

WHATCOM COUNTY

Planning & Development Services
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Mark Personius, AICP
Director

**EXEMPTION FROM THE SHORELINE MANAGEMENT PROGRAM
SUBSTANTIAL DEVELOPMENT PERMIT REQUIREMENT**

SHX2018-00028

Applicant: Nooksack Indian Tribe
c/o Lindsie Fratus
PO Box 157
Deming, WA 98244

Project Description: Construct 18 Engineered Log Jam (ELJ) structures within the active channel of the North Fork Nooksack River. This project will constitute Phase 3 of a multi-phase restoration project in the Farmhouse Reach of the North Fork Nooksack River.

Project Location(s): Between RM 46.4 and 47.1, near the towns of Kendall and Maple Falls
Section 02, Township 39 North, Range 05 East W.M.
Tax Parcel Numbers – 390502170527 & 390502039538
6377 Eastwood Road

Water Body: Nooksack River

Shoreline Designation: Conservancy

SEPA: Determination of Non-significance issued by Whatcom County Planning and Development Services on April 9, 2018 (SEP2018-00021)

Whatcom County Shoreline Management Program (SMP), Title 23, Section 23.60.02.2.P allows projects of which the primary purpose is to improve fish or wildlife habitat or fish passage, to be reviewed without the need for a substantial development permit when all of the following apply:

1. The project has been approved in writing by the Washington State Department of Fish and Wildlife (WDFW) as necessary for the improvement of the habitat or passage and appropriately designed and sited to accomplish the intended purpose;
2. The project received hydraulic project approval by WDFW pursuant to RCW 77.55; and
3. The Shoreline Administrator (Administrator) has determined that the project is consistent with the SMP.

On July 19, 2016, Whatcom County Planning and Development Services (WDFW) received a letter from Mr. Margen Carlson with WDFW and is consistent with 23.60.02.2.P.1 above. The applicant has obtained and submitted the HPA approval consistent with 23.60.02.2.P.2

An exemption from the substantial development permitting process is not an exemption from compliance with the Washington State Shoreline Management Act (SMA), the SMP, or from any other applicable regulatory requirements. To be authorized, all developments must be consistent with the appropriate policies and regulations of the SMA and SMP.

Restoration means the re-establishment or upgrading of impaired ecological shoreline processes or functions (23.110.R.9). Restoration projects are permitted within the Conservancy, Natural and Aquatic Designations if carried out in accordance with the approved shoreline restoration plan (County Resolution 2007-011 and in accordance with other applicable policies and regulations of the SMP.

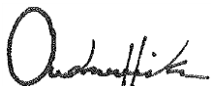
According to Section 4.1.3.3 of the Whatcom County Shoreline Restoration Plan (Restoration Plan) identifies limiting factors and potential restoration opportunities within the South Fork Nooksack (SF) River Watershed Management Unit (WMU). The SF WMU is identified as one of the top priority areas for salmon recovery. The loss of stable forested islands and hydraulic roughness has reduced the quality, availability, and diversity of habitat for fish and other aquatic species. The creation of stable islands in appropriate locations by installing log jams to restore lateral and vertical channel stability, increase hydraulic roughness, and promote off-channel habitat development are specific restoration opportunities outlined within the Restoration Plan; and consistent with the project proposal.

The requested Shoreline statement of exemption is approved subject to the attached conditions. Note that pursuant to Section 23.60.15, the applicant or any opponent of this determination may appeal this administrative permit decision to the office of the Hearing Examiner. The application for appeal from the Shoreline Administrator's decision may be obtained at the Planning and Development Services Office. Such an appeal shall be filed within twenty (20) calendar days of this determination.

Note that obtaining a shoreline statement of exemption for a development or use does not excuse the applicant from complying with any other State, regional or Federal statutes or regulations applicable to such development or use.

**Official: Andrew Hicks
Administrator**

Title: Shoreline



July 21, 2016

CONDITIONS ASSOCIATED WITH SHX2018-00028

1. *The proposed work shall be consistent with the scope and site plans reviewed and approved pursuant to this statement of exemption. Any changes will require additional review by the Whatcom County Shoreline Administrator.*
2. *All materials utilized below the ordinary high water mark (OHWM) shall be untreated.*
3. *Ground disturbing activity shall be kept to the minimum necessary to accommodate the approved developments and vegetation clearing shall be kept to a minimum. Removal of existing large woody debris (LWD) or other in-channel material shall be kept to a minimum, and if necessary, replaced upon completion of the work in such areas.*
4. *The proposed log jams shall be constructed to mimic the appearance of natural jams to the maximum extent feasible.*
5. *After project is completed, please submit an as-built report with photographs under case number MIT2018-00035. Please use our as-built report form located at: <http://whatcomcounty.us/DocumentCenter/View/28923> and submit when all replanting has occurred. Staff will then contact applicant for a follow up site inspection. If all areas that were disturbed within critical areas are replanted with native woody vegetation to extent to replace all lost riparian function, no further submittals will be required. No fees will be required for monitoring.*
6. *Best management practices and erosion and sediment control measures described in the submitted documents will be employed for the duration of site activities.*
7. *Any future site development will require additional critical area review. Changes to the submitted documents will require additional review by Whatcom County.*
8. *Should archaeological resources (e.g. shell midden, faunal remains, stone tools) be observed during project activities, all work in the immediate vicinity should stop, and the area should be secured. The Washington State Department of Archaeology and Historic Preservation (Gretchen Kaehler, Local Government Archaeologist 360-586-3088) and the Lummi Nation Tribal Historic Preservation Office (Lena Tso, THPO 360-312-2257; Tamela Smart, Deputy THPO 360-312-2253) should be contacted immediately in order to help assess the situation and to determine how to preserve the resource(s). Compliance with all applicable laws pertaining to archaeological resources is required.*
9. *If ground disturbing activities encounter human skeletal remains during the course of construction, then all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most*

expeditious manner possible. The remains will not be touched, moved, or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation, and disposition of the remains.

- 10. The proposed jams shall be located, constructed, and managed to minimize impacts to navigation and/or other lawful use of the area by the general public. If such structures become navigation hazards in the future, they may require abatement.*
 - 11. Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, as defined by 23.60.19.3, and shall be completed in five (5) years. The Shoreline Administrator may grant a single extension for a period of not more than one (1) year based on a showing of good cause. Such request must be filed with the Shoreline Administrator before the expiration date described above.*
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