

**SKAGIT COUNTY
OFFICE OF THE HEARING EXAMINER**

re: The application for a Shoreline Substantial Development Permit, Shoreline Variance, and a Variance by **Ton and Nguyen**

PL21-0304 (SSD & SV)

PL21-0323 (VAR)

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicants, Trinh That Ton and Trang Nguyen request permits for “after the fact” construction of retaining walls that are within and over the 8-foot side setback associated with the eastern property line and stairs that were built out of necessity for the construction of those walls. Within shoreline jurisdiction the applicant has constructed retaining walls, stairs, and a landing.

Decision: The requested Shoreline Substantial, Shoreline Variance and Variance permits are granted, subject to conditions of approval, though the portions dealing with the current stairs and adjacent platforms area are denied.

INTRODUCTION

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

FINDINGS OF FACT

I.

Applicant: Trinh that Ton and Trang Nguyen

427 289th Place NE
Carnation, WA 98104

Site Address: 15833 Yokeko Drive, Anacortes, WA

Legal Description: The parcel is located within the southeast quarter of Section 24, Township 34 North, Range 01 East, W.M., Skagit County, WA.

Assessor's Parcel No(s): 3898-000-015-0002 – Assessors Account Number
P64875 – Parcel Number

Lot Size: .20 acres

Zoning: Rural Intermediate

Water Supply: N/A

Sewage Disposal: N/A

Application Date: June 17, 2021

Determination of Completeness: PL21-0304 complete July 15, 2021
PL21-0323 complete July 23, 2021

Requests for Further information: N/A

Adjacent Water Body: Skagit Bay

Shoreline Designation: Rural Residential

Statewide Significance: Yes

SEPA Review: A SEPA threshold Determination of Nonsignificance (DNS) was issued on April 18, 2024

Notice Information: Notice of Application published in Skagit Herald, September 30, 2021, and October 7, 2021

Primary Authorizing Codes, Policies, Plans, and Programs:

- Revised Code of Washington (RCW)
 - RCW 36.70A, Growth Management Act

- RCW 36.70B, Local Project Review
- RCW 90.58, Shoreline Management Act of 1971 (“SMA”)
- Washington Administrative Code (WAC)
 - WAC 25, Archaeology and Historic Preservation
 - WAC 173, Department of Ecology
 - 173-22, Designations of Shorelands and Wetlands
 - 173-60, Maximum Environmental Noise Levels
 - 173-200, Water Quality Standards for Groundwaters
 - 173-201A, Water Quality Standards for Surface Waters
 - WAC 197-11, SEPA Rules
- Skagit County Code (SCC)
 - SCC 14 – Unified Development Code
 - SCC 14.02 – General Provisions
 - SCC 14.02.070 – Office of the Hearing Examiner
 - SCC 14.06 – Permit Procedures
 - SCC 14.10 – Variances
 - SCC 14.16 – Zoning
 - SCC 14.16.300, Rural Intermediate (RI)
 - SCC 14.24 – Critical Areas Ordinance
 - SCC 14.26 – Shorelines
 - SCC 14.32 – Stormwater Management
 - SCC 14.34 – Flood Damage Prevention
- Skagit County Shoreline Master Program of 6/29/76, as amended by Skagit County Board of Commissioners through 7/10/95 (SMP)
- Skagit County Comprehensive Plan of 6/30/16, as amended by Skagit County Board of Commissioners through 12/19/23 (SCP or “Comprehensive Plan”)
- Skagit County Office of the Hearing Examiner Rules of Procedure for Hearings (SCRPH), as authorized by Skagit County Commissioners per Resolution #R20080511 on 11/24/08

Hearing Date: 10/25/24 at 11:00 AM

Testifying Parties of Record:

Leah Forbes
 Sr. Natural Resources Planner
 Skagit County Planning and Development Services

Trinh That Ton & Trang Nguyen
 Ton.trinh@gmail.com

Stuart Thorson
 stuthors@gmail.com

Bridget Moran
bmoran@skagitcoop.org

Howard and Carmel Gully
15815 Yokeko Drive
Anacortes, WA
carmelgu@gmail.com

Hearing Examiner Exhibit List:

1. Shoreline Variance/Shoreline Substantial Development application (PL21-0304) submitted June 17,2021
2. Zoning Variance application (PL21-0323) submitted June 17, 2021
3. Vicinity map
4. Aerial photographs of the site
5. Site photographs
6. Site Plans, including Herrigstad Survey
7. Building Plans
8. Easement for retaining wall and construction access AF#202006180040
9. Protected Critical Area site plan AF#200307230123
10. FEMA FIRMette
11. HPA Permit Number: 2020-4-266+01 for slope failure
12. HPA Permit Number: 2020-4-445+01 for retaining wall and slope stabilization
13. Geotechnical Survey prepared by MTC dated June 9, 2018.
14. Habitat Conservation Area Site Assessment & Mitigation Plan prepared by Bachman Environmental dated June 22, 2018
15. As-built/Addendum prepared by Bachman Environmental dated June 28, 2021
16. SMP Residential Development Tabular Regulations Table RD
17. Notice of Development Application, published September 30, 2021, and October 7, 2021
18. Comment letters received during Notice of Development Application comment period
19. SEPA Environmental Checklist, Threshold Determination
20. Comment received during SEPA comment period
21. Notice of Public Hearing, published October 10, 2024
22. Skagit County Planning and Development Services Findings of Fact, dated October 16, 2024
23. E-mail of Stuart Thorsen, dated 10/23/24

II.

The residence and lot were developed in the late 1960's or early 1970's.

Under a prior landowner several investigations were carried out for the unpermitted removal of

trees and the building of unpermitted walls. The unpermitted removals and construction likely resulted in the weakening of the shoreline side and slope of the property.

On February 5, 2020, the soil on the waterward side of the house sloughed. The landslide threatened the integrity of the existing home. Consequently, the property owner was granted emergency approval from the Washington State Department of Fish and Wildlife (Hydraulic Project Approval Permits for emergency repair of the shoreline) to clean debris from the site, evaluate the extent of the damage, and assess the path forward with protecting the residence. Additionally, in order to protect the residence from further damage, the applicant was approved to construct retaining walls as well as stairs and a landing leading from the residence to the shoreline.

The stairs and landing were deemed necessary for construction of the retaining walls. Testimony was unclear but the form of the stairs currently may have replaced pre-existing stairs with a smaller footprint in the same location, and those stairs and platforms associated with were unsuited to supporting the construction or were destroyed during the bank slough.

To comply with Skagit County Code (SCC) Title 14: Land Use and Development Code and Title 15: Building Codes, the property owner was required to permit these structures “after the fact.”

Staff from the Washington State Department of Ecology completed a site visit on April 15, 2021 and agreed that the retaining walls are necessary and could be permitted with a shoreline substantial development/variance permit, but that the platform at the base of the wall and stairs could not be approved.

An addition to the home was permitted in 2003 and the total developed area has not changed significantly since that time. The retaining walls did not appreciably add to the developed area onsite.

The previous owner submitted the shoreline permit and administrative zoning variance in June of 2021. The property was purchased by the current owners on December 7, 2021 and have taken over the application.

III.

The Skagit County Planning and Development Services Staff (the “Department”) have recommended denial of the retention of the stairs, and approval of the requested Shoreline Substantial

Development, Shoreline Conditional Use, and Shoreline Variance permits in a “Skagit County Planning and Development Services Findings of Fact,” dated October 16, 2024 (“Staff Report” **Ex. 22**).

The Applicant has indicated there are no factual inaccuracies in the Staff Report’s findings or conclusions, and that they agreed with the conditions proposed, but did not agree with the denial of the permission to maintain the stairs in place.

The Findings of Fact in the Staff Report, a copy of which is attached hereto and incorporated herein, are supported by the record as a whole and are hereby adopted and incorporated herein by this reference, except where explicitly contradicted by the findings herein.

IV.

The properties in proximity of the subject property are primarily single-family homes on lots of approximately 0.20 acres in size. The parcel is bound by single-family residential lots to the east and west. To the north is Yokeko Drive and to the south is the marine shoreline.

The subject site and neighboring lots are heavily vegetated upland of the ordinary high-water mark (OHWM) and have steep rocky slopes of varying degrees. The project site has a slope ranging in averaging incline from 1:1 to 1:2 or approximately 45 – 65 degrees respectively per the 2018 Geotechnical and Critical Area Consultation prepared by Materials Testing & Consulting, Inc.

The project is located within 200 feet of the designated shoreline area. The shoreline in this area consists of existing bedrock spanning the entire length of the property. Above the exposed bedrock, the site consists of soil and vegetation. It is this area above the bedrock where the retaining walls were constructed, all located landward of the OHWM, and not intended to prohibit shoreline erosion, but to regrade or terrace the area between the residence and the shoreline. As the proposed and built, the retaining walls encroach into and across the required 8-foot side setback point required for residential developments in the shoreline area.¹

Without this protective structure there is risk to the health, safety and welfare of the property owners, neighboring properties, and the shoreline which would interfere with reasonable use of the property. The stairs as are do not support those same issues.

The developed area within shoreline jurisdiction exceeds the maximum allowed 30%. An addition

¹ SMP §7 at “Table RD” on 7-110

to the home was permitted in 2003 and the total developed area has not changed significantly since that time. The retaining walls did not appreciably add to the developed area onsite.

V.

SCRPH §§2.06 and 2.08 grants parties the right to object to evidence and to cross-examine. In the case at hand, with full knowledge of the evidence being admitted, no objection was made to any of the 22 exhibits that were admitted into the record by the applicant or the Department.

VI.

Any Conclusion of Law below 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.

Scope of Hearing, Jurisdiction, & Interpretation of Law

Whenever possible, development applications are consolidated and reviewed according to the highest standard of all of the permits, with some exceptions outlined in the law.² In this case the highest application level is Level II, and so all are to be reviewed by the Hearing Examiner.³

The project is located within 200 feet of the designated shoreline area and is therefore subject to the requirements of the Skagit County Shoreline Master Program (SMP). The requirements of the SMP and the need for an application by the developer of the project shall apply to every person, natural or unnatural, business entity, association, or government entity who wishes to develop or make use of lands, wetlands, and waters which fall under the jurisdiction of the SMA; real property ownership is not a requirement.⁴

The Hearing Examiner has jurisdiction to hear and decide requests for shoreline substantial development permits,⁵ shoreline conditional use permits,⁶ and shoreline variances.⁷

² SCC 14.06.060

³ SCC 14.06.120

⁴ See *generally* SMP Chapter 2

⁵ SCC 14.06 *et. al.*, 14,06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, and 9.07

⁶ SCC 14.06 *et. al.*, 14,06.050(1)(b), 14.06.120; SMP §§8.07(1)(a), 9.06, 9.07, and 11.02

⁷ SCC 14.06 *et. al.*, 14,06.050(1)(b), 14.06.120, and 14.10.020(3); SMP §§8.07(1)(a), 9.06, 9.07, and 10.02

All of these matters fall under the SMP, which directs:

...the [SMA] is exempted from the rule of strict construction; the [SMA] and this program shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which the [SMA] and this Master Program were enacted and adopted, respectively.⁸

II.

Shoreline Substantial Development

Any person wishing to undertake substantial development on shorelines shall apply to the Administrator for a substantial development permit.⁹ This proposed use is on a shoreline and thus a Shoreline Substantial Development Permit is required.

A shoreline substantial development permit shall be granted only when the proposed development is consistent with the following criteria:

- a. Policies and regulations of the Skagit County Shoreline Master Program;
- b. Applicable policies enumerated in [the SMA] ¹⁰ in regard to shorelines of the state and shorelines of statewide significance; and
- c. Regulations adopted by the Department of Ecology pursuant to the SMA

These will be examined in reverse order, as they tend to go from more specific to less specific.

The polices outlined by the SMA, are ranked in preferential order as follows:¹¹

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element [required by the local Shoreline Master Program].¹²

As conditioned, the proposed use in its totality is consistent with the policies enumerated in the first six of the overarching polices of the SMA, with the exception of the stairs, as the Department of Ecology ordered it only for the purposes of the construction of the walls on an emergency basis, and it exceeds

⁸ See also RCW 90.58.900

⁹ SMP §9.01(1)

¹⁰ RCW 90.58.020

¹¹ RCW 90.58.020

¹² "...as defined in RCW 90.58.100 deemed appropriate or necessary."

the footprint of any pre-existing use. The final element of the SMA criteria will be examined in the next section, but otherwise the proposed use in its totality is consistent with the policies enumerated in the SMA.

The SMP Goals, the last of which is not directly applicable, are as follows:

1. **Shoreline use** - To allow for compatible uses of the shorelines in relationship to the limitations of their physical and environmental characteristics. Such uses should enhance rather than detract from or adversely impact, the existing shoreline environment.
2. **Conservation** - To preserve, protect, and restore the natural resources of Skagit County's shorelines in the public interest and for future generations. These natural resources include but are not necessarily limited to fish, wildlife, vegetation, and natural features found in shoreline regions. Only renewable resources should be extracted and in a manner that will not adversely affect the shoreline environment.
3. **Public access** - To provide safe, convenient, properly administered and diversified public access to publicly owned shorelines of Skagit County without infringing upon the personal or property rights of adjacent residents. Such access should not have an adverse impact upon the environment
4. **Circulation** - To permit safe, adequate, and diversified transportation systems that are compatible with the shorelines, resulting in minimum disruptions to the shoreline environment.
5. **Economic development** - To promote and encourage the optimum use of existing industrial and economic areas for users who are shoreline dependent and shoreline related and can harmoniously coexist with the natural and human environments; and, subsequently, to create similar areas as need arises with minimum disruption of the shorelines.
6. **Recreation** - To encourage the provision and improvement of private and public recreation along the shorelines of Skagit County only to the extent that the environment is not impaired or degraded.
7. **Historical/Cultural/Educational** - To identify, protect, and restore those shoreline areas and facilities that are of historical, cultural or educational value. Public or private organizations should be encouraged to provide public access and protection of such areas and facilities.
8. **Restoration and enhancement** - To restore and enhance those shoreline areas and facilities that are presently unsuitable for public or private access and use.
9. **Implementation Process** - Provide an efficient system for shoreline permit applications which would eliminate unnecessary duplication of effort or jurisdictional conflicts, yet assure complete coordination and review. Provide a process to periodically update the inventory, goals, policies, and regulations to achieve responsiveness to changing attitudes and conditions.¹³

¹³ SMP §4.02

As conditioned, the proposed use in its totality is consistent with the policies enumerated in the overarching policies of the SMP, aside from the stairs which increase any pre-existing usage, were built for emergency construction, and puts a burden of unneeded increased burden of use of the shoreline.

In conclusion, after reviewing the files and testimony, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Shoreline Substantial Development criteria, without the stairs. Consequently, subject to proposed conditions of approval, the Shoreline Substantial Development Permit should be approved, without the stairs.

III.

Shoreline Variances

Variances from the application of specific bulk, dimensional or performance standards set forth in the SMP may be permitted where there are extraordinary or unique circumstances relating to the property; this is for circumstances where the strict implementation of the SMP would impose unnecessary hardship and such compliance with the SMP would prohibit reasonable use of the property.¹⁴

As the proposed retaining walls encroach into and across the required 8-foot side setback point, a variance is required.¹⁵

Shoreline Variances fall into two categories, those for uses that fall above the OHWM and those that are located either waterward of the OHWM or within marshes, bogs or swamps as designated pursuant to WAC 173-22. The latter have an additional requirement to meet such “[t]hat the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.”¹⁶

In the case at hand, the proposed use involves development placing the retaining wall landward of OHWM. This means a Shoreline Variance can only be granted if it meets the less stringent criteria as follows:

¹⁴ SMP §10.01

¹⁵ SMP §7 at “Table RD” on 7-110

¹⁶ Compare SMP §§10.03(1) and (2)

- a. That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes a reasonable use of the property not otherwise prohibited by this Master Program.
- b. That the hardship described above is specifically related to the property and is the result of unique conditions such as irregular lot shape, size or natural features and the application of this Master Program and not, 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 adjacent properties or the shoreline environment designation.
- d. That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief.
- e. That the public interest will suffer no substantial detrimental effect.¹⁷

And, in addition to the above criteria the Hearing Examiner must consider the cumulative impact of additional requests for like actions in the area.¹⁸

The strict application of the bulk, dimensional or performance standards set forth in the SMP precludes a reasonable use of the property not otherwise prohibited; and that hardship is specifically related to the property's unique conditions. The granting of this decision is not likely to result in additional neighboring development that would not be permitted otherwise.

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Shoreline Variance criteria, less the stairs. Consequently, subject to proposed conditions of approval, the Shoreline Variance Permit should be approved.

IV.

General Variance Criteria

In addition to the Shoreline Variance Criteria, the project must also meet the Zoning Variance Criteria. Whether a separate permit process/application is required is a question not examined by the Hearing Examiner here.

Title 14 encompasses all development in Skagit County in order to "implement the Revised Code of Washington (RCW) and the Skagit County Comprehensive Plan on matters concerning land and

¹⁷ SMP 10.03(1)

¹⁸ SMP 10.03(3)

building development and other related issues...” as well as other Skagit County policies outlined in Title 14.¹⁹ It is “applicable to all land within unincorporated Skagit County except as allowed by law.”²⁰

Any person wishing to deviate from the terms and standards outlined in SCC Title 14, can seek a variance where in specific cases that will not be contrary to the public interest, and where, due to special conditions, literal enforcement of the provisions of this Code would result in unnecessary hardship, that is otherwise permissible in the zoning.²¹ There are three levels of variances in Skagit County, Level 1 “Administrative Variances,” Level 2 “Hearing Examiner Variances,” and Level 3 “Board of Commissioner Variances.” To approve a variance, the deciding body must find:

- a. The variance complies with any relevant variance criteria found in other sections of Skagit County Code.
- b. The variance is the minimum variance that will make possible the reasonable use of land, building, or structure.
- c. The granting of the variance will be in harmony with the general purpose and intent of this Title and other applicable provisions of the Skagit County Code, and will not be injurious to the neighborhood, or otherwise detrimental to public welfare.
- d. For all Level II variances and all setback variances:
 - i. The requested variance arises from special conditions and circumstances, including topographic or critical area constraints, which are peculiar to the land, structure, or building involved and which are not ordinarily found among other lands, structures, or buildings in the same district.
 - ii. The special conditions and circumstances do not result from the actions of the applicant.
 - iii. Literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Title and SCC Title 15.
 - iv. The granting of the variance requested will not confer on the applicant any special privilege that is denied by this Title and SCC Title 15 to other lands, structures, or buildings in the same district.

Pursuant to SCC 14.16.300, Rural Intermediate Zone requires a side setback of 8 feet. As indicated in the factual findings, the proposal does not meet that requirement, and thus a variance is required for the construction of the retaining wall.

¹⁹ SCC 14.02.010

²⁰ SCC 14.02.040

²¹ SCC 14.10.010

In this case, after reviewing the files and testimony, and having made the findings above, the Hearing Examiner finds that with appropriate conditions of approval, the project would be compliant with all of the above applicable Variance criteria, less the stairs. Consequently, subject to proposed conditions of approval, the Variance Permit should be approved.

V.

Any Conclusion of Law deemed to be a Conclusion of Fact is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

Any portion of the permit request to maintain the stairs and platforms attached to those stairs as they currently exist is DENIED. The remainder of the Shoreline Substantial Development, Shoreline Variance, and Variance permits shall be granted to the applicant for the construction of retaining walls that are within and over the 8-foot side setback associated with the eastern property line at a site addressed as 15833 Yokeko Drive, Skagit County Washington, subject to the following conditions:

1. All of the conditions below referring to pre-existing studies and documents should be understood (and modified if required by the Department) from the context of approval without the stairs and platforms.
2. The removal of the stairs and platforms in their totality may be administratively stayed by the Department, pending any permit application to restore the stairs to any pre-existing footprint and size if provable, until that time a decision is made on that permit, provided the permit is filed within the next 60 days.
3. A new building permit application will be required for the construction of the retaining walls for compliance with applicable building codes.
4. Mitigation
 - a. The applicant must adhere to the mitigation approach outlined in the June 22, 2018 Habitat Conservation Area Site Assessment and Mitigation Plan for Shoreline Exemption and Buffer Variance under section 2.5 Mitigation Approach and section 7.0 Buffer Enhancement Plan. All non-native plant species shall be removed and replaced with the plant species, size, spacing, and quantity outlined in section 7.2 Planting Area A (600 SF) and 7.3 Planting Area B (500 SF).
 - b. The applicant shall submit an as-built site plan of the mitigation plantings as well as provide photographs of the installed plants. This must be submitted within six months of the date of approval.
 - c. All mitigation plants shall maintain a survival rate of 100% following the first year and an 80% survival rate following years three and five. There shall be less than 20% invasive

plant cover after the fifth growing season. If the plants do not meet that survival rate, a qualified professional must assess the site and determine the best method to improve the rate of survival for additional native plants.

5. The applicant is required to diminish the negative aesthetic impacts of the structure.
6. Temporary erosion/sedimentation control measures shall be utilized in accordance with the Skagit County Code 14.32 Stormwater Management.
7. Inadvertent Discovery Plan. Compliance with all applicable laws pertaining to archaeological resources (RCW 27.53, 27.44 and WAC 25-48) and human remains (RCW 68.50) is required. Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Local Government Archaeologist, 360-586-3088) and the following Nations' Tribal Historic Preservation Offices should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s):

Upper Skagit Indian Tribe
Scott Schuyler, Cultural Resources
sschuyler@upperskagit.com
Phone: 360-854-7009

Swinomish Indian Tribal Community
Josephine Jefferson, THPO
jjefferson@swinomish.nsn.us
Phone: (360) 466-7352

Samish Indian Nation
Jackie Ferry, THPO
jferry@samishtribe.nsn.us
Phone: 360-293-6404 ext. 126

Compliance with all applicable laws pertaining to archaeological resources is required. If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a

determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

NOTICE OF POTENTIAL REVOCATION & PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation.

Complaints regarding a violation of this permit's conditions should be filed with Skagit County Planning and Development Services. Violations of permit conditions may result in revocation (or modification) of the permit, administrative action under SCC 14.44 (including monetary penalties), and the violations being declared a public nuisance.

Shoreline Warnings

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY (30) DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C) and WAC 173-27-190.

Any shoreline substantial development, conditional use or variance permit may be rescinded by Skagit County and/or the Department of Ecology upon the finding that a permittee is in non-compliance with the permit and any conditions, terms or standards attached thereto. Procedure shall follow those outlined in SMMP §9.13.

FURTHER, in addition to incurring civil liability under SCC Ch. 14.44 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. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof.

Pursuant to WAC 173-27-190(2) this permit shall expire within two years of the date of its approval and a new permit will be required if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to WAC 173-27-190(3) it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS OF
THE SKAGIT COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to the Skagit County Board of Commissioners pursuant to the provisions of SCC 14.06.110. The appellant shall file a written notice of appeal within 14 calendar days of the final decision of the hearing examiner, as provided in SCC 14.06.110(13) or SCC 14.06.120(9), as applicable; for shoreline permit applications, by filing notice of appeal within five days of the decision.

More detailed information about reconsideration and appeal procedures are contained in the Skagit County Code Title 14.06 and which is available at <https://www.codepublishing.com/WA/SkagitCounty/>

DATED this 2nd day of November 2024



Rajeev D. Majumdar
Skagit County Hearing Examiner