

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2014-0002
Application for)
)
Whatcom County Parks & Recreation) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit to relocate the group picnic shelter road 25 feet east of its existing location. The relocated road will be approximately 1,245 feet long and 12 feet wide with two new ADA accessible parking stalls for the group picnic shelter.

Decision: The requested permit is granted, subject to conditions.

FINDINGS OF FACT

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.

I.

PRELIMINARY INFORMATION

Applicant: Whatcom County Parks and Recreation

Property Location: Hovander Park
5299 Nielsen Avenue
Ferndale, Washington 98248

Assessor's Parcel No. 390229 190190

Legal Description: Within Section 29, Township 39 North, Range 2 East, W.M.

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Statewide Significance: Yes

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70.010 Administration
 SMP 23.70.030 Hearing Examiner

Applicable Shoreline Program Provisions

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 23.90 General Policies & Regulations
SMP 23.100.150 Transportation

SEPA Review: Determination of Non-Significance (DNS) issued by Whatcom County Planning and Development Services March 18, 2014.

Legal Notices: Published – Notice of Application Feb 3, 2014;
 Notice of Public Hearing, April 3, 2014
 Posted – Notice of Public Hearing, April 2, 2014
 Mailed – Notice of Application, January 31, 2014 and Notice of
 Public Hearing, March 27, 2014

Hearing Date: April 16, 2014

Parties of Record

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

Sanja Barisic
Division of Engineering

Sam McDaniel
Planning and Development Services

Exhibits:

1. Land Use Application with attachments
 - 1-1 Fee Responsibility
 - 1-2 Supplemental Application
 - 1-3 Memo dated January 13, 2014 from Rod Lamb to Sam McDaniel
 - 1-4 Property Owners within 1000 ft [addresses and labels]
 - 1-5 Determination of Completeness, January 23, 2013
 - 1-6 PDS Notice of Application form comment letter
 - 1-7 Notice of Application & Optional DNS Distribution List
2. Staff Report, dated April 16, 2014
3. Agency Comments: Engineering, Feb 27, 2014; Fire Inspector, March 3, 2014; Flood Technician, Nov 21, 2012
4. SEPA DNS, March 18, 2014, with Checklist attached
5. Aerial Site Photos showing proposed access road and existing trail and graphic design of picnic shelter road location
6. Certificate of Mailing, Notice of Application, January 31, 2014
7. Legal Notice of Application, February 3, 2014
8. Certificate of Mailing Notice of Public Hearing, March 27, 2014
9. Certificate of Posting, Notice of Public Hearing, April 2, 2014
10. Legal Notice of Public Hearing, April 3, 2014

II.

Whatcom County Parks and Recreation Department is seeking approval for a Shoreline Substantial Development Permit to relocate the group picnic shelter road at Hovander 25 feet east of its existing location in order to eliminate potential conflict with pedestrians and vehicles. The relocated road is proposed to be 1,245 feet long and 12 feet wide. The project also includes the construction of two ADA accessible parking stalls.

III.

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 and Conclusions of Law of the Shoreline Planner of the Land Use Services Division of Whatcom County Planning and Development Services, as set forth in the Staff Report, Exhibit No. 3, dated April 16, 2014, a copy of which is attached hereto, 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 Whatcom County Shoreline Planner has recommended approval of the requested Shoreline Substantial Development Permit for the proposed relocation of a group picnic shelter road, and two new ADA accessible parking stalls for the relocated group picnic shelter.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit No. 3 in the Hearing Examiner file, dated April 16, 2014. 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. The Conclusions of Law adopted by Staff in the Staff Report are incorporated herein as Conclusions of Law.

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 Whatcom County Parks and Recreation to relocate the group picnic shelter road 25-feet east of the current location and construct two new ADA accessible parking stalls for the group picnic shelter. The property is located on Assessor's Parcel No. 390229 190190, Hovander Park, 5299 Nielsen Avenue, Ferndale, Washington. The permit is granted subject to the following conditions:

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. Best Management Practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved Temporary Erosion and Sedimentation Control (TESC) Plan reviewed and approved by the Shoreline Administrator, or administrative conditions associated with the pending building permit application measures.
3. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.
4. The Applicant shall comply with the requirements contained in the Division of Engineering Memo, dated February 27, 2014, unless modified by the Division of Engineering, or appealed to the appropriate agency.
5. The project shall comply with all applicable Federal, State, and local laws and regulations.
6. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (360-676-6907), LNTHPO (360-384-2298), and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.
7. Construction shall commence within two years of the effective date of shoreline variances and substantial development permits as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single

extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.

NOTICE

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 ADMINISTRATIVE APPEAL PROCEDURES FROM FINAL DECISIONS OF THE WHATCOM COUNTY HEARING EXAMINER

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. Appeal to County Council. Within ten calendar days of the date of the written decision a written notice of appeal may be filed with, and all required filing fees paid to, the Whatcom County Council, Courthouse - 1st Floor, 311 Grand Avenue, Bellingham, WA 98225. The appeal notice must state either:

- 1) The specific error of law which is alleged, or
- 2) How the decision is clearly erroneous on the entire record.

Any party of record may request a closed record review of the Hearing Examiner's Decision, issued under SMP 23.60.15.H.4, by the County Council. Such an appeal shall be filed with the County Council on forms supplied by the County within ten (10) calendar days of the written decision. If appeal is made to the County Council, notice of appeal shall be provided to all parties of record at least fifteen (15) days prior to consideration by the County Council. The Council shall meet to review the Hearing Examiner's decision within twenty-one (21) days of transmittal thereof, at which time it may approve or disapprove the application, or remand the matter to the Hearing Examiner.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830 and Section 23.60.15.H. A copy of this

document is available for review at the County Council Office. After an appeal has been filed and the Council Office has received the hearing record and transcript of the public hearing, the parties will be notified of the time and date to file written arguments.

DATED this 16th day of April 2014.

A handwritten signature in cursive script that reads "Michael Bobbink".

Michael Bobbink, Hearing Examiner



EXHIBIT
#3

April 16, 2014

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES

STAFF REPORT

The application of
Whatcom County Parks & Recreation
for a Shoreline Substantial Development Permit

SHR2014-00002

FINDINGS, CONCLUSIONS, AND
RECOMMENDATIONS

I. SUMMARY OF APPLICATION AND RECOMMENDATIONS

Application: The applicant is requesting approval of a shoreline substantial development permit to relocate the group picnic shelter road 25 east of the current location. The relocated road will be approximately 1,245 feet long and 12 feet wide with two new ADA accessible parking stalls for the group picnic shelter.

Recommendation: Staff recommends approval of the requested developments, subject to the conditions of approval.

II. PRELIMINARY INFORMATION

Applicant: Whatcom County Parks & Recreation
3373 Mt. Baker Highway
Bellingham, WA 98226

Property Location: 5299 Nielsen Avenue, Ferndale Washington

Legal Description: Within Section 29, Township 39 North, Range 2 East, W.M.

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Statewide Significance: Yes

Authorizing Ordinances: SMP 23.50 Applicability
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Applicable Shoreline Program Provisions:

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SMP 23.30.020 Official Shoreline Map
SMP 23.30 Shoreline Designations
SMP 23.60.010 Substantial Development Permit Criteria
SMP 23.90 General Policies & Regulations
SMP 23.100.150 Transportation

III. FINDINGS

Application:

The applicant is requesting approval of a shoreline substantial development permit to relocate the group picnic shelter road 25 east of the current location. The relocated road will be approximately 1,245 feet long and 12 feet wide with two new ADA accessible parking stalls. The road relocation is to eliminate potential conflict with pedestrians and vehicles. The subject site is located within Hovander Park in an existing relatively flat mowed field.

According to the Official Shoreline Map (Map) as outlined in 23.30.02.A, the subject site is located within the Conservancy shoreline designation. Pursuant to 23.30.02.B, "...provided that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the Sumas River and the Mainstem, North Fork, Middle Fork and South Fork of the Nooksack River."

The South Fork of the Nooksack River is a shoreline of the state and thus subject to the provisions of the SMP. Pursuant to 23.90.13.C, the required shore setback is established by Whatcom County Code 16.16. Pursuant to 16.16.740, the required Habitat Conservation Area buffer is 150-feet from the OHWM of the Nooksack River. The proposed road meets the required setback outlined in 23.90.13.C.

The proposal requires approval of a Shoreline Substantial Development Permit pursuant to 23.60.01.A, as it does not strictly meet one of the listed exemptions. Based on review of the submitted application materials, it has been determined that this permit decision requires a public hearing pursuant to 23.60.13.

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.

IV. CONCLUSIONS

Substantial Development Permit Criteria

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 23.60.020.2 (23.60.010.A).

According to 23.60.010.B, in order 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;**

General and use-specific policies and regulations are found within Sections 23.90 and 23.100 respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

23.90.03 Ecological Protection and Critical Areas

23.90.03.A Policies

1. Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means assuring no net loss of ecological functions and processes and protecting critical areas designated in WCC 16.16, in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Permitted uses shall be designed and conducted to minimize, in so far as practical, any resultant damage to the ecology and environment (RCW 90.58.020). Shoreline ecological functions that should be protected include, but are not limited to, fish and wildlife habitat, food chain support, and water temperature maintenance. Shoreline processes that should be protected include, but are not limited to, water flow; littoral drift; erosion and accretion; infiltration; ground water recharge and discharge; sediment delivery, transport, and storage; large woody debris recruitment; organic matter input; nutrient and pathogen removal; and stream channel formation/maintenance.
2. In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
3. Development standards for density, frontage, setbacks, impervious surface, shoreline stabilization, vegetation conservation, buffers, critical areas, and water quality should protect existing shoreline ecological functions and processes. During permit review, the Administrator should consider the expected impacts associated with proposed shoreline development when assessing compliance with this policy.

23.90.03.B Regulations

1. Mitigation Sequencing - To comply with the policies of SMP 23.90.03.A, a shoreline permit applicant or project proponent shall demonstrate all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not have significant adverse impacts. Mitigation shall occur in the following prioritized order:
 - a. Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.
 - b. Minimizing adverse impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology and engineering, or by taking affirmative steps to avoid or reduce adverse impacts.
 - c. Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
 - d. Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
 - e. Compensating for the adverse impact by replacing, enhancing, or providing similar substitute resources or environments and monitoring the adverse impact and the mitigation project and taking appropriate corrective measures.
2. Because of its incorporation by reference herein under Section 23.10.06.A. above, the provisions of the Whatcom County Critical Areas Ordinance, WCC 16.16, shall apply to any use, alteration or development within shoreline jurisdiction whether or not a shoreline permit or written statement of exemption is required. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with WCC 16.16 and the Program, provided that alteration for a water-oriented use may be allowed in accordance with WCC 16.16.225.B.3. Within shoreline jurisdiction, the regulations of WCC 16.16 shall be liberally construed together with the Program to give full effect to the objectives and purposes of the provisions of the Program and Act.

3. Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
7. The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.

Comment:

The proposed location of the road is located 193 feet from the OHWM of the Nooksack River within a maintained lawn/field and on the landward side of an existing pedestrian path. The proposed location meets the setback requirements outlined in 23.90.13.C. Existing maintained grass will be converted no functional buffer will be converted or eliminated as part of the proposal. The proposal complies with the Ecological Protection and Critical Areas policies and regulations.

23.90.04 Water Quality and Quantity

23.90.04.A Policies

1. The location, construction, operation, and maintenance of all shoreline uses and developments should maintain or enhance the quantity and quality of surface and ground water over the long term.
2. Shoreline use and development should minimize the need for chemical fertilizers, pesticides or other similar chemical treatments to prevent contamination of surface and ground water and/or soils, and adverse effects on shoreline ecological functions and values.
3. Appropriate buffers along all wetlands, streams, lakes, and marine water bodies should be provided and maintained in a manner that avoids the need for chemical treatment.

23.90.04.B Regulations

1. Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
2. New development shall provide stormwater management facilities designed, constructed, and maintained in accordance with the current stormwater management standards. Deviations from these standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control (TESC) plan, or administrative conditions.
5. All materials that may come in contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in or above shoreline water bodies.

Comment:

The proposed road was reviewed by the Whatcom County Engineering Services Division for compliance with the Whatcom County Development Standards. This recommendation approval has been conditioned that the applicant submits preliminary stormwater designs and a TESC plan prior to June 1, 2014 and any ground disturbing activities.

23.90.06 Vegetation Conservation

23.90.06.A Policies

1. Where new developments and/or uses are proposed, native shoreline vegetation should be conserved to maintain shoreline ecological functions and/or processes and mitigate the direct, indirect and/or cumulative impacts of shoreline development, wherever feasible. Important functions of shoreline vegetation include, but are not limited to:
 - a. Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
 - b. Regulating microclimate in riparian and nearshore areas.
 - c. Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.
 - d. Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
 - e. Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
 - f. Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
 - g. Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
 - h. Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

1. Shoreline developments shall comply with the vegetation conservation policies of this Program through compliance with the critical area standards of WCC 16.16.335, 16.16.360, 16.16.630 and 16.16.740 for protection and maintenance of critical area and buffer vegetation.
2. Where compliance with SMP 23.90.06.B.1 is not feasible or required, new developments shall be required to develop and implement a vegetation management plan. When required, vegetation management plans shall be prepared by a qualified professional and shall be consistent with the requirements in WCC 16.16.260.B and .C, provided that the Administrator may establish prescriptive standards for vegetation conservation and management as an alternative to requiring a specific plan for a development. Vegetation management plans shall describe actions that will be implemented to ensure that buffer areas provide ecological functions equivalent to a dense native vegetation community to the extent possible given the area that is feasibly available. Required vegetation shall be maintained over the life of the use and/or development by means of a conservation easement or similar legal instrument recorded with the Whatcom County Auditor.
4. Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

Comment:

The proposal complies with the Vegetation Conservation policies and regulations. Proposed road is located within an existing mowed field. No new functional buffer will be lost or converted as part of this proposal. The amount of clearing is the minimum necessary to accommodate the approved shoreline development.

23.90.10 Landfill and Excavation

23.90.10.A Policies

1. Landfill and excavation should only be permitted to the minimum extent necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes. Enhancement and voluntary restoration of landforms and habitat are encouraged.

2. Landfill in water bodies, floodways, and/or wetlands should not be permitted for creation of new uplands, unless it is part of an approved ecological restoration activity. Landfill should be permitted in limited instances to restore uplands where recent erosion has rapidly reduced upland area, to build beaches and protective berms for shore stabilization or recreation, to restore or enhance degraded shoreline ecological functions and processes, or to moderately elevate low uplands to make such uplands more suitable for purposes consistent with this Program.

23.90.10.B Regulations

1. Landfill and excavation shall be minimized to the maximum extent practicable and allowed only along with approved shoreline use and development activities that are consistent with this Program.
8. A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

Comment:

The proposal complies with the Landfill and Excavation policies and regulations. The application materials indicate that approximately 598 cubic yards of excavation and fill will be required to complete the road and parking area. This recommendation of approval has been conditioned that the applicant submit a TESC plan for review and approval prior to ground disturbing activities.

23.100.15.A Transportation – Policies

1. New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
 - a. Perpendicular water crossings are required for access to authorized uses consistent with this Program; or
 - b. Facilities are primarily oriented to pedestrian and non-motorized use and provide an opportunity for a substantial number of people to enjoy shoreline areas, and are consistent with policies and regulations for ecological protection in SMP 23.90.03.
3. Parking is not a preferred use in shorelines and should only be allowed to support authorized uses where no feasible alternatives exist.
4. New or expanded public transportation facility route selection and development should be coordinated with related local and state government land use and circulation planning.
5. Transportation system route planning, acquisition, and design in the shoreline should provide space wherever possible for compatible multiple uses such as utility lines, pedestrian shore access or view points, or recreational trails.
6. Transportation system plans and transportation projects within shorelines should provide safe trail space for non-motorized traffic such as pedestrians, bicyclists, or equestrians. Space for such uses should be required along roads on shorelines, where appropriate, and should be considered when rights-of-way are being vacated or abandoned.
8. Public transportation routes, particularly arterial highways and railways, should be located, designed, and maintained to permit safe enjoyment of adjacent shore areas and properties by other appropriate uses such as recreation or residences. Vegetative screening or other buffering should be considered.

23.100.15.B Transportation – Regulations

23.100.15.B.1 Design and Operation

- a. Transportation facilities on shorelines shall be designed to generally follow natural topography, to minimize cuts and/or fills, to avoid cutting off meander bends or point bars, and to avoid adverse impacts to shoreline ecological functions and processes. Wherever such roads or railway embankments cross depressions remaining from remnant channels and oxbow bends, crossings of ample cross-section shall be provided to span the remnant feature.
- e. Parking facilities are not a water-dependent use and shall only be permitted in the shoreline to support an authorized use where it can be demonstrated that there are no feasible alternative locations away from the shoreline. Parking facilities shall be buffered from the waters' edge and less intense adjacent land uses by vegetation, undeveloped space, or structures developed for the authorized primary use.
- f. Earth cut slopes and other exposed soils shall be placed, compacted, and planted or otherwise stabilized and protected from surface runoff with native vegetation. Transportation facilities sited close to water, wetlands or other sensitive features shall incorporate the maximum feasible buffer of native vegetation in accordance with critical area regulations in WCC 16.16.
- i. Transportation facilities shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Elements within or over water shall be constructed of materials approved by applicable state agencies for use in water for both submerged portions and other components to avoid discharge of pollutants from splash, rain or runoff. Wood or pilings treated with creosote, pentachlorophenol or other similarly toxic materials is prohibited. Preferred materials are concrete and steel.
- k. Transportation development shall be carried out in a manner that maintains or improves State water quality standards for affected waters.
- l. Non-emergency construction and repair work shall be scheduled for that time of year when seasonal conditions (weather, streamflow) permit optimum feasible protection of shoreline ecological functions and processes.
- o. Minimum required setbacks from shorelines are contained in SMP 23.90.13 - Setback, Height and Open Space Standards for Shoreline Development.

Staff Comment:

The proposal complies with the Transportation regulations and policies. The proposed road relocation is necessary to eliminate potential conflict with pedestrians and vehicles. Two new ADA parking stalls will be constructed for the group picnic shelter as part of this proposal. The proposed developments cannot feasibly be located outside of shoreline jurisdiction as the picnic shelter is located within shoreline jurisdiction. The proposed parking area is sufficiently buffered from the Nooksack by existing vegetation.

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.

As stated previously within this staff report, as conditioned, staff anticipates no net loss of shoreline ecological functions or processes as a result of the proposed project. The proposal, as conditioned, appears to comply with the development standards, bulk and dimensional setbacks, vegetation conservation standards, and critical area requirements. As such, additional approvals for additional developments where similar circumstances exist are not likely to represent a cumulative environmental impact to the shoreline.

V. PUBLIC COMMENTS

No Comments public comments were received.

VI. AGENCY COMMENTS

The **Whatcom County Department of Engineering Services** submitted the following comments via memo dated February 27, 2014.

Engineering Services recommend the following conditions for approval:

- 1. All development shall comply with the WC Development Standards.**
- 2. Engineered construction plans including temporary erosion control measures shall be submitted for the review and approval no later than June 1, 2014.**

****All appropriate permits must be obtained before construction. Obtaining a county permit does not replace or over-ride other state and federal statutes and regulations that may apply to this project.**

VII. RECOMMENDATIONS

Based on the above findings, Staff recommends approval of the Shoreline Substantial Development Permit subject to the following conditions:

- 1. The proposed shoreline developments shall be consistent with the scope and site plan approved by this shoreline conditional use 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. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sedimentation control (TESC) plan reviewed and approved by the Shoreline Administrator, or administrative conditions associated with the pending building permit application measures.*
- 3. Construction and/or demolition debris shall be removed from the shoreline area upon completion of the project.*
- 4. The applicant shall comply with the requirements contained in the Department of Engineering Services Memo dated February 27, 2014, unless modified by the Department of Engineering or appealed to the appropriate agency.*
- 5. The project shall comply with all applicable federal, state and local laws and regulations.*
- 6. If archaeological materials (bone, shell midden, cobble tools, etc.) are observed during site work, work in the area of discovery shall cease and the Whatcom County SEPA Administrator (360-676-6907), LNTHPO (360-384-2298), and Washington State Office of Archaeology and Historic Preservation (360-586-3065) shall be contacted immediately to determine the significance of the discovery. If human remains are observed, the Whatcom County Sheriff (911) and LNTHPO Dept. (360-384-2298) shall be contacted immediately. Compliance with all other applicable laws pertaining to archaeological resources is required.*
- 7. Construction shall commence within two years of the effective date of the shoreline variances and substantial development permit as defined by WAC 173-27-090 (3), provided that the Whatcom County Hearing Examiner may authorize a single extension for a period not to exceed one year based on reasonable factors if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and the Department of Ecology.*

Report prepared by:

Sam McDaniel
Whatcom County Shoreline Administrator
Planning and Development Services