookachamps Creek. The SRSC argues that the change will eliminate existing rearing habitat and impose unmitigated impacts to fisheries. At the same time, SRSC maintains that the success of the action at the Turner Creek confluence in relieving flood and drainage concerns is uncertain. The present plan is deemed a "speculative cheap fix." More study is urged.

28. The Applicant (DD 21), in response, points out that fish counts in the area have dropped by 90% and that, where flooding occurs, stranding and excessively warm waters kill most of the fish. The project, taken as a whole, the District maintains will improve fish habitat as well as improve drainage.

29. The Staff review of the application focusses on SMP provisions for Dredging and Landfills (Section 7.04 and 7.06) The SRSC urges that the analysis should address provisions for Shoreline Stabilization and Flood Protection (Section 7.16).

30. After reviewing the record, the Examiner finds that the situation urgently requires action, that the understanding of the existing flow regime is adequate and that the measures proposed are calculated to avoid environmental harm. As with all actions which alter the status quo, success is not absolutely assured. But this is not a case in which study has been inadequate.

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

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over this proceedings. SMP 9.06.

2. The proposal meets the requirements of the State Environmental Policy Act (SEPA).

3. The appropriate SMP Chapters for review of this application are Chapter 7.04 (Dredging) and Chapter 7.06 (Landfills). The Staff Review under these headings was correct. SMP Chapter 7.16 (Shoreline Stabilization and Flood Protection) is not applicable.

4. Viewed in its entirety, the proposal at hand is consistent with the provisions of the local SMP for the issuance of a Substantial Development Permit. SMP 9.02.

5. The granting of a Shoreline Substantial Development Permit in the circumstances is consistent with the policy of the Shorelines Management Act to "foster all reasonable and appropriate uses" balancing environmental protection with promoting the public interest generally. RCW 90.58.020.

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

CONDITIONS

1. The project shall be constructed as described in the application materials, except as the same may be modified by these conditions.

2. The applicant shall obtain all other required permits and abide by the conditions of same.

3. The applicant and its contractors shall comply with the requirements of the Washington Department of Fish and Wildlife (WDFW) for fish exclusion and removal prior to in-water work and for fish salvage when flow is removed from the channel.

4. The applicant shall submit a planting plan to Planning and Development Services (PDS) for review and approval prior to construction.

5. The applicant shall submit a cross section plan showing dimension of existing site conditions and the proposed after construction dimensions to PDS prior to construction.

6. Prior to construction, the applicant shall submit to PDS engineered plans for the placement of the large wood habitat structures.

7. Prior to construction, the applicant shall submit to PDS copies of permits or authorizations from the U.S. Army Corps of Engineers and the WDFW as part of the critical areas review.

8. In accordance with the cultural assessment recommendations, the applicant shall complete a resurvey of the channel re-route design components once water levels have receded, or provide archaeological monitoring of ground disturbing construction activities and archaeological monitoring at each habitat restoration location.

9. Temporary erosion/sedimentation control measures shall be used in accordance with Chapter 14.32 SCC.

10. The applicant and its contractors shall comply with all other applicable State and local regulations, including but not limited to Chapter 173-200 and 173-201A WAC (Surface and ground water quality) and Chapter 173-60 WAC (noise).

11. To limit the effect on surrounding properties of short-term noise level increases from construction activities, work must occur during day time hours only.

12. The contractor shall have a spill prevention plan, and a spill kit shall be on site at all times during construction. All refueling of equipment will take place as far away from surface waters as practicable.

13. The project shall be commenced within two years the effective date of the final approval of this permit and completed within five years thereof.

14. If the applicant proposed any modifications of the subject proposal, as approved, it shall notify PDS prior to the start of construction.

15. Failure to comply with any permit condition may result in permit revocation.

ORDER

The requested Shoreline Substantial Development Permit (PL20-0221) is approved, subject to the conditions set forth above.

SO ORDERED, this 9th, day of September, 2020.

Wick Dufford, Hearing Examiner

Transmitted to Applicant, Staff and interested parties, September 9, 2020.