

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) SHR2010-0007  
Application for )  
)  
*Port of Bellingham* ) FINDINGS OF FACT,  
*“Slater Road Wetland Mitigation”* ) CONCLUSIONS OF LAW,  
) AND DECISION  
)

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Port of Bellingham has submitted an application to mitigate off-site for wetland and associated buffer impacts resulting from the Bellingham International Airport Planned Unit Development (PUD2008-0001)/ Preliminary Binding Site Plan (BSP2008-00003). The mitigation is proposed for degraded wetlands associated with the Nooksack River and Tenant Creek in Washington State Department of Fish and Wildlife’s Whatcom Wildlife Area.

Decision: The requested permit is granted, subject to conditions.

**FINDINGS OF FACT**

**INTRODUCTION**

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

**I.**

**PRELIMINARY INFORMATION**

Applicant: Port of Bellingham

Owner: Washington State Department of Fish and Wildlife

Property Location/Address: North of Slater Road, immediately east of the Nooksack River  
Ferndale, Washington

APNs: 390232 478007 and 390232 482295

Legal Description: Section 32, Township 39N, Range 02E, W.M.

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Shoreline of State-Wide Significance: Yes

Zoning: Recreation and Open Space

Comprehensive Plan: Public Recreation

Subarea: Cherry Point Ferndale

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70.01	Administration
	SMP 23.70.03	Hearing Examiner

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.02	Official Shoreline Map
SMP 23.30.09	Conservancy Shoreline Area Designation
SMP 23.40	Shorelines of Statewide Significance
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.12	Restoration and Enhancement

SEPA Review: Determination of Nonsignificance issued 7/15/2010

Legal Notices: Published – July 2 and August 26, 2010  
Mailed – August 23, 2010

Hearing Date: September 8, 2010

Parties of Record:

Port of Bellingham  
Attn: Sylvia Goodwin, Planning and Development Director  
PO Box 1677  
Bellingham, WA 98227

Washington State Department of Fish and Wildlife  
Attn: Richard Kessler  
5975 Lake Terrell Road  
Ferndale, WA 98248

Elke Daugherty  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Supplemental Application
  - 1-2 Determination of Complete Application, dated June 28, 2010
  - 1-3 Property Owners Address Labels
  - 1-4 Staff Email correspondence
- 2 Staff Report, dated August 25, 2010
- 3 Certificate of Mailing of Notice of Application, not dated
- 4 Legal Notice of Application, dated July 2, 2010
- 5 Certificate of Mailing of Notice of Public Hearing, dated August 23, 2010
- 6 Legal Notice of Public Hearing, dated August 26, 2010
- 7 Site Plan Maps
- 8 Off-Site Wetland Mitigation Design Report Addendum, Slater Road Site, May 2010, by Cooke Scientific

**II.**

The Port of Bellingham is seeking approval of a Shoreline Substantial Development Permit to mitigate off-site for wetland and associated buffer impacts resulting from the expansion of Bellingham International Airport. The mitigation is proposed for degraded wetlands associated with the Nooksack River and Tenant Creek in Washington State Department of Fish and Wildlife's Whatcom Wildlife Area.

**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 #2, dated August 25, 2010, 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 Substantial Development Permit for the proposed off-site mitigation for wetland and associated buffer impacts resulting from the expansion of the Bellingham International Airport.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated August 25, 2010. 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 is hereby granted to The Port of Bellingham for off-site mitigation for wetland and associated buffer impacts resulting from the expansion of the Bellingham International Airport. The property in question is located on Assessor's Parcel Numbers 390232 478007 and 242295, north of Slater Road, immediately east of the Nooksack River, Ferndale, Washington. The permit is granted subject to the following conditions:

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this Shoreline Substantial Development Permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or the Whatcom County Hearing Examiner.
2. In the event changes to the current access are proposed or another access on a county road is proposed, the Applicant shall apply for a Revocable Encroachment Permit.

3. A Temporary Erosion and Sedimentation Control (TESC) Plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
4. Issuance of this shoreline permit does not release the Applicant from any other State, Regional, or Federal statutes or regulations applicable to the proposed development.
5. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
6. The following Whatcom County River and Flood Division conditions shall be met:
  - 6-1. The project shall be constructed according to the lines and grades shown on the submitted drawings.
  - 6-2. A 15-foot (minimum) buffer from the outside toe of the Nooksack River levee landward shall be left undisturbed of any land grading and/or planting.
  - 6-3. There shall be no loss of floodplain storage; any imported fill must be compensated for.
  - 6-4. All disturbed areas shall be planted, seeded and/or mulched.

### **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 9<sup>th</sup> day of September 2010.

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

August 25, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

The application of  
**The Port of Bellingham**  
For a Shoreline Substantial Development Permit

FINDINGS, CONCLUSIONS  
AND RECOMMENDATIONS  
SHR2010-00007

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I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The Port of Bellingham has submitted an application to mitigate off-site for wetland and associated buffer impacts resulting from the Bellingham International Airport Planned Unit Development (PUD2008-0001)/ Preliminary Binding Site Plan (BSP2008-00003). The mitigation is proposed for degraded wetlands associated with the Nooksack River and Tenant Creek in the Washington State Department of Fish and Wildlife Whatcom Wildlife Area.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Port of Bellingham  
Attn: Sylvia Goodwin, Planning and Development Director  
PO Box 1677  
Bellingham, WA 98227

Applicant Representative: same as applicant

Owner: Washington State Department of Fish and Wildlife  
Attn: Richard Kessler  
5975 Lake Terrell Road  
Ferndale, WA 98248

Property Location/Address: North of Slater Road, immediately east of the Nooksack River  
APNs: 390232478007 and 390232482295,

Legal Description: Section 32, Township 39N, Range 02E, W.M,

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Shoreline of State-Wide Significance: Yes

Zoning: Recreation and Open Space

Comprehensive Plan: Public Recreation

Subarea: Cherry Point Ferndale

## B. PROCEDURAL INFORMATION

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70.01	Administration
	SMP 23.70.03	Hearing Examiner

### Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
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SMP 23.90	General Policies and Regulations
SMP 23.100.12	Restoration and Enhancement

SEPA Review: Determination of Nonsignificance issued 7/15/10

## III. FINDINGS

The subject area consists of two parcels located immediately north of Slater Road and immediately east of the Nooksack River. The two parcels are 4.8 and 156 acres in size and both are owned by the Washington Department of Fish and Wildlife (WDFW). The 35.86 acre mitigation area is located on the Washington Department of Fish and Wildlife Whatcom Wildlife Area- Tennant Lake Unit. The site is flat and consists of degraded wetlands with a predominance of reed canary grass with small forested shrub areas. There are no structures on the site. The site contains a gravel parking lot, a walking path and utility easements. The property is designated as a Conservancy shoreline area pursuant to WCC Title 23, Whatcom County Shoreline Management Program (SMP), is zoned ROS (Recreation and Open Space) in accordance with Whatcom County Code, Title 20, and is designated Public Recreation in the Whatcom County Comprehensive Plan.

The applicant is requesting approval of a shoreline substantial development permit to create a 35.86 acre mitigation site for impacts resulting from the Bellingham International Airport redevelopment project. The mitigation consists of 27.24 acres of wetland enhancement in existing degraded wetland, 8.62 acres of wetland creation in the Nooksack floodplain and 1.21 acres of buffer enhancement.

The Nooksack River is a shoreline of the state and thus subject to the provisions of the SMP. According to the Official Shoreline Map as outlined in 23.30.02.A, the subject lot is located within the conservancy shoreline area. Pursuant to 23.30.02.B, exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the Nooksack River.

A shoreline substantial development permit is required for the proposed developments within SMP jurisdiction as the project does not fall within any of the listed exemptions from such permit review pursuant to 23.60.02.2.

Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest; and 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.

According to Section 23.100.12.C.7 restoration activities are permitted subject to the policies and regulations of the Shoreline Management Program.

In the granting of all substantial development permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of permitted actions 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.

#### 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.**
3. **For projects located on shorelines of statewide significance, the policies of Chapter 4 shall also be adhered to.**

General and use-specific policies and regulations associated with restoration and enhancement are found within Sections 23.90 and 23.100.12, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

##### **Land Use**

###### **23.90.02.A Policies**

- Shoreline uses that are water-dependent or water-related should be given preference. Such uses should be located, designed, and maintained in a manner that minimizes adverse impacts to shoreline ecological functions and /or processes.

###### **23.90.02.B Regulations**

- Restoration of ecological functions and processes shall be allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this Program.

##### **Staff comment:**

*The proposed mitigation restores the ecological function of a degraded wetland through removal of invasive species and enhancement with native species. The restoration will preserve the opportunity for water-related passive recreation.*

## **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.

### **23.90.03.B Regulations**

- 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.

#### **Staff Comment:**

*A SEPA determination of nonsignificance (DNS) was made on July 15, 2010 by the lead agency, The Port of Bellingham. No Environment Impact Statement was required for the project per RCW 43.21.C.030(2) c. The project meets all requirements of the Whatcom County Critical Areas Ordinance (WCC 16.16).*

## **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.
- 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 proposed project is consistent with the above water quality and quantity policies and regulations. The project is located within the floodplain; therefore, final permit approval will be subject to any requirements per the River and Flood Division of Whatcom County.*

#### Views and Aesthetics

##### **23.90.05.A Policies**

- Shoreline use and development activities should be designed and operated to minimize obstructions of the public's visual access to the water and shoreline.
- Shoreline use and development should not significantly detract from shoreline scenic and aesthetic qualities that are derived from natural or cultural features, such as shoreforms, vegetative cover and historic sites/structures.
- Clearing, thinning, and/or limbing for limited view corridors should only be allowed where it does not adversely impact ecological and/or aesthetic values, and/or slope stability. Vegetation conservation should be preferred over the creation or maintenance of views from property on the shorelines to protect shoreline ecological functions and aesthetics.

##### **23.90.05.B Regulations**

- Protection and/or enhancement of critical areas and their associated buffers shall be preferred over provisions for visual access, when the two are in conflict.

#### Staff comments:

*The proposal meets the policies and regulations noted above through the enhancement of degraded wetland and creation of wetlands.*

#### 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.
- 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 restoration and enhancement activities expand beyond the 150 ft buffer associated with the Nooksack River. The proposed project is consistent with the vegetation conservation policies and regulations.*

**Public Access**

**23.90.08.A Policies**

- Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.
- Nonwater-related uses or activities located on the shoreline should provide public access as a public benefit.
- 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.
- Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.
- 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**

- In the review of all shoreline substantial development, consideration of public access shall be required. When appropriate, provisions for adequate public access shall be incorporated in to such proposals.
- Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of SMP 23.90.08.A and this section:
  - i. Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.
- 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.
- Public access shall incorporate the following location and design criteria:
  - a. Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the waters edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to 5 feet in width to reduce impacts to ecologically sensitive resources.
  - b. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for handicapped and physically impaired persons where feasible.
  - c. Where views of the water or shoreline are available and physical access to the waters edge is not present or appropriate, a public viewing area shall be provided.
  - d. Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.
  - e. Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

#### Staff comment:

*While this project does not require public access, the public access trail that is currently available will be maintained. In the initial phases of installation of the project and in the first years of plant growth, public access to the wetland enhancement areas will be restricted (approximately three years). The trail will remain open except for during the construction of the project.*

### **23.100.12 Restoration and Enhancement**

#### **23.100.12.A Restoration – Policies**

- This Program recognizes the importance of restoration of shoreline ecological functions and processes and encourages cooperative restoration efforts and programs between local, state, and federal public agencies, tribes, non-profit organizations, and landowners to address shorelines with impaired ecological functions and/or processes.
- Restoration actions should restore shoreline ecological functions and processes as well as shoreline features and should be targeted towards meeting the needs of sensitive and/or locally important plant, fish and wildlife species as well as the biological recovery goals for early Chinook, bull trout populations, and other salmonid species and populations.

- Restoration should be integrated with other parallel natural resource management efforts such as the WRIA 1 Salmonid Recovery Plan and the WRIA 1 Watershed Management Plan.
- Priority should be given to restoration actions that:
  - Create dynamic and sustainable ecosystems.
  - Restore connectivity between stream/river channels, floodplains and hyporheic zones.
  - Restore natural channel-forming geomorphologic processes.
  - Mitigate peak flows and associated impacts caused by high stormwater runoff volume.
  - Reduce sediment input to streams and rivers and associated impacts.
  - Improve water quality.
  - Restore native vegetation and natural hydrologic functions of degraded and former wetlands.
  - Replant native vegetation in riparian areas to restore functions.
  - Restore nearshore ecosystem processes, such as sediment transport and delivery and tidal currents that create and sustain habitat.
  - Restore pocket estuaries that support salmon life histories, including feeding and growth, refuge, osmoregulation, and migration.
  - Address contamination along industrial shoreline regions.

#### **23.100.12.B Restoration – Regulations**

Restoration shall be carried out in accordance with an approved shoreline restoration plan County Resolution 2007-011 and in accordance with the policies and regulations of this Program.

##### Staff comments:

*This project is intended to restore and enhance the shoreline ecology of the Nooksack River. The project will improve various ecological functions, namely: stormwater attenuation, water quality improvement, and habitat enhancement. Functional lift will occur through interspersed habitats, vegetation structure and species richness and variation in hydroperiods that benefit various wildlife species of concern and provide uptake of various pathogens.*

#### **23.40.03 Policies for Shorelines of Statewide Significance**

- Redevelopment of shorelines should be encouraged where it restores or enhances shoreline ecological functions and processes impaired by prior development activities.
- Activities that use shoreline resources on a sustained yield or non-consuming basis and that are compatible with other appropriate uses should be given priority over uses not meeting these criteria.
- The range of options for shoreline use should be preserved to the maximum possible extent for succeeding generations. Development that consumes valuable, scarce or irreplaceable natural resources should not be permitted if alternative sites are available.
- Resources and ecological systems of shorelines of statewide significance should be protected. Shorelands and submerged lands should be protected to accommodate current and projected demand for economic resources of statewide importance such as commercial shellfish beds.
- Those limited shorelines containing unique, scarce and/or sensitive resources should be protected to the maximum extent feasible.
- Public and private developments should be encouraged to provide trails, viewpoints, water access points and shoreline related recreation opportunities whenever possible. Such development is recognized as a high priority use.

##### Staff comments:

*The proposal meets all of the above policies and regulations through preservation and enhancement of the natural shoreline system.*

## V. PUBLIC COMMENTS

No adverse public comment was received during the time of this permit review. Nor were comments received per the SEPA DNS comment period. One inquiry regarding duck hunting availability was made. The person was told that access to the duck hunting in that specific location would be restricted for up to three years, but the adjacent duck hunting areas would be accessible.

## VI. AGENCY COMMENTS

Engineering Division and River and Flood Division have submitted comments. The comments have been included as conditions (see below).

**\*\*All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.**

## VII. RECOMMENDATIONS

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

1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline substantial development permit. 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. In the event changes to the current access are proposed or another access on a county road is proposed, the applicant shall apply for a Revocable Encroachment permit.
3. A temporary erosion and sedimentation control (TESC) plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
4. Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
5. State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.
6. The following Whatcom County River and Flood Division conditions shall be met:
  1. The project shall be constructed according to the lines and grades shown on the submitted drawings.
  2. A 15-foot (minimum) buffer from the outside toe of the Nooksack River levee landward shall be left undisturbed of any land grading and/or planting.
  3. There shall be no loss of floodplain storage, any imported fill must be compensated for.
  4. All disturbed areas shall be planted, seeded and/or mulched.

Report prepared by:



Elke Daugherty  
Whatcom County Shoreline Administrator  
Whatcom County Planning and Development Services