

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WA

2019 JUL 17 AM 11:49

Linda Myhre Enlow  
Thurston County Clerk

19-2-03611-34  
PTJDR 4  
Petition for Judicial Review  
6090587



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THURSTON COUNTY

SNO-KING WATERSHED COUNCIL,  
  
Petitioner,

NO. 19-2-03611-34

v.

SHORELINES HEARINGS BOARD,  
  
Respondent,

**PETITION FOR REVIEW  
OF SHB Case No. 18-016**

(Of Findings of Fact, Conclusions of  
Law and Order dated July 19, 2019 and  
Order on Motion to Dismiss dated  
February 21, 2019)

and

SNOHOMISH COUNTY,  
DEPARTMENT OF PLANNING AND  
DEVELOPMENT & PUBLIC WORKS  
DEPARTMENT, and STATE OF  
WASHINGTON, DEPARTMENT OF  
ECOLOGY,

Additional Parties.

Sno-King Watershed Council petitions this Court for judicial review of the administrative decisions issued by the Shorelines Hearings Board pursuant to Chapter 34.05 RCW, Washington's Administrative Procedure Act, and Chapter 90.58 RCW, the Shoreline Management Act.

**I. NAME AND MAILING ADDRESS OF THE PETITIONER**

Petitioner is Sno-King Watershed Council. Petitioner's mailing address is:

Sno-King Watershed Council  
c/o William Lider, PE

**Bricklin & Newman, LLP**  
Attorneys at Law  
1424 Fourth Avenue, Suite 500  
Seattle WA 98101  
Tel. (206) 264-8600  
Fax. (206) 264-9300

1 Sno-King Watershed Council  
2 2526 205th Place SW  
3 Lynnwood, WA 98036

4 **II. NAME AND MAILING ADDRESS OF PETITIONER'S**  
5 **ATTORNEY**

6 Petitioner Sno-King Watershed Council is represented in this appeal by:

7 Bryan Telegin, WSBA No. 46686  
8 Bricklin & Newman, LLP  
9 1424 Fourth Avenue, Suite 500  
10 Seattle, WA 98101  
11 Telephone: (206) 264-8600  
12 E-mail: telegin@bnd-law.com

13 **III. NAME AND MAILING ADDRESS OF THE AGENCY WHOSE**  
14 **ACTIONS ARE AT ISSUE**

15 The name and mailing address of the agency whose action is at issue is the Shorelines  
16 Hearings Board ("SHB"). The SHB's mailing address is:

17 Shorelines Hearings Board  
18 PO Box 40903  
19 Olympia, WA 98504-0903

20 **IV. IDENTIFICATION OF PARTIES TO THE ADJUDICATIVE PROCEEDINGS**  
21 **WHICH LED TO THE AGENCY ACTIONS**

22 4.1 Underlying Petitioners:

23 Sno-King Watershed Council and William Lider, PE  
24 2526 205th Place SW  
25 Lynnwood, WA 98036

26 Mr. Lider was an individually-named co-petitioner in the adjudication before the Shoreline  
Hearings Board below. However, he is not participating as an individually-named petitioner herein,  
but only as a representative and member of Sno-King Watershed Council.

4.2 Underlying Respondents:

Snohomish County  
Department of Planning and Development &

1 Public Works Department  
2 3000 Rockefeller Avenue  
3 Everett, WA 98201

4 Washington Department of Ecology  
5 PO Box 47600  
6 Olympia, WA 98504-7600

7 4.3 Appearances for Underlying Respondents:

8 Counsel for Snohomish County:  
9 Brian J. Dorsey  
10 Snohomish County Deputy Prosecuting Attorney  
11 3000 Rockefeller Avenue M/S 504  
12 Everett, WA 98201-4060

13 Counsel for Washington Department of Ecology:  
14 Cheerful Catunao  
15 PO Box 40117  
16 Olympia, WA 98504-0117

17 **V. IDENTIFICATION OF THE AGENCY ACTIONS AT ISSUE**

18 The agency actions at issue are the SHB's Findings of Fact, Conclusions of Law and Order  
19 dated July 19, 2019 and Order on Motion to Dismiss dated February 21, 2019, copies of which are  
20 submitted herewith as Appendices A and B to this petition.

21 **VI. JURISDICTION AND VENUE**

22 6.1 The Court has jurisdiction over this matter and venue is proper in Thurston County  
23 Superior Court pursuant to the Shoreline Management Act ("SMA"), RCW 90.58.180(3), and the  
24 Administrative Procedure Act ("APA"), RCW 34.05.514.

25 6.2 As required by RCW 34.05.534, all administrative remedies have been exhausted  
26 and the agency actions at issue are final orders for the purposes of appeal.

6.3 This petition is timely filed pursuant to WAC 461-08-570 and RCW 34.05.542(2)  
and (4).



1 recreational experiences in this area will be harmed by adverse water-quality impacts caused by the  
2 project at issue in this appeal.

3       7.4 Through advocacy and education, Sno-King Watershed Council aims to protect  
4 healthy streams, rivers, lakes, and Puget Sound for the benefit people and wildlife that depend on these  
5 natural resources for their survival. The organization's goals are to connect and empower people  
6 working to protect streams and watersheds; to advocate for laws and policies that protect streams and  
7 watersheds; to promote stream and watershed conservation, restoration, and salmon recovery  
8 activities; and to improve awareness and behavior via outreach and environmental education.  
9

10       7.5 On October 26, 2018, Petitioner filed an administrative appeal with the SHB  
11 challenging Snohomish County's issuance of the permits referenced above in Paragraph 7.1. On  
12 November 29, 2018, the SHB issued a pre-hearing order establishing 11 issues that to be adjudicated  
13 in the appeal. Issues 2A–2D, 3, 6, and 8 alleged that the county failed to comply with its drainage  
14 code, including that the county used the wrong stormwater manual for the road-replacement project.  
15 However, the SHB ultimately dismissed these issues in its Order on Motion to Dismiss (App. B,  
16 hereto) on the alleged basis that the county's drainage code is not incorporated into the county's  
17 shoreline management program — and hence, that the issues were outside the SHB's jurisdiction  
18 under the SMA.  
19

20       7.6 Issue 4 alleged violation of Snohomish County Code (“SCC”) 30.62B.330(3),  
21 which generally prohibits activities or actions requiring a project permit in the channel migration  
22 zone of the North Fork Skykomish River. In its Findings of Fact, Conclusions of Law and Order  
23 dated July 19, 2019 (App. A, hereto), the SHB denied this issue, finding that the road-replacement  
24 project fit within an exception to that rule for “normal maintenance and repair.” However,  
25 Petitioner presented evidence and argument that the “normal maintenance and repair” exception  
26 does not apply. Petitioner also presented evidence that the county's delineation of the channel

1 migration zone failed to meet regulatory standards for a 100-year evaluation, and that the ordinary  
2 highwater mark had not been delineated, meaning the project could actually encroach on the river  
3 itself.

4           7.7     Issues 5 and 7 alleged violations of Washington’s State Environmental Policy Act  
5 (“SEPA”), Chapter 43.21C RCW. Among other things, Petitioner presented evidence that the  
6 county’s SEPA review was premised on inaccurate delineations of the channel migration zone and  
7 ordinary highwater mark of the North Fork Skykomish River; that reports relied upon by the county  
8 were out of date; that the county’s SEPA review did not consider the effects of climate change and  
9 that the proposed mitigation was inadequate to prevent erosion and water quality impacts; that the  
10 project’s stormwater and erosion controls do not meet applicable standards in the Washington  
11 Department of Transportation’s Highway Runoff Manual, and as a result, will result in unmitigated  
12 impacts to water quality; that the project area is too steep for natural dispersion and that the  
13 proposed compost-amended vegetated filter strips did not meet minimum width standards; that the  
14 project’s stormwater/drainage treatment should include stormwater detention vaults and filter  
15 drains; and that fill would be placed below the channel migration zone and ordinary highwater  
16 mark which would result in water quality impacts. The SHB rejected this evidence and these  
17 arguments, and ruled against Petitioner on issues 5 and 7, in its Findings of Fact, Conclusions of  
18 Law and Order dated July 19, 2019 (App. A, hereto).

19           7.8     Issues 10 and 11 challenged the Washington Department of Ecology’s approval of  
20 the conditional use and variance permits referenced above in Paragraph 7.1. In support, Petitioner  
21 presented evidence that Ecology’s approval of those permits was unlawful because it was based on  
22 false assumptions that the project was outside the channel migration zone and that stormwater  
23 erosion treatments were adequate; because Ecology did not have sufficient information about the  
24 project to conduct an adequate review; and because the project is precluded by SCC 30.62B.330(3),  
25  
26

1 prohibiting activities or actions requiring a project permit in the channel migration zone of the  
2 North Fork Skykomish River. As above, the SHB rejected this evidence and these arguments, and  
3 ruled against Petitioner on issues 10 and 11, in its Findings of Fact, Conclusions of Law and Order  
4 dated July 19, 2019 (App. A, hereto).

5           7.9     Petitioner has standing to seek review of the SHB's Findings of Fact, Conclusions  
6 of Law and Order dated July 19, 2019 and Order on Motion to Dismiss dated February 21, 2019  
7 because the Petitioner are parties aggrieved and adversely affected by the SHB's orders and,  
8 pursuant to RCW 34.05.530, because Petitioner are substantially prejudiced by the orders, have  
9 asserted interests that the SHB was required to consider, and a judgment in Petitioner's favor would  
10 substantially eliminate or redress the prejudice caused by the orders. Reversal of the SHB's  
11 Findings of Fact, Conclusions of Law and Order dated July 19, 2019 would effectively reverse the  
12 county-issued permits allowing the road-replacement project. Reversal of the SHB's Order on  
13 Motion to Dismiss dated February 21, 2019 would require the SHB to hold additional hearings to  
14 address Issues 2A-2D, 3, 6, and 8 on the merits, which could also result a denial of the road-  
15 replacement project.  
16

17           7.10    As a participant at the hearing, Petitioner presented numerous arguments and  
18 testimony concerning compliance with the SMA and Snohomish County's shoreline management  
19 program that the SHB was obligated to consider before rendering its final decision.  
20

21           7.11    A judgment in favor of Petitioner would reverse the SHB's orders. The benefit of such  
22 a ruling would inure to Petitioner benefit by requiring the county to comply with the SMA, the local  
23 drainage code, and the county's shoreline management program and other rules and regulations  
24 implementing the SMA.  
25  
26



1 decided that the “normal maintenance and repair” exception applies as an exception to the  
2 prohibition at SCC 30.62B.330(3). The SHB’s ruling wrongly rejected compelling evidence that  
3 the county’s delineation of the channel migration zone failed to meet the applicable 100-year  
4 evaluation standard, and that the ordinary highwater mark had not been delineated, meaning the  
5 project could actually encroach on the river itself. The SHB also wrongly concluded that there are  
6 no other feasible alternatives for certain components of the road-replacement project, and that the  
7 road-side revetments and asphalt removal associated with the project are exempt from the  
8 prohibition at SCC 30.2B.330. Attached hereto as Appendix D is a true and correct copy of  
9 Petitioner’s pre-hearing brief before the SHB, which includes additional reasons why the SHB’s  
10 ruling on Issue 4 was made in error, and which is fully incorporated herein.  
11

12 8.5 For the reasons above, the SHB’s ruling on issue 4 is based on unlawful procedure or  
13 decision-making process, erroneous interpretations of the law, is not supported by substantial  
14 evidence, and is arbitrary and capricious within the meaning of RCW 34.05.570(3)(c), (d), (e), and (i).  
15

16 8.6 The SHB’s ruling in its Findings of Fact, Conclusions of Law and Order dated July  
17 19, 2019 (App. A) denying issues 5 and 7 was made in error. The SHB’s ruling on those issues  
18 ignored compelling evidence that the county’s SEPA review was premised on inaccurate  
19 delineations of the channel migration zone and ordinary highwater mark of the North Fork  
20 Skykomish River; that reports relied upon by the county were out of date; that the county’s SEPA  
21 review did not consider the effects of climate change and that the proposed mitigation was  
22 inadequate to prevent erosion and water quality impacts; that the project’s stormwater and erosion  
23 controls do not meet applicable standards in the Washington Department of Transportation’s  
24 Highway Runoff Manual, and as a result, will result in unmitigated impacts to water quality; that  
25 the project area is too steep for natural dispersion and that the proposed compost-amended  
26 vegetated filter strips did not meet minimum width standards; that the project’s

1 stormwater/drainage treatment should include stormwater detention vaults and filter drains; and  
2 that fill would be placed below the channel migration zone and ordinary highwater mark which  
3 would result in water quality impacts, all of which invalidate the county's SEPA determination.  
4 The SHB also wrongly concluded that an alternative alignment would have greater environmental  
5 impacts, and would be prohibitively expensive. Petitioner's pre-hearing brief (App. D) provides  
6 additional reasons why the SHB's ruling on issues 5 and 7 was made in error, and is fully  
7 incorporated herein.  
8

9 8.7 For the reasons above, the SHB's ruling on issues 5 and 7 is based on unlawful  
10 procedure or decision-making process, erroneous interpretations of the law, is not supported by  
11 substantial evidence, and is arbitrary and capricious within the meaning of RCW 34.05.570(3)(c), (d),  
12 (e), and (i).

13 8.8 The SHB's ruling in its Findings of Fact, Conclusions of Law and Order dated July  
14 19, 2019 (App. A) denying issues 10 and 11 was made in error. The SHB's ruling on those issues  
15 ignored compelling evidence that Ecology's approval of those permits was unlawful because it was  
16 based on false assumptions that the project was outside the channel migration zone and that  
17 stormwater erosion treatments were adequate; because Ecology did not have sufficient information  
18 about the project to conduct an adequate review; and because the project is precluded by SCC  
19 30.62B.330(3), prohibiting activities or actions requiring a project permit in the channel migration  
20 zone of the North Fork Skykomish River. Petitioner's pre-hearing brief (App. D) provides  
21 additional reasons why the SHB's ruling on issues 10 and 11 was made in error, and is fully  
22 incorporated herein.  
23

24 8.9 For the reasons above, the SHB's ruling on issues 10 and 11 is based on unlawful  
25 procedure or decision-making process, erroneous interpretations of the law, is not supported by  
26

1 substantial evidence, and is arbitrary and capricious within the meaning of RCW 34.05.570(3)(c), (d),  
2 (e), and (i).

3 **IX. REQUEST FOR RELIEF**

4 Based upon the above, Petitioner respectfully requests the Court, upon review to:

5 9.1 Set aside the SHB's Findings of Fact, Conclusions of Law and Order dated July 19,  
6 2019 and Order on Motion to Dismiss dated February 21, 2019 as they relate to issues 2A-2D, 3,  
7 4, 5, 6, 7, 8, 10 and 11;

8 9.2 Remand issues 2A-2D, 3, 6, and 8 for an adjudication on the merits, unless such relief  
9 is mooted by other rulings of the Court;

10 9.3 Declare that Snohomish County Shoreline Substantial Development Permit No. 17-  
11 119707 SHOR, Snohomish County Shoreline Conditional Use Permit No. 17-119711 SHOR, and  
12 Snohomish County Shoreline Variance Permit No. 17-119710 SHOR are unlawful and of no force  
13 or effect;

14 9.4 Award Petitioner's attorney's fees and costs, to the extent allowed by law; and

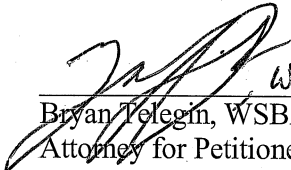
15 9.5 Grant such other relief as the Court deems just and appropriate

16 Dated this 16th day of July, 2019.

17 Respectfully submitted,

18 BRICKLIN & NEWMAN, LLP

19 By:

20  WSBA No. 48608, For:  
21 Bryan Telegin, WSBA No. 46686  
22 Attorney for Petitioner Sno-King Watershed  
23 Council  
24