

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT )	SHR2009-0007
SHORELINE CONDITIONAL USE )	SHC2008-0009
Application for )	
)	
<i>Washington State</i> )	FINDINGS OF FACT,
<i>Department of Transportation</i> )	CONCLUSIONS OF LAW,
)	AND DECISION

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit to relocate a portion of existing State Route (SR) 542 – Mt. Baker Highway away from the North Fork Nooksack River to reduce repetitive roadway maintenance caused by erosion during high flow events.

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: Mr. Alan Soicher, Seattle Office  
Washington State Department of Transportation

Applicant Representative: Mr. Kevin Stuber, Burlington Office  
Washington State Department of Transportation

Property Location/Address: State Route 542 – Mount Baker Highway  
Milepost 38.67 to 39.04

Legal Description: Section 36, Township 40N, Range 07E, W.M.

Adjacent Water Body: North Fork Nooksack River

Shoreline Designation: Conservancy

Shoreline of State-Wide Significance: No

Zoning: Not Applicable – National Forest

Comprehensive Plan: Not Applicable – National Forest

Subarea: Not Applicable – National Forest

Authorizing Ordinances: SMP 23.50                      Applicability  
SMP 23.70                      Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.09	Conservancy Shoreline Area Designation
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.15	Transportation Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on April 6, 2009 by Washington State Department of Transportation as lead agency.

Legal Notices: Published – October 8, 2009  
Posted – October 6, 2009  
Mailed – October 1, 2009

Hearing Date: October 21, 2009

Parties of Record:

Mr. Alan Soicher  
Washington State Department of Transportation  
PO Box 330310  
Seattle, Washington 98133-9710

Mr. Kevin Stuber  
Washington State Department of Transportation  
1043 Goldenrod Road, Suite 101  
Burlington, Washington 98233-3415

Chad Yunge  
Planning and Development Services

Exhibits:

- 1 Land Use Application with attachments
  - 1-1 Supplemental Application
  - 1-2 Letter of Application, dated July 9, 2009 from DOT
  - 1-3 Letter of Complete Application, dated July 13, 2009, from PDS
  - 1-4 Notice of Application, form
  - 1-5 Letter dated July 13, 2009, Property Owner Comment Form
  - 1-6 Certificate of Mailing, unsigned and not dated, form only
  - 1-7 Copy of stamped envelope – no date
- 2 Staff Report, dated October 5, 2009 with Email correspondence attached from Kevin Stuber to Chad Yunge, dated October 6, 2009, re: Roadway Realignment and Fish Passage
- 3 DNS, dated April 6, 2009, Lead Agency: Washington State DOT
- 4 Wetland and Stream Assessment Report, October 2008
- 5 Draft Wetland and Stream Mitigation Report, June 2009
- 6 Site Plans
- 7 2009 WA State JARPA Application
- 8 Certificate of Mailing, dated October 1, 2009
- 9 Certificate of Posting, dated October 6, 2009
- 10 Legal Notice, dated October 8, 2009

**II.**

The Washington State Department of Transportation is proposing to relocate a portion of the existing State Route (SR) 542, Mt. Baker Highway, away from the North Fork of the Nooksack River to reduce repetitive roadway maintenance caused by erosion during high flow events. This proposal requires a Shoreline Substantial Development Permit, review and recommendation by Whatcom County Planning and Development Services, and a public hearing and Decision by Whatcom County Hearing Examiner.

**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 October 5, 2009, a copy of which is attached hereto, are adopted and incorporated herein by this reference.

**IV.**

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

**CONCLUSIONS OF LAW**

**I.**

The Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Substantial Development Permit for the proposed relocation of a portion of State Route 542 away from the North Fork of the Nooksack River.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated October 5, 2009. 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 Washington State Department of Transportation to relocate a portion of the existing State Route 542 away from the North Fork of the Nooksack River, [Mt. Baker Highway] between Milepost 38.67 to 29.04, approximately six miles east of the town of Glacier, Whatcom County, Washington. The permit is granted subject to the following conditions:

1. The proposed shoreline development shall be consistent with the scope and site plans 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. The Applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to starting any development activity.
3. The Applicant shall contact the United States Army Corps of Engineers (ACOE) to obtain any Federal approvals as required by the ACOE. Copies of issued Federal permits shall be provided to the Shoreline Administrator prior to any development activity.
4. The Applicant shall notify the Whatcom County Shoreline Administrator at least forty-eight (48) hours prior to starting work.
5. 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.
6. A final Wetland and Stream Mitigation Report shall be submitted to Whatcom County Planning and Development Services prior to starting work. Mitigation associated with the project shall be consistent with the approved plan including submittal of a final as-built drawing as well as monitoring and maintenance provisions within the approved plan.
7. A Temporary Erosion and Sedimentation Control (TESC) Plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
8. Work shall occur within the dry season when precipitation and in-stream flows are low.
9. 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 business days of the date of the 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.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. 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 21<sup>st</sup> day of October 2009.

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Michael Bobbink, Hearing Examiner



October 05, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

The application of  
**Washington State Department of Transportation**  
For a Shoreline Substantial Development Permit

FINDINGS, CONCLUSIONS  
AND RECOMMENDATIONS  
SHR2009-00007

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I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit to relocate a portion of existing State Route (SR) 542 – Mt. Baker Highway away from the North Fork Nooksack River to reduce repetitive roadway maintenance caused by erosion during high flow events.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mr. Alan Soicher  
Washington State Department of Transportation  
PO Box 330310  
Seattle, Washington 98133-9710

Applicant Representative Mr. Kevin Stuber  
Washington State Department of Transportation  
1043 Goldenrod Road, Suite 101  
Burlington, Washington 98233-3415

Property Location/Address: State Route 542 – Mount Baker Highway  
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Zoning: Not Applicable – National Forest

Comprehensive Plan: Not Applicable – National Forest

Subarea: Not Applicable – National Forest

## B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

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SEPA Review: Determination of Non-Significance (DNS) issued on April 6, 2009 by Washington State Department of Transportation as lead agency.

## III. FINDINGS

The applicant is requesting approval of a shoreline substantial development permit to realign a portion of SR 542 – Mt. Baker Highway away from the North Fork Nooksack River. The purpose of the project is to reduce environmental impacts from repetitive roadway maintenance and to improve fish passage by replacement of a culvert spanning Chain-Up Creek. The project involves realignment of approximately two thousand (2,000) linear feet of roadway between milepost 38.67 and 39.04. An existing five (5) foot diameter by eighty (80) foot long culvert crossing Chain-Up Creek will be replaced with a bridge approximately thirty (30) feet long by forty (40) feet wide to restore the stream channel and allow for fish passage.

Work includes traffic control with a single lane of traffic during construction, temporary best management practices (BMPs) for sediment and erosion control, staging areas for equipment and storage of materials, clearing and grubbing, excavation and filling, replacing all cross culverts, constructing the roadway in its new location with modifications at the intersection of East Church Mountain Road and SR 542, construction of the new bridge, installing a stream bypass for removal of the Chain-Up Creek Culvert, restoring the Chain-Up Creek stream channel, removing the old roadway and restoring the area with native vegetation, providing compensatory mitigation on and off-site for unavoidable wetlands, wetland buffer and stream buffer impacts.

This section of SR 542 is one of five locations identified as a Chronic Environmental Deficiency (CED) due to a history of on-going repairs of the roadway embankment as a result of scour damage by the North Fork Nooksack River. The toe of the bluff that supports the highway at this location is susceptible to erosion caused by high flow events of the river. In 2005, a portion of the roadway failed resulting in emergency actions that realigned approximately three hundred fifty (350) linear feet of the roadway away from the river.

According to the applicant, the relocation of the roadway away from the river will avoid environmental degradation due to sedimentation resulting from repeated roadway failures and avoids placement of hardened armoring within the river itself. The project should therefore provide long term benefits to sensitive fish species such as bull trout, Chinook salmon, steelhead, coho and pink salmon. In addition, restoring fish passage to Chain-Up Creek will provide access to approximately one thousand (1,000) linear feet of potential spawning/rearing habitat for fish who utilize the system.

The proposed project is located within the WSDOT right-of-way between mileposts 38.67 and 39.04 of SR 542 approximately six (6) miles east of the town of Glacier. Surrounding areas consist of federally-owned

forest lands. With exception of the existing developed roadway, the area is heavily forested with a mixture of western hemlock, Douglas fir, western red cedar, grand fir, red alder, big leaf maple and black cottonwood. Understory vegetation consists of vine maple, salmonberry, thimbleberry, red huckleberry etc.

The proposed project will involve approximately thirty seven thousand (37,000) cubic yards of excavation consisting of gravel barrow, base and top course crushed gravels and asphalt from the existing roadway and natural rock and soil from cut areas to facilitate the new roadway alignment. Approximately six thousand for hundred (6,400) cubic yards of fill will be imported to construct the new roadway consisting of gravel barrow, base and top course crushed gravels and asphalt. All excavated materials will be disposed of at an approved WSDOT site.

Three wetlands have been identified and delineated within the project area by a WSDOT wetland biologist. All three wetlands are Category III, depressional and slope wetlands that provide moderate hydrologic functions, moderate to high water quality functions, and moderate to high habitat functions. WSDOT has avoided and minimized impacts to wetlands, streams and their associated buffers to the maximum extent practicable and has provided compensatory mitigation plans associated with such impacts.

The area of the proposed roadway work is located within a conservancy shoreline area. According to Section 23.100.15.C.7, transportation facilities are permitted only for access to approved development, subject to policies and regulations of the SMP. As this is a replacement of existing transportation infrastructure, it has been determined by this administrator to be consistent with the above regulation. Pursuant to 23.60.01.A, a Shoreline Substantial Development Permit is required for the above proposal as the activity or development is not specifically exempt per 23.60.02.2.

#### 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, impacts to wetlands, streams and their associated buffers were avoided and minimized to the maximum extent practicable. Total avoidance was not possible due to constraints associated with safety and design guidelines, and the overall project goal of reducing recurring environmental impacts to the North Fork Nooksack River. The alternative to the proposed plan was to leave the roadway in its current location and construct some sort of shore defense work to abate the on-going erosion. The proposed alternative was selected based on its long term benefits of restoring natural stream channel habitat.

Impacts to wetlands, stream and buffers were further minimized through site-specific design techniques including steepening side slopes, keeping the profile as close to the existing grade to reduce the reach of necessary excavation and fill activities, installing guardrail, and treating stormwater via media filters and continuous inflow bioswales rather than excavating wetland areas for stormwater treatment.

A mitigation plan was submitted as part of this permit application to compensate for all unavoidable impacts to wetlands, streams and associated buffers. The plan has been reviewed and determined to be consistent with WCC 16.16 through the SMP.

The approved mitigation plan along with the resultant increase in restored buffer and stream channel habitat represents an overall gain in ecological functions and processes within the project area.

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 proposed project is consistent with the above water quality and quantity policies and regulations. WSDOT prepared Hydraulic Analysis for Flow Control and Runoff Exemptions dated June 3, 2009 per the 2008 Highway Runoff Manual. According to the applicant, the proposed stormwater system selected as a result of the above-referenced analysis has been approved by Mr. Bobb Nolan of the Washington State Department of Ecology (DOE).

WSDOT typically prepares a temporary erosion and sedimentation control (TESC) plan during completion of contract documents. This approval recommendation has been conditioned that a copy of the TESC plan be submitted to Whatcom County Planning and Development Services (WCPDS) prior to starting work.

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 scope of work. A mitigation plan has been developed that compensates for impacts to buffer vegetation. Long term, the proposed project represents an overall increase in buffer vegetation immediately adjacent to the North Fork Nooksack River.

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. As stated above, landfill within wetlands is allowed if associated with expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible. SR 542 is considered a transportation facility of statewide significance. The applicant has designed to project to represent the minimum necessary construct the scope of work.

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:

The proposed project is consistent with the above transportation policies. The realigned roadway section will be located further from the shoreline than the existing roadway and has been relocated as far away from the shoreline as practicable. There will be no change in transportation routes or capacity as a result of the proposed project. Surrounding lands are owned by the U.S. Forest Service and are primarily utilized by the public for passive recreation. With exception of short term impacts during construction, the proposed project does not represent an impact on existing public access and as such, no formal public access is required pursuant to the SMP.

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 location of the proposed realigned roadway segment has been designed to minimize necessary excavation to the hillside and fill quantities have been limited as much as feasible. The proposed design will blend in with adjacent roadway segments. The proposed bridge crossing over Chain-Up Creek has been designed in accordance with input from the Washington State Department of Fish and Wildlife. This approval recommendation has been conditioned to disallow treated materials on portions of the proposed development in contact with waterbodies including wetlands. In addition, a condition that the proposed work is completed during periods of dry weather and low in-stream flows.

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

Staff Comment:

As stated previously within this approval recommendation, upon completion of the proposed project and required mitigating measures, the result should result in a net gain in ecological functions and processes. As such, approval of additional projects for like actions would not likely represent a cumulative adverse impact to such ecological functions and processes..

V. PUBLIC COMMENTS

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

VI. AGENCY COMMENTS

On August 17, 2009, WCPDS received a letter from Mr. Steve Bell of the Washington State Department of Fish and Wildlife (WDFW). The letter outlines concerns regarding information provided within the application materials as well as design concerns with the stream crossing and the proposed elevation of the realigned roadway. According to the applicant, WSDOT is continuing to work with WDFW to resolve the issues raised within the letter through the review of the Hydraulics Project Approval (HPA) pending with WDFW. As the HPA is a recommended condition of approval of this shoreline permit, issuance of the HPA will represent final resolve of the issues outlined within the above-referenced letter.

## 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 plans 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. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to starting any development activity.
3. The applicant shall contact the United States Army Corps of Engineers (ACOE) to obtain any federal approvals as required by the ACOE. Copies of issued Federal permits shall be provided to the Shoreline Administrator prior to any development activity.
4. The applicant shall notify the Whatcom County Shoreline Administrator at least forty-eight (48) hours prior to starting work.
5. 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.
6. A final Wetland and Stream Mitigation Report shall be submitted to Whatcom County Planning and Development Services prior to starting work. Mitigation associated with the project shall be consistent with the approved plan including submittal of a final as-built drawing as well as monitoring and maintenance provisions within the approved plan.
7. A temporary erosion and sedimentation control (TESC) plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
8. Work shall occur within the dry season when precipitation and in-stream flows are low.
9. 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