

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

FINDINGS, CONCLUSIONS AND DECISION

Applicant: Washington State Department of Transportation
P. O. Box 330310
Seattle, WA 98133-9710, MS 138

File No: PL01-0361

Request: Shoreline Substantial Development and Variance
Permit

Location: North side of the Skagit River one mile east of the Town
of Concrete, within a portion of Sec. 11, T35N, R8E, W.M.

Shoreline Designation: Rural

Summary of Proposal: To permanently authorize the rebuilding of a section of
State Route 20 that was repaired on a emergency basis after
being damaged by a mudslide. The project involved the
construction of an elevated “t” bridge, a soldier pile wall, a
gabion basket wall, catch-basins, guard rails, and concrete
barriers.

Public Hearing: After reviewing the report of Planning and Development
Services, the Hearing Examiner conducted a public hearing
on July 27, 2005.

Decision: The application is approved, subject to conditions.

FINDINGS OF FACT

1. The Washington State Department of Transportation (WSDOT) seeks a Substantial Development and Variance Permit to authorize development undertaken pursuant to three emergency exemptions. The exemptions were issued subject to a requirement that a permit application would eventually be submitted.

2. The site is a portion of State Highway 20 located on the north side of the Skagit River about one mile east of the town of Concrete, within a portion of Sec. 11, T35N, R8E, W.M.

3. In December 1999, the highway section was damaged by a large mudslide in that closed the road. The selected repair involved elevating the road via a bridge so that it would be above future slides. The Biological Assessment for the project calls this the “SR 20 Debris Flow Structure.”

4. Geological analysis revealed that more than 50 times the amount of the original slide still sits up the slope in an unpredictable and unstable condition. The project allows future mudslides and associated large woody debris to flow beneath the bridge and into the river

5. The bridge was constructed over a 12.2 meter wide channel and the roadway profile was raised as much as 1.7 meters in some locations. A retaining wall using a combination of soldier piles and gabion baskets was constructed on top of the existing pavement to facilitate the higher roadway profile. The finished roadway has been paved and pre-existing curbing was replaced as needed. Some catch basins required adjustment or were replaced. Safety features, such as guard rails, concrete barriers and striping were also included.

6. In connection with the construction, WSDOT issued a Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) on November 29, 2000. The DNS was not appealed.

7. The project restores the original environmental baseline in place before the construction of SR 20. Nevertheless, the Biological Assessment in April 2000 determined that the project, then already built, is likely to adversely affect threatened Chinook and bull trout. The following recommendations were made:

- a. Erosion control standards should be strictly followed in order to prevent construction-related sediments from entering the Skagit River.

- b. No construction may take place between November 1 and April 1 in order to avoid disturbance of the overwintering eagle population.
- c. Coordination of construction activities with the Washington State Department of Fish and Wildlife to minimize impacts to streams and Fisheries resources.
- d. Participation in the Little Baker River restoration project to mitigate for the direct take of Chinook reds and juveniles. (This habitat restoration project will directly benefit Chinook juveniles most impacted by the SR 20 mud and slide repair.)
- e. To help preserve salmon habitat, all rip rap in the project area should be modified with bioengineering techniques. This includes choking rip rap with soil and then installing live stakes, poles, and other living vegetation as appropriate.

8. The National Oceanic and Atmospheric Administration (NOAA) reviewed the assessment and, ultimately in September of 2003, issued a Biological Opinion. The Opinion concluded that implementation of the project is not likely to jeopardize the continued existence of Puget Sound Chinook salmon. The purchase of a conservation easement on White Creek, a Skagit Tributary, was considered appropriate mitigation for the habitat degradation predicted. The easement was deeded to WSDOT in November of 2004

9. The construction involved is within the jurisdictional boundary of the Shoreline Management Act. The local Shoreline Master Program (SMP) establishes a setback for highways of 200 feet from the Ordinary High Water Mark (OHWM). The project approaches within about 55 feet of the OHWM. Accordingly both a Substantial Development Permit and a Shoreline Variance are needed under the Act to authorize the project.

10. The project will meet the regulatory requirements of the SMP if it is consistent with the applicable variance criteria. Variances for construction landward of the OHWM must meet the following criteria (SMP 10.03(1)):

- a. The strict application of the bulk dimensional or performance standards set forth in this Master Program precludes or significantly interferes with with a reasonable use of the property not otherwise prohibited by this Master Program.
- b. The hardship described above is specifically related to the property and is the result of unique conditions such are irregular lot shape, size or natural features and the application of this Master Program and, not, for for example, from deed restrictions or the applicant's own actions.

- c. That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to the adjacent properties or the shoreline environment designation.
- d. The variance granted does not constitute a grant of special privilege not enjoyed by the other properties in the same area and will be the minimum necessary to afford relief.
- e. The public interest will suffer no substantial detrimental effect.

In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area.

11. The project puts the highway back in its original footprint. The location before the slide was within the SMP's setback. The surrounding terrain and present location of the rest of SR 20 precludes any other viable placement of the bridge. By accommodating future mud and associated debris flows, the project advances highway safety and serves the public interest.

12. In analyzing this situation both the applicant and the County concluded that the variance criteria are met. The Hearing Examiner concurs in this analysis and adopts the same. The Staff Report is by this reference incorporated herein as though fully set forth.

13. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. The requirements of SEPA have been met.

3. The project as conditioned below is consistent with the criteria for approval of a Substantial Development Permit and the criteria for approval of Shoreline Variance. SMP 9.02(1), SMP 10.03(1).

4. Any finding herein which may be deemed conclusion is hereby adopted as such.

CONDITIONS

1. The project shall be maintained consistent with the recommendations of the Biological Assessment, dated April 2000.
2. The applicant shall comply with all conditions of the Geologic Assessment and Findings issued on March 29, 2000.
3. Any significant alteration of the project shall be submitted to Planning and Development Services for review and approval.
4. Failure to comply with any condition of this permit may result in its revocation.

DECISION

The requested Shoreline Substantial Development and Variance Permit is approved, subject to the conditions set forth above.



Wick Dufford, Hearing Examiner

Date of Action: August 23, 2005

Date Transmitted to Applicant: August 23, 2005

RECONSIDERATION/APPEAL

As provided in the Skagit County Shoreline Master Program, Section 13.01, a request for reconsideration may be filed with Planning and Development Services within five (5) days after the date of this decision. The decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with Planning and Development Services within five (5) days after the date of decision or decision on reconsideration, if applicable.

DEPARTMENT OF ECOLOGY REVIEW

If approval of a Shoreline Variance or Shoreline Conditional Use becomes final at the County level, the Department of Ecology must approve or disapprove it, pursuant to RCW 90.58.140.