

## 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 Avenue, NW, Suite 200  
Seattle, WA 98107
- Request:** Shoreline Substantial Development Permit, PL20-0258
- Location:** 13771 State Route 9. The parcel is located within SE1/4  
Sec. 11, T34N, R4E, W.M. Parcel # P24548
- Shoreline Designation:** Rural
- Summary of Proposal:** Realign the East Fork of Nookachamps Creek by regrading and expanding the left bank channel to align the stream thalweg with the SR9 bridge crossing, increase flow within the reach, and reduce interaction of the stream with the SR9 embankment. The existing right bank channel will remain in place and continue to convey flows at all river stages.
- 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 11, 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](http://www.skagitcounty.net/hearingexaminer)

## **FINDINGS OF FACT**

1. Skagit County Drainage District 21 seeks a Shoreline Substantial Development Permit to realign a portion of the East Fork of Nookachamps Creek and expand a portion of the left bank channel in the vicinity of State Route (SR) 9.

2. The site is at 13771 SR 9, located within SE1/4 Sec. 11, T34N, R4E, W.M. The parcel number is P24548. The location is at approximately river mile 1.7 of the East Fork of Nookchamps Creek. The site is in a forested area. Land use on adjacent properties to the east are in agricultural use.

3. The East Fork is a 9.4 mile long tributary to Nookachamps Creek which in turn flows into the Skagit River. Approximately 500 feet upstream of the proposed project reach is the confluence of Turner Creek with the East Fork.

4. Approximately 250 feet upstream of SR 9 a vegetated island splits the flow of the stream. Now the thalweg is located along the right bank channel. Substantially less flow enters the left bank. The left bank channel is shallow and eventually tails out to a wetland mosaic of coarse woody debris.

5. The current alignment of the right bank channel directs stream flow around the island involving sharp turns above the highway crossing. Under existing conditions there are flooding problems in the area of the East Fork Nookachamps-Turner Creek confluence.

6. The project proposes to reroute much of the stream flow through the left bank channel aligning the stream thalweg with the bridge crossing. The result will be to increase sediment and streamflow conveyance in the creek as a whole through the stream reach.

7. The project will require regrading and expanding the left bank channel. The existing right bank channel will remain in place and still convey flows at all river stages. However, interaction of the stream with the SR 9 embankment should be reduced.

8. The constructed left bank channel will be approximately 25-feet wide, two-to-three-feet deep and 100 feet long. Excavation will occur in the dry at the south end behind a cofferdam. The excavated channel is intended to act as a starter channel with an expanded inlet through which future storm flows will flush sediments downstream.

9. Following starter channel construction, both banks of the realigned stream reach will be planted with woody vegetation to enhance riparian conditions and provide shade and organic inputs to the stream.

10. The purpose of the project is to address flooding issues, but improved fish habitat should also result. The quantity and quality of salmonid habitat will be increased through the increased wetted area of the expanded left bank channel.

11. The construction process will involve “walking” an excavator down the slope to access to the channel. Fish removal will occur in wetted portions of the isolated reach and dewatering will occur prior to channel excavation. Excavated materials from the stream (approximately 230 cubic yards) will remain onsite and be deposited along the toe of the western hillslope.

12. The project will comply with in-water-work timing restrictions of the Washington Department of Fish and Wildlife (WDFW), as well as the conditions of other permits. Best management practices will be employed to minimize turbidity and sedimentation. Temporarily disturbed areas will be regraded to the original condition.

13. The applicant has advised that the proposed construction will begin as soon as possible, once all permits are received. Other Federal and State agencies have jurisdiction and will need to approve this project. The requirements of such agencies will become County requirements through jurisdictional substitution.

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

15. A cultural resources assessment was prepared. It recommended preparation of an inadvertent discovery plan prior to project construction.

16. Critical areas review was completed as part of the shoreline permit process. The area where the stream channel is to be realigned is currently a wetland/upland mosaic. Excavation of the new channel will result in some unavoidable wetland impacts. However, these will be offset by the increase in sediment and stream flow conveyance capacity and by improved fish habitat quality and quantity. Overall, the stream realignment is expected to be environmentally beneficial.

17. The Staff evaluated the application in light of the approval criteria of the County’s Shoreline 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.

18. Six letters were received from members of the public favoring the project. These were principally concerned with the damages and dangers posed by flooding in the area. A letter from the Upper Skagit Tribe expressed general support, but urged evaluation of specific design elements of the East Fork project “to ensure the concept is technically feasible for next year’s fish window.”

19. The Skagit River System Cooperative (SRSC) representing the Swinomish and Sauk-Suiattle tribes opposed the application, both in writing and in oral testimony. The SRSC questioned excavating a straight channel to offset the effects of “two inconvenient 90-degree bends” in the creek without more analysis. It argued that “there is no evidence that *straightening*

EF Nookachamps through a relic side channel will provide any relief to high water conditions nor increase conveyance capacity.” The SRSC said that the “fix is speculative, yet stands to have substantial impacts to important fisheries habitats.”

20. After reviewing the record, the Examiner recognizes that the proposed realignment of Nookachamps Creek near the SR 9 bridge crossing involves some risk of failing to produce the flood control benefits desired. On the other hand, there is no compelling reason to believe that it will be harmful to fish resources. Under all the circumstances, the Examiner concludes the project advances the public interest policies that underlie the Shoreline Management Act.

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

### **CONCLUSIONS OF LAW**

1. The Hearing Examiner has jurisdiction over this proceeding. SMP 9.06.
2. The proposal meets the requirements of the State Environmental Policy Act (SEPA).
3. The project is consistent with the provisions of the local Shoreline Master Program for the issuance of a Substantial Development Permit. SMP 9.02.
4. The granting of the requested Shoreline Substantial Development Permit is consistent with the policy of the Shorelines Management Act, balancing environmental protection with promoting the public interest generally. RCW 90.58.020.
5. 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 a County floodplain permit and all other required permits and shall abide by the conditions of same.
3. The applicant and its contractors shall comply with WDFW requirements 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. Prior to construction, the applicant shall submit to PDS a cross section plan showing dimensions of existing site conditions and proposed after construction dimensions.

6. In accordance with the cultural resources assessment, the applicant shall prepare an inadvertent discovery plan prior to project construction and shall implement the plan during construction.

7. The contractor shall have a spill prevention plan and a spill kit onsite at all times during construction. All refueling of equipment shall take place as far away from surface waters as practicable.

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

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

10. The applicant and its contractors shall comply with all other applicable State and local regulations, including but not limited to Chapters 173-200 and 173-201A WAC (surface and groundwater quality) and Chapter 1730-60 WAC (noise).

11. 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.

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

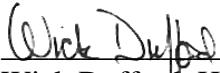
13. If the applicant proposes any modification of the subject proposal, as approved, it shall notify PDS prior to the start of construction.

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

### **ORDER**

The requested Shoreline Substantial Development Permit (PL20-0258) is approved, subject to the conditions set forth above.

**SO ORDERED**, this 11th, day of September, 2020.

  
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Wick Dufford, Hearing Examiner

Transmitted to Applicant, Staff and interested parties. September 11, 2020.