

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) SHR2014-0004  
SHORELINE CONDITIONAL USE ) SHC2014-0003  
Application for )  
)  
*Whatcom County Public Works* ) FINDINGS OF FACT,  
) CONCLUSIONS OF LAW,  
) AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting approval for a Shoreline Substantial Development Permit and a Shoreline Conditional Use Permit to seismically retrofit the Portal Way Dakota Creek Bridge to improve public safety.

Decision: The requested permits are 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: 2900 Block of Portal Way, Blaine Washington  
Legal Description: Within Section 8, Township 40 North, Range 1 East, W.M.  
Adjacent Water Body: Dakota Creek  
Shoreline Designation: Urban Conservancy and Aquatic

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Statewide Significance: No

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                         Shoreline Designations  
SMP 23.60.010                   Substantial Development Permit Criteria  
SMP 23.60.040                   Conditional Use Permit Criteria  
SMP 23.90                         General Policies & Regulations  
SMP 23.100.150                 Transportation

SEPA Review:                 Determination of Non-Significance (DNS) issued by Whatcom  
County Planning & Development Services on April 24, 2014

Legal Notices:               Published – Notice of Application, February 18, 2014  
Notice of Public Hearing, May 22, 2014

Posted – Notice of Public Hearing, May 19, 2014

Mailed – Notice of Application, February 18, 2014  
Notice of Public Hearing, May 16, 2014

Hearing Date:                June 4, 2014

Parties of Record:

Steve Fox  
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 Project Narrative
- 1-4 Memo dated Feb 20, 2014 from Sam McDaniel
- 2 Staff Report, dated June 4, 2014
- 3 Legal Notice of Application, February 18, 2014
- 4 Certificate of Mailing Notice of Public Hearing, May 16, 2014
- 5 Certificate of Posting Notice of Public Hearing, May 19, 2014
- 6 Legal Notice of Public Hearing, May 22, 2014
- 7 Agency Comments: Flood Review, March 26, 2014; Watershed Office, March 27, 2014; PW Engineering Services, March 21, 2014
- 8 Determination of Completeness, Feb 4, 2014
- 9 Certificate of Mailing, Notice of Application, Feb 18, 2014
- 10 Bellingham Herald Tear-Sheet, Notice of Application, Feb 18, 2014
- 11 PDS Form Comment Letter, Notice of Application, Feb 18, 2014
- 12 Property Owners Mailing Labels
- 13 Site Plans
- 14 Aerial Site Plan Photo
- 15 Biological Assessment Report, September 2013 and Revised December 2013, prepared by Whatcom County Public Works, Engineering Division
- 16 Wetland Delineation / Mitigation Plan: Portal Way Bridge #500, Seismic Retrofit, December 2013, prepared by Whatcom County Public Works
- 17 SEPA DNS, April 24, 2014, with attached Distribution List; SEPA Checklist

## II.

Whatcom County Public Works seeks approval of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to seismically retrofit the Portal Way Dakota Creek Bridge to improve public safety.

## III.

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 June 4, 2014, 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 permits to seismically retrofit the Portal Way Dakota Creek Bridge in order to improve public safety.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated June 4, 2014. 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 Substantial Development Permit and Shoreline Conditional Use Permit are hereby granted to Whatcom County Public Works to seismically retrofit the Portal Way Dakota Creek Bridge located in the 2900 Block of Portal Way, Blaine, Washington, APN 4001080000030410. The permits are 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. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sedimentation control (TESC) plan reviewed and approved by the Shoreline Administrator, or administrative conditions associated with the pending building permit application measures.
3. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
4. The applicant shall comply with the conditions outlined by the Division of Engineering Services email dated March 26, 2014, unless modified by the Division of Engineering or appealed to the appropriate agency.
5. The applicant shall comply with the conditions outlined by the Watersheds Technical Administrator memo dated March 27, 2014, unless modified by the Technical Administrator or appealed to the appropriate agency.
6. The applicant shall comply with the conditions outlined by the Critical Area's Technician memo dated May 23, 2014, unless modified by the Technical Administrator or appealed to the appropriate agency.
7. The project shall comply with all applicable Federal, State, and local laws and regulations.
8. Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Preferred materials are concrete and steel.

9. 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 (360-676-6907), LNTHPO (360-384-2298), 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 LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
10. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

### 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 5<sup>th</sup> day of June 2014.

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

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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



EXHIBIT

# 2

J.E. "Sam" Ryan  
Director  
**RECEIVED**

MAY 30 2014

WHATCOM COUNTY  
HEARING EXAMINER

June 4, 2014

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of  
**Whatcom County Public Works**  
for a Shoreline Substantial Development Permit  
& Shoreline Conditional Use Permit

SHR2014-00004 & SHC2014-00003

FINDINGS, CONCLUSIONS, AND  
RECOMMENDATIONS

**I. SUMMARY OF APPLICATION AND RECOMMENDATIONS**

Application: The applicant is requesting approval of a shoreline substantial development and shoreline conditional use permit to seismically retrofit the Portal Way Dakota Creek Bridge to improve public safety.

Recommendation: Staff recommends approval of the requested developments, subject to the conditions of approval.

**II. PRELIMINARY INFORMATION**

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

Property Location: 2900 Block of Portal Way, Blaine Washington

Legal Description: Within Section 8, Township 40 North, Range 1 East, W.M.

Adjacent Water Body: Dakota Creek

Shoreline Designation: Urban Conservancy & Aquatic

Statewide Significance: No

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	Shoreline Designations
SMP 23.60.010	Substantial Development Permit Criteria
SMP 23.90	General Policies & Regulations
SMP 23.100.150	Transportation



### III. FINDINGS

The applicant is requesting approval of a shoreline substantial development and shoreline conditional use permit to seismically retrofit the Portal Way Dakota Creek Bridge to improve public safety. The existing structure is a 335-ft 7-span concrete bridge constructed in 1928. Structural assessment of the bridge in 2010 identified significant seismic risks to the structure that require immediate repair. WCPW proposes to reinforce the support bents and abutments of the existing bridge to bring it up to Washington State safety standards.

The project area is situated in a broad, low relief valley that drains west to Drayton Harbor. The valley landscape is a patch work of small hobby farms and scattered woodlots, swampy sloughs and small clusters of rural residences. The city of Blaine is a small community located immediately northwest of the project, and Portal Way, a rural major collector with average daily traffic of 1,221 vehicle trips per day, is sandwiched between Interstate 5 and the BNSF rail line which bisect the valley from northwest to southeast.

The Portal Way bridge straddles Dakota Creek, a 50 to 100 foot wide, tidally influenced, mud bottomed stream that meanders west through the valley to its confluence with Drayton Harbor just over one half mile west of the project site.

The roadway elevation is approximately 12 feet above sea level. Topographically, the project area is relatively flat, and is bisected by Dakota Creek, which cuts a moderately incised channel through the project area. The project area is approximately 1.8 acres in size, approximately 600 feet long and 125 feet wide. This work area includes all proposed access routes, staging areas for equipment and material stockpiles, and proposed work areas within the stream channel and along the stream banks.

Construction activities will include clearing, grubbing, grading, temporary access, road installation, temporary access facility installation, installation of coffer dams and dewatering systems, excavation for new abutment system, installing steel jackets, rebar, and grout for pier retrofits, road re-construction, and site restoration. Fill material will include both soils excavated on-site and imported gravel.

According to the Official Shoreline Map (Map) as outlined in 23.30.02.A, the subject site is located within the Urban Conservancy & Aquatic shoreline designations.

The proposal requires approval of a Shoreline Substantial Development Permit pursuant to 23.60.01.A. Additionally, the proposal requires approval via Shoreline Conditional Use. Based on review of the submitted application materials, it has been determined that this permit decision requires a public hearing pursuant to 23.60.13.

In the granting of all shoreline substantial development 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 permits 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.

### IV. CONCLUSIONS

#### Substantial Development Permit Criteria

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 23.60.020.2 (23.60.010.A).

According to 23.60.010.B, in order 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;**

General and use-specific policies and regulations are found within Sections 23.90 and 23.100 respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

### **23.90.03 Ecological Protection and Critical Areas**

#### **23.90.03.A Policies**

1. Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
3. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

#### **23.90.03.B Regulations**

1. Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
  - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
  - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
  - c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.

- d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
  - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
2. Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.
  3. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
  7. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

*Comment:*

*Project elements that occur below the ordinary high water mark (OHWM) will be conducted within the WDFW-approved in-water work window.*

*Attempts have been made to avoid and reduce impact to wetlands and buffers in the project area by careful construction planning and footprint reduction, but due to the nature of the project and the proximity of wetlands and buffers to the existing piers and abutments, impacts to wetlands and buffers were unavoidable.*

*This project will require unavoidable impacts to 825 square feet of estuarine tidal fringe wetland and 9,150 square feet of wetland/ stream buffer. Alternatives are limited due to space constraints and its association with existing infrastructure.*

*The proposed mitigation sites are located on the north and south banks of Dakota Creek immediately east of the bridge. WCPW proposes to replace the impacted wetland and buffer areas with 1,650 square feet (0.04 acres) of created estuarine emergent wetland, 830 square feet (0.02 acres) of restored estuarine emergent wetland, and 0.25 acres of restored riparian buffer. The restored and created wetland and buffer areas will ensure no net loss of wetland and buffer function occur as a result of this project. The proposed mitigation site will be monitored for ten years.*

*Overall the impacts associated with the project will be temporary in nature and will be mitigated for with wetland restoration and wetland creation and site stabilization. Therefore staff feels the proposal complies with the Ecological Protection and Critical Areas policies and regulations.*

**23.90.04 Water Quality and Quantity**

**23.90.04.A Policies**

1. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
2. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.

3. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

**23.90.04.B Regulations**

1. Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
5. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in or above shoreline water bodies.

*Comment:*

*The proposed development is consistent with the Water Quality and Quantity policies and regulations as conditioned by this staff recommendation. The recommendation of approval has been conditioned that a Certified Erosion and Sedimentation Control Lead (CESCL) maintain all BMP's throughout the length of the project.*

**23.90.06 Vegetation Conservation**

**23.90.06.A Policies**

1. Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
  - a. Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
  - b. Regulating microclimate in riparian and nearshore areas.
  - c. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
  - d. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
  - e. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
  - f. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
  - g. Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
  - h. Providing habitat for wildlife, including connectivity for travel and migration corridors.

**23.90.06.B Regulations**

1. Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
2. Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.
4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

*Comment:*

*The proposed project is consistent with the above vegetation conservation policies and regulations. Attempts have been made to avoid and reduce impact to wetlands and buffers in the project area by careful construction planning and footprint reduction, but due to the nature of the project and the proximity of wetlands and buffers to the existing piers and abutments, impacts to wetlands and buffers were unavoidable. A mitigation plan for compensatory mitigation has been reviewed and approved for conformance with the Whatcom County Critical Areas Ordinance. The proposed clearing is limited to the necessary the approved shoreline development.*

**23.90.10 Landfill and Excavation**

**23.90.10.A Policies**

1. Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.
2. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.

**23.90.10.B Regulations**

1. Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
2. Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted in limited instances for the following purposes only, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this Program:
  - a. Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.

- b. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
- c. Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
- d. Maintenance of lawfully established development.
- e. Development of shore stabilization projects, flood control and instream structures.

Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.

- 6. Landfills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
- 7. Perimeter banks shall generally be sloped no steeper than 1 foot vertical for every 3 feet horizontal unless a specific engineering analysis has been provided, and the Administrator determines that the landfill blends physically and visually with existing topography.
- 8. A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

*Comment:*

*The applicant is proposing fill and excavation waterward of OHWM and as such the proposal is subject to the conditional use criteria. The conditional use criteria are discussed later within this staff report. The applicant indicates that 2,317 of temporary fill material will be placed below OHWM with 220 cubic yards of excavation below OHWM. The applicant indicates that 1,890 cubic yards of excavation will occur above OHWM and 1,425 cubic yards of fill above OHWM. The recommendation of approval has been conditioned that a Certified Erosion and Sedimentation Control Lead (CESCL) maintain all BMP's throughout the length of the project. The amount of fill and excavation is the minimum necessary to accommodate the desired outcome.*

**SHORELINE 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 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 Portal Way Bridge crossing of Dakota Creek constructed in 1928 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.

The proposed developments will bring the bridge up to Washington State safety standards and along with the approved mitigation activities will not result in damage to the ecology or the shoreline area. The proposed use is consistent the policy of RCW 90.58.020 and the SMP.

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

*No interference with normal public use of public shorelines was identified by this administrator during review of the proposed sewer line extension project other than some minor view interference during construction. Any such impacts are temporary and considered minor by this administrator.*

**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.**

*The area surrounding the proposed project location is currently developed for residential purposes. The proposed bridge retrofit will improve public safety. As the portions of the proposed project within shoreline jurisdiction are on an existing bridge, no concerns regarding design compatibility are applicable.*

**23.60.04.B.4. That the proposed use will not cause adverse effects to the shoreline environment in which it is to be located.**

*As stated previously within this staff report, the proposal has been designed to minimize impacts to the shoreline environment. Temporary impacts to shoreline associated vegetation will occur as complete avoidance of these features is not feasible. Disturbed areas used for access will be restored upon completion of the project. Impacts to the shoreline will be of temporary in nature and should not result in long term adverse effects to the shoreline environment.*

**23.60.04.B.5. That the public interest suffers no substantial detrimental effect.**

*As stated previously, no long-term adverse effects to the shoreline environment is anticipated following completion of the proposed bridge seismic retrofit, nor will the proposal adversely effect access or other public rights to the shoreline. No adverse public comment was received by this administrator during the course of the permit review.*

**Cumulative Impact Analysis**

In the granting of all shoreline substantial development 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 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.

*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. The proposal as conditioned appears to comply with the development standards, bulk and dimensional setbacks, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments were similar circumstances exist, are not likely to represent a cumulative environmental impact to the shoreline.*

**V. PUBLIC COMMENTS**

No Comments public comments were received.

**VI. AGENCY COMMENTS**

The **Whatcom County Watershed Technical Administrator** submitted the following conditions via memo dated March 27, 2014.

- A Certified Erosion and Sedimentation Control Lead (CESCL) shall maintain all Best Management Practices (BMP's) throughout the length of the project. Provide Planning staff with the name and contact information of the CESCL prior to the beginning of work.

The **Whatcom County Critical Area's Technical Administrator** submitted the following conditions via memo dated May 23, 2014.

- Monitoring and reporting, and permanent protection will be required per WCC 16.16.760 (6-8) and WCC 16.16.260(C)
- In conformance with WCC 16.16.265(A), signage will be required in adequate around mitigation areas
- Any changes in the currently approved site plan with regards to critical area impact shall be submitted for review prior to any ground disturbing activities

The **Whatcom County Department of Engineering Flood Division** submitted the following conditions via e-mail dated March 26, 2014.

- Applicant must provide a copy of the approved Army Corps of Engineers (ACOE) permit prior to any land disturbance in order to demonstrate compliance with the Endangered Species Act (ESA).

## **VII. RECOMMENDATIONS**

*Based on the above findings, Staff recommends approval of the Shoreline Substantial Development Permit & Shoreline Conditional Use Permit 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. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sedimentation control (TESC) plan reviewed and approved by the Shoreline Administrator, or administrative conditions associated with the pending building permit application measures.*
- 3. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.*
- 4. The applicant shall comply with the conditions outlined by the Department of Engineering Services email dated March 26, 2014, unless modified by the Department of Engineering or appealed to the appropriate agency.*
- 5. The applicant shall comply with the conditions outlined by the Watersheds Technical Administrator memo dated March 27, 2014, unless modified by the Technical Administrator or appealed to the appropriate agency.*
- 6. The applicant shall comply with the conditions outlined by the Critical Area's Technician memo dated May 23, 2014, unless modified by the Technical Administrator or appealed to the appropriate agency.*
- 7. The project shall comply with all applicable federal, state and local laws and regulations.*
- 8. Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials*



*is prohibited. Preferred materials are concrete and steel.*

9. *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 (360-676-6907), LNTHPO (360-384-2298), 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 LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
10. *Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Sam McDaniel  
Whatcom County Shoreline Administrator  
Planning and Development Services