

WHATCOM COUNTY HEARING EXAMINER

RE: Shoreline Substantial Development Permit)
Application for)
)
Petrogas Pacific, LLC)
"Replace existing mobile Marine Loading Arm")
) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant seeks a Shoreline Substantial Development Permit to replace an existing mobile Marine Loading Arm with a new, fixed permanent Marine Loading Arm on an existing wharf, 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 #SEP2020-0007.

Notice Information: Application submitted: February 4, 2020
Notice of Completeness: February 18, 2020
Notice of Application: March 27, 2020
Comment Period Ended: April 26, 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 Shoreline Use Policies & Regulations
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

Kyla Walters, Shoreline Administrator
Planning and Development Services

Exhibits:

Petrogas Pacific, LLC. SHR2020-0002...

- 
Exhibit
01-Shoreline Substa
- 
Exhibit
02-Project-Narrative.
- 
Exhibit
03-)roject-Revision.p
- 
Exhibit
04.Application.SHR2
- 
04-Email-Clarificatio
n.pdf
- 
05-Aquatic-Lands-L
ease.pdf
- 
06-Bargain-and-Sal
e Development Appl
- 
07-Critical-Areas-As
essment.pdf
- 
08-Exhibit-Biologica
l-Evaluation.pdf
- 
09-SEPA-Checklist.p
df



10-SEPA-Vicinity
Map.pdf



11-JARPA
Application Form.pdf



12-Fire
Protection-Evaluation



13-Site Plans.pdf



14-Mailing
Labels.pdf



15-Notice of
Application.pdf



16-Distribution
Documents.pdf



17-Lummi Nation
Comments.pdf



18-HCA Memo.pdf



19-Flood Memo.pdf



20-SEPA-DNS.pdf



21-Fire Memo.pdf



22-Staff Report.pdf



23-Approved Site
Plans.pdf

II.

The Applicant seeks a Shoreline Substantial Development Permit to replace an existing mobile marine loading arm with a new fixed, permanent marine loading arm at the Petrogas Ferndale Wharf. The new marine loading arm will be permanently affixed to the west end of the wharf where it can provide marine vessels safer product movement and reduce the loading and unloading time of liquid petroleum gas. The new permanent marine loading arm offers improvements in safety, loading efficiency, environmental protection, and ease of use.

III.

The Whatcom County Shoreline Administrator has recommended approval of the requested Shoreline Substantial Development Permit for the specific proposal to construct a new Marine Loading Arm after reviewing for consistency with WCC 23.40.030 and RCW 90.58.030. The project will conform to the policies and statutes for shorelines of statewide significance. The Shoreline Administrator's Revised Staff Report [Exhibit 22] is entitled "Findings, Conclusions, and Recommendations," dated December 14, 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 or at 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 Revised Staff Report, dated December 14, 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 Goals, Policies, and Purpose of the Shoreline Management Act, RCW 90.58.020 and should not produce significant adverse effects to the shoreline ecological functions and processes, or other users, including 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 is hereby granted to Petrogas Pacific, LLC., for a new, fixed permanent Marine Loading Arm located at the west end of the Petrogas Ferndale Wharf adjacent to Petrogas Pacific, a storage and distribution facility for liquid petroleum gas, 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 plan approved by this shoreline conditional use permit that is stamped "Shoreline Approved" on December 4, 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 (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.
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. The project shall adhere to the mitigating measures indicated in supporting documents submitted on February 4, 2020, as updated September 8, 2020, including, but not limited to:

- a. *Critical Area Assessment report dated January 30, 2020, by Fairbanks Environmental*
 - b. *Hydro-acoustic Analysis submitted with JARPA on February 4, 2020*
 - c. *Biological Assessment submitted with JARPA on February 4, 2020*
9. *No ground disturbance or vegetation removal is proposed or approved above OHWM.*
10. *Debris from construction shall be disposed of at an approved facility.*
11. *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*
12. *No in-water work is approved as part of this permit.*
13. *The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.*
14. *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.*

15. *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.*

16. *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 16th 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 14, 2020
-2ND REVISION-

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of		SHR2020-00002
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 replace an existing mobile Marine Loading Arm with a new, fixed permanent Marine Loading Arm on an existing wharf.

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 SEP2020-00007.

Notice Information: Application submitted: February 4, 2020
Notice of Completeness: February 18, 2020
Notice of Application: March 27, 2020
Comment Period Ended: April 26, 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 23.90.030	Ecological Protection and Critical Areas
WCC 23.100.170	Cherry Point Management Area
WCC 23.110	Definitions

III. PROJECT SUMMARY

Proposal: Petrogas Pacific, LLC is requesting approval of a shoreline substantial development permit to replace an existing mobile marine loading arm with a new fixed, permanent marine loading arm at the Petrogas Ferndale Wharf. Liquid petroleum gas is transported between marine vessels and the upland Petrogas facility via a marine loading arm. The new marine loading arm will be permanently affixed to the west end of the wharf where it can provide marine vessels safer product movement and reduce the loading and unloading time of liquid petroleum gas. The current marine loading arm is a mobile unit that must be driven out to the pier and set up for each use. It is still in a safe, functional condition but a new permanent marine loading arm offers improvements in safety, loading efficiency, environmental protection, and ease of use.

The new marine loading arm will be powered by a hydraulic system using environmentally friendly hydraulic fluid and includes a hydraulic emergency release system that shuts off product flow and releases the loading arm in the event of excess ship movement. The marine loading arm is also able to move flexibly to accommodate ship movement, providing safer product handling. An alarm will notify the operator when movement is nearing operational limits of the loading arm and can trigger shutdown before an emergency release.

The applicant originally proposed driving 3 new steel pilings to support the new marine loading arm, and installing a steel dolphin cap on the 3 new pilings at the edge of the pier, and removing two existing timber pilings. The project was later revised to

eliminate all in-water work.

Site Description: The project site is located at the west end of the Petrogas Ferndale Wharf, approximately 1,500 ft. waterward of the Ordinary High Water Mark in the Strait of Georgia. The wharf is adjacent to Petrogas Pacific, a storage and distribution facility for liquid petroleum gas.

IV. 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 construct a new Marine Loading Arm 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.

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 \$3 million. 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.

Cherry Point Management Area Standards: As provided in WCC 23.100.170.A.1.e, development within the Cherry Point Management Area is not subject to the general policies or regulations contained in WCC 23.100.010 through WCC 23.100.160 nor WCC 23.90 unless otherwise referenced in this section. Water-dependent industrial and port uses are permitted in the Cherry Point Management Area, as outlined in WCC 23.100.170.B. The proposed installation of a fixed marine loading arm to replace a mobile marine loading arm continues this permitted use, and does not expand production.

Environmental Impacts: Pursuant to WCC 23.100.170.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. The new fixed marine loading arm will reduce the chance of accidental spills with an alarm shutdown and emergency release, and will reduce the amount of time that vessels

spend docked at the Petrogas Wharf, reducing the duration of underwater vessel noise impacts to wildlife.

Staff has reviewed these documents and determined that the project will not likely have significant and permanent impacts to the habitat conservation area, but will likely have temporary impacts to the marine HCA. It is anticipated that the project will have no net loss of ecological functions and ecosystem wide processes, as conditioned below.

Archaeology: This project was 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 April 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 a condition 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 replacement of a mobile marine loading arm with a fixed, permanent marine loading arm on an existing wharf 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 construction of a fixed, permanent marine loading arm, as conditioned, meets all applicable standards and therefore, no cumulative adverse effects to the shoreline are anticipated.

VI. PUBLIC COMMENTS

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

VII. AGENCY COMMENTS

Amy Dearborn, Critical Areas Planner – Planning & Development Services: Submitted a memorandum on September 8, 2020 signing off on project approval with conditions.

Jason Buehler, Engineering Technician – Public Works River & Flood: Submitted a memorandum on March 27, 2020 signing off on project approval with conditions.

Jacob Johnson, Fire Inspector – Building Services: Submitted a memorandum on June 12, 2020 signing off on project approval with conditions.

VIII. 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: Kyla Walters

Title: Shoreline Administrator

Dated: December 14, 2020

CONDITIONS ASSOCIATED WITH SHR2020-00002

1. *The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline substantial development permit that is stamped "Shoreline Approved" on December 4, 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 (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.*
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. *The project shall adhere to the mitigating measures indicated in supporting documents submitted on February 4, 2020, as updated September 8, 2020, including, but not limited to:*
 - a. *Critical Area Assessment report dated January 30, 2020, by Fairbanks Environmental*
 - b. *Hydro-acoustic Analysis submitted with JARPA on February 4, 2020*

c. Biological Assessment submitted with JARPA on February 4, 2020

- 9. No ground disturbance or vegetation removal is proposed or approved above OHWM.*
- 10. Debris from construction shall be disposed of at an approved facility.*
- 11. 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*
- 12. No in-water work is approved as part of this permit.*
- 13. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County. Any overlooked hazardous condition and/or violation of applicable code does not imply approval of such condition or violation.*
- 14. 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.*
- 15. 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.

- 16. 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.*