



COUNTY COMMISSIONERS

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HEARING EXAMINER

Creating Solutions for Our Future

**FINDINGS, CONCLUSIONS AND DECISION
OF THE HEARING EXAMINER FOR
THURSTON COUNTY**

CASE NO: 2010100397 (Centralia Power substantial development permit)

APPLICANT: City of Centralia

SUMMARY OF REQUEST:

The Applicant requests a substantial development permit under the state Shoreline Management Act to construct bank stabilization and armoring on the Nisqually River downstream from its power station outfall.

LOCATION OF PROPOSAL:

Thurston County Assessor's Parcel No. 21711130000; in the east half of Section 11, T17N, R1E.

SUMMARY OF DECISION:

The substantial development permit is granted, subject to conditions.

HEARING AND RECORD:

The hearing on this request was held before the undersigned Hearing Examiner on July 19, 2010. The following exhibits are admitted as part of the record:

Exhibit 1. Staff Report by Thurston County Resource Stewardship Department for Case No. 2010100397, prepared by Robert Smith and dated July 19, 2010. This Exhibit

SENT

DATE: 8-2-10

includes the seven-page Staff Report and Attachments a through i listed on Page Seven of the Staff Report.

Exhibit 2. Photographs of posted notice at project site.

Exhibit 3. Six-page document entitled "Construction History" pertaining to this project and dated February, 3, 2006.

Exhibit 4. Biological Evaluation dated February 8, 2010, prepared by GeoEngineers, Inc.

Exhibit 5. Revised design for this project.

At the hearing, the following individuals testified under oath, with Mr. Ambrose testifying by telephone:

Robert Smith, Senior Planner
Thurston County Resource Stewardship Department
2000 Lakeridge Drive SW
Olympia, WA 98502

Jonathon Ambrose
GeoEngineers, Inc.
600 Stewart Street, Suite 1700
Seattle, WA 98101

After consideration of the testimony and exhibits described above, the Hearing Examiner makes the following findings of fact, conclusions of law, and decision.

FINDINGS OF FACT

A. Description of existing hydropower facility and need for the proposed bank project.

1. The Applicant City of Centralia requests a substantial development permit under the Shoreline Management Act, Chap. 90.58 RCW, to construct an approximately 210-foot long rock riprap revetment with geotextile reinforced soil lifts on the left bank of the Nisqually River (viewed downstream) on its power plant property approximately 1.5 miles north of Yelm. The project is described in more detail below.

2. The Applicant owns and operates a hydropower generating facility along the Nisqually River. In general, the facility consists of a diversion dam and intake structure on the Nisqually River, 9.1 miles of canal which is fed by the dam and intake structure, three spillways, forebay, gatehouse, two penstocks and a powerhouse. After running through generating turbines, the water flows back into the Nisqually River at the project site, which is located as shown on the map at Exhibit (Ex.) 1, Attachment (Att.) b. These facilities were originally constructed in 1929-30. They and the history of their construction are described in detail in Ex. 3.

3. The original powerhouse was built in 1930 and contained two 2.5 megawatt turbines. In 1954 the powerhouse was expanded and a six megawatt turbine was added.

4. The project site is on a 130.71 acre parcel zoned RRR 1/5 and with the same designation under the Comprehensive Plan. The area along the river shoreline is zoned Conservancy under the Thurston Region Shoreline Master Program (SMP).

5. To the north of the project site lie undeveloped lands zoned RRR 1/5 and to the south are scattered single-family residences and an elementary school. To the west and to the east across the Nisqually River lie Fort Lewis lands.

6. The drawings and pictures at Ex. 1, Att. e depict the project site, where the canal waters or tailrace flow back into the Nisqually River. A number of the pictures in Att. e are also found at Ex. 4, p. B-1. As shown in Att. e, Sheets 3 of 8 and 4 of 8, two of the Applicant's maintenance buildings are located at the confluence of the tailrace and the Nisqually River, one near the top of the bank of the tailrace and one near the top of the riverbank just downstream from the mouth of the tailrace. Each building is located about 20 feet from the respective bank, at its closest point. The powerhouse is located a short distance upstream on the tailrace.

7. During recent periods of high water, the project site has experienced increased erosion along its Nisqually River bank and along the downstream corner of the confluence of the tailrace and the river. The Staff Report states that slumping has occurred along the bank and that the bank is failing. Ex. 1, p. 4. The pictures at Ex. 4 bear this conclusion out. The Department agrees with the Applicant's position that the proposed bank strengthening is necessary to protect the two maintenance buildings described above. See Ex. 1, p. 4.

8. The area proposed for stabilization work is currently an approximately 20-foot high earthen bank with grass and some Scot's broom, willow and two mature Douglas firs, as shown in part by the pictures at Ex. 4. The area extending back from the top of the bank is currently maintained lawn.

9. The Nisqually River is on the 2008 Section 303 (d) list of impaired waters, because it exceeds applicable standards for fecal coliform and chromium.

B. Description of proposed work.

10. The Applicant desires to construct an approximately 210-foot long rock riprap revetment with geotextile reinforced soil lifts to protect the vulnerable banks and the two buildings described above. The location of the proposed construction is shown at Ex. 1, Att. e, covering essentially the corner of the tailrace entrance to the river and a portion of the river bank. The new bank structures will be placed on the existing shoreline and will not create new land. The new structures will allow the passage of

ground and surface water through them and should not create ponding or soil saturation.

11. The profiles of the proposed bank work are shown in the revised design at Ex. 5. The majority of the project will have the design shown in cross section B – B'. Thirty-six inch riprap at a 2:1 angle underlain by geotextile fabric will be placed from a depth of approximately six feet below the channel bottom to a short distance above the ordinary high water level, as shown in Ex. 5. Above this point and extending to an elevation of approximately 127 feet above sea level, a series of geotextile wrapped coir soil lifts will be placed as shown in cross section B – B' of Ex. 5. The evidence does not state what soil "lifts" are, but they are apparently wrapped and separated areas of soil between which live plants are placed and in which seeds are planted. See Ex. 4, Sheet 8 of 8. The live plantings would include willow and vine maple, according to Ex. 5. The evidence does not state what seeds would be planted.

12. The original design proposed to install large woody debris root wads and boulder clusters at points along the bank project. In response to comments from federal regulatory agencies, the Applicant amended the design to place the large woody debris root wads at each end of the bank project, as shown at Ex. 5. Test. of Ambrose. The cross sections at either end of the project would be modified as shown at Ex. 5 to accomplish this. The revised design does not appear to include the boulder clusters originally proposed with the root wads.

13. The proposed bank work is not higher than that reasonably needed to accomplish its purpose.

14. The original design also preserved both the mature Douglas firs along the affected bank. The revised design, however, only shows one of the trees as being retained. No explanation is given as to why a federal agency charged with protecting certain habitat would require the likely degradation of habitat through removal of a large riverside tree. Similarly, no evidence was submitted to show that the design modifications required by the federal service required the removal of one of the trees. Therefore, this decision is conditioned to require the preservation of both Douglas firs, unless removal of one is required by a federal agency with jurisdiction or the Department makes a determination that removal of a tree is necessary to achieve the design modifications required by the federal agency.

15. The methods of constructing the proposal are described in Ex. 1, Att. d and Ex. 4. Construction is expected to take about one month and is proposed to be confined to the July 16 to August 31 in-water work window approved by the Department of Fish and Wildlife.

16. The proposed bank stabilization work was designed in accordance with the *Integrated Streambank Protection Guidelines* of the state Department of Fish and Wildlife (2003).

17. The fair market value of the proposal is approximately \$100,000.

18. The proposal is also required by law to obtain a Hydraulic Project Approval from the Department of Fish and Wildlife, permits under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act from the U.S. Army Corps of Engineers, a water quality certification under Section 401 of the Clean Water Act from the Department of Ecology, and to comply with applicable consultation requirements under Section 7 of the Endangered Species Act. The Section 401 and 404 permits are pending, and NOAA Fisheries has concurred with the proposal, conditioned on the revisions concerning large woody debris described above. Test. of Smith. The evidence did not disclose the status of the Section 10 permit or the Hydraulic Project Approval.

C. Fish, wildlife and their habitat.

19. A Biological Evaluation for this project is found at Ex. 4, of which pp. 2 through 4 discuss construction techniques. These features of the proposal include, but are not limited to the following:

(a) Project work will take place in daylight hours during the July 16 to August 31 in-water work window approved by the Department of Fish and Wildlife.

(b) Project work was designed in accordance with the *Integrated Streambank Protection Guidelines* of the state Department of Fish and Wildlife (2003).

(c) The area where the riprap is to be buried beneath the river bed may be temporarily dewatered, as described at Ex. 4, p. 2. Fish will be removed using dip nets, seines or electroshocking.

(d) Construction will be carried out using a long-reach excavator positioned near the top of the slope and on a temporary bench midway up the bank. Dump trucks will transport material to the site. No equipment will enter the river, except for the scoop arm of the excavator. Equipment will be washed, fueled and staged at least 300 feet from the Nisqually River. Each day the equipment will be inspected for leaks and completely cleaned of external petroleum products, hydraulic fluid, coolants and other deleterious materials.

(e) The project will generate typical construction noise, not expected to exceed 90 dB. No blasting, pile driving, or other activities causing percussive noise dangerous to fish will take place. Underwater noise is expected to be insignificant, because the only equipment entering the water will be the scoop of the excavator.

(f) During construction, the Applicant will follow the guidance in the Department of Ecology 2005 Stormwater Management Manual for Western Washington - Volume II, Construction Stormwater Pollution Prevention.

(g) A floating silt curtain will be installed around the work area and remain in place until work in the water is complete. At that point the silt curtain will be removed and a silt fence will be installed on the bank downslope of the excavator throughout the duration of the project.

20. The potential effects of this project on fish and fish habitat include noise, turbidity, temporary destruction of substrate habitat, and potential spills of petroleum or hazardous materials from equipment. Ex. 4, pp. 7, et seq. The project features described above should prevent harmful effects from noise or discharge of hazardous materials or petroleum products. The temporary loss of substrate is limited and an inescapable consequence of revetment construction.

21. The Nisqually River at the project site constitutes "core summer salmonid habitat" for purposes of the turbidity standards of WAC 173-201A-200(1) (e). The flow of the river at this location is more than 100 cubic feet per second. The Biological Evaluation sets out the basic turbidity standards for core summer salmonid habitat at WAC 173-201A-200(1) (e) and cites that provision's authorization to temporarily exceed these standards during and after in-water construction. Although the Biological Evaluation does not expressly address the point, it appears that the project would take advantage of this authorization to temporarily exceed these basic turbidity standards. See Ex. 1, pp. 3-4.

22. The Biological Evaluation acknowledges that the point of compliance for these exceedances is 300 feet downstream from the activity and proposes to monitor turbidity and take action, including suspending the operation, to ensure that turbidity in excess of the basic standards does not extend more than 300 feet downstream. See Ex. 4, pp. 3-4. Mixing zones (areas of temporary exceedances) in rivers are also subject to the requirements of WAC 173-201A-400 (4), which states:

"No mixing zone shall be granted unless the supporting information clearly indicates the mixing zone would not have a reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body, result in damage to the ecosystem, or adversely affect public health as determined by the department."

The Applicant did present evidence showing that these standards were met generally, but the evidence did not show whether the expected turbidity exceedances were reviewed under these standards.

23. In the long term, the project is expected to benefit habitat by increasing riparian and aquatic habitat features and reducing erosion and sedimentation.

24. The Nisqually River contains anadromous runs of Chinook, chum, pink, and sockeye salmon and steelhead trout, as well as cutthroat trout. Among these are two species listed as threatened under the federal Endangered Species Act: Puget Sound Chinook and Puget Sound steelhead. The Nisqually River at the project site and both

upstream and downstream of it is listed as critical habitat for Puget Sound Chinook. Ex. 4, p. 9.

25. Federally listed fish, wildlife and plant species that may occur in Pierce and Thurston counties, but which are not expected to occur in the project area, are discussed at Ex. 4, pp. 6-7. The only federally listed species expected to occur at the project site are Puget Sound Chinook and Puget Sound steelhead. The analysis at Ex. 4, pp. 7-9 concludes that the project is not likely to adversely affect Puget Sound Chinook or its critical habitat and is not likely to adversely affect Puget Sound steelhead or its proposed critical habitat. The analysis at Ex. 4, pp. 9-11 concludes that the project will have no adverse effect on Pacific salmon essential fish habitat under the federal Magnuson-Stevens Act.

CONCLUSIONS OF LAW

A. The shoreline standards applicable to this proposal.

1. With exceptions not pertinent to this proposal, the state Shoreline Management Act (SMA), Chap. 90.58 RCW, defines shorelines of the state to include "all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them . . ." RCW 90.58.030 (2) (d). Shorelands, in turn, are defined as "those lands extending landward for two hundred feet . . . from the ordinary high water mark . . ." RCW 90.58.030 (2) (f). The SMA requires a substantial development permit for any "substantial development" on the shorelines of the state. RCW 90.58.140 (2). "Substantial development" is defined to include any development "of which the total cost or fair market value exceeds five thousand dollars . . ." RCW 90.58.030 (3) (e). The proposal here at issue is in the shorelines of the state. The fair market value of the proposal exceeds \$5000. Therefore, the proposal may be carried out only if a substantial development permit is issued.

2. A substantial development permit may be granted only if the proposal is consistent with the SMA and the local SMP. RCW 90.58.140 (2) (b). The SMP for Thurston County is the Thurston Region Shoreline Master Program, as amended by Thurston County Code (TCC) 19.01.010.

B. Compliance with SMP policies and regulations for shoreline protection.

3. The proposed work is classified as a shoreline protection measure under SMP Section 3, XVIII, A. Shoreline protective measures are permitted in the Conservancy environment subject to applicable policies and general regulations.

4. The policies governing shoreline protection are found at SMP Section 3, XVIII, B. The evidence, reflected in the Findings above, shows that the proposal is consistent with these policies.

5. The general regulations for shoreline protection are found at SMP Section 3, XVIII, C. Except for those applicable only within the City of Olympia, those regulations state:

"1. A shoreline permit or an exemption from the Administrator shall be required prior to all new construction of protective structures.

2. Vegetation shall be maintained on all streambanks except where removal is necessary for a permitted activity. If feasible, vegetation shall be re-established in areas where it has been removed for a permitted activity. In such instances, vegetation shall be re-established as soon as possible following its removal.

3. Techniques utilizing totally or in part vegetative bank stabilization methods shall be preferred over structural methods (such as concrete revetments or extensive riprap) unless the shoreline administrator determines that such methods will not provide adequate protection. This is not intended to preclude a combination of structural and vegetative methods.

4. Protective structures shall be allowed only when evidence is presented that one of the following conditions exist:

a. Erosion or an active feeder bluff is threatening agricultural land, public roads or bridges, existing structures or areas of unique public interest.

b. It is necessary to the operation and location of shoreline dependent and related activities consistent with this Master Program.

c. The request is for the repair or replacement of an existing protection device . . .

5. Protective structures shall be placed as close to the existing bank as feasible and parallel the natural shoreline. When they are proposed between two adjacent existing structures, the Administrator may allow it to extend out to form a straight line with the protective structure on each side. This shall only be allowed where no adverse impact will occur.

6. Riprap structures shall be preferred to concrete revetments.

7. Protective structures shall allow for the passage of surface and ground waters. Ponding and/or soil saturation is not permitted to occur.

8. The height of structures shall not be more than that necessary to accomplish the protection needed.

9. Use of beach material for backfill is prohibited.

10. Shoreline protection structures shall not be allowed for the purpose of creating new land . . .
11. When feasible, steps shall not extend waterward of a proposed protective structure.
12. Breakwaters must be floating structures and will only be allowed for the protection of uses authorized by this Program.
13. Breakwaters must be designed and certified by a licensed engineer to withstand the storm forces which will be encountered."

The evidence, reflected in the Findings above, shows that the proposal complies with these general regulations which are applicable.

C. Compliance with the Regional Criteria.

6. Apart from the more specific policies and regulations discussed above, Section 2 V of the SMP sets out a number of Regional Criteria which also apply to this proposal. That provision states:

"All development within the jurisdiction of this Master Program shall demonstrate compliance with the following policies:

- A. Public access to shorelines shall be permitted only in a manner which preserves or enhances the characteristics of the shoreline which existed prior to establishment of public access.
- B. Protection of water quality and aquatic habitat is recognized as a primary goal. All applications for development of shorelines and use of public waters shall be closely analyzed for their effect on the aquatic environment. Of particular concern will be the preservation of the larger ecological system when a change is proposed to a lesser part of the system, like a marshland or tideland.
- C. Future water-dependent or water-related industrial uses shall be channeled into shoreline areas already so utilized or into those shoreline areas which lend themselves to suitable industrial development. Where industry is now located in shoreline areas that are more suited to other uses, it is the policy of this Master Program to minimize expansion of such industry.
- D. Residential development shall be undertaken in a manner that will maintain existing public access to the publicly-owned shorelines and not interfere with the public use of water areas fronting such shorelines, nor shall it adversely affect aquatic habitat.

E. Governmental units shall be bound by the same requirements as private interests.

F. Applicants for permits shall have the burden of proving that a proposed substantial development is consistent with the criteria which must be met before a Permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW 90.58.18.180 (1), the person requesting the review shall have the burden of proof.

G. Shorelines of this Region which are notable for their aesthetic, scenic, historic or ecological qualities shall be preserved. Any private or public development which would degrade such shoreline qualities shall be discouraged. Inappropriate shoreline uses and poor quality shoreline conditions shall be eliminated when a new shoreline development or activity is authorized.

H. Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health."

7. Regional Criteria A, C, D and E are not applicable to this proposal, and Criteria F and G are met. Criteria B and H are discussed below.

20. Regional Criterion B states that "[p]rotection of water quality and aquatic habitat" is a goal that must be complied with. As found, the potential effects of this project on fish and fish habitat include noise, turbidity, temporary destruction of substrate habitat, and potential spills of petroleum or hazardous materials from equipment. As also found, the project features described above should prevent harmful effects from noise or discharge of hazardous materials or petroleum products. The temporary loss of substrate is limited, should not adversely affect fish or fish habitat, and is an inescapable consequence of revetment construction.

21. The project will cause turbidity in the river and will likely need to take advantage of the authorization of WAC 173-201A-200(1) (e) to temporarily exceed the turbidity standards set by the same section. The monitoring and response measures discussed in the Findings and required by the conditions, below, should be sufficient to confine any turbidity in excess of the standards to the 300-foot downstream limit. Carrying out the work in the in-stream work window will also protect fish from dangers of turbidity.

22. WAC 173-201A-200(1) (e) (i) allows turbidity exceedances only "after the implementation of appropriate best management practices to avoid or minimize disturbance of in-place sediments and exceedances of the turbidity criteria." The proposed best management practices directed to these goals are allowing only the excavator scoop to enter the water and installation of the silt curtain and fence as

described in the Findings. As part of its Section 401 certification, the Department of Ecology is required to determine whether these practices meet this standard.

23. WAC 173-201A-400 (4) is also one of the requirements for exceeding the turbidity standards. As discussed in the Findings, the Applicant did present evidence showing that these standards were met generally, but the evidence did not show whether the expected turbidity exceedances were reviewed under these standards. The Section 401 certification by the Department of Ecology should include review of expected exceedances under these standards. To ensure these standards are not overlooked, they are included as conditions below.

24. The project should not affect the excessive levels of fecal coliform or chromium in the Nisqually River, which led to its presence on the Section 303 (d) list.

25. The proposed construction cannot proceed until the Applicant receives a Hydraulic Project Approval from the state Department of Fish and Wildlife, a water quality certification from the state Department of Ecology under Section 401 of the federal Clean Water Act, a permit from the U.S. Army Corps of Engineers under Section 404 of the federal Clean Water Act, and a permit from the Corps under Section 10 of the federal Rivers and Harbors Act.

26. The purpose of the state hydraulic permit is to protect fish life by minimizing project specific and cumulative impacts to fish life through the best available science and practices related to protection of fish life. WAC 220-110-010. Permits for shoreline protective devices must "incorporate mitigation measures as necessary to achieve no-net-loss of productive capacity of fish and shellfish habitat", WAC 220-110-050, and must comply with the specific requirements of that section.

27. In addition, because federal permits are required, this proposal will be subject to consultation requirements under Section 7 of the Endangered Species Act. The heart of the consultation process is found in 16 U.S.C. 1536(a)(2), which states that

"[e]ach federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species . . ."

28. This provision incorporates both the procedural requirement to consult and the substantive standards that consultation is designed to meet: insure that the action is not likely to jeopardize the continued existence of a listed species and insure that the action will not destroy or adversely modify critical habitat. This consultation under 16 U.S.C. 1536(a)(2) is sometimes called formal consultation. 50 CFR 402.02.

29. With one exception, formal consultation is required whenever federal action "may affect listed species or critical habitat." 50 CFR 402.14(a). The exception arises if

a biological assessment by the agency taking the action or informal consultation with a federal service shows that the action "is not likely to adversely affect any listed species or critical habitat." 50 CFR 402.14(b)(1). A biological assessment is an evaluation of the effect of a proposed action on any listed species. 16 U.S.C. 1536(c)(1). Informal consultation comprises the optional discussions and other contact between the federal agency taking the action and a federal service to determine whether formal consultation is required. 50 CFR 402.13(a). The federal services are the National Marine Fisheries Service (NOAA Fisheries) and the U.S. Fish and Wildlife Service.

30. Here, the Biological Assessment prepared by the Applicant's consultant (called the Biological Evaluation at Ex. 4) shows that this project is not likely to adversely affect any listed species or critical habitat. The Biological Evaluation also shows that the project is not likely to adversely affect Pacific salmon essential fish habitat.

31. As conditioned, the evidence shows compliance with Regional Criterion B.

32. Regional Criterion H states:

"Protection of public health is recognized as a primary goal. All applications for development or use of shorelines shall be closely analyzed for their effect on the public health."

33. Reading "health" broadly to include "safety", one should examine whether shoreline protective devices may increase or target the risk of flood damage. Here, the evidence shows that the new protective structure will be built along the existing shoreline for a relatively short distance and will not create new land. The portion of the structure in contact with the river will be rock revetment, not concrete. These features, together with the absence of any evidence that flood risk will be increased, indicates that Regional Criterion H is met.

D. Compliance with the SMA.

34. For the reasons above, the proposal is consistent with the policies of the SMA set out in RCW 90.58.020.

DECISION

The substantial development permit is approved, subject to the following conditions:

A. The Department recommended conditions at Ex. 1, p. 6 are incorporated by reference.

B. The Applicant shall comply with the proposed project features set out in the Findings, including, but not limited to restricting work to the July 16 to August 31 in-water work window, keeping all equipment out of the river, except for the scoop arm of the excavator, washing, fueling and staging equipment at least 300 feet from the Nisqually River, inspecting all equipment leaks and cleaning all equipment of external petroleum products, hydraulic fluid, coolants and other deleterious materials each work day, employing no blasting, pile driving, or other activities causing percussive noise dangerous to fish, and following the Department of Ecology 2005 Stormwater Management Manual for Western Washington - Volume II, Construction Stormwater Pollution Prevention. However, given the current time restrictions, work may extend a short period beyond the August 31 end of the in-water work window, if necessary to complete the project and if expressly approved by the Department of Fish and Wildlife.

C. The Applicant shall implement the best management practices listed at Ex. 4, p. E-1, except that work may extend a short period beyond the August 31 end of the in-water work window, if necessary to complete the project and if expressly approved by the Department of Fish and Wildlife.

D. No work for which state or federal permits or approvals are required may begin until they are granted.

E. Both Douglas firs shown as "Existing trees to remain" in Ex. 1, Att. e shall be preserved, unless removal of one is required by a federal agency with jurisdiction or the Department makes a determination that removal of a tree is necessary to achieve the design modifications required by the federal agency.

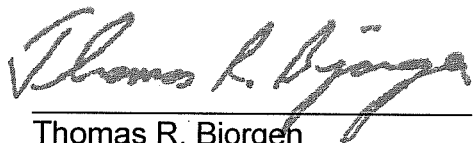
F. The Applicant shall comply with the turbidity standards of WAC 173-201A-200(1) (e) for "core summer salmonid habitat", except within 300 feet downstream of the immediate project site where those standards may be exceeded consistently with WAC 173-201A-200(1) (e). The Applicant shall visually monitor turbidity during compliance and shall take turbidity measurements if a visible plume develops and extends more than 200 feet downstream from the work location. If those measurements or any other circumstances shows a risk that turbidity could exceed the standards of WAC 173-201A-200(1) (e) for core summer salmonid habitat beyond a point 300 feet downstream from the immediate work location, the Applicant shall stop work, modify work or take other mitigating measure to ensure those standards are not exceeded beyond the 300-foot zone.

G. The Applicant's proposal is subject to the following requirements of WAC 173-201A-400 (4):

"No mixing zone shall be granted unless the supporting information clearly indicates the mixing zone would not have a reasonable potential to cause a loss of sensitive or important habitat, substantially interfere with the existing or characteristic uses of the water body, result in damage to the ecosystem, or adversely affect public health as determined by the department."

The reference to "the department" in this provision is to the state Department of Ecology.

Dated this 2nd day of August, 2010.

A handwritten signature in cursive script, reading "Thomas R. Bjorgen". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Bjorgen
Thurston County Hearing Examiner