

**BEFORE THE**  
**SNOHOMISH COUNTY HEARING EXAMINER**

**DECISION of the DEPUTY HEARING EXAMINER**

In the matter of the application of )  
 )  
**SKYKOMISH HABITAT, LLC** ) **FILE NO. 04 114730**  
 )  
For a conditional use permit for mineral extraction for )  
the Skykomish Habitat Mitigation Bank )

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DATE OF DECISION: August 25, 2005

APPLICANT: Skykomish Habitat, LLC, by its agent, Eric Gleason

TYPE OF REQUEST: Conditional use permit for mineral extraction of approximately 800,000 cubic yards of material on 95.4 acres in order to create a wetland/habitat mitigation bank along the Skykomish River near Monroe.

DECISION (SUMMARY): The application for the mineral extraction is **CONDITIONALLY APPROVED.**

**BASIC INFORMATION**

LOCATION: The subject property is located at 18016 177<sup>th</sup> Avenue SE, Monroe, at the end of 177<sup>th</sup> Avenue SE next to the Skykomish River.

ACREAGE: 250

ZONING: Agriculture-10 (A-10)

COMPREHENSIVE PLAN DESIGNATION:

General Policy Plan Designation: Riverway Commercial Farmland with a Mineral Lands overlay  
Pre-GMA Subarea Plan: Skykomish Valley  
Subarea Plan Designation: Agriculture (1 du/10 acres)

SELECTED AGENCY RECOMMENDATIONS:

Department of:  
Planning and Development Services: Approval subject to conditions  
Public Works: Approval subject to conditions

**INTRODUCTION**

The applicant filed the Master Application on November 23, 2004. (Exhibit 1)

The Department of Planning and Development Services (PDS) gave proper public notice of the open record hearing as required by the county code. (Exhibits 22, 23 and 24)

A SEPA determination was made on March 7, 2005. (Exhibit 21) No appeal was filed.

The Examiner held an open record hearing on August 9, 2005, the 153<sup>rd</sup> day of the 120-day decision making period. Witnesses were sworn, testimony was presented, and exhibits were entered at the hearing.

**PUBLIC HEARING**

The public hearing commenced on August 9, 2005 at 3:48 P.M.

1. The Examiner stated that he has read the PDS staff report, reviewed the file and viewed the area and therefore has a general understanding of the particular request involved.
2. The applicant, Skykomish Habitat, LLC, was represented by its agent Eric Gleason and its attorney, Tom Adams. The Snohomish County Department of Planning & Development Services was represented by Erik Olson and Ken Crossman. Citizen Clark Vellema testified that the project is a project of merit in the opinion of the Board of the Snohomish River Basin Salmon Enhancement Program. Kristina Mertin of Washington State’s Department of Ecology attended the hearing but did not testify.
3. No member of the public appeared at the hearing except as noted above. Letters of record from the public are in support generally with some concern expressed as to whether or not the project could cause the river to change its course.

The hearing concluded at 4:10 P.M.

**NOTE:** The above information summarizes the statements that were made at the hearing. However, for a full and complete record, an electronic recording is available at the Office of the Hearing Examiner.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**FINDINGS OF FACT**

Based on all of the evidence of record, the following findings of fact are entered.

1. The master list of exhibits and witnesses which is a part of this file and which exhibits were considered by the Examiner, is hereby made a part of this file, as if set forth in full herein.
2. The PDS staff report has correctly analyzed the nature of the application, the issues of concern, the application's consistency with adopted codes and policies and land use regulations, and the State Environmental Policy Act (SEPA) evaluation with its recommendation and conditions. This report is hereby adopted by the Examiner as if set forth in full herein.
3. No letters were received in opposition to the request nor did anyone appear in opposition.
4. The request is for a conditional use permit (CUP) for mineral extraction on 95.4-acre Phase 1 (and conceptual Phase 2) of a proposed 177-acre habitat restoration project on a 250-acre floodplain. The subject site is developed as a farm abutting the north bank of the Skykomish River approximately 2.5 river miles upstream of the river's confluence. The City of Monroe abuts the subject site on the north. Farms operate across the river to the east in Ag-10 zoning. Existing motorcycle dirt race track and soccer fields will be removed in Phase I and the existing baseball fields may be removed in Phase 2.
5. The subject site is also zoned Ag-10 and is located within a Mineral Lands Designation, a flood hazard area and a Rural Shoreline designation. The staff report to the Hearing Examiner reports that all related shoreline permits will be issued separately and are not before the Hearing Examiner as part of this application. Also, Phase 2 technical review will await a determination of the level of success of Phase 1.
6. The proposal project is to restore and enhance salmonid habitat and wetlands by creating a braided, side-channel complex along the north bank of the Skykomish River as compensatory mitigation bank. Local governments in the State of Washington will have latitude to permit use of the site as off-site mitigation for loss of comparable critical area habitat due to development proposals.
7. The project in essence proposes to restore habitat and wetlands on the site to restore the natural river processes that would normally form and maintain the side-channel and depressional outflow wetland habitat that will be created on the site.
8. The proposal has been developed under (and remains under) review by the Mitigation Bank Review Team, which is an interagency committee established to regulate and approve mitigation banking in the state of Washington.
9. The Examiner has reviewed the staff report comments on road system capacity (SCC 30.66B.310), on concurrency (SCC 30.66B.120), on drainage and grading (SCC Chapters 30.63A and B), on critical areas (SCC Chapter 30.62), on the GMA Comprehensive Plan, on zoning (SCC Chapter 30.22, and on Environmental Policy (SCC Chapter 30.61). The Examiner concurs with the staff analysis and recommendations as to each of those subject areas.
10. Of course, the most applicable and decisive regulatory language in this matter is that concerning a conditional use for mineral extraction at SCC 30.31D. Although noted earlier herein, the Examiner expressly now again adopts by this reference any findings of fact in the text of the staff report as to a conditional use permit for mineral extraction.
11. Any finding of fact in this decision which should be deemed a conclusion is hereby adopted as such.

## CONCLUSIONS OF LAW

1. The Examiner having fully reviewed the PDS staff report, hereby adopts said staff report as properly setting forth the issues, the land use requests, consistency with the existing regulations, policies, principles, conditions and their effect upon the request. It is therefore hereby adopted by the Examiner as a conclusion as if set forth in full herein, in order to avoid needless repetition. There are no changes to the recommendations of the staff report.
2. The Department of Public Works recommends that the request be approved as to traffic use subject to certain conditions.
3. The request is consistent with the GMACP; GMA-based County codes; and the type and character of land use permitted on the site and the permitted density with the applicable design and development standards.
4. If approved subject to the conditions below, the proposal will make adequate provision for the public health, safety and welfare. Thus, the request should be approved subject to compliance by the applicant with the following conditions:

### CONDITIONS:

- A. The site plan(s) marked Exhibits 6C through 6R, shall be the official approved development plan(s) for this project. Any discrepancy between the content of the official approved development plan(s) and the performance standards of the UDC SCC shall be resolved in favor of the standards contained within the UDC SCC. Revision of official approved development plan(s) is regulated by SCC 30.42C.110.
- B. Excavation is limited to daylight hours only and in compliance with the hours stipulated in Chapter 10.01 SCC, the county's noise ordinance and the Hydraulics Project Approval (HPA) issued by the Washington State Department of Fish and Wildlife.
- C. Prior to initiation of any further site work; and/or prior to issuance of any development/construction permits by the county:
  - i. All site development work shall comply with the requirements of the plans and permits approved pursuant to Condition A, above.
  - ii. The developer shall mark with temporary markers in the field the boundary of all Native Growth Protection Areas (NGPA) required by Chapter 30.62 SCC, or the limits of the proposed site disturbance outside of the NGPA, using methods and materials acceptable to the county.
  - iii. A Critical Area Site Plan (CASP) shall be recorded with the Snohomish County Auditor encumbering the critical areas/required buffers in a Native Growth Protection Area (NGPA). The CASP shall include the 100-foot buffer between phase 1 and phase 2.

The recorded NGPA restrictive language shall state "All NATIVE GROWTH PROTECTION AREAS shall be left permanently undisturbed in a substantially natural state, post mitigation bank installation. No clearing, grading, filling, building construction or placement, or road construction of any kind shall occur, except removal of hazardous trees.

- iv. Native Growth Protection Area boundaries (NGPA), including the 100-foot buffer between phase 1 and phase 2, shall have been permanently marked on the site prior to final inspection by the county, with both NGPA signs and adjacent markers which can be magnetically located (e.g.: rebar, pipe, 20 penny nails, etc.). The project proponent may use other permanent methods and materials provided they are first approved by the county. Where an NGPA boundary crosses another boundary (e.g.: lot, tract, plat, road, etc.), a rebar marker with surveyors' cap and license number must be placed at the line crossing.

NGPA signs shall have been placed no greater than 100 feet apart around the perimeter of the NGPA. Minimum placement shall include one Type 1 sign per wetland, and at least one Type 1 sign shall be placed in any lot that borders the NGPA, unless otherwise approved by the county biologist. The design and proposed locations for the NGPA signs shall be submitted to the Land Use Division for review and approval prior to installation.

- v. The applicant shall have applied for and have been granted a Haul Route Agreement from the DPW.

Nothing in this permit/approval excuses the applicant, owner, lessee, agent, successor or assigns from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project.

- 5. The recipient of any conditional use permit shall file a land use permit binder on a form provided by the department (Planning and Development Services) with the county auditor prior to any of the following: initiation of any further site work, issuance of any development/construction permits by the county, or occupancy/use of the subject property or buildings thereon for the use or activity authorized. The binder shall serve both as acknowledgement of and agreement to abide by the terms and conditions of the conditional use permit and as a notice to prospective purchasers of the existence of the permit. (SCC 30.42C.200)
- 6. Any conclusion in this report and decision which should be deemed a finding of fact is hereby adopted as such.

### **DECISION**

Based on the findings of fact and conclusions of law entered above, the decision of the Hearing Examiner on the application is as follows:

The request for a conditional use permit for mineral extraction is hereby **CONDITIONALLY APPROVED**, subject to compliance by the applicant, with the conditions set forth in Conclusions 4 and 5 above.

Decision issued this 25<sup>th</sup> day of August, 2005.

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Ed Good, Deputy Hearing Examiner

## EXPLANATION OF RECONSIDERATION AND APPEAL PROCEDURES

The decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. However, reconsideration by the Examiner may also be sought by one or more parties of record. The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see Chapter 30.72 SCC and the respective Examiner and Council Rules of Procedure.

### **Reconsideration**

Any party of record may request reconsideration by the Examiner. A petition for reconsideration must be filed in writing with the Office of the Hearing Examiner, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington, (Mailing Address: M/S #405, 3000 Rockefeller Avenue, Everett WA 98201) on or before **SEPTEMBER 6, 2005**. There is no fee for filing a petition for reconsideration. **“The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record on the date of filing.” [SCC 30.72.065]**

A petition for reconsideration does not have to be in a special form but must: contain the name, mailing address and daytime telephone number of the petitioner, together with the signature of the petitioner or of the petitioner’s attorney, if any; identify the specific findings, conclusions, actions and/or conditions for which reconsideration is requested; state the relief requested; and, where applicable, identify the specific nature of any newly discovered evidence and/or changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

- (a) The Hearing Examiner exceeded the Hearing Examiner’s jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching the Hearing Examiner’s decision;
- (c) The Hearing Examiner committed an error of law;
- (d) The Hearing Examiner’s findings, conclusions and/or conditions are not supported by the record;
- (e) New evidence which could not reasonably have been produced and which is material to the decision is discovered; or
- (f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the County file number in any correspondence regarding this case.

### **Appeal**

An appeal to the County Council may be filed by any aggrieved party of record. Where the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been disposed of by the hearing examiner. An aggrieved party need not file a petition for reconsideration but may file an appeal directly to the County Council. If a petition for reconsideration is filed, issues subsequently raised by that party on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with

the Department of Planning and Development Services, 2<sup>nd</sup> Floor, County Administration-East Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **SEPTEMBER 8, 2005** and shall be accompanied by a filing fee in the amount of five hundred dollars (\$500.00); PROVIDED, that the filing fee shall not be charged to a department of the County or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect. [SCC 30.72.070]

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal shall be limited to the following:

- (a) The decision exceeded the Hearing Examiner's jurisdiction;
- (b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;
- (c) The Hearing Examiner committed an error of law; or
- (d) The Hearing Examiner's findings, conclusions and/or conditions are not supported by substantial evidence in the record. [SCC 30.72.080]

Appeals will be processed and considered by the County Council pursuant to the provisions of Chapter 30.72 SCC. Please include the County file number in any correspondence regarding the case.

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The Land Use Permit Binder, which must be executed and recorded as required by SCC 30.42C.200, will be provided by the department. The Binder should **not** be recorded until all reconsideration and/or appeal proceedings have been concluded and the permit has become effective.

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Staff Distribution:

Department of Planning and Development Services: Erik Olson  
Department of Public Works: Norm Stone

<p>The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this Decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.</p>
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