

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION in
the matter of Dairy Valley Site Development Shoreline Variance,
Floodplain Development Variance, and Setback Reduction.**

HEARING DATE: August 4, 2016

DECISION DATE: August 11, 2016

RE: PL16-038 Dairy Valley Site Development Shoreline Variance,
Floodplain Development Variance, and Setback Reduction

APPLICATION DATE: March 22, 2016

DECISION SUMMARY: Approved with Conditions

PROPERTY OWNER: Skagit Valley Properties, LLC, a Washington Limited
Liability Company

PROJECT PROPONENT: Mike Grahn, Dairy Valley Distributing

DESCRIPTION OF PROPOSAL: Demolition of an existing building currently situated within
the floodway of the Skagit River; construction of a new
building and associated asphalt area, which will be situated
on the same parcel and behind a flood protection structure
to be constructed by a government agency.

The permit applications under consideration by the hearing
examiner are (1) a shoreline variance; (2) floodplain
development variance; and (3) setback reduction.

Site Address:	1201 S First Street	Parcel ID Nos.:	P28950
----------------------	---------------------	------------------------	--------

FINDINGS OF FACT

Introduction. This matter came on for hearing before the Mount Vernon hearing examiner on August 4, 2016, on the application of Mike Grahn, for a conditional use permit to allow the construction of a mini-storage facility.

Testimony. In addition to the presentation by staff at the public hearing, the applicant's representatives included Corey Grahn; Gary Grahn; Michael Grahn; Craig Magnusson, Esq.; and John Ravnik, P.E. No members of the public were present at the public hearing.

Written Comments. No written comments were received prior to the public hearing.

Exhibits. All exhibits submitted were admitted without objection. The Mount Vernon municipal code, comprehensive plan, zoning map, and the exhibits identified in Exhibit “A” were considered by the hearing examiner.

The hearing examiner makes the following Findings of Fact based upon consideration of the exhibits admitted herein, and evidence presented at the public hearing. To the extent that any finding of fact is more properly characterized as a conclusion of law, or vice versa, the hearing examiner adopts it as such:

1. Description of Proposal. This proposal consists of the construction of a new structure and associated asphalt parking areas. The building currently used by the applicant is situated within the floodway of the Skagit River. The City of Mount Vernon is currently in the process of constructing a flood protection structure along the Skagit River, intended to protect currently developed areas of the City landward from the Skagit River from a 100-year flood event. As depicted in Exhibit “F” of the Hearing Examiner Staff Report for Dairy Valley, the City’s flood protection structure is proposed to be constructed in the location in which the existing building now sits. This proposal project consists of the construction of a new building, and associated impervious surface for truck access, parking, and loading docks. Approximately 3,600 cubic yards of fill material will be necessary.

The proposal does not include the demolition of the existing structure.

2. Property owner. The current property owner acquired the property on October 11, 2001, from Darigold, Inc. The record in this matter does not identify the date on which the structure was erected.
3. Application. On March 22, 2016, Mike Grahn (the “Applicant”), submitted a Master Land Use Application for the project described herein. Exhibit “A” of the Hearing Examiner Staff Report for Dairy Valley. The City has combined the land use permit approvals for the proposed project into a single permitting process pursuant to 14.05.080 (G) MVMC. See, Exhibit “C” of the Hearing Examiner Staff Report for Dairy Valley.
4. Notice of Application and draft MDNS. A Notice of Application and draft Mitigated Determination of Non-Significance (“MDNS”) was issued May 6, 2016, and published and mailed to neighbors situated within 300 feet on May 11, 2016. Exhibit “C” of the Hearing Examiner Staff Report for Dairy Valley.
5. Project Location. The project is located at 1201 South First Street. The Assessor’s Parcel Number is P28950. The site is bounded by First Street on the southeast side, and the Skagit River on the northwest side. The site is legally described in Schedule “A” of Subdivision Guarantee issued by Chicago Title Insurance Company, order No. 620026451 dated February 18, 2016. Exhibit “A” of the Hearing Examiner Staff Report for Dairy Valley.

An aerial depiction of the property, reproduced from the staff report to the hearing examiner, is included below. First Street is constructed on top of the existing levee, and roughly parallels the Skagit River:



6. Zoning. The property is currently zoned Industrial (M-2). The hearing examiner observes that the M-2 zone was first adopted by the City of Mount Vernon in 1989, prior to the date of purchase of the property by the current owner.
7. Zoning Setbacks. Section 17.60.060 MVMC provides that the minimum setback requirements for the M-2 zone are to be the same as for the M-1 zone. The minimum front-yard setback in the M-1 district is 10 feet. The community and economic development and public works directors can, through a Type I decision process, administratively reduce, for good cause shown, this setback.
8. Shoreline Designation. The Shoreline designation for the parcel is Urban – Mixed use. The proposed building will be used as a distribution facility for dairy projects.
9. Comprehensive Plan designation. The Comprehensive Plan designation for the property is Commercial/Industrial (CI).
10. Adjacent property uses. The project site is located within an urbanized setting. The Skagit River is located immediately to the northwest of the site, and First Street is located to the southeast. A structure housing Commercial Cold Storage, a light industrial use, is located on the adjoin property to the northeast. A regional stormwater pump station operated by the City of Mount Vernon adjoins the project site to the southeast.

11. Flood Protection. The flood protection structure proposed by the City will extend from Freeway Drive (north of the proposed development) to a location south of the Mount Vernon wastewater treatment plant (south of the proposed development.) The hearing examiner takes notice that a significant portion of the flood protection structure north of the proposed development has been completed, and a portion of the project immediately north of the project is currently under construction. City staff stated orally at hearing that funding for the portion of the flood structure that is to be constructed across the Applicant's property has been secured through state grant, and that permit applications for construction of the flood protection structure have been submitted.
12. CLOMR. On August 24, 2010, the Federal Emergency Management Agency issued a Conditional Letter of Map Revision ("CLOMR") for the Flood Insurance Rate Maps applicable to land situated within the City of Mount Vernon, adopting analysis performed by the City's consultant, Pacific International Engineering. In particular, FEMA concluded that if the proposed flood protection structure was constructed as shown on the "Skagit River Levee System, City of Mount Vernon – Downtown Flood Protection Project," dated January 30, 2009, then the flood boundaries of the base flood (100 year flood) would be as shown on the annotated Flood Insurance Rate Map (COE 2008 Hydrology Inundation Map, Post-Project Condition) prepared by Pacific International Engineering and dated January 4, 2010.
13. CLOMR Floodplain Boundaries. The COE 2008 Hydrology Inundation Map, Post-Project Condition articulates the boundaries of the 100-year floodplain as being contained by the proposed flood protection structure riverward of the proposed project, and at the base of the existing levee, such that the proposed site will be removed from the 100-year floodplain. See, Exhibit "J."
14. Final MDNS. A final MDNS was issued June 6, 2016, and published June 9, 2016. The final MDNS included a number of conditions to mitigate the impacts of the proposed development. No appeal of the MDNS has been filed.
15. Location of Proposed Structure. The proposed structure is to be constructed landward of the new flood protection structure, such that the new structure will be removed from the floodplain once the CLOMR is effective.
16. Notice of Hearing. On July 11, 2016, the City issued a Notice of Hearing for the proposed project, and published the Notice on July 14, 2016.
17. Staff Recommendation. Staff recommends approval of the shoreline variance, floodplain development variance, and front yard setback reduction, subject to compliance with the standards of the Mount Vernon Municipal Code and Compliance with the Floodwall Riverbank Slope Encroachment Area Restrictions set forth in the City's Shoreline Master Program ("SMP").

/ / /

Based upon the foregoing Findings of Fact, the hearing examiner makes the following,

CONCLUSIONS OF LAW

Permit Processing

1. Shoreline Variance. Chapter 14.05 MVMC – Procedures, applies to this project. A shoreline variance is processed as a Type III permit, MVMC § 14.05.060, and requires an open record hearing before the hearing examiner, who renders the final decision. MVMC § 14.05.070.
2. Floodplain Development Variance. A floodplain development variance is processed as a Type IV permit, MVMC 14.05.060, and requires an open record hearing before the hearing examiner, who makes a recommendation to the city council for final approval.
3. Consolidation. Pursuant to MVMC § 14.05.080 (G), an applicant may have the review and decision process for multiple permits and approvals relating to a proposed project action consolidated into a single review process. Consolidated review allows for a single open record hearing, and no more than one closed record appeal. Where, as here, the required permits are subject to different types of permit review procedures, then all the associated applications are subject to the highest level of review authority that applies to any of the required applications except for shoreline permits, which are processed in accordance with the shoreline master program.
4. Floodplain Development Variance Processing. The floodplain development variance and the front yard setback reduction are properly processed as a Type IV permit under the city's consolidated permit process. Appeals of these permit decisions may be brought in accordance with MVMC § 14.05.190.
5. Shoreline Variance Processing. The shoreline variance is properly processed as a Type III permit under the city's consolidated permit process and shoreline master program, with the final decision made by the hearing examiner. Appeals of the shoreline variance may be brought in accordance with MVMC § 14.05.190 and Chapter 90.58 RCW.

Notice

6. Public Hearing Notice. Pursuant to MVMC § 14.05.150 (C), notice of a public hearing is to be provided as set forth in subsection (A)(3) of that section.
7. Shoreline Permit Notice. Pursuant to section III (B)(8) of the SMP, public notification of a shoreline permit is to be provided as required by MVMC § 14.05.150, "Notice Requirements.
8. Mailing. The record contains an Affidavit of Mailing, demonstrating notice was provided in accordance with MVMC § 14.05.150, and the hearing examiner concludes that proper notice was given.

SEPA

9. Environmental Review. The proposed project is subject to review pursuant to Chapter 15.06 MVMC. On June 6, 2016, the City issued a final Mitigated Determination of Non-significance. Exhibit "C" of the Hearing Examiner Staff Report for Dairy Valley. Environmental review is beyond the scope of review delegated to the hearing examiner, and the examiner directs the reader to the relevant environmental documents maintained by the City.

Shoreline

10. Shoreline Jurisdiction. The Shoreline Management Zone extends a minimum of 200 feet upland from the line of the ordinary high water mark of the Skagit River, and includes contiguous land upon which flood waters may be carried during periods of flooding that can occur with reasonable regularity, although not necessarily annually. SMP § IV(A)(1). The floodway of the Skagit River is included within the Shoreline Management Zone.
11. Shoreline "Use." The use of the proposed building as a distribution facility for dairy projects does not include a functional requirement for a waterfront location, does not provide a necessary service that is supportive of a water-dependent shoreline use, and does not facilitate access to the shoreline. As such, the proposed use of the existing and proposed structure is a non-water oriented use. WAC 173-26-020.
12. Floodway. The Shoreline Management Act, at RCW 90.58.030(2)(g), delineates a floodway as that which has been established in applicable federal emergency management agency flood insurance rate maps or floodway maps.
13. Existing Levee. The existing levee is landward of the existing building. Because the existing levee height is lower than the base flood elevation, the base flood plain extends behind (landward) of the existing levee.
14. Propose Flood Protection Structure. Upon completion of the flood protection structure, and the final issuance of revised flood insurance rate maps or a letter of map revision by the Federal Emergency Management Agency, the floodplain and floodway will be coextensive in the immediate vicinity of the proposed Dairy Valley project, and will be located at an elevation so as to be constrained by the flood protection structure.
15. Non-water Oriented Use Setback. SMP Table 3, Development Standards shows that all non-water oriented uses have an associated setback; and all of the non-water-oriented uses in Table 3 reference note 11 to the Table.
16. Table 3, Development Standards. Note 11 to the aforementioned Table 3 distinguishes between areas located at Stewart Road, in west Mount Vernon and several parcels abutting Riverbend Road and states that those areas have a setback as set forth in note 10 to the Table, which setback is 50 feet (with several listed exceptions which are not applicable here.) Note 11 then describes an area extending

(generally) southward from Lions Park, in which area “where a new flood risk reduction measure is to be constructed subject to engineering plans approved by FEMA...”. The setback under note 11 is 10 feet.

17. Shoreline Management Plan Interpretation Rule. Section VI(A)(3)(d) of the Mount Vernon Shoreline Master Program provides that, “[w]here regulations included in this Master Program appear to produce conflicting requirements, the shoreline regulations that are most consistent with the City’s existing zoning requirements and its Comprehensive Plan shall be applied, absent clear and convincing evidence that application of such regulations would violate the provisions of the Shoreline Management Act, as expressed in RCW 90.58.020”.
18. Shoreline Setback. Because the subject property is not explicitly addressed in the Mount Vernon Shoreline Master Program, it is necessary for the hearing examiner to decide if the setback should be either 10 feet as set forth in note 11 to Table 3, Development Standards; or 50 feet as set forth in note 10 of that same table. Because the subject parcel is zoned Industrial (M-2) and has a Comprehensive Plan designation of Commercial/Industrial (CI), a setback of 10 feet is consistent with the site zoning and Comprehensive Plan designations.
19. Shoreline Variance. A shoreline variance is required because the proposed building will be constructed prior to the construction of the City’s new flood protection structure. Stated otherwise, the proposed building will be riverward of the existing levee when constructed, and situated within the floodway. Upon construction of the flood protection measure, and certification of the revised flood insurance rate maps by the Federal Emergency Management Agency, the proposed building will no longer be situated within the floodplain.
20. Variance Criteria. Shoreline variances are governed by Section III (D) of the Mount Vernon Shoreline Master Program, and by WAC § 173-27-170. The criteria in these two governing documents are identical.
21. Purpose of Variance. The purpose of a shoreline variance is limited to granting relief from specific bulk, dimensional or performance standards set forth in the Mount Vernon Shoreline Master Program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. WAC § 173-27-170. In all instances the applicant must demonstrate that the public interest shall suffer no substantial detrimental effect. *Id.*
22. In addition, variance permits for development and/or uses that will be located waterward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(b), may be authorized provided the applicant can demonstrate all of the following:

- (a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;
- (b) That the hardship described in (a) of this subsection 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;
- (c) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;
- (d) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
- (e) That the variance requested is the minimum necessary to afford relief; and
- (f) That the public interest will suffer no substantial detrimental effect.
- (g) That the public rights of navigation and use of the shorelines will not be adversely affected.

Id. The hearing examiner analyzes each of these criteria as follows.

23. Interference with Reasonable Use of Property. The reasonable use of property depends on the expectations of the landowner at the time of purchase of the property. If existing land regulations limit the permissible uses of the property at the time of acquisition, a purchaser usually cannot reasonably expect to use the land for prohibited purposes. *Buechel v. State Dept. of Ecology*, 125 Wn.2d 196, 210, 884 P.2d 910 (1994).

Here, the owner purchased the property in 2001. The structure on the property was then used for the purpose for which it now exists. The proposed structure will be used for the same purpose. The shoreline variance is a temporary measure, allowing the building to be relocated to an area that will be landward, and ultimately outside of the Skagit River floodplain at the time the proposed flood protection measure is completed. The expectations of the property owner for the uninterrupted, continued use of the existing building is now prevented by the construction of the proposed flood measure. Denying the proposed variance through a strict application of the SMP would be a denial of the reasonable use of property.

24. Hardship Specifically Related to Property. Use of a portion of the property at issue has been identified as being necessary for the construction of a flood protection structure by the City of Mount Vernon, a third party to the applicant. The hardship that results is demolition of the applicant's existing structure, and the inability to rebuild a structure until such time as the City's flood protection structure has been

completed and certified. The hardship is thus the complete lack of use of the property, and a failure of a return on investment. This hardship is unrelated to the applicant's actions or inaction. The majority of properties located within shoreline jurisdiction do not share in that type of hardship. Thus, the hardship is related to the property's unique location, and the actions to be undertaken by the City of Mount Vernon.

25. Compatibility of Design of the Project. The proposed project is in an urbanized area. The property adjacent to the north holds an industrial building, with a use that is unrelated to the shoreline. The property adjacent to the south holds public infrastructure that is industrial in nature (a stormwater pump station.) Other permitted activities in the area include residential properties to the east and southeast opposite of the existing levee, and a vacant parcel to the south. These uses, and the proposed use of the new building, are all allowed under the Mount Vernon Comprehensive Plan and current zoning regulations.

The proposed building and associated infrastructure is compatible with other permitted activities in the area, and will not cause adverse effects to adjacent properties. The existing structure will be removed, and relocated further from the Skagit River, providing an enhancement of views of the Skagit River. Not degradation of the shoreline environment will result.

26. Grant of special privilege. The City of Mount Vernon's proposed flood protection structure has been completed through the City's downtown area, or is currently under construction. The hearing examiner observes that the unique circumstances presented by the subject property have not arisen on any other parcel, and because the proposed flood protection structure will be built upon a few remaining parcels that are vacant, these issues are unlikely to arise again. Staff opines that any other parcel would be treated in the same manner. Hearing Examiner Staff Report for Dairy Valley. As such, no special privilege will result.

27. Variance is the Minimum Necessary Relief. In order to prevent a disruption of business activities, it is necessary for the proposed project to be completed before the time that the City's proposed Flood Protection Structure is begun. The City's start date for construction of its Structure is scheduled for March 1, 2017. A variance will allow the proposed project to be completed before the start of construction on the proposed Flood Protection Structure, and is the minimum relief necessary.

28. Public Interest Will Suffer No Substantial Detrimental Effect. The shoreline will be better protected once the City's new levee is installed and the existing use is moved away from the shoreline area. No harm will be done to the shoreline features, resources, or uses in the project vicinity by the proposed project.

29. Public Rights of Navigation and Use of the Shorelines. Navigation rights will not be affected. Shoreline views will be enhanced by the relocation of the project. Use of the shorelines will not be impacted by the proposed project.

30. Cumulative Impact. In accordance with WAC § 173-27-170, consideration is to be given to the cumulative impact of additional requests for like actions in the area. It is unlikely that the present circumstances will arise again. *See*, Conclusion of Law No. 26. Even if the same circumstances arose again, removing a structure from the floodway and replacing that structure at a distance outside of the floodplain will accomplish shoreline goals, and result in a positive impact on shoreline sue.
31. Variances from Shoreline Use Regulations. The applicant is not seeking a variance from the use regulations of the City's SMP.

Flood Hazard Variance

32. Reason for Variance. A floodplain development variance is required because Dairy Valley will be constructing a new building in the regulated floodway before the City's proposed Flood Protection Measure is completed. Once the new Flood Protection Measure is constructed and a Letter of Map Revision is issued by the Federal Emergency Management Agency, the new building will no longer be located within the regulated floodplain.
33. Applicable Provisions. The proposed variance would be applicable to the following sections of the Mount Vernon Municipal Code, to the extent that completion of the City of Mount Vernon's proposed Flood Protection Structure, and issuance of a Letter of Map Revision or Revised Flood Insurance Rate Map by the Federal Emergency Management Agency fails to remove the proposed project from the Area of Special Flood Hazard, it being the intent of the parties to only mitigate the regulatory burden resulting from the erection of the proposed project prior to completion of the Flood Protection Structure and not mitigate any regulation that would remain applicable to the proposed project once the Flood Protection Structure has been completed:
 - a. 15.36.060 Areas of special flood hazard – Compliance.
 - b. 15.36.170 General standards.
 - c. 15.36.180 Anchoring.
 - d. 15.36.190 Construction materials and methods.
 - e. 15.36.200 Utilities.
 - f. 15.36.250 Nonresidential construction.
 - g. 15.36.270 Dike setback area restrictions.
 - h. 15.36.280 Floodway use restrictions.
34. Process. Pursuant to MVMC § 14.05.060 a floodplain development variance is a Type IV permit. The hearing examiner is to consider all technical evaluations, all

relevant factors, standards specified in other sections of Chapter 14.05 MVMC, and the variance criteria contained in MVMC 15.36.150 (D) (1) - (11); (E); and 15.36.160(D) (1) - (3). That analysis follows.

35. MVMC 15.36.150 (D) (1), the danger that materials may be swept onto other lands to the injury of others. The proposed building will be situated landward of the proposed Flood Protection Structure, and the existing structure will be removed. Removal of the existing structure will reduce the likelihood that materials may be swept away during a flood event.
36. MVMC 15.36.150 (D) (2), The danger to life and property due to flooding or erosion damage. Construction of the building will begin in the fall of 2016, with completion expected before March, 2017. The start of construction of the proposed Flood Protection Structure is expected to begin in March, 2017, and be completed prior to beginning of the fall flood season. The risk to life and property is minimal.
37. The susceptibility of the proposed facility and its contents to flood damage. Construction of the building will begin in the fall of 2016, with completion expected before March, 2017. The start of construction of the proposed Flood Protection Structure is expected to begin in March, 2017, and be completed prior to beginning of the fall flood season. The susceptibility of the proposed facility and its contents to flood damage is minimal.
38. The importance of the services provided by the proposed facility to the community. The facility to be demolished, and the proposed facility, provides jobs within the City, and facilitates the distribution of food products to the community. The services are significant, especially in comparison the risk.
39. The necessity to the facility of a waterfront location. The term “waterfront” is not defined by the Mount Vernon Municipal Code; the term “Water dependent” is defined by MVMC 15.36.030 (23), as “a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.” The proposed building and use are not water dependent. However, the construction of the Flood Protection Structure will remove the facility from the regulatory floodplain.
40. The availability of alternative locations. There are alternative locations available.
41. Compatibility of the proposed use with existing and anticipated development. The proposed project complies with existing zoning and comprehensive plan designations, and the site is compatible with existing and anticipated development.
42. The relationship of the proposed use to the comprehensive plan and floodplain management program. The proposed project complies with existing zoning and comprehensive plan designations. The City’s floodplain management program anticipates the construction of the proposed Flood Protection Structure, and removal of this site from the regulatory floodplain.

43. The safety of access to the property in times of flood. Access to the site during a flood will remain available along First Street upon the completion of the proposed Flood Protection Structure.
44. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters. Flood waters are expected to be constrained by the proposed Flood Protection Structure, and floodwaters are not expected at the site.
45. The cost of providing governmental services during and after flood conditions. Flood waters are expected to be constrained by the proposed Flood Protection Structure, and the cost of providing government services will not increase as a result of the proposed project.
46. Variances shall only be issued upon a determination that the variance is the minimum necessary to afford relief. A variance of limited duration is the only means of providing relief.
47. Variances shall only be issued upon a showing of good and sufficient cause. The hearing examiner concludes that good and sufficient cause has been shown.
48. Variances shall only be issued upon a showing that failure to grant the variance would result in exceptional hardship to the applicant. Failure to grant a variance will result in the loss of jobs, and the closing of a business. This is a significant hardship.
49. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public as identified in MVMC 15.36.150 (D), or conflict with existing local laws or ordinances. The hearing examiner concludes that the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
50. The hearing examiner concludes that the Proposed Flood Protection Structure is a method that protects against flood damages caused by a base flood, and creates no additional threat to public safety in accordance with 44 CFR 60.6.

Setback

51. The front yard setbacks for the subject site are from 1st Street. The portion of 1st Street abutting the subject site is not identified as an arterial roadway. As such, a 10-foot front yard setback is required. However, the Mount Vernon Municipal Code allows reductions in this setback with "good cause shown".

The construction of the City's new levee results in Dairy Valley needing to reconstruct their existing building further away from the Skagit River. The reduced setback as depicted on the site plans (Exhibit "F" to the staff report) will not adversely affect any adjacent properties. The setback reduction is necessary to

accommodate the proposed structures, and prevents a denial on the reasonable use of the property.

DECISION AND RECOMMENDATION

Based on the above Findings of Fact and Conclusions of Law, the hearing examiner recommends that the City Council **APPROVE** the Shoreline Variance, Floodplain Development Variance, and Setback Reduction subject to the following **condition**:

1. Compliance with the Floodwall Riverbank Slope Encroachment Area Restrictions found within the City's Shoreline Master Program.

This approval is limited to a 24,269 square foot building that was reviewed pursuant to SEPA. Future expansions of the proposed building, such as what is shown on the site plans labeled as "future building expansion", will require permits that are required at such time that the owner wishes to construct a larger building.

NOTICE. Pursuant to 44 CFR 60.6 and MVMC § 15.36.160 (G), any applicant to whom a floodplain development variance is granted is to be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Flood insurance premiums may be increased as much as \$25.00 for \$100 of insurance coverage. In addition, construction below the base flood level increase risks to life and property.



Scott G. Thomas,
Hearing Examiner

Petitions for review of the Hearing Examiner's recommendation should be filed with the City within 14 days of the decision. See Section 14.05.180 MVMC. It is the responsibility of the person seeking review to consult applicable statutes to determine his/her rights and responsibilities relative to an appeal.

Appeals of the Hearing Examiner's decision on the Shoreline Variance should be filed in accordance with the Shoreline Management Act, Chapter 90.58 RCW.

EXHIBITS

- Exhibit A:** Master Land Use Application and Associated Legal Description
- Exhibit B:** Project Narrative and Justification for Project Proposal, and Construction Mitigation Description
- Exhibit C:** City notices and associated information as follows:
1. Notice of Application/Proposed Mitigated Determination of Non-Significance (MDNS); Issued: May 6, 2016; published and mailed to neighbors within 300 feet: May 11, 2016
 2. Final Mitigated Determination of Non-Significance published on February 10, 2010 and its associated Environmental Report Issued: June 6, 2016; published and mailed to neighbors within 300 feet: June 9, 2016
 3. Notice of Public Hearing Issued: July 11, 2016 published and mailed to neighbors within 300 feet: July 14, 2016
 4. Affidavits of mailing, and verification from the Skagit Valley Herald that this notice was published for notices referenced previously
- Exhibit D:** Joint Aquatic Resources Permit Application (JARPA) Form
- Exhibit E:** SEPA Checklist
- Exhibit F:** Site Plan; Construction Plans; Drainage Study dated March 16, 2016; Geotechnical Study dated February 26, 2016
- Exhibit G:** Vicinity Map; Neighborhood Detail Map
- Exhibit H:** Floodplain Variance Analysis
- Exhibit I:** Staff Comments to-date on permit PR16-556
- Exhibit J:** CLOMR
- Exhibit K:** Public Hearing Sign-in Log.