

WHATCOM COUNTY HEARING EXAMINER

RE: Shoreline Substantial Development) SHR2012-0001
Shoreline Conditional Use) SHC2012-0002
Application for)
)
Whatcom County Public Works) FINDINGS OF FACT,
"Potter Road Bridge Replacement") CONCLUSIONS OF LAW,
) AND DECISION
)

SUMMARY OF APPLICATION AND DECISION

Application: Whatcom County Public Works is requesting approval of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to replace an existing one lane 15 foot-wide by 243-foot long 4-span bridge with a 30-foot wide by 360-foot long two span bridge.

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/Address: Potter Road crossing of South Fork of the Nooksack River

Legal Description: Section 17, 28, Township 38N, Range 05E, W.M.
Assessors Parcel Number - 3805170000089800

Adjacent Water Body: Nooksack River

Shoreline Designation: Resource & Aquatic

Shoreline of State-Wide Significance: Yes

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions

SMP 23.20	Goals and Objectives
SMP 23.30	Shoreline Area Designations
SMP 23.60.010	Shoreline Substantial Development Permit Criteria
SMP 23.60.040	Shoreline Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.150	Transportation Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning & Development Services on March 30, 2012.

Legal Notices: Published – August 1 and December 5, 2001 and January 31, 2002
Posted – January 31, 2002
Mailed -

Hearing Date: February 13, 2013.

Parties of Record:

Steve Fox
Whatcom County Public Works
322 North Commercial St
Bellingham, WA 98225

Sam McDaniel
Planning and Development Services

Exhibits

- 1 Land Use Application, with attachments
 - 1-1 Fee Responsibility
 - 1-2 Supplemental Application, SHR
 - 1-3 Supplemental Application, SHC
 - 1-4 Project Description
 - 1-5 Vicinity Map
 - 1-6 Determination of Completeness, January 11, 2012
 - 1-7 PDS Form Letter/Comment, January 11, 2012
 - 1-8 Address Labels
 - 1-9 Staff Email re: Scheduling
- 2 Staff Report, February 13, 2013
- 3 David Evans and Associates Memo, April 13, 2010 re: TS&L report update
- 4 Biological Assessment Report, September 2012, prepared by County Engineering

- 5 Memorandum, 10/23/2012, from Steve Fox re: attached two drawings: location of pedestrian trail and location of two parking spots along Potter Road
- 6 Memo, February 17, 2012 from Northwest Hydraulic Consultants, Inc. re: FEMA No-Rise Analysis for Project
- 7 Temporary Working Platform Layout Plan
- 8 Memo, January 31, 2013 from Travis Bouma re: Flood Review and Conditions
- 9 Critical Areas Approval Memo, November 8, 2012
- 10 Heavy Loose Riprap drawings, Figures A-A, B-B, C-C, D-D
- 11 Large Set of Plans
- 12 Legal Notice of Application, January 18, 2012
- 13 Certificate of Mailing Notice of Application, not dated
- 14 Certificate of Mailing, Notice of Public Hearing, January 24, 2013
- 15 Certificate of Posting, Notice of Public Hearing, January 28, 2013
- 16 Legal Notice of Public Hearing, January 31, 2013

II.

Whatcom County Public Works seeks approval of a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit to replace an existing one lane, 15-foot-wide by 243-foot long 4-span, bridge with a 30-foot wide by 360-foot long two span bridge in order to reduce stream channel constriction and provide two lanes for the bridge.

III.

The Applicant 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 13, 2013, 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.

Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Permits for the proposed replacement of the existing one-lane Potter Road bridge crossing the South Fork of the Nooksack River.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 2, dated February 13, 2013. 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 replace the existing Potter Road Bridge with a new 30-foot wide by 360-foot long two span bridge, crossing the South Fork of the Nooksack River, located on Assessor Parcel No. 380517 0000089800, Van Zandt, Washington. The permits are granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this permit approval. 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. The Applicant shall comply with the requirements of the **Whatcom County Engineering Division of River & Flood** as outlined in the January 31, 2013 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.
3. The Applicant shall comply with the requirements of the **Whatcom County Critical Area Technical Administrator** as outlined in the November 8, 2012 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.
4. Construction and/or demolition debris shall be wholly removed from the 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. Offsite deposition of excavation spoils, concrete debris, etc within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services unless located on WSDOT Right-of-Way.

5. A Temporary Erosion and Sedimentation Control (TESC) Plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work. The Applicant shall contact the Shoreline Administrator so that a site inspection of BMP's can be conducted prior to initiating ground disturbing activities.
6. The proposed development shall comply with any other State, Regional, or Federal statutes or regulations applicable to such development or use.
7. 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.
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 13th day of February 2013.



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

FEB 06 2013

WHATCOM COUNTY
HEARING EXAMINER

February 13, 2013

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

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS
SHR2012-00001/SHC2012-
00002

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit and shoreline conditional use permit to replace an existing one lane 15 foot-wide by 243-foot long 4-span bridge with a 30-foot wide by 360-foot long two span bridge.

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 North Commercial St
Bellingham, WA 98225

Property Location/Address: Potter Road crossing of South Fork of the Nooksack River

Legal Description: Section 17, 28, Township 38N, Range 05E, W.M,
Assessors Parcel Number - 3805170000089800

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 Administration

Applicable Shoreline Program Provisions:

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SMP 23.90	General Policies and Regulations
SMP 23.100.150	Transportation Policies and Regulations
SMP 23.110	Definitions

SEPA Review:

Determination of Non-Significance (DNS) issued by Whatcom County Planning & Development Services on March 30, 2012. .

III. FINDINGS

Whatcom County public works is requesting a shoreline substantial development permit and shoreline conditional use permit to replace bridge #148 on Potter Road over the South Fork of the Nooksack River. The existing bridge is a one-lane structure with two intermediate piers located in the river channel. According to the application materials the bridge is structurally deficient and currently load restricted due to a deteriorating substructure.

SMP 23.100.15.C indicates "...expanded bridge crossings for nonwater-dependent or nonwater-related uses may be permitted as a conditional use in the Aquatic designation. It also indicates that Transportation facilities are subject to policies and regulations of the SMP within the Resource designation. Accordingly, both the SMA and SMP consider the current use of the bridge to be reasonable otherwise this specific development would be prohibited. The existing Potter Road Bridge over the South Fork is evident in 1975 aerial photographs and therefore clearly pre-dates the passage of the Whatcom County Shoreline Management Program (SMP).

Pursuant to 23.30.02.B, the lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands; provided that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the South Fork of the Nooksack River.

The proposed development includes typical practices for bridge replacement including; Installation of BMPs, Install new abutments, construct roadway approaches, Cofferdam installation and dewatering work, Install temporary road for temporary bridge, Install new super-girders, concrete bridge deck and guardrails, Remove temporary road, Remove old bridge trusses, Remove staging area and re-vegetate disturbed areas.

The proposal requires approval of a Shoreline Substantial Development Permit pursuant to 23.60.01.A. As indicated in 23.100.05.C expanded bridge crossing for nonwater-dependent or nonwater-related uses may be permitted as a conditional use. The Conditional Use section of this Staff Report discusses the criteria and staffs response. Staff has determined that this permit decision requires a public hearing pursuant to 23.60.13.

In the granting of all shoreline substantial development 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.

IV. CONCLUSIONS

Shoreline Substantial Development Permit:

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, 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 pursuant to 23.60.03.**
- 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 associated with transportation developments are found within Sections 23.90 and 23.100.15, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

Ecological Protection and Critical Areas

23.90.03.A Policies

- 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.
- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- 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

- 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:
 - Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - 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.

- Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
 - Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
 - 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.
- 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.
 - Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
 - The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
 - Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

The proposed project is consistent with the above policies and regulations. According to the applicant, approximately, .4 acres of immature forest and shrub buffer habitat between the pasture land and the river will be disturbed to install temporary jetties, crane platforms, and access roads. Following completion of construction, disturbed riparian buffer areas will be amended with six inches of compost, mulched with coir fabric and planted with native species of trees and shrubs. Impacts to wetlands, streams and their associated buffers were avoided and minimized to the maximum extent practicable. Total avoidance was not possible due to site location and design goals. A mitigation plan was developed by Whatcom County Public Works staff to compensate for unavoidable impacts to buffer vegetation within the project vicinity.

Additionally, the proposal will remove 305 lineal feet of existing rip rap revetment on the west bank. One large engineered log jam, seven log V-jams , six cottonwood boles, and 8 habitat logs will be placed on the east bank, downstream of the bridge, to provide cover and flood refuge for migrating adult and juvenile salmon. In addition, disturbed areas landward of the OHWM will be planted with native trees and shrubs according to the approved planting plan.

Water Quality and Quantity

23.90.04.A Policies

- 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.
- 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.
- 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

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
- 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.

Staff Comment:

The existing impervious area within the project area is .67 acres. Currently, no water quality treatment is provided from stormwater runoff from existing impervious surfaces within the project area. Proposed stormwater facilities are designed based on guidance of the WSDOT 2010 Highway Runoff Manual and the Department of Ecology's 2005 Stormwater Management Manual for Western Washington. The proposed project will result in a net gain of .30 acres of pollution generating impervious surface (PGIS) within the project area, but will provide basic treatment for .86 acres of PGIS where no treatment was provided before. This recommendation of approval has been conditioned that Public Works submit a Temporary Sedimentation Control Plan to the shoreline administrator prior to initiating construction activities

Vegetation Conservation

23.90.06.A Policies

- 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:
 - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - Regulating microclimate in riparian and nearshore areas.
 - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.

- Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
- Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
- Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
- Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

- 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.
- 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.
- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

Staff Comment:

The proposed project is consistent with the above policies and regulations. As stated previously within this approval recommendation, impacts to existing vegetation have been minimized insofar as feasible to complete the scope of work. A mitigation plan has been developed and approved by the critical areas technical administrator that compensates for impacts to buffer vegetation.

Public Access

23.90.08.A Policies

1. Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.
2. Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns

should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured. As required by the Governing Principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.

3. Public access should be provided for water-oriented uses and nonwater-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.
4. Nonwater-related uses or activities located on the shoreline should provide public access as a public benefit.
5. Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public.
6. Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.
7. Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.

23.90.08.B Regulations

1. In the review of all shoreline substantial development, conditional use permits, or developments of more than four (4) residential lots or dwelling units, consideration of public access shall be required, subject to the test stated above in SMP 23.90.08.A.2. When appropriate, provisions for adequate public access shall be incorporated into such proposals, including land division, unless the applicant/proponent demonstrates that one or more of the following provisions apply:
 - a. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
 - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
 - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;
 - d. Significant environmental impacts will result from the public access that cannot be mitigated;
 - e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
2. When provisions for public access are required as a condition of project approval, the Administrator shall prepare written findings, pursuant to SMP 23.60, demonstrating consistency with the principles of nexus and proportionality and the test stated in SMP 23.90.08.A.2 and SMP 23.50.08.A.
5. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching

ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.

11. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
15. Public access facilities shall be available to the public twenty-four (24) hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of SMP 23.90.08.B.1.
16. The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.

Staff Comment:

The applicant is proposing a 6 foot wide pedestrian path on the northern side of the bridge for the public to access the shoreline along with an improved parking area for two vehicles approximately 750 feet east of the bridge. Currently there is no existing official public access to the shoreline. However, the site has been historically used as an access point. Therefore, it is the opinion of the administrator that the proposed pedestrian trail with two parking spots appears to be consistent with the principles of nexus and proportionality and the test stated in SMP 23.90.08.A.2 and SMP 23.50.08.A.

Landfill and Excavation

23.90.10.A Policies

- 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.
- 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.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

23.90.10.B Regulations

- 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.
- 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:

- Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.
- Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
- Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
- Maintenance of lawfully established development.
- 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.
- 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.
- 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.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Staff Comment:

The proposed project is consistent with the above landfill and excavation policies and regulations. This recommendation of approval has been conditioned to require that Public Works submit a Temporary Sedimentation Control Plan to the shoreline administrator prior to initiating construction activities. The proposed landfill and excavation is the minimum necessary to accommodate the project goal.

Transportation

23.100.15.A Transportation – Policies

- New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
 - Perpendicular water crossings are required for access to authorized uses consistent with this Program; or
 - Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in SMP 23.90.03.
- Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.
- Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.

- Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.
- Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.
- Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

Staff Comment:

Compliance with the Transportation Policies is demonstrated through compliance with the Transportation Regulations outlined below.

23.100.15.B Transportation – Regulations

- Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.
- Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood control works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood control, they shall comply with policies and regulations for Flood Control Works under SMP 23.100.06.
- Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities sited close to water, wetlands or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC 16.16.
- Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.
- Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.
- 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.

- Transportation development shall be carried out in a manner that maintains or improves State water quality standards for affected waters.
- Non-emergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.

Staff Comment:

The proposed project is consistent with the above transportation regulations. The locations of the proposed temporary and permanent developments have been designed to minimize impacts to existing critical areas to the maximum extent possible. The proposed bridge replacement and other in-water work will require review and approval by the Washington State Department of Fish and Wildlife. The proposed work within shoreline jurisdiction will take place over the course of two years in order to complete the project. As such, work within this area will not be conducted during periods of dry weather throughout the duration of the project. Best management practices will be implemented pursuant to an approved TESC plan as a condition of this permit.

23.100.15.B.2 Application Requirements

All applications for new or expanded transportation facilities shall be accompanied by adequate documentation that the proposal meets the policies and regulations of this Program, including but not limited to:

- a. **Documentation that the facility cannot be feasibly located outside of shoreline jurisdiction due to the uses served or the need to connect specific end points. An analysis of alternatives may be required. New or expanded public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline.**

The Potter Road Bridge is an existing structure that is the sole access to the west side of the river and cannot be feasibly re-located. Alternatives were researched such as building a road over Stewart Mountain, crossing at Strand road, etc, but all either exceeded the impacts of the existing location or were cost prohibitive.

According to the applicant the new bridge design had to meet or exceed the following criteria:

1. *Follow WSDOT local agency guidelines, and published AASHTO and WSDOT guidelines,*
2. *Since this is a BRAC funded and WDFW permitted bridge, the backwater rise must be less than 0.2 feet compared to the no-bridge, no-road condition,*
3. *Maintain three feet of freeboard over the 100 year flood elevation,*
4. *Scour protection must be designed to withstand the 500 year flood,*
5. *Per WDFW criteria, no permanent bridge piers are allowed in the water,*
6. *Debris collection must be minimized,*
7. *Long term maintenance of the structure must be minimized.*

A number of alternatives were analyzed to ensure that the most environmentally friendly and cost effective solution was chosen. These alternatives are briefly presented below:

A new road from the east end of Smith Road over the north end of Stewart Mountain. Rejected due to infeasible cost.

A 310 foot three-span steel beam bridge located south of the existing bridge with two piers in the river. Rejected due to in-channel impacts, and debris collection issues.

A two-span pre-cast concrete girder bridge with one pier in the center of the channel, and the same opening as the existing bridge (243 Ft.). Rejected due to narrow span opening that wouldn't meet WDFW < 0.2 ft backwater requirement, in-channel impacts, and debris collection issues.

A clear-span pre-cast concrete girder bridge with the same opening as the existing bridge. Rejected because the narrow bridge opening wouldn't meet the WDFW < 0.2 ft backwater requirement.

350 foot clear-span steel truss bridge. Rejected due to high construction cost (nearly double that of pre-cast concrete) that would be hard to justify to FHWA, and because of long term maintenance costs resulting from sandblasting and re-painting every few years.

350 Ft two-span pre-cast concrete girder bridge with one pier located outside the OHWM. This option was chosen because of its lower environmental impacts, the ability to open up the channel cross section under the bridge, relatively minor debris collection issues, low maintenance, and relatively low cost.

- b. Documentation that the facilities are primarily oriented to pedestrian use and provide an opportunity for a substantial number of people to enjoy shoreline areas.**

The bridge itself is not primarily oriented to pedestrian use. However, Public Works is proposing pedestrian access to the shoreline via a footpath on the northeast road embankment, and providing two parking spots along Potter Road to ensure continued public access to the shoreline.

- c. Documentation that the proposed facilities comply with critical area regulations in WCC 16.16.**

Significant design and construction modifications have been made to minimize and avoid impacts to Critical Areas and mitigate for unavoidable impacts. As discussed within this staff report the project will result in unavoidable impacts to critical areas. These impacts have been addressed in the approved mitigation plan.

- d. Documentation of how the location, design and use achieves no net loss of shoreline ecological functions and incorporate appropriate mitigation in accordance with SMP 23.90.03.**

As discussed in the Ecological & Critical Areas Policies and Regulations section of this staff report, the applicant has submitted a mitigation plan that will mitigate for the temporary unavoidable impacts to buffer vegetation. This plan was reviewed by the Critical Areas Technical Administrator and unconditionally approved.

- e. Documentation that facilities avoid public recreation areas and significant natural, historic, archaeological or cultural resources, or that no alternative is feasible outside of the shoreline and that all feasible measures to minimize adverse impacts have been incorporated into the proposal.**

No formal public recreation areas are present in the project vicinity, only informal access on private land. The county has replaced the function of this private access and parking in this proposal. The Cultural Resources Survey documents no effect on cultural resources, and the report details efforts to document the historic Bridge. The Bridge design includes a significant expansion of the river floodplain and installation of habitat structures as well as restoration of disturbed areas to address impacts to natural resources.

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.

...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...

SMP 23.100.15.C indicates "...expanded bridge crossings for nonwater-dependent or nonwater-related uses may be permitted as a conditional use in the Aquatic designation. It also indicates that Transportation facilities are subject to policies and regulations of the SMP within the Resource designation. Accordingly, both the SMA and SMP consider the current use of the bridge to be reasonable otherwise this specific development would be prohibited. As discussed within this staff report the proposal has been designed and will be constructed in a manner that will minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area.

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

Public Works is constructing a pedestrian access to the shoreline on the northern side of the proposed bridge as part of the proposal. There will be a temporary disruption on the public's ability to access the shoreline during construction periods. Staff does not anticipate a long term interference for the public's use of the shoreline.

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 project proposal involves the replacement and expansion of an existing bridge and therefore, no change in use is proposed as part of this project.

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.

With exception of short-term water quality effects during the in-water work associated with the proposed project, it is the opinion of staff that no unreasonable adverse effects will occur. BMPs will be implemented throughout the project to ensure water quality is maintained to the maximum extent possible during construction. Post project, the habitat conditions in the project reach will be improved over those present now. The channel width in the project area will be expanded significantly, and will include engineered log habitat features on the east bank as well as scattered habitat logs on the expanded flood terrace. A similar amount of rip rap protection will be present under the bridge compared to existing conditions, and riparian areas that are disturbed during construction will be restored with native trees and shrubs. Finally, disturbed channel substrate areas will be restored to pre-existing conditions following construction so that the sediment dynamics and spawning habitat will remain unchanged.

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

The purpose of the proposed project is to remove an existing bridge and replace with a larger bridge to reduce stream channel constriction and provide two lanes for traffic. As indicated above the project may

interfere with the public's access to the shoreline during construction periods but should not provide long term access interference. There is nothing in the record that indicates that expanding the existing bridge will result in a substantial detrimental effect on the public interest. No public comments were received during the legislated comment period for the proposal.

Cumulative Impact Analysis

In the granting of all 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 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. No significant impacts to the shoreline environment were identified during review of the project. The proposal will result in an increase in stormwater treatment, removal of 305 lineal feet of existing rip rap; any disturbed vegetation will be replaced with native species when the project is complete. Therefore, it is the opinion of staff that 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.

Shoreline of Statewide Significance

In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated The Nooksack River as a Shoreline 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 proposed bridge replacement and expansion is consistent with the policy of RCW 90.58.020 and the SMP as conditioned by this approval. The above guiding policy of the Shoreline Management Act (SMA) prefers uses which are consistent with control of pollution and prevention of damage to the natural environment or unique to or dependent on the State's shoreline. 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 areas and any interference with the public's use of the water. The proposed bridge replacement is consistent with all applicable policies and regulations outlined within the SMP as discussed previously within this staff report. During the comment period Whatcom County sought comments from all appropriate agencies and tribes. No comments were received from such agencies or tribes.

V. PUBLIC COMMENTS

No written adverse public comment was received during the time of this permit review.

VI. AGENCY COMMENTS

The Whatcom County Critical Area Technical Administrator submitted the following comments regarding the proposal on November 8, 2012:

Information for the above proposed replacement of an existing bridge has been routed to Critical Areas staff in conformance with WCC16.16 Critical Areas Ordinance.

A critical areas site assessment and Habitat Management Plan was submitted for review. The replacement/relocation of the bridge will have unavoidable impacts to the habitat conservation area (riparian area of the Nooksack River). The applicants are proposing a 1:1 ratio for the buffer impacts which conforms to the requirements in WCC16.16. A parking area is proposed farther east, outside critical areas and/or buffers.

The above proposal has received critical area approval.

The Whatcom County Engineering Division of River & Flood submitted the following comments regarding the proposal on January 31, 2013:

The proposed project is located on the South Fork Nooksack River approximately 2 miles upstream of the South Fork and North Fork Nooksack River confluence within Township 38 North, Range 5 East, Sections 8 and 17. The project consists of replacing the existing one lane 15 foot wide by 243 foot long bridge with a 30 foot wide by 360 long two span bridge. The project is located within Flood Zone AE and the regulatory Floodway. As such, the project is subject to compliance with the Whatcom County Flood Damage Prevention Code (Title-17) and the associated requirements of the Endangered Species Act (ESA).

Regarding development within the regulatory floodway, Title-17 (Section 17.16.120A) states, "*Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge*". To address this, an engineering "No-Rise" certification has been stamped and signed by Todd Bennett, a professional engineer licensed in the State of Washington, certifying that the proposed project will not increase the 100-year water surface elevations of the South Fork Nooksack River in the area of the proposed project. This analysis was completed using a duplicate FEMA effective hydraulic model. This certification and supporting technical memorandum dated 2/17/2012 are attached.

In regards to compliance with the ESA, a Biological Assessment was completed and submitted by the applicant in September of 2012 and is attached hereto. The assessment concludes that construction related impacts will likely adversely affect bull trout, steelhead trout, Chinook salmon, Chinook critical habitat and bull trout critical habitat; may adversely affect EFH for the Pacific salmon fishery, but will not adversely affect marbled murrelets. Accordingly, the applicant is in the middle of a formal consultation with the federal services that should be completed in the near future. The review is through Federal Highways and the Corps will adopt the decision into their permit process.

Given the above information, the following conditions are required for compliance with Title-17 and the ESA:

- Applicant shall provide River and Flood with final As-Built survey drawings documenting the hydraulic opening of the completed bridge project including finished grades upstream and downstream of the bridge within the project limits
- Applicant shall provide River and Flood with a final copy of all state and federal permits including all special conditions for the protection of listed threatened or endangered species under the Federal Endangered Species Act prior to start of any ground disturbing activities
- Applicant shall notify River and Flood of any changes to site conditions or permit requirements that may occur following receipt of the original permits

We have determined that the project, with above conditions met, satisfies the requirements of Title-17 and the associated requirements of the ESA. Any proposed changes will require another review for compliance.

VII. RECOMMENDATIONS

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

1. *The proposed shoreline developments shall be consistent with the scope and site plans approved by this permit approval. 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. *The applicant shall comply with the requirements of the **Whatcom County Engineering Division of River & Flood** as outlined in the January 31, 2013 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.*
3. *The applicant shall comply with the requirements of the **Whatcom County Critical Area Technical Administrator** as outlined in the November 8, 2012 memorandum unless modified by the Technical Administrator or appealed to the appropriate agency.*
4. *Construction and/or demolition debris shall be wholly removed from the 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. Offsite deposition of excavation spoils, concrete debris, etc within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services unless located on WSDOT Right-of-Way.*
5. *A temporary erosion and sedimentation control (TESC) plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work. The applicant shall contact the shoreline administrator so that a site inspection of BMP's can be conducted prior to initiating ground disturbing activities.*
6. *The proposed development shall comply with any other State, Regional, or Federal statutes or regulations applicable to such development or use.*
7. *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.*
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:

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Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services