

**WHATCOM COUNTY HEARING EXAMINER**

RE: SHORELINE SUBSTANTIAL DEVELOPMENT ) SHR2010-0009  
Application for )  
)  
*Washington State* ) FINDINGS OF FACT,  
*Department of Transportation* ) CONCLUSIONS OF LAW,  
) AND DECISION  
)

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**SUMMARY OF APPLICATION AND DECISION**

Application: The Applicant is requesting a Shoreline Substantial Development Permit to replace the existing intersection of State Route (SR) 542 and SR 9 with a new roundabout to improve vehicular safety and traffic flow.

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: Washington State Department of Transportation

Property Location/Address: Intersection of SR 542 and SR 9 (Nugent’s Corner)

Legal Description: Sections 27, 28, Township 39N, Range 04E, W.M.

Adjacent Water Body: Nooksack River

Shoreline Designation: Urban

Shoreline of State-Wide Significance: Yes

Authorizing Ordinances: SMP 23.50 Applicability  
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.03	Urban Shoreline Area Designation
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.15	Transportation Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on October 22, 2009 by Washington State Department of Transportation as lead agency.

Legal Notices: Published – August 11 and October 7, 2010  
Posted – October 8, 2010  
Mailed – September 30, 2010

Hearing Date: October 20, 2010

Parties of Record:

Mr. Alan Soicher  
Washington State Department of Transportation  
PO Box 330310  
Seattle, Washington 98133-9710

Mr. Kevin Stuber  
Washington State Department of Transportation  
1043 Goldenrod Road, Suite 101  
Burlington, Washington 98233-3415

Chad Yunge  
Planning and Development Services

Exhibits:

- 1 Land Use Application
  - 1-1 Cover Letter dated July 27, 2010 from Alan Soicher
  - 1-2 Letter dated November 12, 2008 from WA State DOT re: Determination of “No Effect” for Federally Listed Species under the ESA to Seattle District Corps of Engineers
  - 1-3 Letter of Complete Application, August 6, 2010
  - 1-4 Property Owners within 1,000-feet
  - 1-5 JARPA Application-2010
  - 1-6 PDS Shoreline Permit Submittal Requirements form

- 2 Staff Report, dated October 15, 2010
- 3 Agency Comments
- 4 Site Plans
- 5 DNS, dated October 22, 2009
- 6 Certificate of Mailing of Notice of Application, not dated
- 7 Legal Notice of Application, dated August 11, 2010
- 8 Certificate of Mailing of Notice of Public Hearing, dated September 30, 2010
- 9 Legal Notice of Public Hearing, dated October 7, 2010
- 10 Certificate of Posting of Notice of Public Hearing, dated October 8, 2010

**II.**

Washington State Department of Transportation is seeking approval for a Shoreline Substantial Development Permit in order to replace the existing intersection of SR 542 and SR 9 with a new roundabout to improve vehicular safety and traffic flow.

**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 #2, dated October 15, 2010, 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 replacement of the existing

intersection of SR 542 and SR 9 with a roundabout in order to improve vehicular safety and traffic flow.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated October 15, 2010. 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 the Washington State Department of Transportation for the replacement of the existing intersection of SR 542 and SR9 with a new roundabout. The property in question is located at Nugent's Corner, Everson, Washington. The permit is granted subject to the following conditions:

1. The proposed shoreline development shall be consistent with the scope and site plans approved by this shoreline substantial development permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The Applicant shall notify the Whatcom County Shoreline Administrator at least forty-eight (48) hours prior to starting work.
3. Construction and/or demolition debris shall be wholly removed from the shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority. Offsite deposition of excavation spoils, concrete debris, etc., within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services unless located on WSDOT Right-of-Way.
4. A Temporary Erosion and Sedimentation Control (TESC) Plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
5. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

## 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 21<sup>st</sup> day of October 2010.

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Michael Bobbink, Hearing Examiner



October 15, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES  
STAFF REPORT

The application of <b>Washington State Department of Transportation</b> For a Shoreline Substantial Development Permit	   	FINDINGS, CONCLUSIONS AND RECOMMENDATIONS SHR2010-00009
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I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit to replace the existing intersection of State Route (SR) 542 and SR 9 with a new roundabout to improve vehicular safety and traffic flow.

Recommendation: Staff recommends approval of the proposed project subject to the conditions outlined within this staff report.

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

Applicant: Mr. Alan Soicher  
Washington State Department of Transportation  
PO Box 330310  
Seattle, Washington 98133-9710

Applicant Representative: Mr. Kevin Stuber  
Washington State Department of Transportation  
1043 Goldenrod Road, Suite 101  
Burlington, Washington 98233-3415

Property Location/Address: Intersection of SR 542 and SR 9 (Nugent's Corner)

Legal Description: Sections 27, 28, Township 39N, Range 04E, W.M,

Adjacent Water Body: Nooksack River

Shoreline Designation: Urban

Shoreline of State-Wide Significance: Yes

B. PROCEDURAL INFORMATION

<u>Authorizing Ordinances:</u>	SMP 23.50	Applicability
	SMP 23.70	Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.03	Urban Shoreline Area Designation
SMP 23.60.02	Shoreline Substantial Development Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.15	Transportation Policies and Regulations
SMP 23.110	Definitions

SEPA Review:

Determination of Non-Significance (DNS) issued on October 22, 2009 by Washington State Department of Transportation as lead agency.

III. FINDINGS

The applicant is requesting approval of a shoreline substantial development permit to replace the existing intersection of State Route (SR) 542 and SR 9, (Nugent's Corner) with a new roundabout to improve vehicular safety and traffic flow. Other project work includes stormwater facilities, drainage improvements, illumination, overhead and underground utility relocation, curbing and sidewalk, sign installation, striping and guardrail installation. The proposed work at Nugent's Corner is part of a larger intersection improvement project that also includes roundabout construction at the intersection of SR 542 and Smith Road. The work at Smith Road is outside of the jurisdiction of the Whatcom County Shoreline Management Program (SMP) and thus not included within this permit review.

According to the applicant, roundabout construction will require clearing and grubbing consisting mostly of herbaceous vegetation. Such clearing will be limited to those areas needed for the construction of the roundabout. Construction includes the use of excavators, bulldozers, earthwork graders, earthwork loaders, vibratory compactors, dump trucks, pavement grinder/planning machines, asphalt paving machines, pavement striping trucks, drill/auger trucks, directional drills, mechanical tampers, cutoff saws, chainsaws, jackhammers, portable generators, portable air compressors, and portable light generators. No staging or equipment storage will take place within critical areas or their functional buffers. Construction is anticipated to begin spring of 2011 and will be completed by fall of 2011.

Temporary best management practices (BMPs) will be implemented for sediment and erosion control during construction. Temporary BMPs include, but are not limited to, geotextile-encased check dams, geotextile silt fences, inlet protection, erosion control blankets, straw wattles, mulching, and stabilized construction entrances.

The proposed project area is located within the Washington State Department of Transportation (WSDOT) right-of-way. Surrounding areas consist of private, commercially-zoned and developed properties. The proposed roundabout project will result in 0.005-acres of new impervious surface in the area along the northwest corner of the existing intersection. The remaining development will be located in areas that are currently developed with concrete roadway and parking areas.

No wetlands have been identified within the project area based on an assessment conducted by WSDOT dated April, 2010. The mainstem of the Nooksack River is located approximately 0.25-miles to the west of the project area; however the project area is located within SMP jurisdiction according to the Official Shoreline Map which delineates the lateral extent of such jurisdiction on the Nooksack River. Such mapping is based on historic channel movement patterns and includes areas prone to flooding.

The area of the proposed roadway work is located within an Urban shoreline area. According to Section 23.100.15.C.1, transportation facilities are permitted subject to policies and regulations of the SMP. Pursuant to 23.60.01.A, a Shoreline Substantial Development Permit is required for the above proposal as the activity or development is not specifically exempt per 23.60.02.2.

## IV. CONCLUSIONS

### **Shoreline Substantial Development Permit:**

In the review of Shoreline Substantial Development Permits, the Administrator or Hearing Examiner, as appropriate, 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 pursuant to 23.60.03.**

**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 associated with transportation developments are found within Sections 23.90 and 23.100.15, respectively. Applicable policies and regulations associated with the proposed development are listed and discussed below:

### **Ecological Protection and Critical Areas**

#### 23.90.03.A Policies

- 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.
- In assessing the potential for net loss of ecological functions or processes, project-specific and cumulative impacts should be considered.
- 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

- 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:
  - Avoiding the adverse impact altogether by not taking a certain action or parts of an action, or moving the action.

- 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.
  - Rectifying the adverse impact by repairing, rehabilitating or restoring the affected environment.
  - Reducing or eliminating the adverse impact over time by preservation and maintenance operations during the life of action.
  - 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.
- 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.
  - Unless otherwise stated, critical area buffers shall be protected and/or enhanced pursuant to this Program and WCC 16.16.
  - The cumulative effects of individual development proposals shall be identified and evaluated to assure that no net loss standards are achieved.
  - Whenever the administrator issues a determination or recommendation and/or conditions of approval on a proposal, which will result in the denial or substantial alteration of a proposed action, such determinations will be provided in writing stating the relationship(s) between the ecological factors, the proposed action and the condition(s).

Staff Comment:

The proposed project is consistent with the above-referenced policies and regulations. A majority of the project will involve re-development of existing concrete-covered roadway and parking areas. The proposal will result in 0.05-acres of new impervious development along the northwest corner of the existing intersection. No wetlands or habitat conservation areas were identified by WSDOT’s biologists according to an assessment report dated April, 2010.

The northern portion of the project is located within a frequently flooded area according to the Whatcom County Public Works – River and Flood Division; however the proposal is consist with Whatcom County Flood regulations (Title 17) according to River and Flood.

The area is located within geologic hazard areas associated with volcanic flows as well as shaking and liquefaction hazards during earthquake events. These hazard areas can not be avoided; however can be reduced through proper project design and engineering.

Water Quality and Quantity

23.90.04.A           Policies

- 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.
- 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.
- 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

- Shoreline use and development shall incorporate measures to protect and maintain surface and ground water quantity and quality in accordance with all applicable laws.
- 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.
- 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.

#### Staff Comment:

According to the applicant, the proposed project was reviewed for consistency with the Washington State Department of Transportation Highway Runoff Manual. It was determined by WSDOT that no treatment is required pursuant to such manual. Flow control will consist of tying into an existing system of conveyance pipes that discharge into the overflow channel of the Nooksack River.

WSDOT typically prepares a temporary erosion and sedimentation control (TESC) plan during completion of contract documents. This approval recommendation has been conditioned that a copy of the TESC plan be submitted to Whatcom County Planning and Development Services (WCPDS) prior to starting work.

#### Vegetation Conservation

##### 23.90.06.A Policies

- 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:
  - Providing shade necessary to maintain water temperatures required by salmonids, forage fish, and other aquatic biota.
  - Regulating microclimate in riparian and nearshore areas.
  - Providing organic inputs necessary for aquatic life, including providing food in the form of various insects and other benthic macro invertebrates.

- Stabilizing banks, minimizing erosion and sedimentation, and reducing the occurrence/severity of landslides.
- Reducing fine sediment input into the aquatic environment by minimizing erosion, aiding infiltration, and retaining runoff.
- Improving water quality through filtration and vegetative uptake of nutrients and pollutants.
- Providing a source of large woody debris to moderate flows, create hydraulic roughness, form pools, and increase aquatic diversity for salmonids and other species.
- Providing habitat for wildlife, including connectivity for travel and migration corridors.

23.90.06.B Regulations

- 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.
- 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.
- Vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.
- Removal of noxious weeds and/or invasive species shall be incorporated in vegetation management plans, as necessary, to facilitate establishment of a stable community of native plants.

Staff Comment:

The proposed project is consistent with the above policies and regulations. Clearing will be limited to the 0.05-acres necessary to construct the proposed roundabout. Vegetation in this area is outside of critical areas and/or protective buffers.

Landfill and Excavation

23.90.10.A Policies

- 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.

- 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.
- Landfills and excavation should be located and developed so that water quality, hydrologic and runoff patterns are not altered.
- The predicted economic benefits of landfills and excavation should be weighed against long term cumulative impacts on ecological processes and functions.

#### 23.90.10.B Regulations

- 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.
- Landfill and excavation within wetlands or waterward of the ordinary high water mark shall only be permitted in limited instances for the following purposes only, with due consideration given to specific site conditions, and only along with approved shoreline use and development activities that are consistent with this Program:
  - Port development for water-dependent uses where other upland alternatives or structural solutions, including pile or pier supports are infeasible.
  - Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
  - Ecological restoration or enhancement such as beach nourishment, habitat creation, or bank restoration when consistent with an approved restoration plan.
  - Maintenance of lawfully established development.
  - Development of shore stabilization projects, flood control and instream structures.
  - Except for landfill for county-approved ecological restoration, fill and excavation waterward of the OHWM or in a wetland may only be authorized as a conditional use.
- Landfills, beach nourishment and excavation shall be designed to blend physically and visually with existing topography whenever possible, so as not to interfere with long term appropriate use including lawful access and enjoyment of scenery.
- Perimeter banks shall generally be sloped no steeper than 1 foot vertical for every 3 feet horizontal unless a specific engineering analysis has been provided, and the Administrator determines that the landfill blends physically and visually with existing topography.
- A temporary erosion and sediment control (TESC) plan shall be provided for all proposed landfill and excavation activities.

#### Staff Comment:

As conditioned, the proposed project is consistent with the above-referenced policies and regulations. New landfill and excavation is limited to a 0.05-acre footprint along the northwestern corner of the existing

intersection. A TESC plan will be required to contain sediment during construction activities and until the soils on the site are stabilized.

## Transportation

### 23.100.15.A Transportation – Policies

- New public or private transportation facilities should be located inland from the land/water interface, preferably out of the shoreline, unless:
  - Perpendicular water crossings are required for access to authorized uses consistent with this Program; or
  - 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.
- Transportation facilities should be located and designed to avoid public recreation and public access areas and significant natural, historic, archaeological or cultural sites.
- 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.
- 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.
- Public access should be provided to shorelines where safe and compatible with the primary and adjacent use, or should be replaced where transportation development substantially impairs lawful public access. Viewpoints, parking, trails and similar improvements should be considered for transportation system projects in shoreline areas, especially where a need has been identified.
- 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.

### Staff Comment:

The proposed project is consistent with the above transportation policies. With exception of a 0.05-acre portion, the project will re-develop existing roadway and parking areas. The project is located a significant distance from the Nooksack River and will not affect exiting recreational and public access to the shoreline.

### 23.100.15.B Transportation – Regulations

- 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.

- Raised arterial roads or railways shall be built outside the floodway except for necessary crossings. If built in the floodway fringe, such routes should be aligned generally parallel to outside stream bends so they will also act as setback dikes. Any parking areas required along such roads shall be sited at the base of the embankment and at the downstream corner of large accretion beaches, thus requiring no or minimal flood control works or shoreline stabilization. Local access roads in floodplains shall be built at valley floor grade level so that floodwaters are not abnormally obstructed nor diverted. Transportation facilities shall be designed so that no significant loss of floodway capacity or measurable increase in predictable flood levels will result. If transportation facilities are intended to secondarily provide flood control, they shall comply with policies and regulations for Flood Control Works under SMP 23.100.06.
- 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.
- Bridge supports and abutments shall be designed and spaced so they do not act as walls baffling or blocking flood waters, or interrupting stream channel processes or littoral drift.
- Bridges or bottomless culverts or other similar structures shall be used in accordance with WDFW guidance to protect shoreline ecological functions and processes. Bridge approaches in floodways shall be constructed on open piling, support piers, or other similar measures to preserve hydraulic processes.
- 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.
- Transportation development shall be carried out in a manner that maintains or improves State water quality standards for affected waters.
- 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.

Staff Comment:

As conditioned, the proposed project is consistent with the above regulations. No work will be occurring within the floodway of the Nooksack River. Exposed soils will be stabilized and protected from surface runoff with native vegetation.

**3 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 and other users.**

Staff Comment:

No impacts to wetlands or habitat conservation areas were identified during the review of the project. Stormwater generated from the developments will be handled in accordance with applicable regulations.

Therefore, no significant adverse effect to the shoreline ecological functions and processes is anticipated nor are impacts to other users probable.

#### V. PUBLIC COMMENTS

No written adverse public comment was received during the time of this permit review.

#### VI. AGENCY COMMENTS

No adverse agency comment was received during the time of this permit review.

#### VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a shoreline substantial development permit subject to the following conditions of approval:

1. The proposed shoreline developments shall be consistent with the scope and site plans approved by this shoreline substantial development permit. Any changes to the proposed development may require additional review and approval by the Whatcom County Shoreline Administrator and/or Whatcom County Hearing Examiner.
2. The applicant shall notify the Whatcom County Shoreline Administrator at least forty-eight (48) hours prior to starting work.
3. Construction and/or demolition debris shall be wholly removed from the shoreline. Disposal shall occur in accordance with all applicable agency laws and regulations, including but not limited to Whatcom County Planning and Development Services, DOE and Northwest Air Pollution Authority. Offsite deposition of excavation spoils, concrete debris, etc within unincorporated Whatcom County will require a Land Disturbance Permit from Whatcom County Planning and Development Services unless located on WSDOT Right-of-Way.
4. A temporary erosion and sedimentation control (TESC) plan shall be developed and provided to the Whatcom County Shoreline Administrator prior to starting work.
5. Construction shall be commenced within two years, and authorization to conduct the construction shall terminate five years after the effective date of this shoreline permit as defined in 23.60.160.

Report prepared by:

Chad Yunge  
Whatcom County Shoreline Administrator  
Whatcom County Planning and Development Services