

**BEFORE THE HEARING EXAMINER  
FOR SKAMANIA COUNTY**

In the Matter of the Application of	)	NO. SHR-18-01
	)	
<b>University of Oregon</b>	)	
	)	
	)	<b>FINDINGS, CONCLUSIONS, AND</b>
For Approval of a Shoreline Substantial	)	<b>DECISION</b>
<u>Development Permit and Shoreline Variance</u>	)	

**SUMMARY OF DECISION**

The request for a shoreline substantial development permit and shoreline variance to perform shoreline repair work along a portion of the Columbia River at 28852 State Highway 14 is **GRANTED** subject to conditions.

**SUMMARY OF RECORD**

**Request:**

The University of Oregon (Applicant) requested a shoreline substantial development permit and shoreline variance to perform shoreline repair work along a portion of the Columbia River at 28852 State Highway 14, in Prindle, Washington.

**Hearing Date:**

The Skamania County Hearing Examiner held an open record hearing on the request on August 20, 2018. The record was left open until August 27, 2018 to allow the Applicant and the County to submit additional documentation.

**Testimony:**

The following individuals presented testimony under oath at the open record hearing:

Mike Beck, Planner, Skamania County  
Daniel Miller, Inter-Fluve, Project Engineer

**Exhibits:**

The following exhibits were admitted into the record:

1. Staff Report
2. Application materials, including JARPA and attached figures
3. Cultural resources inventory report
4. Natural resources mitigation plan
5. Revised final plans, dated June 2018

6. Notice of public hearing, published in the *Skamania County Pioneer* on July 11, 2018 and July 18, 2018
7. Corrected notice of public hearing, published July 25, 2018
8. Certificate of mailing
9. Mailed notice
10. Electronic notice of public hearing
11. Mitigated Determination of Non-significance (MDNS), dated April 25, 2018, with environmental checklist and plan set
12. National Scenic Area staff report, from decision dated July 26, 2018
13. Memo from Caitlin Alcott, Inter-Fluve, dated August 22, 2018
14. Wetland delineation, dated June 2018
15. WDFW Hydraulic Project Approval, dated June 7, 2018

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

#### **FINDINGS**

1. The Applicant requested a shoreline substantial development permit and shoreline variance to perform shoreline repair work along a portion of the Columbia River at 28852 State Highway 14, in Prindle, Washington.<sup>1</sup> *Exhibits 1, 2, and 5.*
2. The subject property is an approximately 75-acre riverfront parcel known as “The Shire.” Architect John Yeon landscaped the property in the 1960s, creating meadow/lawn areas, paths, and scenic viewpoints. The only structure on the property is a small concrete building known as the “Dugout,” which was used for storage and as a studio for Mr. Yeon. The subject property is now owned by the University of Oregon and is used as a landscape architecture classroom and for occasional events. *Exhibits 1 and 3; Daniel Miller Testimony.*
3. Approximately 142 lineal feet of the subject property’s river bank, to a width of 15 feet, suffered erosion during the winter of 2016-2017. The Applicant proposes to repair the shoreline by excavating 140 cubic yards of eroded fines (impacting approximately 2,170 square feet), filling the area with 140 cubic yards of approximately 18-inch wave protection stone and 20 cubic yards of gravel filter, removing non-native shrubs, planting native shrubs and herbaceous species, and relocating irrigation lines. *Exhibits 1, 2, 5, and 11.*
4. The placement of stone is designed to restore the damaged portion of the shoreline and to defend against wave erosion. The stone would be enhanced for visual and habitat conditions

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<sup>1</sup> The legal description of the subject property is a portion of Section 34, Township 2 North, Range 6 East, W.W.; also known as Parcel Number 01-05-01-0-0-0700-00. *Exhibit 1.*

by filling the voids with fines including cobble, gravel, sand, and silt, and by placing live cuttings, herbaceous plugs, and seeds in and on the stone to create vegetative cover. *Exhibit 2; Daniel Miller Testimony.*

5. The excavation, fill, and removal of invasive species would be performed below the ordinary high water mark (OHWM) as prescribed by the US Army Corps of Engineers (USACOE), which is 29.55 feet NAVD 88. The USACOE OHWM is based on hydraulic modeling. However, the OHWM as delineated in the field per guidance from the Washington State Department of Ecology is at a lower elevation of 22.03 feet NAVD 88. Using the state OHWM, the excavation and fill would be performed above the OHWM, but the removal of invasive vegetation (which would include mechanical removal of stumps) would be below the OHWM. The work would be performed during low flow conditions, when the river stage is expected to be below grading limits. If the river stage is within the limits of disturbance, the worksite would be isolated using cofferdams and dewatered using dewatering pumps. If the grading limits are dry, a silt fence would be used to control stream sedimentation. Impacts landward of the USACOE OHWM would include temporary access and staging areas; of these, the site plans show clearly that the temporary access would be within 200 feet of the shoreline, and temporary staging areas might be within 200 feet of the shoreline. *Exhibits 2, 4, 5, 11, and 13; Daniel Miller Testimony.*
6. There is one wetland within the project area, which is identified as Wetland A in the wetland delineation report.<sup>2</sup> Wetland A is an 0.18-acre fringe feature that supports mostly reed canarygrass and false indigo brush. It is located waterward of the OHWM as identified by the USACOE (which is the OHWM relied on by the County in its review) and upland of the OHWM as delineated by Applicant consultants based on state Department of Ecology criteria, thus creating confusion as to whether to classify and regulate the area as wetland or waterbody. Wetland A is east of the eroded area proposed for repair, but the eroded area is likely former wetland because it shares a similar contour and geomorphic location. At present, it is devoid of vegetation as the soil has been stripped away. *Exhibits 13 and 14.*
7. Washington Department of Fish and Wildlife priority habitats and species occurring in the project area include spotted owl<sup>3</sup>, steelhead, coho, fall chum, Dolly Varden/bull trout, fall chinook, and freshwater forested/shrub wetland. *Exhibit 4.*
8. The Applicant's mitigation plan includes revegetation of disturbed areas (such as temporary access and staging areas) plus additional planting areas. The Applicant proposes to plant narrowleaf willow, spirea, and slough sedge within the rock wave protection area; grasses within the access and staging areas and within an additional 0.34 acre of uplands; spirea and narrowleaf willow within the riparian area to the east of the rock wave protection area; and narrowleaf willow below the state OWHM. The mitigation goal is to improve the riparian

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<sup>2</sup> There were two wetlands identified within the area of potential impact. As clarified in the Applicant's post-hearing memorandum, only Wetland A would be impacted by project activities. Wetland B was delineated during design as the Applicant consultants identified the staging or mitigation areas anticipated to result in the least impact to the project. Figure 2, page 14 of the wetland report illustrates the location of these wetlands. *Exhibits 13 and 14.*

<sup>3</sup> Species presence, not habitat.

and aquatic habitats by re-establishing native vegetation assemblages across distinct elevational zones, removing invasive species, and preventing the establishment of noxious weeds and Canada thistle. As part of the mitigation plan, the Applicant developed performance standards with respect to species survival and weed coverage, and a five-year monitoring plan. *Exhibits 4 and 5.*

9. Pursuant to the Skamania County Shoreline Master Program (SMP), the Columbia River is a shoreline of statewide significance. The SMP designates the subject shoreline as a Conservancy shoreline environment, which designation is “intended to protect, conserve, and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.” *Exhibit 1.* Uses allowed in the Conservancy environment include shoreline protection works when part of another use or for protection of uplands. *Exhibit 1.*
10. Within the Conservancy environment, the minimum building setback from the ordinary high water mark is 50 feet. The County determined that a shoreline variance is needed for the proposal because project activities would occur within 50 feet of the ordinary water mark. *Exhibit 1; Mike Beck Testimony.*
11. The proposed development constitutes “substantial development” and requires a shoreline substantial development permit because the projected fair market value of the project (\$250,000) would exceed the \$7,047.00 threshold set forth in the Shoreline Management Act. *RCW 90.58.030(3)(e); Washington State Register 17-17-007; Exhibit 2.*
12. The Washington Department of Fish and Wildlife (WDFW) granted Hydraulic Project Approval (HPA) for the proposal on June 7, 2018. The HPA requires that all work within the ordinary high water mark occur between July 15 and September 30.<sup>4</sup> It also contains several project-specific conditions to protect the bank, including: locating the toe of the rock landward of the ordinary high water mark as shown in approved plans; using clean angular rock for bank protection that is large enough and installed to withstand the 100-year peak flow; and not releasing overburden material into the water when resloping the bank. The HPA also requires the Applicant to mitigate impacts, including: removing all reed canary grass and indigo waterward of the ordinary high water mark; revegetating disturbed areas consistent with approved plans; and maintaining plantings above 17-foot water elevation to ensure 85% survival after planting. *Exhibit 15.*
13. Approval from the Washington Department of Natural Resources is not required for the project, as the proposed hard bank treatment would be located outside of the state-defined ordinary high water mark. *Exhibit 13.*

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<sup>4</sup> The Applicant has already been in communication with WDFW regarding delays in processing the application and anticipates that an extension would be granted due to the need to protect the shoreline before winter. Water levels are favorable through the end of October. *Daniel Miller Testimony; see also Exhibit 4, page 11 (Columbia River Stage diagram).*

14. The subject property is located within the Columbia River Gorge National Scenic Area and is zoned Special Management Area - Forest and General Management Area - Water. Nearby land uses include residential housing, commercial forest lands, and a County road shop. County Staff administratively reviewed the project under the regulations applicable to the Scenic Area (Title 22 of the Skamania County Code) and granted approval with conditions on July 26, 2018. The conditions of approval address temporary visual impacts during construction, use of temporary lighting during construction, and submittal of a final monitoring report for the project mitigation. *Exhibits 1 and 12.*
15. A cultural resources inventory was conducted for the subject property. Based on consultant research and field investigation, there are no archaeological resources on the subject property and no previously recorded cultural resources. However, the consultant identified the site itself as an aboveground historic resource under National Register of Historic Places criteria and recommended that it be recorded. The consultant submitted that the project would have no adverse effect on the historic property, as it would restore the shoreline consistent with its original construction. *Exhibit 3.*
16. The project would not affect public access to the shoreline. The property is privately owned, and there is no public access except for those invited to attend events at the site. *Daniel Miller Testimony.*
17. Skamania County acted as lead agency for environmental review of the project under the State Environmental Policy Act (SEPA) and issued a mitigated determination of non-significance (MDNS) on April 25, 2018. The MDNS contains conditions requiring the following: installation of erosion control measures prior to clearing, grading, or construction; minimization of temporary visual impacts during construction; preparation of a Cultural Resource Reconnaissance Survey and History Survey<sup>5</sup>; and a requirement that the Applicant obtain necessary local, state, and federal permits prior to construction. *Exhibit 11.*
18. Notice of the open record hearing was published on July 11, 2018 and July 18, 2018 in the *Skamania County Pioneer*, the legal paper of record, and re-published on July 25, 2018 to correct an address error. Notice of hearing was also mailed to the owners of properties within 500 feet of the subject property and posted on the Community Development Department's website on July 18, 2018.<sup>6</sup> *Exhibits 1, 6, 7, 8, 9, and 10.* There was no public comment on the application. *Exhibit 1; Mike Beck Testimony.*

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<sup>5</sup> This mitigation measure was satisfied with the subsequent submission of Exhibit 3.

<sup>6</sup> The mailed notice did not include the address error. *Exhibit 9.*

## CONCLUSIONS

### **Jurisdiction:**

The Hearing Examiner is granted jurisdiction to hear and decide applications for County shoreline permits pursuant to SCC 20.20.010.

### **Criteria for Review:**

#### ***Substantial Development Permit***

Pursuant to SCC 20.20.020, the Hearing Examiner shall grant a substantial development permit only if the proposal is consistent with:

1. The policies and procedures of the Shoreline Management Act; and
2. The provisions of Chapter 173-14 [now 173-27] WAC; and
3. The Skamania County Shoreline Master Program.

#### *Shoreline Management Act*

Chapter 90.58 RCW, the Washington State Shoreline Management Act (SMA) of 1971, establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Act. The Skamania County Shoreline Master Program provides goals, policies, and regulatory standards for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

The intent of the policies of RCW 90.58.020 is to foster “all reasonable and appropriate uses” and to protect against adverse effects to the public health, the land, and its vegetation and wildlife. The SMA mandates that local governments adopt shoreline management programs that give preference to uses that (in the following order of preference): recognize and protect the statewide interest over local interest; preserve the natural character of the shoreline; result in long term over short term benefit; protect the resources and ecology of the shoreline; increase public access to publicly owned areas of the shorelines; and increase recreational opportunities for the public in the shoreline. The public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state is to be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses that are consistent with control of pollution and prevention of damage to the natural environment, or that are unique to or dependent upon use of the state’s shoreline, are to be given preference.

#### *Washington Administrative Code*

##### WAC 173-27-140 Review criteria for all development

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the

view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

(2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

(1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

*Shoreline Master Program for Skamania County*

Shoreline Policy Statements for the Use Activities

2. Archeological Areas and Historic Sites

Archeological areas, ancient villages, military forts, old settlers homes, ghost towns, and trails were often located on shorelines because of the proximity of food resources and because water provided an important means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past these locations should be preserved.

Policy Statements:

- a. Consult with the Skamania County Historical Society to identify archeological areas and historic sites. All archeological and historic sites should be identified and noted in priority. Where possible, such sites should be permanently preserved for scientific study and public observation.
- b. Shoreline permits, in general, should contain special provisions which require developers to notify local governments if any possible archeological data are uncovered during excavations. In areas known to contain archeological data, local governments should attach a special condition to a shoreline permit providing for a site inspection and evaluation by an archeologist to ensure that possible archeological data are properly salvaged. Such a condition might also require approval by local government before work can resume on the project following such an examination.
- c. Development which might destroy an archeological or historic site may be delayed until the appropriate agency or organization can be given the opportunity to purchase the site or obtain the desired data. Such delays will not be prolonged if little or no interest is shown, or if the group wanting protection is dilatory.

## 18. Shoreline Protection Works

Flood protection and streamway modifications are those activities occurring within the streamway and wetland areas which are designed to reduce overbank flow of high waters, and stabilization to reduce sedimentation, and protection of property from erosion are normally achieved through water-shed and flood plain management and by structural works. Such measures are often complimentary to one another and several measures together may be necessary to achieve the desired end.

Shoreline protection works shall include Bulkheads, Breakwaters, Jetties, Groins, Levees, Berms, Retaining Walls, Riprapping, Dikes and the like. Note: SPW means “Shoreline Protection Works.”

### Policy Statements:

- a. SPW shall be located and constructed in such a manner which will not result in adverse effects of “wetlands” and will minimize alterations of the natural shoreline.
- b. Special attention shall be given to the effect SPW will have on the propagation and movement of fish.
- c. Consider the effect of a proposed SPW on public access to publicly owned shorelines.
- d. SPW should be designed to blend it with the surrounding and not detract from the aesthetic qualities of the shoreline.
- e. The construction of SPW should be permitted only where they provide protection to upland areas or facilities and not for the indirect purpose of creating land behind the SPW. Landfill operations should satisfy the policies under “landfills.”
- f. Riprapping and other bank stabilization measures shall be located, designed, and constructed so as to avoid the need for channelization and to protect the natural character of the streamway.
- g. Where flood protection measures such as dikes are planned, they should be placed landward of the streamway, including associated swamps and marshes and other wetlands directly inter-related and interdependent with the stream proper.
- h. Flood protection measures which result in channelization should be avoided.
- i. SPW shall fulfill the requirements of a Hydraulics Project Approval from the Department of Fisheries and the Department of Game.

## 21. Wildlife

Hunting and fishing is a major recreational activity for residents of Skamania County. Also, a large number of nonresidents from other areas of the state and neighboring Oregonians visit the county to hunt and fish. The wildlife resource of the county also provides a source of enjoyment for those who desire to observe and photograph wildlife. Since wildlife (which include the fish in lakes and streams) constitutes a major use of the county’s shorelines, the Shoreline Advisory Committee considers it necessary for the Master Program to include wildlife as a shoreline use. And, to develop policies

which give consideration to the habitat requirements of wildlife in order to maintain and enhance this valuable natural resource.

Policy Statements:

- a. Identify rare and endangered wildlife species habitat along shorelines and reserve these areas for wildlife use.
- b. Winter range is the limiting factor for wildlife populations and should be protected from intensive development that would be detrimental to wildlife.
- c. Nesting sites for waterfowl, hawks, owls, and eagle species should be protected from shoreline uses which would render the habitat unsuitable for nesting areas.
- d. In reviewing substantial development permits, recognition should be given to the possible detrimental impact such developments may have on wildlife resources, including the fisheries resource, especially spawning areas for anadromous fish.

The Environment Regulations

Conservancy Environment Regulations

1. Purpose: The Conservancy Environment is intended to protect, conserve, and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.
2. Uses: The primary uses permitted in the Conservancy Environment are those uses which can utilize resources on a sustained yield basis. Such uses include diffuse outdoor recreation activities, timber harvesting, agricultural uses, low density residential, and other related uses.

Shoreline Uses permitted within the Conservancy Environment:

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Shoreline protection works as part of another use or for protection of uplands ....

3. Minimum shoreline lot sizes and dimensions: For residential lots within the Conservancy Environment.
4. Setback: All buildings and structures shall be setback at least 50 feet from the ordinary high water mark.
5. Building height: There shall be a 35-foot maximum building height for all structures.
6. Building design: In general, buildings shall be compatible with the surrounding environment. Exterior walls of buildings, including out buildings, shall have a finished surface, preferably wood siding. Exterior walls of non-wood material shall be finished in muted tones by painting, staining, or other processing.
7. Restoration: Same as for the Urban Environment except for timber harvesting, which shall comply with the Renewable Resource Regulations.

The Urban Environment “Restoration” regulation states: All shoreline areas, which are disturbed as a result of shoreline development, shall be landscaped, except those areas

along the water line where shoreline protection works are specifically allowed by the shoreline development permit. All areas unpaved or reserved for future development shall be either entirely landscaped or screened from public view. Landscaping may consist of trees, shrubbery and grass. All landscape development should be designed particularly to enhance the building scale and form and be compatible with other nearby landscaping. New plantings shall be of such size and density that they are initially effective. The plantings shall be so maintained that they will blend into the urban area in the shortest possible time. Where development shall cause the removal of all debris, litter, dilapidated buildings and structures, and old machinery, this removal and restoration shall occur on all of the parcel of property and as far into the water as abandoned piling or other debris may extend within the property ownership. The property owner shall maintain the shoreline area in a neat and orderly manner and not dispose of litter, junk, or abandon machinery within the shoreline area. Timber harvesting shall comply with the Skamania County Shorelines Master Program Renewable Resource Regulations.

#### The Use Regulations: Construction and Operations Regulations

The following regulations cover the construction practices that must be observed for substantial developments.

1. No construction equipment shall enter any shoreline body of water, except as authorized under the terms of a substantial development permit.
2. Vegetation along the water shall be left in its natural condition unless the substantial development permit allows otherwise.
3. During construction, care will be taken to assure that waste material and foreign matter are not allowed to enter the water.
4. All fuel and chemicals shall be kept, stored, handled, and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water.
5. Protection from siltation and erosion shall be provided for on all earthworks projects.
6. Land being prepared for development shall have an adequate drainage system to prevent runoff from entering water bodies.
7. Side casting of excess road building material into streams will not be permitted.
8. Land clearing operations shall be done in a fashion that does not place machinery or debris within 10 feet of the high water mark and all cleared vegetation shall be burned. This regulation does not apply to timber harvest roads.
9. All construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the shoreline area. No equipment shall be abandoned within the shoreline area.

### Scenic Vista and View Protection Regulations

These regulations are intended to protect and enhance existing or potential scenic views and vistas.

1. No advertising signs or billboards shall be permitted within the shorelines except those signs identifying the names and business of the persons or firm occupying a particular site. Such identifying signs may be painted or mounted flush onto the exterior face of buildings and shall not rise higher than the buildings they are affixed to. Illuminated signs are permitted provided they are placed on that side of the building furthest from the water. Flashing and moving signs shall not be permitted. The size and design of all identifying signs shall be compatible with the surrounding environment. Preferable signs should be constructed of wood with routed lettering and finished in muted tones.
2. All electrical and telephone service shall be brought underground into the development site and to buildings.
3. Buildings and structures shall be no higher than 35 feet if there is the possibility that they might interfere with the views of a substantial number of upland properties.

### ***Shoreline Variance***

- (A) The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional, or performance standards set forth in the Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant, or thwart the policies set forth in RCW 90.58.020.
- (B) Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no detrimental effect.
- (C) Variance permits for development that will be located landward of the ordinary high water mark as defined in RCW 90.58.030(2)(b), except within those areas designated by the Department as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized; provided that the applicant can demonstrate all of the following:
  1. That the strict application of the bulk, dimensional, or performance standards set forth in the Master Program precludes or significantly interferes with a reasonable permitted use of the property.
  2. That the hardship described in subsection C1 of this section 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 the Master Program, and not, for example, from deed restrictions or the applicant's own actions;
  3. That the design of the project will be compatible with other permitted activities in the areas or qualify as a prior nonconforming use, and will not cause adverse effects to adjacent properties or the shoreline environment designation.

4. That the variance authorized does not constitute a granting of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;
5. That the public interest will suffer no substantial detrimental effect.

(D) Variance permits for developments that will be located either waterward of the ordinary high water mark as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the Department pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

1. That the strict application of the bulk, dimensional, or performance standards set forth in the applicable Master Program precludes a reasonable permitted use of the property;
2. That the hardship described in subsection C1 of this section is specifically related to the property, and is the result of unique conditions as irregular lot shape, size, or natural features and the application of the Master Program, and not, for example from deed restrictions or the applicant's own actions;
3. That the requested variance will not constitute a grant of special privilege not enjoyed by other properties in the area, and will be the minimum necessary to afford relief;
4. That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance;
5. That the public interest will suffer no substantial detrimental effect.

(E) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020, and should not produce substantial adverse effect to the shoreline environment.

**Conclusions Based on Findings:**

1. With conditions of approval, the criteria for a Substantial Development Permit are satisfied.
  - a. Consistent with the policy of the Shoreline Management Act, the proposal to repair and protect the shoreline of this historic property, and to improve the aquatic habitat through mitigation plantings, is a reasonable and appropriate use of the affected shoreline. Protection of public health is addressed through a condition of approval requiring fuel and chemicals to be stored and handled in a manner that prevents their entry into the water. *Findings 2, 3, 4, 8, and 15.*
  - b. The provisions of Chapter 173-27 WAC are procedural in nature and have been incorporated into Title 20 of the Skamania County Code (Shoreline Management). The proposal is for a use that is allowed in the Conservancy environment, but which requires a substantial development permit and a shoreline variance. No structure taller than 35 feet is proposed and no upland views of the shoreline would be obstructed. *Findings 9, 10, and 11.*
  - c. With the mitigation proposed by the Applicant and the conditions recommended by Planning Staff, the proposal is consistent with the policies and regulations of the

Shoreline Master Program. The site has been evaluated for cultural resources. A condition of approval would require the Applicant to stop work if cultural resources are discovered during construction activities. The project is protective of the historic landscape architecture on the site. With respect to shoreline protection policies, the project is designed to restore the original shoreline. With the proposed mitigation, its completion would not adversely affect wetlands. The work would not affect fish movement or public access to shorelines. The project is designed to restore the aesthetic qualities of the shoreline consistent with preexisting landscape architecture. The placement of rock would not result in channelization. An HPA has been granted by WDFW for the project. Fish would be protected through compliance with the HPA-mandated construction window, which would ensure that either the work is conducted during low water, or if the river stage is higher than anticipated, that the project area would be isolated from the river. The conditions of approval (including those imposed through the MDNS) require site restoration, limit mechanical equipment within the water body to approved activities (for this project, removal of invasive vegetation), require fuel and chemicals to be stored and handled in a manner that prevents entry into the water, and require use of erosion control measures and removal of construction debris. Removal of invasive vegetation consistent with the submitted natural resources mitigation plan (Exhibit 4) is specifically allowed by this decision. *Findings 2, 3, 4, 5, 6, 8, 12, 13, 15, and 16.*

2. With conditions of approval, the proposal satisfies the criteria for a shoreline variance. The analysis that follows is intended to address activities both above and below the OHWM.
  - a. Strict application of the 50-foot buffer would preclude a reasonable permitted use of the property. The shoreline repair proposed is allowed in the Conservancy environment, and by necessity it must occur within 50 feet of the OHWM. *Findings 3, 4, 5, and 9.*
  - b. The hardship requiring the variance is related to unique conditions that are not the fault of the Applicant, including the impact of natural forces along the subject shoreline, the need to protect the historic property from further storm damage, and the need to locate protective features at the OHWM. *Findings 2, 3, 4, 5, and 15.*
  - c. With conditions, the design of the project would be compatible with other permitted activities in the area and would not cause adverse effects to adjacent properties or to the Conservancy environment. The project has been reviewed and approved under the Columbia River Gorge National Scenic Area regulations. *Findings 8 and 14.*
  - d. Given the unique nature of the property, the purpose of the project, and the mitigation proposed by the Applicant and required by the Washington Department of Fish and Wildlife, the variance would not be a grant of special privilege. The extent of the repair work coincides with the area of past storm damage and is therefore the minimum necessary. *Findings 2, 3, 8, and 12.*
  - e. Public rights of navigation and use of the shoreline would not be adversely affected. *Finding 16.*

- f. With conditions, the public interest would suffer no substantial detrimental effect. The conditions address construction-related impacts and fuel/chemical storage.  
*Findings 4, 5, 6, and 8.*

### DECISION

Based on the preceding findings and conclusions, the request for a shoreline substantial development permit and shoreline variance to perform shoreline repair work along a portion of the Columbia River at 28852 State Highway 14 is **GRANTED** subject to the following conditions:

1. The following procedures shall be effected in the event that cultural resources are discovered during construction activities:
  - a. Halt Construction: All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
  - b. Notification: The Applicant shall notify the Community Development Department and the Native American Tribal governments within 24 hours.
2. The Applicant shall comply with the goals, objectives, performance standards, monitoring plan, and implementation schedule contained in the Inter-fluve Natural Resources Mitigation Plan, dated June 14, 2018.
3. All disturbed areas other than those authorized as shoreline protection works by the shoreline development permit shall be landscaped or screened from public view. All plantings are required to be maintained.
4. Mechanical equipment shall be authorized to enter water bodies solely for approved project activities in the location denoted on the approved site plan.
5. All fuel and chemicals shall be kept, stored, handled, and used in a fashion which assures that there will be no opportunity for accidental entry of such fuel and chemicals into the water.
6. All cleared vegetation shall be burned or properly disposed of at an appropriate upland off-site disposal facility, such as a commercial compost purveyor or other venue consistent with applicable County regulations.
7. All construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the shoreline area at the conclusion of the construction work. No equipment shall be abandoned within the shoreline area.

DECIDED September 4, 2018 by



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Sharon A. Rice  
Skamania County Hearing Examiner

Note: Pursuant to WAC 173-27-200, after local government approval of a shoreline conditional use or shoreline variance permit, local government shall submit the permit to the Department Ecology for the Department's approval, approval with conditions, or denial. The Department shall render and transmit to local government and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by local government pursuant to WAC 173-27-110. In deciding the ultimate outcome of the permit, the department shall review the complete file submitted by local government on conditional use and variance permits and any other information submitted or available that is relevant to the application. The department shall base its determination to approve, approve with conditions, or deny a conditional use permit or variance on consistency with the policy and provisions of the Act and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170. Local government shall provide timely notification of the department's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

Note: Pursuant to WAC 173-27-220, all requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the shorelines hearings board.