

WHATCOM COUNTY HEARING EXAMINER

RE: Shoreline Substantial Development Permit)	SHR2020-0006
Application for)	
)	
Petrogas Pacific, LLC)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks approval of a Shoreline Substantial Development Permit to dredge up to 4,000 cubic yards of sediment to re-establish the original -38 ft. of depth at MLLW to reduce the frequency of re-berthing at the Petrogas Pier, located at 4050 Mountain View Road, Ferndale, WA.

Decision: The requested permit is 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: Petrogas Pacific, LLC.

Property Location: 4050 Mountain View Road, Ferndale, Washington.

Legal Description: Within Section 29, Township 39 North, Range 01 East, W.M.

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Cherry Point Management Unit

Statewide Significance: Yes

SEPA Review: Whatcom County PDS issued a Determination of Non-Significance [DNS] on June 24, 2020 under file #SEP2020-0018.

Notice Information: Application submitted: March 2, 2020
Notice of Completeness: March 9, 2020
Notice of Application: March 11, 2020
Comment Period Ended: April 13, 2020

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70 Administrator
 SMP 23.70.130 Public Hearings

Applicable Shoreline Program Provisions

SMP 23.20 Goals and Objectives
SMP 23.30.020 Official Shoreline Map
SMP 23.30 Shoreline Jurisdiction and Area Designations
SMP 23.40 Shorelines of Statewide Significance
SMP 23.60.170 Substantial Development Permit Criteria
SMP 23.90 General Policies & Regulations
SMP 23.90.130 Bulk and Dimensional Requirements
SMP 23.100.170 Cherry Point Management Area
SMP 23.110 Definitions

Legal Notices: Published – Notice of Public Hearing, November 26, 2020
 Posted – Notice of Public Hearing, November 26, 2020
 Mailed – Notice of Public Hearing, November 20, 2020

Hearing Date: December 16, 2020

Parties of Record

Chase Carter, Agent
Petrogas Pacific, LLC
1230 Yew Street
Bellingham, WA 98229

Andrew Hicks, Shoreline Administrator
Planning and Development Services
Whatcom County

Exhibits:



1-Shoreline
Substantial Applicat



2-Project
Proposal.pdf



3-Site Plans.pdf



4-JARPA
Application.pdf



5-CA
Assessment.pdf



7-DNS Distribution
Packet.pdf



8-Vicinity Map.pdf



9-Notice of
Application.pdf



10-NOAR Response
Update.pdf



11-Optional Legal
Notice.pdf



12-Lummi Nation
Comments.pdf



13-Staff Report.pdf



14-Approved
Proposal and Site PI



15-wetHCA
memo.pdf



16-Flood Memo.pdf



17-PW Eng
Memo.pdf

II.

Petrogas Pacific, LLC [Petrogas] is proposing to dredge approximately 4,000 cubic yards of sediment to restore the original water depth at the Petrogas Pier in order to reduce the frequency of re-berthing. The dredging is proposed to the design depth of -38 feet mean lower low water [MLLW] plus 2-feet of over-dredge allowance [to a maximum of -40 feet MLLW]. The project proposes 2-feet of allowable over-dredge for greater flexibility during construction due to unanticipated site and sea state conditions [e.g., unanticipated obstructions, high wind and/or wave condition, or survey inaccuracy]. Dredging activities will be focused near the edge of the pier.

The project is located in the area of Cherry Point Aquatic Reserve.

III.

The Whatcom County Shoreline Administrator has reviewed this proposal for consistency with WCC23.40.030 and RCW90.58.030 and finds that this specific proposal to dredge approximately 4000 cubic yards of sediment conforms to the policies and statutes for Shorelines of Statewide Significance. Pursuant to WCC 23.60.010, a substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt from such requirements pursuant to one or more of the listed exemptions in WCC 23.60.022. The proposal does not meet any of the exemptions from the substantial development permitting process listed in WCC 23.60.022. As such, a substantial development permit is required. In addition to the applicable use policies and regulations of Chapter 23.100 WCC; provided, that all use and development that is to be located within the Cherry Point Management Area shall be subject to the policies and regulations found in WCC 23.100.170. WCC 23.90.130.C.9 requires a conditional use permit for dredging in the aquatic, however, as this dredging proposal is within the Cherry Point Management Area, it is not subject to WCC 23.90. Therefore, no conditional use permit is required to authorize the proposed dredging activities. Staff has reviewed the application and finds the proposal complies with the Shoreline Substantial Development Criteria: Pursuant to 23.60.010(B) and the project is not subject to the general policies and regulations of WCC 23.90 or WCC 23.100.

The Shoreline Administrator's Staff Report [Exhibit 22] is entitled "Findings, Conclusions, and Recommendations," dated December 8, 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 during the public comment period, and no public comment during the public 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, dated December 8, 2020, 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 Cherry Point Management Area Standards: As provided in WCC 23.90.010, development within the Cherry Point Management Area is not subject to the general policies or regulations contained in WCC 23.90 and WCC 23.100. However, pursuant to WCC 23.100.170.B.4.b, the Cherry Point Management Area, Staff finds the proposal complies with the standards.

Pursuant to WCC 23.100.070.B.3, development within the Cherry Point Management Area shall be consistent with the provisions of WCC 23.90.030- Ecological protection and critical areas. Staff finds that this project will not likely have significant and permanent impacts to wetlands and Habitat Conservation Areas [HCA], but will likely have temporary impacts to the Marine HCA. Mitigating measures and best management practices [BMP] are proposed to reduce temporary impacts.

Staff has determined that the proposed dredging activity will not result in a significant adverse ecological impacts. The proposed dredging activity meets all applicable standards and therefore, no cumulative adverse effects to the shoreline are anticipated.

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 is hereby granted to Petrogas Pacific, LLC., to dredge up to 4,000 cubic yards of sediment to re-establish the original -38 ft. of depth at MLLW to reduce the frequency of re-berthing, located at the Petrogas Ferndale Pier, addressed as 4050 Mountain View Road, Ferndale, 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 plans submitted by the applicant stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on December 8, 2020. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and critical areas staff.
2. Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.
3. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. A copy of the issued HPA shall be submitted along with the above required building permit to Whatcom County Planning and Development Services. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.
4. Flood proofing requirements, according to Whatcom County Code Chapter 17.16, will be required for the structure and must be met prior to approval of a future building permit (refer to attached Title-17 excerpts and building in a floodplain diagram). We advise that the project agent/representative and architect/engineer work with us throughout the design process to assure all necessary requirements are being met prior to submitting the final drawings for a building permit.

5. The project requires Nationwide Permit approval from the Army Corps of Engineers (ACOE). As such, the ACOE is the Federal nexus for compliance with the Endangered Species Act (ESA). A copy of the issued permit from the ACOE shall be provided to the River and Flood Division and/or Planning and Development Services prior to the start of any work.
6. Construction BMP's shall be used, as necessary, to reduce or eliminate any construction related impacts within the SFHA.
7. A copy of the approved Hydraulic Project Approval (HPA) permit must be submitted to the River and Flood Division and/or Planning and Development Services prior to the start of any work.
8. No vegetation removal is proposed or approved above OHWM.
9. Debris/sediment from dredging shall be disposed of at an approved facility.
10. Environmental approvals from other agencies shall be submitted to the County. Requirements, including mitigating measures and BMP's, shall be reviewed for consistency with WCC. Other agencies may include:
 - a. US Army Corps of Engineers Permits
 - b. DNR permit conditions for in water work
 - c. WDFW Hydraulic Project Approval (HPA)
 - d. National Marine Fisheries Service
 - e. US Fish and Wildlife
 - f. Tribes
11. A pre-construction meeting is required to review BMP's and other agency approvals and conditions.
12. 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.

13. 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.
14. Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, 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 UNDER SHORELINE MANAGEMENT PROGRAM**

Pursuant to WCC 23.60.180, 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.

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.

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

This action of the Hearing Examiner is final. The following review procedure is available from this decision and may be taken by the Applicant, any opponent of record, or any County department.

Appeals to the shoreline hearings board of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use permit may be filed by the applicant/proponent or any aggrieved party pursuant to RCW 90.58.180 within 21 days of filing the Final Decision by Whatcom County with the Department of Ecology.

Whatcom County Council shall consider an appeal of a decision on a shoreline substantial development permit, shoreline variance or shoreline conditional use only when the applicant/proponent waives his/her right to a single appeal to the shoreline hearings board. Such waivers shall be filed with the County in writing concurrent with a notice of appeal within 10 days of a final action. When an applicant/proponent has waived his/her right to a single appeal, such appeals shall be processed in accordance with the appeal procedures of WCC 23.60.150.H and shall be an open record hearing before the Hearing Examiner.

More detailed information about appeal procedures is contained in the Shoreline Management Program at WCC 23.60.150. Whatcom County Code can be viewed online at <http://www.codepublishing.com/WA/WhatcomCounty>.

DATED this day 17th of December 2020.

Michael Bobbink

Michael Bobbink, Hearing Examiner

WHATCOM COUNTY
Planning & Development Services
5280 Northwest Drive
Bellingham, WA 98226-9097
360-778-5900, TTY 800-833-6384
360-778-5901 Fax



Mark Personius, AICP
Director

December 8, 2020

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of | SHR2020-00006
Petrogas Pacific, LLC for a | FINDINGS, CONCLUSIONS, AND
Shoreline Substantial Development Permit | RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant requests approval of a Shoreline Substantial Development permit to dredge up to 4,000 cubic yards of sediment to re-establish the original -38 ft. of depth at MLLW to reduce the frequency of reberthing at the Petrogas Pier.

Recommendation: Staff recommends approval of the requested Shoreline Substantial Development Permit subject to the conditions within this staff report.

II. PRELIMINARY INFORMATION

Applicant: Petrogas Pacific, LLC
4050 Mountain View Rd.
Ferndale, WA 98248

Agent: Chase Carter
1230 Yew St.
Bellingham, WA 98229

Property Location: 4050 Mountain View Rd., Ferndale

Legal Description: Within Section 29, Township 39N, Range 01E, W.M.
Assessor's Parcel Number: 390129260284

Adjacent Water Body: Strait of Georgia

Shoreline Designation: Cherry Point Management Unit

Statewide Significance: Yes

SEPA Review: Determination of Non-significance (DNS) issued by Whatcom County PDS on June 24, 2020 under SEP2020-00018.

Notice Information: Application submitted: March 2, 2020
Notice of Completeness: March 9, 2020
Notice of Application: March 11, 2020
Comment Period Ended: April 13, 2020

Applicable Shoreline Program Provisions:

WCC 23.50	Applicability
WCC 23.70	Administrator
WCC 23.20	Goals and Objectives
WCC 23.30	Shoreline Jurisdiction and Area Designations
WCC 23.40	Shorelines of Statewide Significance
WCC 23.60.170	Substantial Development Permit Criteria
WCC 23.60.130	Public Hearings
WCC 23.90	General Policies and Regulations
WCC 23.90.130	Bulk and Dimensional Requirements
WCC 23.100.170	Cherry Point Management Area
WCC 23.110	Definitions

III. PROJECT SUMMARY

Proposal: Petrogas Pacific, LLC (Petrogas) is proposing to dredge approximately 4,000 cubic yards of sediment to restore the original water depth at the Petrogas Pier in order to reduce the frequency of reberthing. The reduction in tugboat traffic and mooring operations will result in a safer overall operation and reduce environmental impacts. The dredging is proposed to the design depth of -38 feet mean lower low water (MLLW) plus 2 feet of overdredge allowance (to a maximum of -40 feet MLLW). The project proposes 2 feet of allowable overdredge for greater flexibility during construction due to unanticipated site and sea state conditions (e.g., unanticipated obstructions, high wind and/or wave condition, or survey inaccuracy). The dredging prism would be approximately 850 ft. north to south along the west head of the Pier, up to 60 ft. wide and 8 ft. maximum depth from current Light- Detection-and-Ranging (LIDAR) model reading to the 38 ft. MLLW design water depth. The bathymetric data shows the sediments have accumulated close to the Pier structure where the piles have disrupted sediment transport. Dredging activities will be focused near the edge of the pier.

Petrogas plans to transport the dredged material via barge to the Waste Management National Services-Duwamish Reload Facility (WMDRF) operation

located at 7400 8th Avenue S., Seattle, WA. The material will be offloaded at the WMDRF pier, processed per their operations permits, and transported by rail to Arlington, Oregon, for final disposal at the Columbia Ridge Landfill.

Project Need: Since the construction of the Pier in 1965, sediment transport and deposition at the pierhead has resulted in the loss of approximately 5-8 feet of underkeel clearance along the west edge of the Pier. This clearance is critical to safe operation of the ships. The accumulated sediments have resulted in more frequent reberthings of ships during tidal changes. To address this issue, in August 2019, Petrogas submitted to the US Army Corps Dredged Materials Management Office (DMMO), a Tier 1 report to begin the process of planning for dredging at the Petrogas Pier. Petrogas has developed a Sediment Sampling and Analysis Plan (SSAP) by way of the sediment sampling experts at Anchor QEA, in coordination with the DMMO, to collect core samples of the sediment to characterize the sediment quality. The results of this sampling and analysis will be submitted to the DMMO to determine what options are available for proper disposal of dredged sediment.

Site Description: The project is located in the area of Cherry Point Aquatic Reserve. The shore area is characterized by wave washed feeder bluffs where sediment transport creates both sandy and cobbled beaches and intertidal zones. There are numerous species of rock-dwelling marine algae and low densities of eelgrass. The eelgrass is limited to approximately -10ft MLLW (AECOM 2011, Fairbanks 2005). The project area is located approximately 1,500 feet offshore from the MLLW elevation in water depths of -35 feet MLLW and deeper.

The aquatic lands are managed by the Washington State Department of Natural Resources (DNR). The property is leased out to Petrogas Pacific, LLC for use under Lease #20-A08488. The primary improvement on this property is a timber pier structure located at 4050 Mountain View Road, Ferndale, Washington. The structure serves as a loading point for LPG (Liquid Petroleum Gas). The pier is also a receiving point for raw aluminum ore, which is offloaded from ships with a clamshell transfer bucket and conveyed to shore with an enclosed conveyor belt system. The conveyance pipe for Intalco Aluminum Corporation's main wastewater and stormwater outfall also runs along the pier to a diffuser below the surface of the water.

The Petrogas Pier is a timber pier structure that serves as a loading facility for LPG and as a receiving point for raw aluminum ore. The pier, which was originally constructed in 1965, has undergone frequent routine repairs to maintain it in a fully serviceable condition. The conveyance pipe for Intalco Aluminum Corporation's main wastewater and stormwater outfall also runs along the pier to a diffuser below the surface of the water.

Adjacent Uses: The Petrogas Pier is located in an area zoned heavy impact industrial and is neighbor to other industrial facilities that refine and distribute petroleum products and smelt aluminum. Adjacent properties to the pier include oil refineries to the north and south, an LPG terminal facility to the southeast, an aluminum smelter to the east and railway property running north-south.

IV. PUBLIC COMMENTS

No public comments were received during the public comment period for this project.

V. CODE ANALYSIS & FINDINGS

Shoreline Designation: According to the Official Shoreline Map, WCC 23.30.020.A, the subject site is located within the Cherry Point Management Unit designation.

Shorelines of Statewide Significance: Marine waters waterward of extreme low tide are designated as shorelines of statewide significance per WCC 23.40.020. As such, the statewide interest should be recognized and protected over the local interest. Staff reviewed this proposal for consistency with WCC 23.40.030 and RCW 90.58.030 and finds that this specific proposal to dredge up to 12,000 cubic yards of sediment conforms to the policies and statutes for shorelines of statewide significance.

Substantial Development Requirement: Pursuant to WCC 23.60.010, a substantial development permit shall be required for all proposed use and development of shorelines unless the proposal is specifically exempt from such requirements pursuant to one or more of the listed exemptions in WCC 23.60.022. The proposal does not meet any of the exemptions from the substantial development permitting process listed in WCC 23.60.022. As such, a substantial development permit is required.

Shoreline Conditional Use Requirement: Pursuant to WCC 23.90.010-*Applicability*, all use and development activities on shorelines shall be subject to all of the general policies and regulations in addition to the applicable use policies and regulations of Chapter 23.100 WCC; provided, that all use and development that is to be located within the Cherry Point Management Area shall be subject to the policies and regulations found in WCC 23.100.170 and shall not be subject to the policies and regulations found in Chapter 23.90 and Chapter 23.100 WCC unless otherwise specified. WCC 23.90.130.C.9 requires a conditional use permit for dredging in the aquatic, however, as this dredging proposal is within the Cherry Point Management Area, it is not subject to WCC 23.90. Therefore, no conditional use permit is required to authorize the proposed dredging activities.

Public Hearing Requirement: Pursuant to WCC 23.60.130, a public hearing shall be required when the project meets one of the eight criteria enumerated in that section. One criterion for requiring a public hearing is for any proposal with a cost or fair market value in excess of \$100,000. Application documents state that the anticipated cost of the project is \$500,000. Therefore, a public hearing is required and has been scheduled for December 16, 2020.

Substantial Development Criteria: Pursuant to 23.60.010(B), in order for a substantial development to be approved, the decision maker must find that the proposal is consistent with the following criteria:

1. *All regulations of the SMP appropriate to the shoreline designation and the type of use or development proposed shall be met, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under SMP 23.60.030.*
2. *All policies of the SMP appropriate to the shoreline area designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated.*
3. *For projects located on shorelines of statewide significance, the policies of Chapter 23.40 shall be also be adhered to.*

Staff has reviewed the application and finds the proposal complies with the above general policies and regulations. The project is not subject to the general policies and regulations of WCC 23.90 or WCC 23.100.

Cherry Point Management Area Standards: As provided in WCC 23.90.010, development within the Cherry Point Management Area is not subject to the general policies or regulations contained in WCC 23.90 and WCC 23.100. Specifically, this project is not subject to the general regulations on dredging contained in WCC 23.100.120.

Pursuant to WCC 23.100.170.B.4.b, the regulations pertaining to dredging within the Cherry Point Management Area are as follows:

- i. *Dredging to accommodate water access to, or construction of, new development is prohibited. New development shall be located and designed to avoid the need for dredging. Dredging for existing development shall be the minimum necessary and shall minimize interference in the intertidal zone and impacts to fish and wildlife habitats.*
- ii. *Dredging operations, including spoil disposal, shall be conducted in accordance with policies and regulations in WCC 23.90.120(B)(4) and (5), Dredging.*
- iii. *Dredging is prohibited in the accretion shoreform and backshore wetland areas described in Appendix C of this title.*

Staff finds that the proposal complies with the above standards.

Environmental Impacts: Pursuant to WCC 23.100.070.B.3, development within the Cherry Point Management Area shall be consistent with the provisions of WCC 23.90.030-*Ecological protection and critical areas*. Additionally, projects within the Cherry Point Management Area shall meet the following standards:

- a. *Mitigation to achieve no net loss of ecological functions and processes shall be conducted in accordance with WCC 23.90.030.*
- b. *Development and alteration shall not be allowed in wetlands in the backshore area. Upland development shall demonstrate that changes in local hydrology will not decrease the viability of the wetland environment nor degrade the existing water quality within the wetland.*
- c. *The minimum required setback from the OHWM for all industrial and port facilities, including development components, which do not require a water's edge or water surface location shall be 150 feet; provided, that bluffs and banks greater than 10 feet in height and sloping greater than 30 percent and wetland shorelines shall have such setbacks measured from the crest of the bank or the edge of the wetland in addition to the OHWM.*
- d. *Development and alteration other than recreation development for public and quasi-public shoreline access is prohibited on the accretion shoreforms identified on the map in Appendix C of this title, subject to the regulations in this section and consistent with the conservancy and aquatic shoreline area designation policies and regulations of Chapters 23.90 and 23.100 WCC; provided, that lawfully established uses or developments may be maintained subject to the provisions of WCC 23.50.070.*

The purpose and intent of the Critical Areas Ordinance is to protect the functions and values of critical areas and the ecological processes that sustain them, while allowing for appropriate economically beneficial or productive use of land and property. The applicant submitted several ecological reports, including a Critical Areas Assessment, Biological Evaluation, SEPA Checklist, and JARPA to demonstrate that the proposal will not have a detrimental effect on the environment.

Staff finds that this project will not likely have significant and permanent impacts to wetlands and Habitat Conservation Areas (HCA), but will likely have temporary impacts to the Marine HCA. Mitigating measures and best management practices (BMP) are proposed to reduce temporary impacts. Compensatory mitigation is not required for the project as proposed. No net loss of ecological functions and ecosystem wide processes will likely occur as a result of this project, with the conditions of approval below.

Archaeology: This project is not within 500 ft. of a mapped archaeological area per a GIS map provided by the Department of Archaeology and Historic Preservation (DAHP), and subsequently this project was not reviewed for compliance with WCC 23.90.070. The project notice was sent to the local tribes, however, and the Lummi Nation provided written comments via email on July 21, 2020 requesting that an Inadvertent Discovery Plan be on-site during construction and followed should archaeological resources or human remains be encountered. This has been added as conditions of approval, below.

Cumulative Impact Analysis: In the granting of all shoreline substantial development permits consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if shoreline substantial development permits were granted for other developments in the area where similar circumstances exist, the sum of the permitted actions should also remain consistent with the policy of RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes or other users.

The proposal was reviewed for consideration of potential cumulative effects that would result if similar developments were permitted in the area of the subject property. Staff has determined that the proposed dredging activity would not result in any significant adverse ecological impacts. According to Section 23.90.030.A.3 (Ecological Protection and Critical Area Policies), if a proposed development meets the development standards of the SMP for setbacks, impervious surface, vegetation conservation, buffers, critical areas, and water quality, existing shoreline ecological functions and processes should be protected. This permit has been conditioned that the applicant obtains all other necessary approvals including a Hydraulics Project Approval (HPA) from the Washington State Department of Fish and Wildlife (WDFW). Such approval will ensure that no short or long term adverse impacts to fish and wildlife and their respective habitat will occur as a result of the proposed project. The proposed dredging activity meets all applicable standards and therefore, no cumulative adverse effects to the shoreline are anticipated.

VI. AGENCY COMMENTS

Amy Dearborn, Critical Areas Planner – Planning & Development Services: Submitted a memorandum on October 19, 2020 signing off on project approval with conditions.

Jason Buehler, Engineering Technician – Public Works River & Flood: Submitted a memorandum on March 16, 2020 signing off on project approval with conditions.

Michael Vaughan, Engineering Technician – Public Works Engineering Services: Submitted a memorandum on March 26, 2020 signing off on project approval with conditions.

VII. APPEAL RIGHTS

Pursuant to WCC 23.60.150 and WCC 22.05.160, the application for appeal from the Shoreline Administrator's decision may be obtained at the planning and Development Services Department. Such an appeal shall be filed within ten (10) calendar days of the issuance of a Substantial Development Permit.

Note that issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.

Report Prepared By

Official: Andrew Hicks

Title: Shoreline Administrator

Dated: December 8, 2020

CONDITIONS ASSOCIATED WITH SHR2020-00006

1. *The proposed shoreline developments shall be consistent with the scope and site plans submitted by the applicant stamped "Site Plan Review Approval" and initialed by the Shoreline Administrator on December 8, 2020. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and critical areas staff.*
2. *Issuance of this shoreline permit does not release the applicant from any other State, regional or Federal statutes or regulations applicable to the proposed development.*
3. *The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) and obtain a Hydraulics Project Approval (HPA) or any other requirements as determined by WDFW. A copy of the issued HPA shall be submitted along with the above required building permit to Whatcom County Planning and Development Services. Note that any additional mitigation measures imposed by WDFW shall hereby be adopted as conditions of approval pursuant to WCC 16.16.215. In the event that there is a conflict between such HPA conditions and applicable WCC, the more restrictive standards shall apply.*
4. *Flood proofing requirements, according to Whatcom County Code Chapter 17.16, will be required for the structure and must be met prior to approval of a future building permit (refer to attached Title-17 excerpts and building in a floodplain diagram). We advise that the project agent/representative and architect/engineer work with us throughout the design process to assure all necessary requirements are being met prior to submitting the final drawings for a building permit.*
5. *The project requires Nationwide Permit approval from the Army Corps of Engineers (ACOE). As such, the ACOE is the Federal nexus for compliance with the Endangered Species Act (ESA). A copy of the issued permit from the ACOE shall be provided to the River and Flood Division and/or Planning and Development Services prior to the start of any work.*
6. *Construction BMP's shall be used, as necessary, to reduce or eliminate any construction related impacts within the SFHA.*
7. *A copy of the approved Hydraulic Project Approval (HPA) permit must be submitted to the River and Flood Division and/or Planning and Development Services prior to the start of any work.*
8. *No vegetation removal is proposed or approved above OHWM.*
9. *Debris/sediment from dredging shall be disposed of at an approved facility.*

10. *Environmental approvals from other agencies shall be submitted to the County. Requirements, including mitigating measures and BMP's, shall be reviewed for consistency with WCC. Other agencies may include:*
 - a. *US Army Corps of Engineers Permits*
 - b. *DNR permit conditions for in water work*
 - c. *WDFW Hydraulic Project Approval (HPA)*
 - d. *National Marine Fisheries Service*
 - e. *US Fish and Wildlife*
 - f. *Tribes*
11. *A pre-construction meeting is required to review BMP's and other agency approvals and conditions.*
12. *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.*
13. *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.*

14. *Construction shall be commenced within two (2) years of the effective date of this shoreline exemption, 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.*

FOR OFFICE USE ONLY

**** The following conditions shall be added to the building permit ****

**** The following fees shall be added to the building permit ****

**** The following reviews are required for the building permit**

- Shoreline – ATH
- Critical Areas – Amy Dearborn
- Flood – Jason Buehler