

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE CONDITIONAL USE) SHC2014-0020
Application for)
)
Whatcom County Public Works) FINDINGS OF FACT,
"Hannegan Road Bridge") CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval for a Shoreline Conditional Use Permit to repair and mitigate ongoing scour at Pier 2 of Hannegan Road Bridge. The proposal includes approximately 74 cubic yards of riprap below the Ordinary High Water Mark.

Decision: The requested Shoreline Conditional Use Permit is granted, subject to conditions.

FINDINGS OF FACT

INTRODUCTION

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

I.

PRELIMINARY INFORMATION

Applicant: Whatcom County Public Works

Property Location: 8100 Block of Hannegan Road
Lynden, Washington

Legal Description: Within Section 20, Township 40 North, Range 03 East, W.M.

Adjacent Water Body: Nooksack River
Shoreline Designation: Resource and Aquatic
Statewide Significance: Yes
Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70.010 Administration
SMP 23.70.030 Hearing Examiner

Applicable Shoreline Program Provisions

SMP 23.20 Goals and Objectives
SMP 23.30.020 Official Shoreline Map
SMP 23.30.090 Conservancy Area Designation
SMP 23.40 Shorelines of Statewide Significance
SMP 23.60.040 Conditional Use Permit Criteria
SMP 23.90 General Policies and Regulations
SMP 23.90.100 Landfill and Excavation

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning & Development Services on November 26, 2014

Legal Notices: Published – Notice of Application, October 24, 2014
Notice of Public Hearing, February 12, 2015

Posted – Notice of Public Hearing, February 11, 2015

Mailed – Notice of Application, October 24, 2014
Notice of Public Hearing, February 5, 2015

Hearing Date: February, 2015

Parties of Record

Atina Casas
Whatcom County Public Works
322 North Commercial Street, Suite 301
Bellingham, WA 98225

Sam McDaniel
Planning and Development Services

Exhibits

- 1 Land Use Application with attachments
 - 1-1 Fee Responsibility
 - 1-2 Supplemental Application
 - 1-3 Compensatory Mitigation Plan
 - 1-4 PDS Shoreline Conditional Use Application Requirements
 - 1-5 Determination of Completeness, October 15, 2014
 - 1-6 Mailing labels
- 2 Staff Report, dated February 25, 2015
- 3 Agency Comments
 - TRC Routing Memo, October 24, 2014
 - Geologic Hazards Review, November 13, 2014
 - City of Lynden, memo, dated November 17, 2014 re: City of Lynden raw water intake concerns
 - Critical Areas memo, December 12, 2014, with Compensatory Mitigation Plan, dated December 2014 attached
- 4 SEPA DNS, issued November 26, 2014, with attached SEPA Checklist
- 5 Legal Notice of Application, October 24, 2014
- 6 Certificate of Mailing, Notice of Application, dated October 24, 2014, with attached PDS Comment Form Letter
- 7 Certificate of Mailing Notice of Public Hearing, February 5, 2015
- 8 Certificate of Posting, Notice of Public Hearing, February 11, 2015
- 9 Legal Notice of Public Hearing, February 12, 2015
- 10 Vicinity Map, Proposed Site Notes and typical Sections for scour mitigation, and Plan View Map

II.

Whatcom County Public Works seeks approval of a Shoreline Conditional Use Permit to repair and mitigate ongoing scour at Pier 2 of the Hannegan Road Bridge #252. The proposal includes approximately 74 cubic yards of riprap below the Ordinary High Water Mark of the Nooksack River.

III.

Except for a correction in Staff's recommended Condition of Approval No. 3, the Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 2, dated February 25, 2015, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

IV.

Any Conclusion of Law 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.

The Whatcom County Shoreline Planner has recommended approval for the requested Shoreline Conditional Use Permit to repair and mitigate ongoing scour at Pier 2 of the Hannegan Road Bridge.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated February 25, 2015. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

II.

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

DECISION

A Shoreline Conditional Use Permit is hereby granted to Whatcom County Public Works to repair and mitigate ongoing scour at Pier 2 of the Hannegan Road Bridge #252, APN 400320000055110, located in the 8100 Block Hannegan Road, Lynden, Washington. The permit is granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this Shoreline Conditional Use Permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. A Temporary Erosion and Sedimentation Control (TESC) Plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
3. No work is scheduled within 35 feet of the existing City of Lynden raw water intake facility and therefore no conflicts are anticipated. Turbidity monitoring will be performed during in-water work.
4. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
5. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
6. Issuance of this Shoreline Permit does not release the Applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.

7. State Water Quality Standards, and all other applicable standards, shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
8. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

NOTICE

In addition to incurring civil liability under Shoreline Management Program Section 23.80.20 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 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.

NOTICE OF ADMINISTRATIVE APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the applicant, any opponent of record, or any County department. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it

may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 27th day of February 2015.

A handwritten signature in cursive script that reads "Michael Bobbink".

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-676-6907, TTY 800-833-6384
360-738-2525 Fax



J.E. "Sam" Ryan
Director

EXHIBIT

2

February 25, 2015

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
Whatcom County Public Works
For a Shoreline Conditional Use Permit

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS
for SHC2014-00020

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: Whatcom County Public Works is requesting approval of a shoreline conditional use permit to repair and mitigate ongoing scour at Pier 2 of the Hannegan Road Bridge. The proposal includes approximately 74 cubic yards of riprap below the OHWM of the Nooksack

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Whatcom County Public Works
322 N. Commercial, Ste. 301
Bellingham, WA 98225

Property Location/Address: 8100 Block Hannegan Road

Legal Description: Section 20, Township 40N, Range 03E, W.M,

Adjacent Water Body: Nooksack River

Shoreline Designation: Resource & Aquatic

Shoreline of State-Wide Significance: Yes

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70.010 Administration
SMP 23.70.030 Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20 Goals and Objectives
SMP 23.30.020 Official Shoreline Map

SMP 23.30.090	Conservancy Area Designation
SMP 23.40	Shorelines of Statewide Significance
SMP 23.60.040	Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.90.100	Landfill and Excavation

SEPA Review: Determination of Nonsignificance issued by Whatcom County Planning & Development Services on November 26, 2014.

III. FINDINGS

Whatcom County Public Works is requesting approval of a shoreline conditional use permit to repair and mitigate ongoing scour at Pier 2 of the Hannegan Road Bridge.

The proposed project adds heavy loose riprap to repair the scour hole on the upstream side of the pier that is exposing approximately 2.5 feet of the pile cap and to augment the slumped section of existing riprap immediately downstream of the pier. Disturbed riprap on the face of the levee will be replaced with light loose riprap. The total amount of new heavy loose riprap is approximately 125 cubic yards, of which approximately 74 cubic yards will be placed below the OHWM of the Nooksack River. The total amount of new light loose riprap is approximately 31 cubic yards.

The Hannegan Road Bridge #252 was constructed in 1934 and rebuilt in 1962. It is a 320 foot long by 30 foot wide structure consisting of a 160 foot steel drop-in center span and two 80 foot concrete box girder approach spans. The spans are supported on two abutments (Piers 1 and 4) and two intermediate piers (Piers 2 and 3) that are founded on timber piles. Piers 1 and 4 are located in the floodplain above the ordinary high water mark (OHWM), while Piers 2 and 3 are located within the river channel near the toe of the left (south) and right (north) banks, respectively. Pier 2 is on the outside of a gradual meander bend; hence, it receives higher velocities than the right bank. The left bank in the project vicinity is covered with rock riprap to prevent lateral migration of the channel. The thalweg is currently next to Pier 2.

The Nooksack River is a shoreline of the state and thus subject to the provisions of the SMP. According to the Official Shoreline Map (Map) as outlined in 23.30.02.A, the subject site is located within the Conservancy area and Aquatic shoreline designations. Pursuant to 23.30.02.B exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the Nooksack River. The location of the proposed excavation and fill activities is located waterward of the OHWM of the Nooksack River.

The proposed development is a maintenance activity to an existing lawfully established development. As such, pursuant to 23.60.020.2.B, the applicant has made application for a Shoreline Statement of Exemption to conduct "Maintenance and Repair" activities.

Pursuant to Landfill and Excavation Regulations (23.90.100.B.2) fill and excavation waterward of the OHWM may only be authorized as a conditional use. In order for a shoreline conditional use permit to be approved, the proposal must satisfy the criteria of section 23.60.040 of the SMP. These criteria are set forth and discussed below. According to the applicant the project has a valuation of over \$100,000; therefore, pursuant to 23.60.130 the project is not exempt from an open record public hearing.

Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites

should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

Shoreline Conditional Use Permit:

In order for a Shoreline Conditional Use Permit to be approved, the proposal must satisfy the criteria of section 23.60.040 of the Program. These criteria are set forth and discussed below.

23.60.04.B.1. That the proposed use will be consistent with the policy of RCW 90.58.020 and this Program.

The Shoreline Management Act of 1971, at RCW 90.58.020 indicates:

...It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses...This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life... Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area...

The existing Hannegan Road Bridge crossing of Nooksack River is within the Resource & Aquatic designation, and does not comply with the minimum 150-foot setback from OHWM as required by the SMP. However, the bridge was constructed in 1934 prior to the adoption of the Whatcom County Shoreline Management Program. SMP 23.50.070.A states that lawfully established developments that existed prior to the adoption of the SMP shall be considered nonconforming and may be continued subject to the provisions the nonconforming provisions contained within the SMP (23.50.070). Section 23.60.022.B allows for maintenance and repair activities of lawfully established developments via a shoreline statement of exemption.

23.60.04.B.2. That the proposed use will not interfere with normal public use of public shorelines.

Staff does not anticipate interference with normal public use of public shorelines.

23.60.04.B.3. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

Nothing in the record demonstrates that the continued use of the proposed bridge or the design of the rip rap collar is incompatible with other permitted uses within the area.

23.60.04.B.2. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.

The project includes work below the OHWM. Elements to minimize impacts to listed species and habitats were incorporated into the project design and schedule. The project is timed for the summer during seasonally low water levels, work below the OHWM will be performed during the WDFW in-water work window. Conservation measures to minimize adverse impacts also include installation of sediment and erosion control BMPs to minimize sedimentation and turbidity.

Project elements include establishing the construction access and staging area, lowering the existing levee on the downstream side of the bridge, removing Japanese knotweed and Himalayan blackberry in the project area, installing scour protection riprap, rebuilding the levee, and restoring the access road and staging area. There is no evidence that the proposal will cause adverse effects to the shoreline environment.

WCPW is proposing to offset project impacts to habitat by restoring a riparian buffer on the Nooksack River approximately 16.7 river miles downstream of the project location with an emphasis on conifer conversion. The lower Nooksack River rates poor for large wood recruitment and riparian function due to the presence of levees and the significant conversion from forested floodplain to agricultural land uses. The proposed mitigation addresses this deficiency by planting native conifer and shrub species on 6,534 square feet of a riverfront parcel at 4216 Ferndale Road that is owned by the Whatcom County Flood Control District.

23.60.04.B.2. That the public interest suffers no substantial detrimental effect.

No substantial detrimental effects to the public interest were identified by staff during review of the project.

In the granting of all shoreline conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits and conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policy of RCW 90.58.020 and should not produce a significant adverse effect to the shoreline ecological functions and processes or other users.

As stated previously within this staff report, as conditioned, staff anticipates no net loss of shoreline ecological functions or processes as a result of the proposed project. As such, additional approvals for additional developments where similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline consistent with the above criteria.

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the Mainstem of the Nooksack River as a Shoreline of Statewide Significance. Policies for development on Shorelines of Statewide Significance. Pursuant to 23.40.010, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

The project proposal will not consume additional shoreline resources nor impact valuable shoreline features. Views and public access will remain unaffected by this development. Through review of the proposal staff has determined that no long term adverse effects to the shoreline environment were identified. Other reviews on record demonstrate the project, as conditioned, should satisfy the public safety, health and welfare requirements of applicable Whatcom County regulations.

Based on staff's review, the proposed development appears, subject to the attached conditions of approval, to meet all the current development standards of the Shoreline Program, and concurrently protect the interest of the public on a regional basis.

V. PUBLIC COMMENTS

No public comments were received during the public comment period.

VI. AGENCY COMMENTS

Whatcom County River & Flood Division submitted the following conditions via email on January 6, 2015:

The subject permit to place riprap to protect Hannegan Road Bridge has been reviewed for compliance with the Whatcom County Flood Damage Prevention Code (Title 17) and the associated requirements of the Endangered Species Act (ESA). According to the attached Digital Flood Insurance Rate Map (DFIRM) and submitted drawings the proposed project is located within the Special Flood Hazard Area (SFHA) or specifically Flood Zone AE and regulatory Floodway with a Base Flood Elevation (BFE) of 56.0 feet (NGVD29).

Per Whatcom County Code, Flood Damage Prevention (Title 17), encroachments are prohibited in the floodway "unless certification by a registered professional engineer has provided adequate documentation demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge". According to the attached technical memorandum and attached annotated plan sheet, submitted January 6, 2015 by James Lee P.E. and certified/stamped by Joseph Rutan P.E. the proposed project "**will not impede on the hydraulic opening of the Nooksack River and no adverse effects to the BFE's or regulatory Floodway are expected**". Therefore, a FEMA "no-rise" analysis will not be required for compliance.

Development proposals within the SFHA require compliance with the ESA. In order to meet Federal requirements, the project is required to obtain permit approval with the Army Corps of Engineers (ACOE) . **A copy of the approved ACOE permit must be submitted to the River and Flood Division prior to start of any work in order to demonstrate compliance with the ESA.**

Based on our review of the submitted information we have determined that the project satisfies the requirements of Title 17 and the ESA provided that all above referenced conditions are met and the project is constructed in accordance with the submitted plans/drawings and supporting technical documentation.

The City of Lynden submitted the following comments via letter dated November 17, 2014:

The City of Lynden raw water intake is located directly east of the Hannegan Road Bridge on the south side of the river. This critical public facility provides the water for approximately 13,500 citizens of Lynden and the surrounding North Whatcom area.

The proposed armoring project will occur in very close proximity to this intake; therefore, we request that the County and its contractors take the utmost care so as to not damage this facility.

Staff has added a condition to this recommendation of approval recognizing the City's concern of its intake facility.

VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a shoreline conditional use permit subject to the following conditions of approval:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline substantial development permit and shoreline conditional use permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. A temporary erosion and sedimentation control (TESC) plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.

3. No work is scheduled within 35 feet of the existing City of ^{Lynden} ~~Blaine~~ raw water intake facility and therefore no conflicts are anticipated. Turbidity monitoring will be performed during in-water work.
4. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (676-6907) LNTHPO (384-2298) and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LHTHPO Department (384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
5. Construction and/or demolition debris shall be wholly removed from water/shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority.
6. Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
7. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
8. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

Report prepared by:

Sam McDaniel
Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services