

WHATCOM COUNTY HEARING EXAMINER

re: The application of **Whatcom County Parks & Recreation** for a Shoreline Substantial Development Permit and Zoning Conditional Use Permit

“Silver Lake shower/restroom buildings”

SHR2020-0004;
CUP2020-0004; and
LDP2020-0067

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks a Shoreline Substantial Development Permit and Zoning Conditional Use Permit to remove vault-type toilet buildings and replace with six (6) new flush-type shower/restroom buildings, and add two (2) RV sanitary dump stations at the Silver Lake Park Campgrounds, addressed as 9006 Silver Lake Road, Maple Falls, Washington.

Decision: The requested permits are granted, subject to conditions.

INTRODUCTION

The following Findings of Fact and Conclusions of Law are based upon consideration of the exhibits admitted herein and evidence presented at the public hearing.

FINDINGS OF FACT

I.

PRELIMINARY INFORMATION

Applicant: Whatcom County Parks and Recreation

Property Location: 9006 Silver Lake Road
Maple Falls, Washington

Legal Description: Within Section 07, Township 40 North, Range 06 East, W.M.

Parcel Number: 400607 310220

Adjacent Water Body: Silver Lake

Shoreline Designation: Conservancy
Statewide Significance: No
Zoning Designation: Rural Forestry
Comprehensive Plan: Rural Forestry
SEPA Review: Categorically Exempt pursuant to WAC 197-11-800(1) - Minor new construction
Notice Information: Application submitted: February 13, 2020
Notice of Completeness: February 27, 2020
Notice of Application: March 2, 2020
Comment Period Ended: April 1, 2020

Applicable Ordinances:

SMP 23.50	Applicability
SMP 23.70	Administrator
SMP 23.20	Goals and Objectives
SMP 23.30.020	Official Shoreline Map
SMP 23.30	Shoreline Designations
SMP 23.60.010	Substantial Development Permit Criteria
SMP 23.60.130	Public Hearings
SMP 23.90	General Policies & Regulations
SMP 23.100	Shoreline Use Policies & Regulations

Legal Notices: Published – Notice of Public Hearing, July 16, 2020
Posted – Notice of Public Hearing, July 16, 2020
Mailed – Notice of Public Hearing, July 9, 2020

Hearing Date: July 29, 2020

Parties of Record

Rod Lamb
County Parks & Recreation
3373 Mt. Baker Highway
Bellingham, WA 98226

Andrew Hicks, Shoreline Administrator
Planning and Development Services
Whatcom County

Exhibits:

01. Substantial Development Application Packet

02. Conditional Use Application Packet
03. Substantial Development Project Narrative
04. Project Narrative
05. Land Disturbance Application
06. Site Plans
07. Red Mountain Site Plan
08. Topographic Map
09. Critical Areas Assessment Report
10. Critical Areas Assessment Report addendum
11. Floor Plans
12. Preliminary Stormwater
13. Preliminary Traffic and Concurrency
14. Encroachment-permit-application
15. Easement-agreements
16. Deeds
17. Staff Report, *dated 8/21/19*

II.

The proposed project is for the removal of vault-type toilet buildings and replace them with new flush-type shower/restroom buildings, and add two (2) RV sanitary dump stations at Silver Lake Park. Only one of the shower/restroom buildings is with shoreline jurisdiction. The improvements will take place in various locations throughout the park.

III.

The Whatcom County Shoreline Administrator has recommended approval of the requested Shoreline Substantial Development Permit and Zoning Conditional Use Permit for the proposed replacement of existing vault-type toilet buildings with new flush-type shower/restroom buildings, and add two (2) RV sanitary dump stations. The Staff Report entitled "Findings, Conclusions, and Recommendations," dated July 21, 2020, a copy of which is attached hereto. The Applicant has indicated that the Staff Report is factually correct. The Applicant stated no objection to the Conditions of Approval recommended by Staff. There was no public comment on this matter at the hearing. The Findings of Fact contained in the Staff Report are adopted and incorporated herein by this reference.

IV.

Any Conclusion of Law which is deemed a Finding of Fact is hereby adopted as such.

Based on the foregoing Findings of Fact, now are entered the following:

CONCLUSIONS OF LAW

I.

The Conclusions of Law are set forth in the Staff Report, Exhibit 17, are adopted and incorporated herein by this reference as Conclusions of Law. Subject to the Conditions of Approval recommended by Staff, the Hearing Examiner also concludes that the proposal is consistent with the Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58, and with the Goals and Policies of the Whatcom County Shoreline Management Program.

II.

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such. Based on the foregoing Findings of Fact and Conclusions of Law, now is entered the following:

DECISION

A Shoreline Substantial Development Permit and Zoning Conditional Use Permit are hereby granted to Whatcom County Parks & Recreation Department to replace the existing vault-type toilet buildings and replace with six (6) new flush-type shower/restroom buildings and add (2) RV sanitary dump stations, within Silver Lake Park located on Assessor's Parcel Number 400607 310220, addressed as 9008 Silver Lake Road, Maple Falls, Washington. The Permit is granted subject to the following Conditions of Approval:

- 1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline substantial development permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.*
- 2. The project must be constructed in accordance with the submitted plans/drawings and supporting documentation and comply with all agency permit conditions.*
- 3. Issuance of this shoreline permit does not release the applicant from any other Local, State, regional or Federal statutes or regulations applicable to the proposed development.*
- 4. Washington State Department of Ecology Water Quality Standards shall be maintained.*
- 5. The project shall not result in significant degradation of ground or surface waters*

and shall be completed during periods of dry weather.

- 6. Construction Best Management Practices (BMP's) shall be required according to approved TESC in order to reduce or eliminate any potential construction storm water impacts to the adjacent waters and/or floodplain area.*
- 7. All construction debris shall be removed from the shoreline environment upon completion of the project and disposed of in accordance to all applicable regulations.*
- 8. The general location of future projects is approved. However, site plan review for each future project phase (campgrounds, dump stations, septic, utility, and access) shall be reviewed independently by Critical Area staff when submitted.*
- 9. Mitigation for temporary or permanent impacts to regulated critical areas shall be developed during specific site plan review at each phase.*
- 10. The applicant must demonstrate adequate sewage disposal capacity for the proposed project. The applicant has proposed a new on-site sewage system. An approved on-site sewage system design will be required at the time of building permit application.*
- 11. The Red Mountain Campsite appears to be served by its own public water system – Silver Lake Park – Horse Camp Water System ID: 52666P. The proposed project appears to be an expansion of the existing public water system. The applicant will be required to obtain approved from the Washington State Department of Health. Please contact Laura McLaughlin at 253-395-6761 or Laura.McLaughlin@doh.wa.gov. The water system approval may also require demonstrating the well has adequate water rights to support the proposed project. For more information on water rights for this project please contact Tom Perkow at the Washington State Department of Ecology at 360- 255-4388 or tper461@ecy.wa.gov.*
- 12. Buildings must meet all the requirements of the International Fire Code at time of building permitting.*
- 13. Propane tanks shall be installed at the building sites per IFC Chapter 61 Liquefied Petroleum Gas code and NFPA 58. Separate fire permit is required if installed underground.*
- 14. A commercial building permit is required for this project. It will be reviewed under the current adopted edition of the International Building Code (IBC) and must comply with all other applicable codes and ordinances adopted by Whatcom County.*
- 15. A pre-application screen meeting will be required prior to submittal for permit to determine if a Building Services pre-application meeting will be required or waived. If a Conditional Use Permit is required, it must be approved prior to the screening meeting date. Call 360-778-5900 to set up a screening meeting with the Building Department supervisor or a plans examiner.*

16. *When you have completed your screening and have completed any requirements indicated on your screening form, or you have completed your pre-application meeting and have completed any requirements from that meeting you may set up your appointment for permit submittal. Appointments are available on Mondays through Friday. To schedule an appointment, contact Planning and Development Services (369-676-6907). Please have your pre-application number and/or your contact information and geographic (tax parcel) number available when you call to schedule. The commercial building permit application form is available on-line at: www.whatcomcounty.us/pds under Quick Links > Applications/Forms.*
17. *A revocable encroachment permit has been submitted, and is pending review by encroachment staff. Any conditions of the revocable encroachment permit will be required to be satisfied prior to final occupancy. Refer to ECE2020- 00013 on county file for additional concurrency information.*
18. *The final stormwater engineering design shall be submitted and approved by the PW Engineering Services division prior to any land clearing or commencing any construction work.*
19. *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 (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.*
20. *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.*
21. *Construction shall be commenced within two (2) years of the effective date of this shoreline permit, as defined by 23.60.190(A)(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.

NOTICE OF POTENTIAL REVOCATION AND PENALTIES

This Approval is subject to all of the above-stated conditions. Failure to comply with them may be cause for its revocation. Complaints regarding a violation of the conditions of this permit should be filed with Whatcom County Planning and Development Services. The Hearing Examiner may not take any action to revoke this approval without further public hearing. Violations of this title shall constitute Class I civil infractions pursuant to RCW 7.80.120. The maximum penalty and the default amount for such violations shall be consistent with Chapter 7.80.RCW.

FURTHER, in addition to incurring civil liability under Shoreline Management Program Section 23.80.20 and RCW 90.58.210, pursuant to RCW 90.58.220 any person found to have willfully engaged in activities on shorelines of the state in violation of the provisions of the act or the Shoreline Management Program or other regulations adopted pursuant thereto shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$25 or more than \$1,000 or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment; provided that the fine for the third and all subsequent violations in any five year period shall not be less than \$500 nor more than \$10,000.

Any person who willfully violates any court order, regulatory order or injunction issued pursuant to the Shoreline Management Program shall be subject to a fine of not more than \$5,000, imprisonment in the county jail for not more than 90 days, or both. This approval does not release the applicant from any regulations and procedures required of any other public agency, or any County requirements other than the requirement to obtain a Shoreline Substantial Development Permit and Shoreline Conditional Use Permit. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or conditions thereof. Pursuant to Whatcom County Shoreline Management Program Section 23.60.151 this permit shall expire within two years of the date of its approval and a new permit will be required, if the permittee fails to make substantial progress toward completion of the project for which it was approved. Pursuant to Section 23.60.152 it shall expire if the project is not completed within five years of the date of the approval, unless the permittee has requested a review, and upon good cause shown, been granted an extension of the permit.

THIS PERMIT IS NOT VALID (AND NO CONSTRUCTION NOR OPERATION AUTHORIZED BY THIS PERMIT SHALL BEGIN) UNTIL THIRTY (30) DAYS AFTER THE DATE OF FILING AS DEFINED BY RCW 90.58.140(6) AND WAC 197-14-090,

OR UNTIL ALL REVIEW PROCEEDINGS INITIATED WITHIN THIRTY DAYS FROM THE DATE OF SUCH FILING HAVE TERMINATED; EXCEPT AS PROVIDED IN RCW 90.58.140(5)(A)(B)(C).

**NOTICE OF APPEAL PROCEDURES FROM FINAL DECISIONS
OF THE WHATCOM COUNTY HEARING EXAMINER**

This action of the Hearing Examiner is final.

The applicant, any party of record, or any county department may appeal any final decision of the hearing examiner to Superior Court or other body as specified by WCC 22.05.020. The appellant shall file a written notice of appeal within 21 calendar days of the final decision of the hearing examiner, as provided in RCW 36.70C.040.

More detailed information about appeal procedures is contained in the Whatcom County Code Title 22 and Title 23.60 and which is available at <http://www.codepublishing.com/WA/WhatcomCounty>.

Dated this 6th day of August 2020



Rajeev Majumdar, Hearing Examiner *Pro-Tem*