

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT)	SHR2010-0006
Application for)	
)	
<i>Whatcom County Parks and Recreation</i>)	FINDINGS OF FACT,
<i>“Hovander / Tenant Lake Park”</i>)	CONCLUSIONS OF LAW,
)	AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant is requesting approval of a Shoreline Substantial Development Permit Application to widen 1,800 lineal feet of existing gravel trail from Tennant Lake Interpretive Center to Hovander Homestead Park barn and construct 830-lineal feet of new trail around the barn. The project will also include construction of a playground area adjacent to the barn.

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 Department of Parks and Recreation

Property Location/Address: 5299 Neilsen Road
Ferndale, Washington

Legal Description: Section 29, Township 39N, Range 02E, W.M.
Assessor’s Parcel Number 390229-190190

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

- 1-3 Form Letter dated May 14, 2010
- 1-4 Endangered Species Act Checklist
- 1-5 Land Disturbance and Clearing Application Information
- 1-6 Tracking Checklist
- 1-7 Staff Emails re: scheduling

- 2 DNS, dated May 14, 2010

- 3 Staff Report, dated July 8, 2010

- 4 Agency Comments

- 5 Certificate of Mailing of Notice of Application, dated May 13, 2010

- 6 Project Narrative, dated April 22, 2010, submitted by Ronald Jepson and Associates

- 7 Determination of Complete Application, dated May 6, 2010

- 8 Legal Notice of Application, dated May 14, 2010

- 9 Certificate of Mailing of Notice of Public Hearing, dated June 25, 2010

- 10 Certificate of Posting of Notice of Public Hearing, dated July 1, 2010

- 11 Critical Areas Assessment Report and Mitigation Plan, dated April 2010, prepared by Ronald Jepson and Associates

- 12 Stormwater Site Plan, dated April 14, 2010, by Ronald Jepson and Associates

- 13 Site Plan

II.

Whatcom County Department of Parks and Recreation is seeking a Shoreline Substantial Development Permit for proposed improvements to the existing gravel trail from Tennant Lake Interpretive Center to the Hovander Homestead Park barn. The proposal includes widening 1,800-linear feet of the existing gravel trail and constructing 830-linear feet of new trail around the barn. The project also proposes construction of a new playground area adjacent to the barn.

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 either in writing or 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 #3, dated July 8, 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 trail improvements to the existing gravel trail between Tennant Lake Interpretive Center and Hovander Homestead Park barn; new trail construction around the barn; and construction of a new playground area adjacent to the barn.

Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #3, dated July 8, 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 Whatcom County Parks for the widening of 1,800-lineal feet of existing gravel trail between Tennant Lake Interpretive Center and the Hovander Homestead Park barn; construction of a new, 830-lineal foot trail around the barn; and construction of a new playground area adjacent to the barn. The property in question is located at 5299 Neilsen Road, Ferndale, Washington. The permit is granted subject to the following conditions:

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 contact the United States Army Corps of Engineers (ACOE) to obtain any Federal approvals as required by the ACOE. Copies of issued Federal permits shall be provided to the Shoreline Administrator prior to any development activity.
3. 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.
4. Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re vegetated with native or compatible plants.
5. The Applicant shall comply with all of the requirements of the Whatcom County Building Services Division prior to any development approvals as outlined in the June 28, 2010, memorandum unless modified by the Building Services Division or appealed to the appropriate agency.
6. The Applicant shall comply with all of the requirements outlined in the Whatcom County River & Flood Division comments prior to initiation of development as outlined in the May 19, 2010 Flood Division comments unless modified by the River & Flood Division or appealed to the appropriate agency. Documentation indicating compliance with the flood comments shall be submitted to the Shoreline Administrator prior to initiating development.
7. 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.
8. Best Management Practices (BMPs) for control of erosion and sedimentation shall be implemented during the development. At a minimum, such measures shall include installation of a site fence and covering all exposed soils with a minimum of two-inches of straw, wood mulch, etc. until the area of disturbance can be re-seeded. Such measures shall be implemented prior to ground disturbing activity and shall be maintained throughout the construction project.
9. 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 14th day of July 2010.

Michael Bobbink, Hearing Examiner



July 8, 2010

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of
Whatcom County Parks Department
For a Shoreline Substantial Development Permit

FINDINGS, CONCLUSIONS
AND RECOMMENDATIONS
SHR2010-00006

I. SUMMARY OF APPLICATION AND RECOMMENDATION

Application: The applicant is requesting approval of a shoreline substantial development permit to widen 1,800 lineal feet of existing gravel trail from the Tennant Lake Interpretive Center to the Hovander Homestead Barn and construction 830 lineal feet of new trail around the Hovander Barn. The project will also include the construction of a playground area adjacent to Hovander Barn.

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

II. PRELIMINARY INFORMATION

A. BACKGROUND INFORMATION

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

Applicant Representative Mr. Ben Wasson
222 Grand Ave, Suite C
Bellingham, WA 98226

Property Location/Address: 5299 Neilsen Road
Ferndale, Washington

Legal Description: Section 29, Township 39N, Range 02E, W.M,
Assessor's Parcel Number 390229-190190

Adjacent Water Body: Nooksack River

Shoreline Designation: Conservancy

Shoreline of State-Wide Significance: Yes

Zoning: Recreation Open Space

Comprehensive Plan: Public Recreation

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
SMP 23.70 Administration

Applicable Shoreline Program Provisions:

SMP 23.20 Goals and Objectives
SMP 23.30.09 Conservancy Shoreline Area Designation
SMP 23.30.02 Office Shoreline Map
SMP 23.60.02 Shoreline Substantial Development Permit Criteria
SMP 23.90 General Policies and Regulations
SMP 23.100.10 Recreation policies and Regulations
SMP 23.110 Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on May 14, 2010 by Whatcom County.

III. FINDINGS

The applicant is requesting approval of a shoreline substantial development permit to widen 1,800 lineal feet of existing gravel trail from the Tennant Lake Interpretive Center to the Hovander Homestead Barn and construction of 830 lineal feet of new trail around the Hovander Barn. The existing gravel trail is six to eight feet wide with culverts at several locations to facilitate wetland drainage (the existing trail bisects three wetlands). The project will also include the construction of a playground area adjacent to Hovander Barn.

A wetland delineation was completed for the proposed work area and trail corridor. Eight wetlands and an unnamed stream were located and delineated. Three wetlands were rated as Category II, one wetland was rated Category IV, the remaining wetlands were rated Category III. The proposed activities were considered a moderate intensity land use proposal for buffer calculations. The widening of the existing trail will fill 5,964 square feet of wetland and 6,999 square feet of buffer. Given that the Hovander Homestead Park has a significant amount of wetland area, the applicant is proposing wetland enhancement to replace lost functions and values as a result of proposed wetland fill. The applicant has avoided and minimized impacts to wetlands, streams and their associated buffers to the maximum extent practicable and has provided compensatory mitigation plans associated with such impacts.

The proposed 830 lineal feet of new trail ranges from approximately 400 feet to 700 feet from the OHWM of the Nooksack River and will provide an improved trail from the Hovander Barn to the existing restroom. The new trail will connect the Hovander Barn/Parking area with the proposed play ground and existing trail system. This proposed new trail work will not affect any wetlands or buffers.

The proposed playground will be located approximately 450 feet from the OHWM of the Nooksack River. The applicant is proposing an approximate 3,000 square foot play area that will contain two different play structures designed for different age groups and associated access, ramps, and benches. The applicant is proposing to fill the location of the play ground with approximately 3 feet of fill and constructing a perimeter seat wall in an effort to reduce impacts during flooding events. The proposed construction of the play ground will not affect any wetlands or buffers.

The area of the proposed trail expansion and playground construction is located within the conservancy shoreline area designation. Pursuant to 23.30.02.B The lateral extent of the shoreline jurisdiction shall be determined on a case-by-case basis based on the location of the ordinary high water mark (OHWM), floodway and presence of associated wetlands; provided that, exclusive of associated wetlands, the map identifies the lateral extent of shoreline jurisdiction on the South Fork of the Nooksack River. The wetlands

on site meet the definition of "Associated Wetlands" as they are located within the floodplain of the Nooksack River.

According to Section 23.100.10.C.7, low intensity water-oriented recreational use and development is permitted subject to policies and regulations of this Program and the criteria outlined below in the recreation policies and regulations. Expansion of existing trails, construction of new trails, and the construction of a playground is low intensity water-oriented recreational use, staff has determined by the proposal is consistent with the above regulation.

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 policies and regulations. According to the applicant, impacts to wetlands, streams and their associated buffers were avoided and minimized to the maximum extent practicable.

A mitigation plan was submitted as part of this permit application to compensate for all unavoidable impacts to wetlands, streams and associated buffers. The plan has been reviewed and determined to be consistent with WCC 16.16 through the SMP.

The trail expansion is a public water-oriented development that requires a location within jurisdictional associated wetlands and/or within their associated buffers. Pursuant to 23.90.13.B.7, the subject trail expansion activities are not subject to buffers and setbacks provided that they are constructed and maintained in a manner that minimizes adverse impacts on shoreline functions and processes, and provided further that they comply with all the applicable regulations in WCC 16.16

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:

The proposed project is consistent with the above water quality and quantity policies and regulations. The applicant has submitted a stormwater report to quantify storm runoff flow frequencies to receiving wetlands for the existing and proposed developed condition for the Hovander Park trail improvements. The applicant indicates that the stormwater report was prepared in compliance with Whatcom County's Development Standards and the Washington State Department of Ecology's 1992 Stormwater Management Manual for the Puget Sound Basin and the Washington State Department of Ecology's Stormwater Management Manual for Western Washing. The subject stormwater report was reviewed and unconditionally approved by the Whatcom County Department of Engineering Services.

Staff has reviewed and unconditionally approved a temporary erosion and sedimentation control (TESC) submitted by the applicant.

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. As stated previously within this approval recommendation, impacts to existing vegetation have been minimized insofar as feasible to

complete scope of work. The applicant has indicated that impacts to wetlands and buffers were unavoidable based on the location of existing trails. The applicant has submitted a mitigation plan that complies with the requirements of WCC 16.16 and compensates for unavoidable impacts to wetlands or wetland buffer vegetation.

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:

The proposed project is consistent with the above landfill and excavation policies and regulations. As stated above, the trail expansion within shoreline associated wetlands and/or their buffers are allowed for the purposes of expanding a public water-oriented development and are therefore not subject to setback or buffer requirements. The applicant has submitted a TESC plan and has been approved by staff. The applicant has designed to project to represent the minimum necessary construct the scope of work.

Recreation

23.100.10 Policies

- Shoreline recreational development should be given priority for shoreline location to the extent that the use facilitates the public's ability to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline. Where appropriate, such facilities should be dispersed along the shoreline in a manner that supports more frequent recreational access and aesthetic enjoyment of the shoreline for a substantial number of people.
- Recreational developments should facilitate appropriate use of shoreline resources while conserving them. These resources include, but are not limited to: accretion shoreforms, wetlands, soils, ground water, surface water, native plant and animal life, and shore processes.
- Recreational development requiring extensive structures, utilities and roads and/or substantial modifications of topography or vegetation removal should not be located or expanded in areas where damage to persons, property, and/or shoreline functions and processes is likely to occur.
- Recreational developments and plans should provide the regional population a varied and balanced choice of recreation experiences in appropriate locations. Public agencies and private developers should coordinate their plans and activities to provide a wide variety of recreational opportunities without needlessly duplicating facilities.
- Trail links between shoreline parks and public access points should be encouraged for walking, horseback or bicycle riding and other non-motorized vehicle access where appropriate. The Whatcom County Comprehensive Park and Recreation Open Space Plan should be considered in design and approval of public trail systems.
- Access to natural character recreational areas, including but not limited to beaches and fishing streams, should be a combination of linear shoreline trails or easements and small parking or access tracts to minimize user concentration on small portions of the shoreline.
- Recreation facilities should incorporate public education regarding shoreline ecological functions and processes, the role of human actions on the environment and the importance of public involvement in shorelines management. Opportunities incorporating educational and interpretive information should be pursued in design and operation of recreation facilities and nature trails.

- Reasonable physical or visual public access to shorelines should be provided and integrated with recreational developments in accordance with SMP 23.90.08.
- Recreation development should be located only where utility and road capability is adequate, or may be provided without significant damage to shore features commensurate with the number and concentration of anticipated users.
- Cooperative efforts among public and private persons toward the acquisition and/or development of suitable recreation sites or facilities should be explored to assure long term availability of sufficient public sites to meet local recreation needs.

23.100.10.B Regulations

Where significant adverse impacts are adequately mitigated, recreational development is a priority use for shoreline location, subject to the following:

- Water-related and water-enjoyment uses do not displace water-dependent uses and are consistent with existing water-related and water-enjoyment uses.
- Activities provided by recreational facilities must bear a substantial relationship to the shoreline, or provide physical or visual access to the shoreline. Facilities for water-dependent recreation such as fishing, clam digging, swimming, boating, and wading, and water-related recreation such as picnicking, hiking, and walking should be located near the shoreline, while nonwater-related recreation facilities shall be located inland.
- Recreation areas or facilities on the shoreline shall provide physical or visual public access consistent with the criteria of SMP 23.90.08.
- Recreation facilities with large grass areas, such as golf courses and playing fields, and facilities with extensive impervious surfaces shall incorporate means to prevent erosion, control the amount of runoff, and prevent harmful concentrations of chemicals and sediment from entering water bodies in accordance with the policies and regulations of SMP 23.90.04
- Recreation use of motor vehicles including unlicensed off-road vehicles is permitted only on roads or trails specifically designated for such use. Such use is prohibited on tidelands, backshore beaches, streams, or wetlands; except as necessary for public health and safety or maintenance.

Staff Comment:

The proposed project is consistent with the above recreation policies and regulations. The continued use of Hovander Park as a low intensity recreational development meets the intent of the Shoreline Management Act. There is no evidence in the application materials that indicate the proposed developments will result in adverse impact on shoreline resources, functions, or processes. While the conservancy regulations limit the alteration of topography to generally less than 30 inches. The playground will be elevated by approximately 3 feet for the purposes of mitigating potential hazardous flooding events.

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:

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, impervious surface limits, 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.

4. In accordance with the criteria of RCW 90.58.030(2)(e), the legislature designated the Southfork of the Nooksack River as a Shoreline of Statewide Significance. Policies for development on Shorelines of Statewide Significance. Pursuant to 23.40.01, development on Shoreline of Statewide Significance the statewide interest should be recognized and protected over local interest, agencies and local interest groups should be consulted and responses solicited. The natural character of the shorelines should be preserved, intensive development should be concentrated in areas already developed and limited in areas of low-density development. The use of Shorelines of Statewide Significance should result in long term benefit to the people of the state, resources and ecological systems should be protected and scarce or rare sites should be left in their natural state. Public access to publicly owned areas on Shorelines of Statewide Significance should be increased.

Comment: The project proposal will not consume additional shoreline resources nor impact valuable shoreline features. Views and public access will remain unaffected by this development. Whatcom County Critical Areas staff has reviewed and unconditionally proposed the proposal and the submitted mitigation plan to mitigate for unavoidable impacts to existing wetlands. A determination of nonsignificance was issued on May 14, 2010 by the Whatcom County SEPA official. Other reviews on record demonstrate the project, as conditioned, should satisfy the public safety, health and welfare requirements of applicable Whatcom County regulations.

Based on staff's review, the proposed development appears, subject to the attached conditions of approval, to meet all the current development standards of the Shoreline Program, and concurrently protect the interest of the public on a regional basis.

V. PUBLIC COMMENTS

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

VI. AGENCY COMMENTS

The Whatcom County **River and Flood Division** submitted the following comments in an email regarding the proposal on May 19, 2010:

After reviewing the subject permit for the Hovander Park trail expansion and playground it became apparent that there will need to be things addressed in regards to Whatcom County Flood Code Title-17 and potential impacts to Endangered Species per the Endangered Species Act (ESA). Because of the proposed fill, new impervious surfaces and potential removal of vegetation within the floodplain boundary an ESA checklist must be done to determine if a Habitat Assessment and Mitigation Plan will be required for the proposed work within the FEMA regulatory floodplain. Attached is an ESA Checklist and FEMA's Regional Guidance for Habitat Assessment and Mitigation.

In regards to filling in the floodplain, any fill placed in the floodplain will require compensatory floodplain storage in order to address any loss of floodplain storage by importing the fill. Water quality/stormwater runoff concerns from new impervious surfaces constructed in the floodplain will have to be addressed and/or mitigated. Furthermore, any removal of vegetation will also have to be addressed and/or mitigated as the guidance suggest.

The applicant shall comply with all of the requirements outlined in the Whatcom County River & Flood Division comments prior to any development approvals as outlined in the May 19, 2010 Flood Division comments unless modified by the River & Flood Division or appealed to the appropriate agency.

The Whatcom County Planning & Development Services – **Building Services Division** administers the International Residential Code (IRC) associated with residential structures. The office of the Plans Examiner submitted a June 28, 2010 memorandum with the following comments:

The Whatcom County Plans Examiner requires the following condition(s) for the above permit.

1. Due to the scope of this project, these comments do not address any specific requirements. Specific requirements will be discussed at time of application of each individual building pre-application meeting and or submittal when more detailed plans are available. The following are general comments are not intended to be the final comments or requirements for any one project.
2. A building permit may be required if sidewalks and walking surfaces are greater than 30" above adjacent grade (measured at a point 36" from the edge of the walking surface) where guards may be required. It does appear that the play ground equipment is exempt per Whatcom County title 15
3. If required due to adjacent grade requirements the following would apply
4. Due to the scope of the proposed project, the applicant must apply (if required) to the Building Official for a pre-application screening prior to building permit application submittal. At the Building Official's discretion a pre-application meeting may be required.
5. Applicable code references for this project proposal are the 2006 International Building Code (IBC); the 2006 International Fire Code (IFC); the 2006 International Mechanical Code (IMC); If applied for after July 1, 2010 then applicable code would be per the 2009 code editions.
6. A Washington State registered architect may be required to design and stamp plans for all "non-exempt" structure
7. A design professional of record (licensed architect or engineer of record) shall be designated on the permit submittal documents and drawings where appropriate. The design professional of record shall be responsible for reviewing and coordinating all submittal documents prepared by others, including deferred submittal items, for compatibility with the design of the building. (IBC Section 106.3.4)
8. The proposal shall meet the barrier-free, handicap accessible requirements of the International Building Code, Chapters 10 & 11; IBC Appendix E; ICC/ANSI A117.1-03; applicable sections of the Washington State Amendments, per WAC 51-50. Accessibility design details shall be indicated on the plan drawings and submitted with the building permit.
9. The proposal shall comply with all applicable codes and ordinances adopted by Whatcom County.
10. Required plans for this project shall include but not be limited to. (Suggested scales)
 - a. Site plan (1/10th scale)
 - b. Foundation plan (1/4" =1' scale)
 - c. Floor plan (plan views) (1/4" =1' scale)
 - d. Elevation plans (1/4" =1' scale)
 - e. Structural plans (1/4" =1' scale)
 - f. Section views (1/2" =1' scale)
 - g. Details (special construction and or connections) (1/2" =1' scale)

The applicant shall comply with all of the requirements outlined in the Whatcom County Plans Examiners comments as outlined in the June 28, 2010 Memorandum unless modified by the Whatcom County Building Services Division or appealed to the appropriate agency.

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 contact the United States Army Corps of Engineers (ACOE) to obtain any federal approvals as required by the ACOE. Copies of issued Federal permits shall be provided to the Shoreline Administrator prior to any development activity.
3. 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.
4. Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate the approved development. Surfaces cleared of vegetation should be immediately re vegetated with native or compatible plants.
5. The applicant shall comply with all of the requirements of the Whatcom County Building Services Division prior to any development approvals as outlined in the June 28, 2010 memorandum unless modified by the Building Services Division or appealed to the appropriate agency.
6. The applicant shall comply with all of the requirements outlined in the Whatcom County River & Flood Division comments prior to initiation of development as outlined in the May 19, 2010 Flood Division comments unless modified by the River & Flood Division or appealed to the appropriate agency. Documentation indicating compliance with the flood comments shall be submitted to the Shoreline Administrator prior to initiating development.
7. 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.
8. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented during the development. At a minimum, such measures shall include installation of a site fence and covering all exposed soils with a minimum of two-inches of straw, wood mulch etc. until the area of disturbance can be re-seeded. Such measures shall be implemented prior to ground disturbing activity and shall be maintained throughout the construction project.
9. 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:

Sam McDaniel
Whatcom County Shoreline Administrator
Whatcom County Planning and Development Services