

**WHATCOM COUNTY HEARING EXAMINER**

The application of Northwest Pipeline, LLC. for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit

**SHR2019-00015 and SHC2019-0013**

Findings of Fact, Conclusions of Law, and Decision

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**SUMMARY OF APPLICATION AND DECISION**

**Application:** The Applicant requests approval of a Shoreline Substantial Permit and Shoreline Conditional Use Permit to leave the existing logs in place and let them dismantle subject to natural riverine processes.

**Decision:** The requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit is granted, subject to Conditions of Approval.

**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.

**FINDINGS OF FACT**

I.

**PRELIMINARY INFORMATION**

**Applicant:** Northwest Pipeline, LLC.  
c/o Halli Harris

**Property Location:** The north bank of the North Fork Nooksack River, east of the Highway 9 Bridge

**Assessor's Parcel No.** 380505-186371, 380505-176334

Zoning Designation: Rural Forest  
Adjacent Water Body: Nooksack River  
Shoreline Designation: Conservancy, Aquatic  
Comprehensive Plan: Rural Forest  
Statewide Significance: Yes

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning and Development Services on February 5, 2021 under SEP2019-0100.

Notice Information: Application submitted: November 18, 2019  
Notice of Completeness: December 2, 2019  
Notice of Application: September 29, 2020  
Comment Period Ended: October 29, 2020

<u>Applicable Ordinances:</u>	WCC 23.50	Applicability
	WCC 23.70	Administrator
	WCC 23.20	Goals and Objectives
	WCC 23.30	Shoreline Jurisdiction & Area Designation
	WCC 23.40	Shorelines of Statewide Significance
	WCC 23.60.010	Substantial Development Permit Criteria
	WCC 23.60.040	Shoreline Conditional Use Criteria
	WCC 23.60.130	Public Hearings
	WCC 23.90	General Policies and Regulations
	WCC 23.100	Shoreline Use Policies and Regulations
	WCC 23.110	Definitions

Hearing Date: February 17, 2021

Parties of Record

Halli Harris  
Northwest Pipeline, LLC  
295 Chipeta Way  
Salt Lake City, UT 84108

Kyla Walters, Shoreline Administrator  
Whatcom County Planning & Development Services

Exhibit List: SHR2019-00015 & SHC2019-0013 Northwest Pipeline, LLC.

01. Shoreline Substantial Development Application
02. Shoreline Conditional Use Application
03. Project Narrative
04. Mitigation Plan
05. Site Plan
06. SEPA Checklist
07. Vicinity Map
08. Easement Lease Agreement
09. Addresses
10. Receipt
11. Notice of Application
12. Certificate of Mailing
13. Critical Areas Memo
14. Emergency Exemption Application (SHX2018-00092)
15. Emergency Exemption Determination (SHX2018-00092)
16. Staff Report
17. Approved Site Plan
18. Approved Mitigation Plan
19. SEPA Determination
20. Staff Report – Revised
21. Critical Areas Memo -- Revised

II.

Northwest Pipeline, LLC. is requesting approval of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, as after the fact permits, for emergency work approved under Shoreline Exemption Permit, SHX2018-0092. The Applicant proposes to disconnect the logs, but leave them in place to dismantle naturally, subject to natural riverine processes. The project site is located along the north bank of the North Fork of Nooksack River, approximately one-half mile east of Highway 9 Bridge.

III.

Whatcom County Shoreline Administrator and Technical Review Committee have recommended approval of the requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit subject to Conditions, and issued a Revised Staff Report entitled "Findings, Conclusions, and Recommendations," dated February 11, 2021 (herein "Staff Report").

The Applicant has indicated that the Staff Report is factually correct and had no objections to the recommended conditions of Approval. The Findings of Fact and Conclusions of Law as set forth in the Revised Staff Report, dated February 11, 2021, a copy of which is attached hereto, are hereby adopted as findings of fact by the Hearing Examiner and incorporated herein by this reference. There was no public comment during the public comment period or at the Hearing.

IV.

Any Conclusion of Law made 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.

**Substantial Development Permit**

Pursuant to WCC 23.60.010, a Substantial Development Permit is required for all proposed use and development of shorelines unless the proposal is specifically exempt

from such requirements pursuant to one or more of the listed exemptions in 23.60.022. None of the exemptions apply to this proposal. As such, a substantial development permit is required.

Subject to the Conditions of Approval attached hereto, the proposed use is consistent with the Substantial Development Permit Criteria, and a Substantial Development Permit should be granted subject to those conditions.

#### 20.60.040(B) Conditional Use Criteria

Before being approved the proposed Application for a Shoreline Conditional Use Permit, the Hearing Examiner must find ensure that the proposal is consistent with the applicable criteria. Staff has reviewed the application and finds the proposal complies with the criteria. The proposed temporary log bundles are consistent with RCW 90.58.020 and the SMP. No interference with the normal public use of public shorelines was identified during the project review. Staff has recommended Shoreline Conditional Use Permit and Shoreline Substantial Development Permit finding approval consistent with Whatcom County Shoreline Master Program and the Whatcom County Hearing Examiner agrees with staff's assessment. The Shoreline Conditional Use Permit and Shoreline Substantial Development Permit, should be granted, subject to the recommended Conditions of Approval.

#### 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 Substantial Development Permit and Shoreline Conditional Use Permit are hereby granted to Northwest Pipeline LLC to leave the existing logs in place and let them dismantle subject to natural riverine processes, on the north bank of North Fork Nooksack River, east of the Highway 9 Bridge, on Assessor's Parcel No. 380505-186371 & 380505-176334. 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 substantial development permit and shoreline conditional use permit that is stamped "Shoreline Approved" on February 5, 2021. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and critical areas staff.*
2. *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.*
3. *Washington State Department of Ecology Water Quality Standards shall be maintained.*
4. *The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.*
5. *Because of impacts and resulting mitigation, a mitigation monitoring permit number has been created and fees assessed (MIT2020-00043). Mitigation plantings shall be installed as soon as possible. Once the plantings are installed, an as-built report is required to be submitted, followed by a site inspection by CA staff. Please use our online as-built form located at:  
<http://whatcomcounty.us/DocumentCenter/View/28923/As-built-Documentation-Form->*
6. *Please submit a signed agreement to maintain the mitigation site shall be completed by responsible party under case number MIT2020-00043. This form can be found online at: <http://whatcomcounty.us/DocumentCenter/View/2170/Agreement-to-Maintain-Mitigation-Site-PDF>.*
7. *Mitigation review and yearly monitoring fees under case number MIT2020-00043 in the amount of \$659.20 shall be paid in full within 30 days of hearing examiner determination.*
8. *Following the as-built report approval, a mitigation report will be required for a period of five years after installation showing that mitigation is meeting its approved criteria. Staff may close the monitoring permit case if the applicant has demonstrated at Year 3 that all performance standards are met and the applicant has demonstrated that the site will be maintained and protected from degradation in perpetuity.*
9. *Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and*

*Historic Preservation (Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.*

10. *If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.*
11. *Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF  
THE WHATCOM COUNTY 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 to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

Dated this 22<sup>th</sup> day of February 2021



Michael Bobbink, Hearing Examiner

**WHATCOM COUNTY**  
Planning & Development Services  
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**Mark Personius, AICP**  
Director

~~February 5, 2021~~  
REVISED February 11, 2021

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of <b>Northwest Pipeline LLC</b> for a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit		SHR2019-00015 & SHC2019-00013 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS
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**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Application: The applicant requests approval of a Shoreline Substantial Development permit and Shoreline Conditional Use permit as after the fact permits for emergency work approved under SHX2018-00092 which placed 60 logs in between existing engineered log jams permitted under SHR2015-00006 to protect the north fork Nooksack line lowering project. After project completion, the bolts and chains anchoring the logs were removed in August 2019. The applicant applied for this permit to leave the existing logs in place and let them dismantle subject to natural riverine processes.

Recommendation: Staff recommends approval of the requested Shoreline Substantial Development Permit and Shoreline Conditional Use Permit, subject to the conditions within this staff report.

**II. PRELIMINARY INFORMATION**

Applicant: Northwest Pipeline, LLC  
c/o Halli Harris  
295 Chipeta Way  
Salt Lake City, UT 84108

Property Location: The north bank of the North Fork Nooksack River, east of the Highway 9 Bridge

Legal Description: Within Section 05, Township 38N, Range 5E, W.M.

Parcel Number: 380505186371, 380505176334

Adjacent Water Body: Nooksack River

Zoning Designation: Rural Forest

Comprehensive Plan: Rural Forest

Shoreline Designation: Conservancy, Aquatic

Statewide Significance: Yes

SEPA Review: Whatcom County issued a Determination of Non-Significance (DNS) on February 5, 2021 under SEP2019-00100

Notice Information: Application submitted: November 18, 2019  
 Notice of Completeness: December 2, 2019  
 Notice of Application: September 29, 2020  
 Comment Period Ended: October 29, 2020

Applicable Shoreline Program Provisions:

WCC 23.50	Applicability
WCC 23.70	Administrator
WCC 23.20	Goals and Objectives
WCC 23.30	Shoreline Jurisdiction and Area Designations
WCC 23.40	Shorelines of Statewide Significance
WCC 23.60.010	Substantial Development Permit Criteria
WCC 23.60.040	Shoreline Conditional Use Criteria
WCC 23.60.130	Public Hearings
WCC 23.90	General Policies and Regulations
WCC 23.100	Shoreline Use Policies and Regulations
WCC 23.110	Definitions

**III. PROJECT SUMMARY**

**Proposal:** Northwest Pipeline, LLC is requesting approval of a Shoreline Substantial Development permit and Shoreline Conditional Use permit as after the fact permits for emergency work approved under Shoreline Exemption permit SHX2018-00092. That emergency permit authorized the temporary placement of 60 logs in between existing engineered log jams (ELJs) permitted under SHR2015-00006 with the purpose of protecting the North Fork Nooksack line lowering project (NFNLLP).

After completion of the NFNLLP, the bolts and chains anchoring the logs were removed in August 2019. The exemption required that the logs be removed after completion of the NFNLLP, or the applicant apply for after-the-fact permits to leave

them in place. The applicant opted for the latter option, proposing to disconnect the logs but leave them in place to dismantle naturally, subject to natural riverine processes.

The project entailed adding 60 logs in separate bundles between existing ELJ structures. The bundles were a similar size to the existing ELJs with lengths of 25-35 ft. A total of 6 log bundles were placed within each erosion bay of the existing ELJ structure. Cross logs were then placed perpendicular to the bundles and secured to the ELJs and V-ballast logs with chains and bolts. After work on the NFNLLP was completed, bindings holding the ELJs and log bundles were removed along with the chains and bolts holding the log bundles in place. The logs were left in place and will be subject to natural riverine processes.

**History and Project Need:** The NFNLLP (approved under SHR2017-00013 & SHC2017-00011) replaced and lowered an existing natural gas pipeline running under the Nooksack River which had been threatened by ongoing erosion and scour due to channel migration. A total of 24 ELJ structures (approved under SHR2015-00006 & SHC2015-00005) were approved to temporarily protect the pipeline during the NFNLLP. It later became apparent that additional protection was needed as channel migration was shifting north resulting in erosion, scour, and undercutting of the existing ELJ structures. The current proposal to fill the gaps between those ELJ structures for the temporary protection of the NFNLLP which, once completed, will allow for natural channel migration without the need for protective structures.

**Site Description:** The project site is located along the north bank of the North Fork Nooksack River, approximately one-half mile east of the Highway 9 Bridge at 48.811225 N latitude, -122.192906 W longitude.

#### **IV. CODE ANALYSIS & FINDINGS**

**Shoreline Designation:** According to the Official Shoreline Map, WCC 23.30.020.A, the subject site is located within the Conservancy and Aquatic designations.

**Shorelines of Statewide Significance:** The Nooksack River is designated as a shoreline of statewide significance per WCC 23.40.020. As such, the statewide interest should be recognized and protected over the local interest. Staff reviewed this proposal for consistency with WCC 23.40.030 and RCW 90.58.030 and finds that this specific proposal conforms to the policies and statutes for shorelines of statewide significance.

**Shoreline Buffers and Setbacks:** According to WCC 23.90.130, shore setbacks within jurisdiction of the SMP are determined based on the buffer standards outlined within the Whatcom County Critical Areas Ordinance (CAO), incorporated by reference into the SMP pursuant to WCC 23.10.060.A. Rivers are classified as a Habitat Conservation Area (HCA) pursuant to WCC 16.16.700 and according to WCC 16.16.740, have a prescribed buffer/setback of 150-feet as measured landward on a horizontal plane from the OHWM. This proposal is located within the HCA.

**Substantial Development Requirement:** Pursuant to WCC 23.60.010, a substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt from such requirements pursuant to one or more of the listed exemptions in WCC 23.60.022. The proposal does not meet any of the exemptions from the substantial development permitting process listed in WCC 23.60.022. As such, a substantial development permit is required.

**Shoreline Conditional Use Requirement:** Pursuant to WCC 23.90.100.B.2, fill and excavation waterward of the Ordinary High Water Mark (OHWM) may only be authorized as a conditional use. As the proposed log bundles will be placed in water, below the OHWM, a shoreline conditional use permit is required.

**Public Hearing Requirement:** Pursuant to WCC 23.60.130, a public hearing shall be required when the project meets one of the eight criteria enumerated in that section. This proposal met the requirements for requiring a public hearing, and one has been scheduled for February 17, 2021.

**Substantial Development Criteria:** Pursuant to 23.60.010(B), in order for a substantial development to be approved, the decision maker must find that the proposal is consistent with the following criteria:

1. *All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under SMP 23.60.030.*
2. *All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.*
3. *For projects located on shorelines of statewide significance, the policies of Chapter 23.40 shall be also be adhered to.*

Staff has reviewed the application and finds the proposal complies with the above general policies and regulations as outlined in this report.

**Shoreline Conditional Use Criteria:** Pursuant to 23.60.040(B), in order for a shoreline conditional use to be approved, the decision maker must find that the proposal is consistent with the following criteria:

1. *That the proposed use will be consistent with the policy of RCW 90.58.020 and this program.*
2. *That the proposed use will not interfere with normal public use of public shorelines.*
3. *That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.*
4. *That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.*
5. *That the public interest suffers no substantial detrimental effect.*

Staff has reviewed the application and finds the proposal complies with the above criteria. The proposed temporary log bundles are consistent with RCW 90.58.020 and the SMP, as discussed in more detail, below. No interference with the normal public use of public shorelines was identified during review of this project. The use and design of the proposal is compatible with other permitted uses in the area, as the temporary bundles will dismantle over time and will then be natural materials typically found within the North Fork Nooksack riverine system. With mitigation, staff has determined that the project will not cause adverse effects to the shoreline environment in which it will be located, and the project will result in no net loss of shoreline ecological functions and values. As conditioned, staff finds that the proposed use will not cause adverse effects to the shoreline. Staff has also determined that the public interest suffers no substantial detrimental effect caused by this proposal.

**Water Quality and Quantity:** The materials used for this project were untreated logs that will not adversely affect water quality or aquatic plants or animals. Staff finds that this project will maintain surface and groundwater quality and quantity in accordance with all applicable laws.

**Shoreline Stabilization:** The applicant demonstrated through SHR2005-00006 & SHC2005-00005 that ELJs were necessary for temporary shoreline stabilization to protect the pipeline until the NFNLLP could be completed. At that time, it was demonstrated that the proposed ELJ structures were the minimum necessary to protect the pipeline. Due to additional unanticipated channel migration cutting into and undermining the north bank of the river, it became necessary to bolster this armoring with additional temporary log bundles. The applicant used a natural material, untreated wood, as is preferred by the SMP. The installation was temporary and now that the NFNLLP is complete, the original ELJs and these log bundles are no longer held together by chains and bolts which were removed in August 2019. Since the NFNLLP has been completed, natural channel migration can occur which will dismantle these logs over time, subject to natural processes. Additional stabilization is not anticipated.

**Landfill and Excavation:** Per WCC 23.90.100.B, landfill waterward of the Ordinary High Water Mark (OHWM) shall only be permitted in limited instances for the development of a shoreline stabilization project or instream structure, shall be the minimum necessary, and shall be reviewed as a conditional use. A total of 60 logs were placed below the OHWM for this project. Their temporary placement and the use of natural materials typically found in the riverine system demonstrate that the project was designed to have the least impact possible and is in conformance with this section of code.

**Ecological Protection and Critical Areas:** This project was reviewed by staff for compliance with WCC 16.16, specifically Habitat Conservation Areas. The applicant submitted a riparian mitigation planting plan, dated November 2018. Subsequently, a mitigation case was opened under permit number MIT2020-00043, which was approved by staff on July 17, 2020. Staff finds that the proposal meets all policies and regulations related to ecological protection and critical areas, and determined that the project would result in no net loss of critical area habitats, species, or shoreline functions.

**Environmental Impacts:** The purpose and intent of the Critical Areas Ordinance is to protect the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. Critical Areas staff reviewed the proposal, which includes the planting of 10,000 sq. ft. of riparian vegetation as mitigation to offset construction impacts from installation, which will be beneficial to fish and wildlife, creating shading and providing organic material into the river. Staff determined that project is not anticipated to have any detrimental impacts on surrounding critical areas.

**Cumulative Impact Analysis:** In the granting of all shoreline substantial development permits and 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 and shoreline conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

The proposal was reviewed for consideration of potential cumulative effects that would result if similar developments were permitted in the area of the subject property. Staff has determined that the temporary log bundles, as proposed and conditioned, meet all applicable standards and therefore, would not result in any significant adverse ecological impacts and no cumulative adverse effects to the shoreline are anticipated.

**Archaeological, Historic and Cultural Resources:** Per WCC 23.90.070, review for impacts to cultural resources shall be required when the project is within 500 ft. of known cultural resources. Based on the map provided by the Washington State Department of Archaeology and Historic Preservation (DAHP), this project is not within 500 ft. of known cultural resources. However, the Lummi and Nooksack Tribes were both notified of this application, and did not provide comments.

## **V. PUBLIC COMMENTS**

No public comments were received during the public comment period for this proposal.

## **VI. AGENCY COMMENTS**

Erin Page, Critical Areas Planner – Planning & Development Services: Submitted a memorandum on July 17, 2020 signing off on project approval with conditions, incorporated below as conditions of approval.

Jason Buehler, Engineering Technician – Public Works River & Flood: Signed off on project approval in the Tidemark permit tracking system on December 10, 2019 with no additional conditions.

Andrew Wisner, Geologist – Planning & Development Services: Signed off on project approval in the Tidemark permit tracking system on September 3, 2020 with no additional conditions.

## **VII. APPEAL RIGHTS**

Pursuant to WCC 23.60.150 and WCC 22.05.160, the application for appeal from the Shoreline Administrator's decision may be obtained at the planning and Development Services Department. Such an appeal shall be filed within ten (10) calendar days of the issuance of a Substantial Development Permit.

Note that 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.

### ***Report Prepared By***

***Official: Kyla Walters***

***Title: Shoreline Administrator***

***Dated: REVISED February 11, 2021***

## CONDITIONS ASSOCIATED WITH SHR2019-00015 & SHC2019-00013

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 that is stamped "Shoreline Approved" on February 5, 2021. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and critical areas staff.*
2. *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.*
3. *Washington State Department of Ecology Water Quality Standards shall be maintained.*
4. *The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.*
5. *Because of impacts and resulting mitigation, a mitigation monitoring permit number has been created and fees assessed (MIT2020-00043). Mitigation plantings shall be installed as soon as possible. Once the plantings are installed, an as-built report is required to be submitted, followed by a site inspection by CA staff. Please use our online as-built form located at: <http://whatcomcounty.us/DocumentCenter/View/28923/As-built-Documentation-Form->.*
6. *Please submit a signed agreement to maintain the mitigation site shall be completed by responsible party under case number MIT2020-00043. This form can be found online at: <http://whatcomcounty.us/DocumentCenter/View/2170/Agreement-to-Maintain-Mitigation-Site-PDF>.*
7. *Mitigation review and yearly monitoring fees under case number MIT2020-00043 in the amount of \$659.20 shall be paid in full within 30 days of hearing examiner determination.*
8. *Following the as-built report approval, a mitigation report will be required for a period of five years after installation showing that mitigation is meeting its approved criteria. Staff may close the monitoring permit case if the applicant has demonstrated at Year 3 that all performance standards are met and the applicant has demonstrated that the site will be maintained and protected from degradation in perpetuity.*

9. *Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.*
10. *If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.*
11. *Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.190(A)(3), and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*