



200205230079

Skagit County Auditor

5/23/2002 Page 1 of 20 11:26AM

AFTER RECORDING RETURN TO:  
SKAGIT COUNTY HEARING EXAMINER  
302 SOUTH FIRST STREET  
MOUNT VERNON, WA 98273

DOCUMENT TITLE: Order on Shoreline Substantial Development Permit  
PL 01 0560

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPLICANT: MVA, Inc.  
Attn: George Thurtle

ASSESSOR PARCEL NO: P24744

ABBREVIATED LEGAL DESCRIPTION: proposed project is located just north of SR 538, south of Nookachamps Creek and west of the intersection of SR 538 and SR 9; within Section 14, Township 34 North, Range 4 East, W.M., Skagit County, Washington.

## HEARING EXAMINER for SKAGIT COUNTY

In the Matter of a Shoreline	)	
Substantial Development Permit	)	PL 01-0560
Application by MVA, Inc.	)	FINDINGS OF FACT, CONCLUSIONS
(George Thurtle, President)	)	OF LAW and DECISION
	)	

This matter is a shoreline permit application for a drainage pipe and discharge facility for flows from the already-permitted Skagit Highland PUD. Discharge would be into an unnamed stream tributary to Nookachamps Creek, which in turn is tributary to the Skagit River.

The public hearing before Hearing Examiner Pro Tem Judith Bendor was held on April 3, 2002, at 9:00 am in the Skagit County Administrative Building in Mt. Vernon, and continued on the Record to May 1, 2002 (same time and location). Representation was:

Applicant MVA, Inc. (George Thurtle President): Attorney Charles Wolfe  
Skagit County: Daniel Downs, Shoreline Administrator and Dan Cox, Associate Planner  
Clear Valley LLC (Loren and Arlene Korthuis): Attorney C. Thomas Moser (4/3),  
L. Korthuis (5/1).


After contesting the application, Clear Valley settled its disputes with the Applicant and the County on the second hearing day, May 1, 2002, (see Ex. 67 at Attachment 2).

The **Record** consists of witness testimony and exhibits that were admitted. The proceedings were audio recorded. Oral and written argument was made. The **witnesses**, who were sworn/affirmed, were:

Daniel Down, for Skagit County, shoreline planner.  
Carl Hadley, for Applicant, fisheries biologist.  
Robert A. Montgomery, for Applicant, engineer with Montgomery Water Group.  
Loren Korthuis, co-owner of Clear Valley LLC, downstream property owner.  
Fred Buckenmeyer, City of Mt. Vernon, engineer.  
David Hough, for Clear Valley, consultant.  
George Thurtle, for Applicant, President of MVA, Inc.)

The **exhibits** are listed at **Attachment 1**, from numbers 0 to number 72. For convenience, some written materials which are not evidence were given exhibit numbers to aid in their tracking. In a few instances exhibits were not subsequently offered/admitted though exhibit numbers had been reserved. There was one offer of proof. Due to the extensiveness of the record, in response to the Examiner's oral order, parties filed written references to the Record. The County submitted a staff report with exhibit references, see Ex. 56).

Having reviewed the Record, the Examiner now issues these:

  
200205230079  
Skagit County Auditor  
5/23/2002 Page 2 of 20 11:26AM

## Findings of Fact

1. On September 18, 2001, MVA, Inc. applied for a Shoreline Substantial Development Permit to install on a hill, and operate a drainage system to serve the Skagit Highlands PUD, which had already received a permit. Discharge would be into an unnamed stream tributary to Nookachamps Creek, which enters the Skagit River. The Highlands PUD had extensive review, including an EIS and Addendum. Stormwaters from 140 acres of the PUD would first drain into two sedimentation retention basins. The PUD stormwater discharge would be no greater than existing flows prior to development.
2. The discharge system would consist of: 300 feet of buried 24 inch plastic pipe on the hillside, a 9 foot by 12 foot by 3 foot brick and gabion outfall structure (also known as energy dissipater), a riprapped outfall apron, and 3 log weirs (20 feet long each) in the stream. The project would cost more than \$2,500, and would be located within 200 feet of Nookachamps Creek. Only the energy dissipater and the weirs would be located in the stream's 100-year floodplain.
3. There had been extensive noticing of the Highlands PUD SEPA process, including notice to the Swinomish Tribe (see Ex. 27-38), property owners within 300 feet, etc. The City of Mt Vernon was the lead agency for the PUD SEPA process. The County has used these SEPA documents for this shoreline substantial development (sdp) application.
4. The City deemed this sdp application Complete on November 15, 2001. Notice was by publication in the Skagit Valley Herald on November 15 and November 22, 2001.
5. A Hydraulics Permit Approval (HPA) was obtained in February 2002, and revised for time of implementation, see Ex. 57 at Attachment 3 here. The HPA has many conditions, including:
  - Installation will only use handtools.
  - No trees will be removed, and only that vegetation necessary for install could be removed.
  - Erosion control measures will be used during construction "to prevent silt-laden water from entering the stream." (HPA No. 4) After construction completion, the area will be replanted with native seed and straw-mulched.
  - Construction wastewater will be routed above the ordinary high water mark to allow fine sediments and other materials to settle out prior to the waters being discharged to the creek. No petroleum products, etc. will be allowed to enter the stream.
  - Construction waste material will be deposited in an approved site above the flood water limits.



- Open passage for fish is to be maintained by the owner.
6. The City in recommending approval of the application has also required measures primarily at the construction phase, to lessen potential adverse impacts, Attachment 5 here.
  7. The design of this drainage system is required to be approved by local government. Under the May 1 settlement, a professional engineer will review the construction and provide certification to the County that the system was constructed according to the approved design (Ex 67; Attachment 3). Under a professional engineer's direction, the owner is required to maintain and monitor this discharge project to ensure its functioning according to the approved design (Id.).
  8. The Korthuis, Clear Valley LLC, have a 700+ acre farm downstream of this discharge. They raise dairy cows, growing crops to feed them. The Korthuis have adapted their farming practices to winter flooding, But later spring flooding, if it were to occur, can harm the planted seeds. The Korthuis were initially concerned that the proposal would increase this later flooding. With the added conditions (Attachment 3), they view their concerns to have been addressed.

Note: hereafter references to the project or proposal include the conditions.

9. The Examiner finds that the proposal would not adversely impact downstream farm lands.
10. There are bull trout throughout the Skagit River system, native char in the West fork of Nookachamps Creek, chinook salmon in the Skagit River, with fall chinook spawning in the Creek in small numbers. The project would be in a Skagit County Fish and Wildlife Habitat Conservation Area buffer.
11. The Examiner finds that the proposal would not adversely impact water quality or fish, nor increase flooding.
12. The proposal would not otherwise harm the environment.
13. Any Statement, Note, or Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such. From these Findings the following are adopted:



200205230079

Skagit County Auditor

5/23/2002 Page 4 of 20 11:26AM

### Conclusions of Law

1. This proposal is governed by the Skagit County Shoreline Management Master Program (SCSMMP), adopted pursuant to the Washington State Shoreline Management Act. A substantial development permit is required.
2. The proposal is within the County's Shoreline designation of Rural Nookachamps Creek is not a shoreline of state wide significance.
3. Under SCSMMP 9.06, the Hearing Examiner is to decide shoreline permit applications.
4. Noticing of this Application, when considered in conjunction with the noticing for the Highlands PUD, complied with the SCSMMP 9.04. The Examiner has jurisdiction to consider this application.
5. Utility development in the shoreline is permitted in the Rural designation subject to SCSMMP 7.18 General and Tabular regulations. The proposal complies.
6. SCSMMP Chapter 6.3 outlines the Rural designation objectives, criteria and management policies. Protecting farmland is a key part of this section. The proposal complies.
7. The proposal otherwise complies with the Master Program.
8. Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. From the foregoing the following is issued:

### DECISION

The proposal as conditioned by the City, in the May 1, 2002 settlement, and in the HPA, is hereby **APPROVED**.

DONE this 23rd day of May 2002.

*Judith A. Bendor*

Judith A. Bendor  
Hearing Examiner Pro Tem

#### Attachments:

1. Exhibit List
2. Hydraulic Permit Approval revised (Ex. 57) (in part)
3. Settlement Conditions (Ex. 67)
4. Staff Report Conditions (Ex. 1A, p.6)
5. Cedarock Report, March 6, 2002 (Ex. 23)



200205230079  
Skagit County Auditor  
5/23/2002 Page 5 of 20 11:26AM

MVA EXHIBIT LIST

Hearing Date: 4/3/02 and 5/1/02

Shoreline Substantial Development SL 02 0560

ATTACHMENT 1

0. Memo 3/26/02 Wick Dufford
- 1A. Staff Report Version 3 – Skagit County Planning & Permit Center
- 1B. Shoreline application materials including Schopf Drainage Plan aka Ex #43
- 2A. Strawberry Hill Stormwater Tech – Montgomery Water Group
- 2B. Strawberry Hill Preliminary Storm Drainage Report – Triad Assoc.
- 2C. Strawberry Hill EIS Stormwater Tech Report/Addendum – Montgomery Water
- 2D. Strawberry Hill EIS Stormwater Rech Report/Addendum #2 – Montgomery Water Group
3. January 1997, Strawberry Hill Planned Unit Development, Draft Environmental Impact Statement prepared for the City of Mount Vernon.
4. July 24, 1998 Strawberry Hill Final Environmental Impact Statement prepared for the City of Mount Vernon.
5. November 8, 2000 Skagit Highlands Preliminary Drainage Design prepared by Montgomery Water Group Inc.
6. January 29, 2001 Skagit Highlands SEPA Compliance Document.
7. July 27, 2001 Storm drainage release easement.
8. January 29, 2002 Addendum to Environmental Impact Statement issued by the City of Mount Vernon.
9. July 11, 2001 Wetland Delineation and Stream Identification Survey, Skagit Highlands Off-site Stormwater Outfall prepared by Associated Earth Sciences Inc.
10. July 27, 2001 Skagit Highlands Water Quality Evaluation prepared by A. C Kindig & Co.
11. September 12, 2001 Biological Evaluation – Skagit Highlands prepared by Associate Earth Sciences Inc.
12. September 17, 2001 memorandum from Scott Stoneman from Montgomery Water Group Inc to Pat Gastineau of Subdivision Management Inc discussing the County Flood Damage Prevention Ordinance 14.34.
13. October 24, 2001 Letter from Pat Gastineau of Subdivision Management Inc. to Daniel Downs of Skagit County.
14. November 15, 2001 Letter of Completeness.
15. November 15 & 22, 2001 Notice of Development.
16. December 10, 2001 letter from Jim Haehn engineer from the City of Mount Vernon.
17. January 8, 2002 Technical Team memorandum from Dan Cox of Skagit County.
18. January 15, 2002 e-mail from Keith Elefson of Skagit County Public Works.
19. January 23, 2002 facsimile from Gloria Rivera of the City of Mount Vernon to Daniel Downs of Skagit County.
20. January 31, 2002 E-mail commenting on the proposal from Bill Dowe, Skagit County Building Official.



200205230079

Skagit County Auditor

21. February 7, 2002 approved Hydraulic Project Approval from the Washington State Department of Fish & Wildlife.
22. February 13, 2002 letter from Gloria Rivera of the City of Mount Vernon to Daniel Downs of Skagit County. (annotated CRW)
23. March 6, 2002 Conservation Measures for the Nookachamps Stormwater Discharge pipe prepared by Cedarock Consultants, Inc.
24. March 19, 2002 letter from C. Thomas Moser to Charles Wolfe.
25. March 27, 2002 MVA's response packet/recommended exhibits to the March 19, 2002 letter submitted by Clear Valley LLC.
26. Stream Geomorphology Analysis by AESI 9-21-00
27. City Notice of Application (NOA) - Master Plan 1-12-01
28. Affidavit of Publication for NOA 1-12-01
29. Affidavit of 500-foot Radius Mailing for NOA 1-11-01
30. Affidavit of Mailing for FEIS Distribution List 1-11-01
31. Affidavit of Posting for NOA 1-12-01
32. Affidavit of Mailing Addendum to FEIS Distribution List 1-26-01
33. Affidavit of Addendum Posting 1-30-01
34. Affidavit of Addendum Publication 1-29-01
35. Notice of Public Hearing - Master Plan 2-19-01
36. Affidavit of Publication for Hearing RE: Master Plan App 2-19-01
37. Affidavit of 500-foot Radius Mailing for Hearing RE: Master Plan App 2-16-01
38. Affidavit of Posting for Hearing RE: Master Plan App 2-19-01
39. Notice of Decision - Master Plan 6-05-01
40. Letter to Daniel Downs from Patrick Gastineau 9-17-01
41. Shoreline Permit Application with Compliance Narrative and Project Narrative 9-17-01
42. Revised Project Narrative 11-15-01
43. Applicant Plan Sheet (4) 1-10-02
44. Aerial/Site Photos prepared by Carl Hadley 1-6-01 and 8-3-01
45. Revised Compliance Narrative and Project Narrative 3-27-02
46. Memorandum to Daniel Downs from Robert Montgomery - Additional analysis regarding affect of utility development on agricultural land 3-27-02
47. Consultant Resume - Robert Montgomery, Montgomery Water Group, Inc.
48. Consultant Resume - Carl Hadley, Cedarock Consultants
49. Consultant Resume - Greg Krabbe, P.E., TRIAD Associates
50. Consultant Resume - Curtis Koger, Associated Earth Sciences, Inc. (AESI)
51. Consultant Resume - Andy Kindig, Ph.D., A. C. Kindig & Co.
52. Aerial Photo - Nookachamps/Clear Valley - 8/87
53. None Offered
54. None Offered
55. Aerial Photo of Nookachamps area showing approximately 100 year floodplain and Clear Valley property boundary.
56. Staff Report annotated, showing exhibit numbers.
57. Hydraulic Project Approval (HPA; revised) 3/29/02
58. David Hough Letter to Hearing Examiner 4/2/02
59. Basin Drainage Map, color, annotated



200205230079

Skagit County Auditor

5/23/2002 Page 7 of 20 11:26AM

60. MV. Inc, references to the Record
61. City of Mount Vernon Master Plan Approval Resolution NO. 574 (background information)
62. City of Mount Vernon Master plan Drainage Conditions (Portion of Res No. 574, Exhibit D – previously submitted with shoreline permit application, but not listed in exhibits entered to date).
63. Annotated Applicant Compliance Narrative (annotated to include comprehensive exhibit references)
64. Montgomery Water Group memo dated April 23, 2002 (regarding drainage)
65. Buckenmeyer memo, 4/23/02.
66. Clear Valley Recommended Conditions, 5/1/02.
67. Conditions--agreed-upon at hearing.
68. Stormwater Discharge Alternatives (photo with text)
69. None offered
70. Moser memo re appearance, 4/30/02.
71. Moser letter referencing the record to evidence, rec'd 4/18/02
72. David C. Hough Resume



200205230079

Skagit County Auditor

5/23/2002 Page 8 of 20 11:26AM



# **HYDRAULIC PROJECT APPROVAL** **RCW 77.55.100 - appeal pursuant to Chapter 34.05 RCW**

State of Washington  
 Department of Fish and Wildlife  
 La Cramer District Office  
 PO Box 1100  
 La Cramer, Washington 98257

**DATE:** March 29, 2002

**LOG NUMBER:** 00-F0741-02

Ex 57

I, Nelson, on February 20, 2002, this Hydraulic Project Approval (HPA), which now supersedes all project, is a time extension and change of the original HPA issued February 7, 2002.

PERMITTEE	AUTHORIZED AGENT OR CONTRACTOR
Hurtle, Managing Partner	Subdivision Management, Inc. ATTENTION: Patrick S. Gasineau, President 16031 119th Place NE Kirkland, WA 98011 (425) 488-1111 Fax: (425) 488-2162

**LOCATION:** Install Stormwater Pipeline and Outfall Structure

**LOCATION:** Unnamed Tributary to West Fork Nookachamps Creek, north of SR-538, west of SR-538 & SR-9 Junction, Skagit County

BODY	TRIBUTARY TO	1/4 SEC.	SEC.	TOWNSHIP	RANGE	COUNTY
Tributary	West Fork Nookachamps Creek	SW	14	34 North	04 East	Skagit

Hydraulic Project Approval (HPA) pertains only to the provisions of the Washington State Fisheries and Wildlife Code. It is the permittee's responsibility to apply for and obtain any additional authorization from other agencies (local, state and/or federal) that may be necessary for this project.

This is one of two HPA's issued for the project known as the Skagit Highlands (formerly known as Hill Planned Unit Development).

## **PROVISIONS**

**TERMS:** The project may begin June 15, 2002 and shall be completed by August 15, 2002.

**NOTICE REQUIREMENT:** The permittee or contractor shall notify the Area Habitat Biologist (AHB) listed on the project start date. Notification shall be received by the AHB at least three working days prior to the start of activities. The notification shall include the permittee's name, project location, starting date for work, and phone number for this Hydraulic Project Approval.

The project shall be accomplished per plans and specifications entitled, JARPA, dated October 23, 2001, and Schopf, dated January 10, 2002, and submitted to the Washington Department of Fish and Wildlife, except as modified by this Hydraulic Project Approval. These plans reflect design criteria per Chapter 220-110 WAC. These plans require mitigation procedures to significantly reduce or eliminate impacts to fish resources. A copy of these plans shall be on site during construction.

Attachment 2



200205230079

Skagit County Auditor

5/23/2002 Page 9 of 20 11:26AM

**DRAULIC PROJECT APPROVAL**  
**.55.100 - appeal pursuant to Chapter 34.05 RCW**

State of Washington  
Department of Fish and Wildlife  
La Conner District Office  
PO Box 1300  
La Conner, Washington 98257

2 2002

LOG NUMBER: 00-F0741-02

sed to prevent silt-laden water from entering the stream. Those may include, but are not limited to, immediate mulching of exposed areas. Upon completion of work, the stream bed shall be seeded with native seed mix, and straw mulched.

and water removed from within the work area shall be routed to an area landward of the work area for removal of fine sediment and other contaminants prior to being discharged to the stream.

excavation debris, silt, excess dirt, excess spoils, or overburden resulting from this project shall be removed from the project area and disposed of in an approved upland disposal site.

in the event that severe siltation are encountered during this project, work shall stop until the flow is restored.

existing vegetation shall not be removed or disturbed, with the exception of installing the structure and excavating the necessary area for the outfall structure at the subject location.

excavation shall be limited to that necessary to construct the project. Within seven calendar days of completion of the project, disturbed areas shall be protected from erosion using vegetation or other means. Within 180 days of completion of the project, disturbed areas shall be revegetated to match pre-disturbance conditions and shall be maintained for a minimum of 5 years to ensure 80 percent survival.

ensure that no petroleum products, hydraulic fluid, fresh cement, sediments, sediment-laden water, or other toxic or deleterious materials are allowed to enter or leach into the stream.

the structure shall be constructed and installed using hand tools only. To minimize impacts to the stream, the use of heavy equipment is not authorized by this HPA.

vehicles and equipment are not authorized by this HPA.

the structure or water energy dissipation materials shall be isolated from the wetted stream bed. Masonry materials used shall be washed prior to installation.

the structure shall be a minimum of 1-foot in diameter and shall be composed of sound fir or cedar. All materials shall meet or exceed the standards established in "Best Management Practices For the Protection of Aquatic Environments" developed by the Western Wood Preservers Institute, dated July 1996. Materials to be utilized in construction shall not contain creosote or pentachlorophenol (Penta). All materials in contact with the water shall be untreated.

the structure shall be maintained by the owner(s) per RCW 77.55.060 to ensure features installed for the structure do not directly impede fish passage in the unnamed tributary and West Fork Nookachamps Creek.



200205230079

Skagit County Auditor

5/23/2002 Page 10 of 20 11:26AM

**HYDRAULIC PROJECT APPROVAL**  
77.100 - appeal pursuant to Chapter 34.05 RCW

State of Washington  
Department of Fish and Wildlife  
La Crosse District Office  
PO Box 1100  
La Crosse, Washington 98257

2002

LOG NUMBER: 00-F0741-02

Hydraulic Project Approval and providing prompt repair. Financial responsibility for  
cost of the owner(s).

Final on July 24, 1998; Addendum to FEIS by City of Mount Vernon on January  
1, 2002.

January 31, 2002

ENFORCEMENT OFFICER: Frazier 073 [P3]

13

*[Signature]*  
for Director  
WDFW

**GENERAL PROVISIONS**

77.100 pertains only to the provisions of the Fisheries Code (RCW 77.55 - formerly RCW  
77.100) other public agencies may be necessary for this project.

77.100 site at all times and all its provisions followed by the permittee and operator(s)

77.100 may be held liable for any loss or damage to fish life or fish habitat which results  
from violations of this HPA.

77.100 of this Hydraulic Project Approval could result in a civil penalty of up to one hundred  
dollars per charge, possibly punishable by fine and/or imprisonment.

77.100 77.100 or 77.55.200 are subject to additional restrictions, conditions or revocation if  
determines that new biological or physical information indicates the need for such  
pursuant to Chapter 34.04 RCW to appeal such decisions. All HPAs issued pursuant to  
the Department of Fish and Wildlife due to changed conditions after consultation with  
DER, that such modifications shall be subject to appeal to the Hydraulic Appeals Board

**APPEALS - GENERAL INFORMATION**

77.100 77.100 OF OR CONDITIONS PROVIDED IN A HYDRAULIC PROJECT  
77.100 77.100 AND FORMAL APPEAL PROCESSES AVAILABLE.

77.100 77.100 77.100 OF DEPARTMENT ACTIONS TAKEN PURSUANT TO RCW



200205230079  
Skagit County Auditor

5/23/2002 Page 11 of 20 11:26AM

in of the storm drainage system  
 at outfall North of College  
 and the provision of as built  
 be provided to the County  
 has

### Attachment 3

# College Way

nce structure + outfall  
 maintained and monitored  
 Under the direction of a  
 (PE) ensure that the system  
 is in accordance with the approved  
 If necessary, corrective  
 will be implemented by the  
 owner.

in of the storm drainage system  
 outfall North of College Way,  
 I provision of as built  
 be provided to the County  
 has been constructed per  
 design. The certification  
 ed by ~~a independent design~~  
 engineer.

for

HEARING EXAMINER  
 EXHIBIT 67



200205230079  
 Skagit County Auditor  
 5/23/2002 Page 12 of 20 11:26AM

Attachment 4

SKAGIT COUNTY PLANNING & PERMIT CENTER

FINDINGS OF FACT

Ex 1A

REVIEWING AUTHORITY: Skagit County Hearing Examiner  
PUBLIC HEARING DATE: April 3, 2002  
APPLICATION FOR: Shoreline Substantial Development Permit #PL 01-0560.  
APPLICATION DATE: September 18, 2001

APPLICANT: MVA Inc. Attn George Thurtle  
C/O John L. Scott Real Estate  
3801 150<sup>th</sup> Ave SE #101  
Bellevue, WA 98006

PROJECT DESCRIPTION: To allow the following drainage improvements to occur in County jurisdiction for the previously approved by the City of Mount Vernon Skagit Highlands Planned Unit Development: 1) To install 300 feet of 24 inch plastic pipe. 2) Construct a 9' X 12' X 3' deep brick and gabion outfall structure. 3) Placement of a riprap outfall apron. 4) Placing three log weirs 20 feet long each, into a tributary adjacent to Nookachamps Creek. The proposed drainage utility is designed to provide storm water conveyance from the Skagit Highlands development proposed south of SR 538 in the city limits of Mount Vernon to Nookachamps Creek.

The proposal requires a Shoreline Substantial Permit because it involves work valued in excess of \$2,500 within 200 feet of Nookachamps Creek which is a shoreline of the state per the Skagit County Shoreline Management Master Program (SCSMMP) 14.26.2.05.

PROJECT LOCATION: The proposed project is located just north of State Route 538, south of Nookachamps Creek and west of the intersection of SR-538 and SR-9, within a portion of Section 14, Township 34 North, Range 4 East, W.M., Skagit County. The subject proposal is located adjacent to Nookachamps Creek and is designated Rural under the Shoreline Master Program.

RECOMMENDATION: Approval, with conditions stated at the end of the report.  
EXHIBITS:

1. Staff report, shoreline application materials.



200205230079

Skagit County Auditor

2. February 8, 1994 Strawberry Hill EIS Stormwater Technical Report prepared by Montgomery Water Group Inc.
3. January 1997, Strawberry Hill Planned Unit Development, Draft Environmental Impact Statement prepared for the City of Mount Vernon.
4. July 24, 1998 Strawberry Hill Final Environmental Impact Statement prepared for the City of Mount Vernon.
5. November 8, 2000 Skagit Highlands Preliminary Drainage Design prepared by Montgomery Water Group Inc.
6. January 29, 2001 Skagit Highlands SEPA Compliance Document.
7. July 27, 2001 Storm drainage release easement.
8. January 29, 2002 Addendum to Environmental Impact Statement issued by the City of Mount Vernon.
9. July 11, 2001 Wetland Delineation and Stream Identification Survey, Skagit Highlands Off-site Stormwater Outfall prepared by Associated Earth Sciences Inc.
10. July 27, 2001 Skagit Highlands Water Quality Evaluation prepared by A. C Kindig & Co.
11. September 12, 2001 Biological Evaluation - Skagit Highlands prepared by Associate Earth Sciences Inc.
12. September 17, 2001 memorandum from Scott Stoneman from Montgomery Water Group Inc to Pat Gastineau of Subdivision Management Inc discussing the County Flood Damage Prevention Ordinance 14.34.
13. October 24, 2001 Letter from Pat Gastineau of Subdivision Management Inc. to Daniel Downs of Skagit County.
14. November 15, 2001 Letter of Completeness.
15. November 15 & 22, 2001 Notice of Development.
16. December 10, 2001 letter from Jim Hahn engineer from the City of Mount Vernon.
17. January 8, 2002 Technical Team memorandum from Dan Cox of Skagit County.
18. January 15, 2002 e-mail from Keith Elefson of Skagit County Public Works.
19. January 23, 2002 facsimile from Gloria Rivera of the City of Mount Vernon to Daniel Downs of Skagit County.
20. January 31, 2002 E-mail commenting on the proposal from Bill Dowe, Skagit County Building Official.
21. February 7, 2002 approved Hydraulic Project Approval from the Washington State Department of Fish & Wildlife.
22. February 13, 2002 letter from Gloria Rivera of the City of Mount Vernon to Daniel Downs of Skagit County.
23. March 6, 2002 Conservation Measures for the Nookachamps Stormwater Discharge pipe prepared by Cedarock Consultants, Inc.
24. March 19, 2002 letter from C. Thomas Moser to Charles Wolfe.
25. March 27, 2002 MVA's response packet/recommended exhibits to the March 19, 2002 letter submitted by Clear Valley LLC.



200205230079

Skagit County Auditor

5/23/2002 Page 14 of 20 11:26AM

STAFF FINDINGS:

1. The application has been advertised in accordance with Section 9.04 of the Skagit County Shoreline Management Master Program (SCSMMP) and WAC 173-14-070.
2. The subject property is within the jurisdiction of the Washington State Shoreline Management Act and the SCSMMP.
3. The subject proposal is located adjacent to Nookachamps Creek and is designated as Rural in the SCSMMP. The zoning and comprehensive plan designation is Rural Reserve.
4. The project activities located Skagit County jurisdiction involves placement of a 24-inch pipe south of State Route 538 with placement of a subsurface storm water outfall structure 9 feet wide, 12 feet long and 3 feet deep. Downstream from the outfall the applicant proposes to install three log weirs to cause a ponding effect of the flow further reducing flow velocity prior to entering Nookachamps Creek. This source of this water is the 209 upland acres from the prior approved Skagit Highlands Planned Unit Development within the City of Mount Vernon. The current proposal will provide storm water drainage for the 140 acres of the Skagit Highlands proposal and will utilize two sediment retention ponds (pond 3 & 5) for temporary retention. An earlier drainage proposal was to divert a larger amount of the flow into the Trumpeter Creek system but this was changed upon findings in the EIS and geomorphology analysis suggesting that the Trumpeter Creek drainage basin should not receive additional drainage flows. Total drainage flow encumbrance to the Nookachamps drainage basin will not be increased by the rerouting flows to the north instead of the west because all flow from all three drainage locations ultimately feed into the Nookachamps drainage basin anyway. However, the November 8, 2000 Skagit Highlands Preliminary Drainage Design prepared by Montgomery Water Group Inc on page 6 demonstrates that the potential flows in cubic feet per second (cfs) will decrease in a 100 year event from 19.2 cfs undeveloped in the pond 3 drainage to 16.4 cfs after development. The decrease in impervious surface from Pond 5 shows a cfs flow of 1.7 in a 100-year event to a projected 1.6 cfs in a 100 year event. The consultant identified no additional impacts than those already identified in the final FEIS for the project.
5. Staff determined that the subject proposal required a Fish & Wildlife Site Assessment/Habitat Management Plan as required in Skagit County Code (SCC) 14.24.510 & 520 and a Wetland reconnaissance/delineation per SCC 14.24.210-230 of the Skagit County Critical Areas Ordinance. SCC 14.24.530(3-a) describes utilities as an allowed use in critical areas buffers provided that the conditions in



200205230079  
Skagit County Auditor

5/23/2002 Page 15 of 20 11:26AM

1 14.24.530(3)(a)(I-V) are met. Staff has determined that the criteria will be met as  
2 long as the proposal complies with the recommended conservation measures  
3 stated in the March 6, 2002 Conservation measures for the Nookachamps  
4 Stormwater Discharge pipe prepared by Cedarock Consultants, Inc.

5  
6 6. A notice for Technical Team review per the Critical Areas Ordinance was  
7 forwarded to the appropriate agencies with a January 8 to a January 25, 2002  
8 comment period. No comments were received.

9  
10 7. One letter of support was received from Jim Hachn engineer for the City of  
11 Mount Vernon.

12  
13 8. On February 7, 2002 the project received an approved Hydraulic Project Approval  
14 from the Washington State Department of Fish & Wildlife.

15  
16 9. The project has been reviewed by Keith Elefson of the Skagit County Department  
17 of Public Works. Mr. Elefson noted in (exhibit # 16) that the project needs to  
18 utilize temporary erosion/sedimentation control measure based on the Washington  
19 State Department of Ecology (WSDOE) manual and SCC 14.32.060. The Skagit  
20 County Health Department had no comment regarding the proposal.

21  
22 10. The application was reviewed in accordance with the State Environmental Policy  
23 Act guidelines (WAC 197-11 and RCW 43.21C). The City of Mount Vernon  
24 acting as Lead Agency, performed a environmental review which included the  
25 issuance of a Draft Environmental Impact Statement on January 27<sup>th</sup> 1997 and a  
26 Final Environmental Impact Statement on of Significance (FEIS) on July 24<sup>th</sup>,  
27 1998. The proposal was later modified (per exhibit # 5) and the City of Mount  
28 Vernon issued an addendum to the FEIS on January 21, 2001 per the changes (see  
29 exhibit #6). A letter from Gloria Rivera of the City of Mount Vernon dated  
30 January 15, 2002 further demonstrates that the City as lead agency has determined  
31 that the currently proposed project has been fully reviewed in regards to SEPA  
32 requirements (see exhibit # 11).

33  
34 11. Staff determined that the proposal is not located on a Shoreline of Statewide  
35 Significance.

36  
37 12. The proposal does not qualify as an exemption from a Substantial Development  
38 Permit upon reviewing the exemptions allowed in WAC 173-27-040(2)(a-o) and  
39 will cost more than \$2,500.00 dollars.

40  
41 13. A September 17, 2001 memorandum prepared by Scott Stoneman of the  
42 Montgomery Water Group discusses that the only portions of the proposed outfall  
43 that are to be located on the 100 year floodplain are the energy dissipater and several  
44 weirs. Mr. Stoneman concludes that the proposal will cause no significant increase  
45 of fill in the floodplain and thereby meets the "zero loss in conveyance test" at  
46 required in SCC 14.34.210. Skagit County Building Official, Bill Dowe, has  
47 concurred with the assessment prepared (see exhibit # 11).



200205230079  
Skagit County Auditor

5/23/2002 Page 16 of 20 11:26AM



1  
2 14. The applicant has requested that the standard shoreline time requirements be  
3 extended for the project in question for the following reasons: 1) The Skagit  
4 Highland development has been permitted by Mount Vernon for 15 years from  
5 5/23/01. 2) The project is still under review for ESA compliance by the U.S Corps  
6 of Engineers. 3) Lastly, the work window is restricted by the HPA thereby slowing  
7 construction progress. The applicants have requested years to start the project and 6  
8 years to finish the project with the option of a one-year extension to be granted  
9 prior to the expiration of the sixth year. Staff concurs with this request and have  
10 determined that the applicant has demonstrated "good cause".  
11

## 12 REVIEW OF APPLICABLE COUNTY SMMP POLICIES & REGULATIONS.

13  
14 Staff determined that the subject proposal was required to be reviewed for consistency with  
15 SCSMMP Chapter 7.18 Utilities as defined in Chapter 3.03.

16 Staff determined that the proposal does not conflict with the **general policies** regarding,  
17 Coordination, Existing use areas, Joint Use, Multiple use, Natural resources processes, and  
18 other uses, Location, Solid Waste avoidance of sensitive areas, Hazardous areas,  
19 Petroleum/chemical pipelines and electrical transmission cables, Design and Impacts.  
20

21 Staff further determined that the proposal complies with all SCSMMP **regulations**  
22 regarding Rural Residential, Existing use areas, Prohibited utility developments,  
23 Floodplains, Floodways, Underground utilities, Shore defense works, Parking areas and  
24 access roads, Screening and buffer areas, Landfills, Underground utility lines, Surface utility  
25 lines, Aerial utility lines, and Tabular Regulations.  
26

27 The following inserts from the Regulation section are considered below with staff notes  
28 in italics:  
29

## 30 2. REGULATIONS

### 31 A. Shoreline Area

#### 32 (3) Rural

33 Utility development is permitted subject to the General and Tabular Regulations  
34 EXCEPT for the below.

35 (b) ...Buried or submarine facilities are permitted subject to General and Tabular  
36 Regulations.  
37

#### 38 (C) Tabular Regulations

##### 39 (1) Shore setback

40 (a) Utility lines, building, and accessory uses *except buried lines*.  
41

42 *Staff notes that Table U (1)(a) clearly identifies that buried lines such as the proposed*  
43 *storm water conveyance pipe and outfall are not subject to the 150 foot setback from the*  
44 *OHWM as other above ground structure and accessory uses are.*  
45  
46



200205230079

Skagit County Auditor

5/23/2002 Page 17 of 20 11:26AM

1 RECOMMENDATION

2  
3 Based on the above findings, the Skagit County Planning and Permit Center would  
4 recommend for approval of a **Shoreline Substantial Development Permit** subject to the  
5 following conditions:  
6

- 7  
8 1. The applicant shall comply with the recommended conservation measures stated  
9 in the March 6, 2002 Conservation measures for the Nookachamps Stormwater  
10 Discharge pipe prepared by Cedarock Consultants, Inc.  
11  
12 2. Construction of the project must be commenced within five years (5) years of the  
13 date of the Department of Ecology's approval and finished within 6 years or the  
14 shoreline permit will become void. Upon submittal of a written request  
15 referencing the file number a one (1) year extension to this time requirement may  
16 be granted by the Shoreline Administrator provided the request is received prior  
17 to the expiration date and notice of the proposed extension is given to parties of  
18 record.  
19  
20 3. Best management practices shall be utilized to avoid unnecessary impacts to  
21 identified critical areas buffers.  
22

23  
24 Prepared By: DD

25 Approved By:

26 Date: March 7, 2002

27 Amended: April 2, 2002



200205230079

Skagit County Auditor

5/23/2002 Page 18 of 20 11:26AM

**Conservation Measures for the  
Nookachamps Stormwater Discharge Pipe** Cx 23

March 6, 2002

**Construction Measures**

- Clearing limits shall be flagged prior to any construction activities. Where clearing limits are within jurisdictional sensitive area buffers, normal flagging shall be supplemented with either orange barrier fence or silt fence where terrain slopes into the stream (see TESC Sheet 4 of 4).
- Unsurfaced parking areas used by construction equipment shall be stabilized to minimize erosion and tracking of sediment off-site.
- All approach roads shall be kept clean, and all sediment and street wash water shall not be allowed to enter storm drains without prior and adequate treatment.
- All work on the proposed stormwater conveyance pipe and outfall structure within 300 feet of the OHWM of Nookachamps Creek shall be conducted with handheld tools. No mature trees (greater than 6 inches dbh) shall be cut down within this area.
- Temporary and permanent ground cover measures shall be provided in a timely manner to protect disturbed areas. Cover methods shall include mulch, erosion control blankets, plastic covering, sodding, hydroseeding, jute matting, and/or clear plastic sheeting as appropriate. All exposed and unworked soils shall be stabilized by application of effective BMPs that protect the soil from the erosive forces of raindrop impact and flowing water. From October 1 through April 30, no soils shall remain exposed and unworked for more than 2 days. From May 1 to September 30, no soils shall remain exposed and unworked for more than 7 days. This condition applies to all soils on-site whether at final grade or not. The proposed activity shall be subject to SCC 14.32.060.
- All foundation and trench dewatering water shall be discharged via overland infiltration into stable areas of the adjacent forest. Clean, non-turbid dewatering water can be discharged to Nookachamps Creek provided the dewatering flow is less than 20 percent of the receiving water flow.
- All temporary and permanent erosion and sediment control measures shall be maintained and repaired as needed to assure continued performance of their intended function. All maintenance and repair shall be conducted in accordance with BMPs. All TESC measures shall be removed within 30 days after final site stabilization is achieved or after the temporary TESC measures are no longer needed. Trapped sediment shall be removed or stabilized on-site. Disturbed soil areas resulting from removal of TESC measures or vegetation shall be permanently stabilized.



200205230079

Skagit County Auditor

5/23/2002 Page 19 of 20 11:26AM

**Hazardous Material Spill Containment Measures**

- The primary containment strategy for on-site spills shall be to contain accidental releases of hazardous materials before they enter on-site surface water. This shall be accomplished by addressing the following minimum requirements:
- Polluting materials subject to vandalism, including chemicals and petroleum products, shall be kept in a designated staging areas located a minimum of 300-feet from Nookachamps Creek and it's tributary where adequate control can be provided.
- All equipment refueling, maintenance, and other activities that have the potential for discharge or spillage of petroleum products or other pollutants shall occur in the designated staging area. Both containment materials and spill cleanup kits shall be available in the area. The fueling pad and any other spill location shall be immediately cleaned, with waste materials appropriately disposed of, following any discharge or spill incident.
- Agricultural chemicals and fertilizers are not expected to be used, but if so, shall be applied per the manufacturer's recommendations.
- Spill response standard operating procedures (SOP) documentation, designed in coordination with the lead emergency services organization, containing telephone numbers of appropriate agency/department contacts in case a spill should occur (e.g., Ecology, County Fire Department Hazmat Team, Skagit County Fire and Rescue) shall be available on-site.

**Post-Construction Measures**

- Replanting of all disturbed areas with native shrubs and trees shall occur during the next appropriate planting season as permitted by Washington Department of Fish and Wildlife (WDFW) and required in the Hydraulic Project Approval permit (HPA). Planting success shall be monitored under terms and conditions of the HPA.



200205230079

Skagit County Auditor

5/23/2002 Page 20 of 20 11:26AM