

WHATCOM COUNTY HEARING EXAMINER

RE: SHORELINE SUBSTANTIAL DEVELOPMENT) SHR2008-0014
SHORELINE CONDITIONAL USE) SHC2009-0005
ZONING CONDITIONAL USE) CUP2009-0007
Application for)
)
Harbor Shores, L.L.C.) FINDINGS OF FACT,
) CONCLUSIONS OF LAW,
) AND DECISION

SUMMARY OF APPLICATION AND DECISION

Application: The Applicant requests approval of a Shoreline Substantial Development Permit to install a sanitary sewer line within the jurisdiction of the Whatcom County Shoreline Management Program (SMP) in order to provide public sewer service to existing lots within the Harbor Shores Plat. Work includes installation of a new sewer line from the Harbor Shores Plat approximately one-mile to the south along State Route (SR) 548 (Blaine Road) to the Loomis Trail Pump Station where it will be connected to an existing sewer line operated by the Birch Bay Water and Sewer District (BBWSD).

The Applicant also requests approval of a Shoreline Conditional Use Permit to directionally bore a portion of the proposed sewer line beneath an estuarine wetland associated with Drayton Harbor in order to avoid impacting the wetland feature. In addition, in order to facilitate the sewer service extension, the Applicant requests approval of a Zoning Conditional Use Permit for the construction of a sewer pump station, an electrical equipment shelter and a gravel access road located in the southeast corner of the Plat of Harbor Shores.

Decision: The requested permits are 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: Skip Jansen

Applicant Representative: Amy de Vera Pederson
David Evans and Associates, Inc.

Property Location/Address: Harbor Shores Plat to the BBWSD Loomis Trail Pump Station
Blaine, Washington

Legal Description: Section 07, Township 40N, Range 01E, W.M.

Adjacent Water Body: Drayton Harbor and associated wetlands

Shoreline Designation: Rural

Shoreline of State-Wide Significance: No

Zoning: Urban

Comprehensive Plan: Urban Growth Area

Subarea: Blaine / Birch Bay

Authorizing Ordinances:

Whatcom County Comprehensive Land Use Plan
Whatcom County Code Chapter 15, Building Code
State Environmental Policy Act (SEPA). Washington
Administrative Code Chapter 197-11
Whatcom County Code Chapter 16.16, Critical Areas
Whatcom County Code Title 20, Official Whatcom County Zoning Ordinance
Whatcom County Shoreline Management Program, SMP 23.50 Applicability, and SMP 23.70
Administration

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.43	Rural Shoreline Area Designation
SMP 23.60.170	Shoreline Substantial Development Permit Criteria
SMP 23.60.190	Shoreline Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.70	Landfill and Excavation Policies and Regulations
SMP 23.100.180	Utility Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on July 21, 2008 by Birch Bay Water and Sewer District as Lead Agency.

Legal Notices: Published – April 16 and September 10, 2009
Posted – September 10, 2009
Mailed – April 16 and September 3, 2009

Hearing Date: September 23, 2009

Parties of Record:

Skip Jansen
Harbor Shores, L.L.C.
4071 Hannegan Road, Suite Q
Bellingham, Washington 98226

Amy de Vera Pederson
David Evans and Associates, Inc.
119 Grand Avenue, Suite D
Bellingham, Washington 98225

Chad Yunge and Brenda Wilson
Planning and Development Services

Copy of Decision sent to
Helen Stanovich
9003 Bay Circle
Blaine, WA 98230

Exhibits:

- 1 Land Use Application with attachments
 - 1-1 Supplemental Application
 - 1-2 Letter dated March 3, 2009 from David Evans and Associates: Project Description
 - 1-3 Letter of Completeness, dated April 9, 2009
 - 1-4 Technical Review Form Memo, dated April 16, 2009
 - 1-5 Property Owners Form Letter, dated April 16, 2009
 - 1-6 Mailing Labels
 - 1-7 Preliminary Traffic Information
 - 1-8 Preliminary Stormwater Proposal
 - 1-9 Customer Receipt
 - 1-10 Statutory Warranty Deed
- 2 Staff Report, dated September 17, 2009, Agency Comments attached
- 3 Revised Site Plans, dated 8/22/08

- 4 Plat Map
- 5 Vicinity Map
- 6 Zoning Map
- 7 SEPA, DNS, dated July 21, 2008
- 8 Legal Notice, dated April 16, 2009, with SEPA Legal and Distribution attached
- 9 Certificate of Mailing, dated September 3, 2009
- 10 Certificate of Posting, dated September 10, 2009
- 11 Legal Notice, dated September 10, 2009
- 12 Letter dated August 25, 2008 from David Evans and Associates re: Harbor Shores Sanitary Sewer Project
- 13 Revised Critical Areas Assessment Report, dated March 2009, prepared by David Evans and Associates

II.

The Applicant is requesting approval of a Shoreline Substantial Development Permit, Shoreline Conditional Use Permit, and a Zoning Conditional Use Permit for the installation of a sanitary sewer line in order to provide public sewer service to the existing lots within the Harbor Shores Plat. The sewer installation is proposed to run from the Harbor Shores Plat approximately one-mile to the south along State Route 548 [Blaine Road] to the Loomis Trail Pump Station where it will connect to an existing sewer line operated by Birch Bay Water and Sewer District.

The Shoreline Conditional Use Permit is requested to permit directional boring of a portion of the proposed sewer line beneath an estuarine wetland associated with Drayton Harbor in order to avoid impacts to the wetland. The Zoning Conditional Use Permit is requested for the proposed construction of a sewer pump station, an electrical equipment shelter and a gravel access road to be located in the southeast corner of the Plat of Harbor Shores.

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 September 21, 2009, 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 and Zoning Permits for the proposed installation of a sanitary sewer line within the jurisdiction of the Whatcom County Shoreline Management Program in order to provide public sewer service to the existing lots within the Harbor Shores Plat.

The Findings of Fact and Conclusions of Law are set forth in the Staff Report, Exhibit #2, dated September 21, 2009. 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, and with the Zoning Conditional Use Criteria of WCC 20.84.200 [1 through 8]. 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, Shoreline Conditional Use Permit, and Zoning Conditional Use Permit are hereby granted to Harbor Shores, L.L.C. for the installation of a sanitary sewer line, including construction of a sewer pump station, an electrical equipment shelter, and a gravel access road to service to the existing lots within the Harbor Shores Plat. The new sewer line will run from the Harbor Shores Plat approximately one-mile to the south along State Route 548 [Blaine Road] and connect to an existing sewer line operated by Birch Bay Water and Sewer District, Loomis Trail Pump Station, Blaine, Washington. The permits are 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 and 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. The Applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to starting any development activity.
3. 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.
4. Prior to any development activity, the Applicant shall obtain a Land Disturbance Permit (LDP) from Whatcom County Planning and Development Services for all development located outside of the jurisdiction of the Whatcom County Shoreline Management Program.
5. Construction and/or demolition debris shall be wholly removed from water/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.
6. Use of heavy equipment shall be limited to previously impacted surfaces to the extent practicable within wetland areas to minimize compaction and other impacts to wetland soils and vegetation. Excavation spoils to be stockpiled for replacement within wetland areas shall be staged in upland locations and covered until ready for replacement.
7. Mitigation associated with temporary impacts to shoreline-associated wetlands shall be consistent with the Revised Critical Areas Assessment Report, dated March 2009, by David Evans and Associates (DEA) along with the following additional provisions.
 - Upon re-vegetation of the affected areas within shoreline jurisdiction, DEA or another qualified professional shall submit a monitoring report, documenting success of the mitigating measures as proposed. The report shall be provided to the Whatcom County Shoreline Administrator and provided as soon as re-vegetation has occurred on the subject property but no later than one (1) year following completion of the site disturbance associated with the proposed shoreline project.
8. A Revised Stormwater and Pollution Protection Plan (SWPPP) shall be submitted incorporating the following revisions as determined by WCPDS:
 - Element #3 of the SWPPP shall be revised to protect downstream properties and waterways from increases in velocity and peak flow rates.

- The SWPPP shall indicate a Certified Erosion and Sedimentation Control Lead (CESCL) for the project including phone numbers, electronic mail addresses, and/or associated company information.
9. An Erosion and Sedimentation Control (ESC) inspection shall be required at the beginning and at the end of the project. The ESC inspection at the beginning shall be performed prior to the commencement of any land disturbance activities. The ESC inspection at the end of the project shall be performed after all permanent ESC measures have been installed.
 10. 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.
 11. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.
 12. The Applicant shall comply with the conditions of the Division of Engineering, memorandum, dated May 12, 2009, unless modified by the Division of Engineering or appealed to the appropriate agency.
 13. The Applicant shall comply with the conditions of the Whatcom County Plans Examiner, memorandum, dated May 14, 2009, unless modified by the Plans Examiner or appealed to the appropriate agency.
 14. The Applicant shall comply with the conditions of the Critical Areas Review, memorandum, dated April 27, 2009.

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 business days of the date of the 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.

More detailed information about appeal procedures is contained in the Official Zoning Ordinance at Section 20.92.600-.830. 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 24th day of September 2009.

Michael Bobbink, Hearing Examiner



September 21, 2009

WHATCOM COUNTY PLANNING AND DEVELOPMENT SERVICES
STAFF REPORT

The application of Harbor Shores LLC	FINDINGS, CONCLUSIONS AND RECOMMENDATIONS
For a Zoning Conditional Use Permit	CUP2009-00007
Shoreline Substantial Development Permit	SHR2008-00014
Shoreline Conditional Use Permit	SHC2009-00005

I. SUMMARY OF APPLICATIONS AND RECOMMENDATION

Application: The applicant has requested approval of a shoreline substantial development permit to install a sanitary sewer line within the jurisdiction of the Whatcom County Shoreline Management Program (SMP) in order to provide public sewer service to existing lots within the Harbor Shores Plat. Work includes installation of a new sewer line from the Harbor Shores Plat approximately one-mile to the south along State Route (SR) 548 (Blaine Road) to the Loomis Trail Pump Station where it will be connected to an existing sewer line operated by the Birch Bay Water and Sewer District (BBWSD). The applicant also requests approval of a shoreline conditional use permit to directionally bore a portion of the proposed sewer line beneath an estuarine wetland associated with Drayton Harbor in order to avoid impacting the wetland feature. In addition, in order to facilitate the sewer service extension, the applicant has requested approval of a zoning conditional use permit for the construction of a sewer pump station, an electrical equipment shelter and a gravel access road located in the southeast corner of the Plat of Harbor Shores.

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. Skip Jansen
Harbor Shores LLC
4071 Hannegan Road, Suite Q
Bellingham, Washington 98226

Applicant Representative: Ms. Amy de Vera Pederson
David Evans and Associates, Inc.
119 Grand Avenue, Suite D
Bellingham, Washington 98225

Property Location/Address: Harbor Shores Plat to the BBWSD Loomis Trail Pump Station
Blaine, Washington

Legal Description: Section 07, Township 40N, Range 01E, W.M,
 Adjacent Water Body: Drayton Harbor and associated wetlands
 Shoreline Designation: Rural
 Shoreline of State-Wide Significance: No
 Zoning: Urban
 Comprehensive Plan: Urban Growth Area
 Subarea: Blaine, Birch Bay

B. PROCEDURAL INFORMATION

Authorizing Ordinances: SMP 23.50 Applicability
 SMP 23.70 Administration
 Whatcom County Comprehensive Land Use Plan.
 Whatcom County Code Chapter 15, Building Code
 State Environmental Policy Act (SEPA). Washington
 Administrative Code Chapter 197-11
 Whatcom County Code Chapter 16.16, Critical Areas
 Whatcom County Code Title 20, Official Whatcom County
 Zoning Ordinance

Applicable Shoreline Program Provisions:

SMP 23.20	Goals and Objectives
SMP 23.30.43	Rural Shoreline Area Designation
SMP 23.60.170	Shoreline Substantial Development Permit Criteria
SMP 23.60.190	Shoreline Conditional Use Permit Criteria
SMP 23.90	General Policies and Regulations
SMP 23.100.70	Landfill and Excavation Policies and Regulations
SMP 23.100.180	Utility Policies and Regulations
SMP 23.110	Definitions

SEPA Review: Determination of Non-Significance (DNS) issued on July 21, 2008 by Birch Bay Water and Sewer District as Lead Agency.

III. FINDINGS

The applicant has requested approval of a shoreline substantial development permit to install a sanitary sewer line within the jurisdiction of the Whatcom County Shoreline Management Program (SMP) in order to provide public sewer service to existing lots within the Harbor Shores Plat. Work includes installation of a new sewer line from the Harbor Shores Plat approximately one-mile to the south along State Route (SR) 548 (Blaine Road) to the Loomis Trail Pump Station where it will be connected to an existing sewer line operated by the Birch Bay Water and Sewer District (BBWSD). The applicant also requests approval of a shoreline conditional use permit to directionally bore a portion of the proposed sewer line beneath an estuarine wetland associated with Drayton Harbor in order to avoid impacting the wetland feature.

Only portions of the proposed sewer line extension projects fall within the jurisdiction of the SMP and thus covered by this shoreline substantial development and shoreline conditional use permit review. Remaining portions outside of shoreline jurisdiction shall require permitting via a Land Disturbance permit from Whatcom

County Planning and Development Services (WCPDS). Within the Harbor Shores Plat, work within SMP jurisdiction includes trenching and installation of sewer lines within portions of the existing developed Dearborn Avenue and Hall Road right-of-ways. Along Blaine Road, work within SMP jurisdiction includes a directional bore beneath a shoreline associated estuarine wetland in order to avoid adverse impacts to the wetland. In addition, approximately 400-linear feet of excavation, trenching, and backfill to install a sewer line and a four-foot diameter vault along Blaine Road. Temporary impacts to approximately 90-linear feet of shoreline associated wetland is anticipated to accomplish the proposed work. Excavation spoils within the wetland will be stockpiled and replaced upon completion of the work. The areas will then be re-vegetated with a native seed mixture.

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. In addition, per 23.100.180.31(f), submarine sewer lines permitted as a conditional use within the Aquatic shoreline designation as defined by 23.110.

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 all policies and regulations appropriate to the shoreline designation and the type of use or development activity proposed.

The area of the proposed project is located within a rural shoreline designation according to the Official Shoreline Map with exception of work within and/or underlying the shoreline associated wetlands within the work area. Work beneath and within wetland areas is designated Aquatic pursuant to the definition enumerated in 23.11(A.12). Utility development within the Rural designation is allowed subject to policies and regulations per 23.100.31(c). Utility development within the Aquatic designation requires approval via a shoreline conditional use permit per 23.100.31(f) as discussed later within this staff recommendation.

General and use specific policies and regulations associated with utility development are found within 23.90 and 23.100.180, respectively. Applicable policies and regulations associated with the proposed utility development project are listed and discussed below:

Hazardous, Sensitive or Unsuitable Areas

23.90.15 – Natural features or conditions associated with shorelines are often environmentally sensitive or potentially hazardous to development. Such areas and features include natural wetlands, accretion shoreforms, floodways, alluvial fans, steep slopes, unstable soils, ground and surface water, fish and wildlife habitat and shore processes. Many such areas are often unique or scarce, highly productive biologically, visually attractive, valuable for public access, open space or recreation, and in many instances hazardous or otherwise unsuitable for intensive use or development. Such areas should be maintained in a natural condition. In limited instances where alternatives are infeasible, some minimal development activity may be allowed, provided optimum mitigation is achieved. Such development, if properly conducted, should not impair natural features, recreation or aesthetic values or result in hazardous conditions and should adequately protect resources over the long term.

23.90.43 – Development shall be located, designed, constructed and maintained to prevent hazardous conditions and to substantially conserve wetlands, fish and wildlife habitat, shore processes and other sensitive natural features which are valuable to the region.

Staff Comment – The proposed sewer line extension project involves work within and beneath sensitive areas including freshwater, shoreline associated wetlands and a tidally-influenced estuarine wetland. Due to the linear nature of the infrastructure project, complete avoidance of these areas is not feasible according to the applicant. The proposed project has been designed to minimize impacts to these areas by restoring the

affected wetland areas upon completion of the work and by the utilization of direction bore technology to avoid impacts to the intact estuarine wetland altogether.

Site Preparation

23.90.16 – Land clearing, grading, filling, and alteration of natural drainage or other features should be limited to the minimum amount necessary to accommodate approved development. Surfaces cleared of vegetation should be immediately re-vegetated with native or compatible plants.

23.90.44 – Land clearing, grading, filling, removal of vegetation and alteration of natural features shall be kept to the minimum that is reasonably necessary to accommodate approved development. Disturbed areas shall be re-vegetated as soon as possible.

Staff Comment –The portions of the proposed project within shoreline jurisdiction have been designed to minimize, insofar as feasible, the amount of ground disturbing activity. Portion of the proposed route contain and abandoned former water line formally serviced by BBWSD. The new sewer line will travel through this former water line if possible to eliminate the need for trenching and installation of a new line. It is assumed that portions of the former line may be damaged to the extent where such a proposal is infeasible. In these areas, trenching would occur. Areas of the potential trenching work are located in previously impacted shoreline wetlands immediately adjacent to the existing roadway. Any excavated soils will be stockpiled on site and replaced following installation of the sewer line. The affected areas would then be re-vegetated with a native seed mix to restore the affected area. The work shall be conducted from the existing roadway if feasible to keep disturbance to the areas to a minimum. A directional bore is proposed to completely avoid impacts to the estuarine wetland within the project area.

Water Quality

23.90.18 – Location, construction, operation, and maintenance of all shoreline use and development activities should maintain or enhance the quality or surface and ground water over the long term and restore water quality if degraded. As a minimum, state water quality and all other applicable standards should be adhered to.

23.90.46 – State water quality and all other applicable standards shall be adhered to. Water quality of ground and surface waters shall not be significantly degraded.

Staff Comment – The applicant has submitted a temporary erosion and sedimentation control (TESC) plan for the proposed project involving the installation of best management practices (BMPs) for control of erosion and sedimentation during the construction project. The plan has been reviewed and approved with conditions by County staff for consistency with the 2005 Department of Ecology Stormwater Manual for the Puget Sound Basin.

Fish and Wildlife

23.90.20 – All shoreline use and development activities should be located and operated so as to provide long term protection of fish and wildlife resources, and their various habitats. Maintenance and enhancement of fisheries should be given priority consideration in reviewing shorelines use proposals which might adversely impact fisheries habitat, migratory routes and harvest of significant fish or shellfish species. Alternative locations or designs should be seriously considered for such proposals if such potential adverse impacts areas significant. Shorelines having banks, beaches and beds critical to preservation or enhancement of the fisheries resource base should be maintained or restored to a productive natural condition whenever possible.

23.90.48 – Design, location, construction and operation of all shoreline use and development activities shall not unnecessarily impact fish and wildlife resources and their respective habitats over the short or long term. Development in critical wildlife habitat areas identified by the Washington State Department of Fish and

Wildlife (WDFW) shall not be permitted unless adequate mitigation of impacts can be provided. Development is also subject to the provisions of the Whatcom County Critical Areas Ordinance (CAO).

Staff Comment – According to David Evans and Associates (DEA) in an assessment report dated March 2009, no priority fish and wildlife species are known to occur within the Harbor Shores Plat or the proposed sanitary sewer line extension route based on a data request submitted to WDFW in 2008. California Creek adjacent to portion of the southern end of the proposed sanitary sewer extension contains both priority anadromous and resident fish, however according to DEA, no work will be performed within any streams. This approval recommendation is conditioned that a Hydraulics Project Approval (HPA) be obtained prior to commencement of construction.

A bald eagle nest is location is mapped approximately 0.5-mile to the north of the Harbor Shores Plat across Dakota Creek, however according to the DEA report, the proposed work in the area will occur entirely within existing roadway areas within the buffer zone of the nest and no trees will be removed as part of the project. Noise levels will be consistent with ongoing background noise already occurring. As such, DEA anticipates no impacts to bald eagles or their habitat as a result of the project.

Public Access

23.90.21 – Physical or visual access to shorelines should be required as a condition of significant development activities, when the proposal would either generate a demand for specific forms of such access, and/or would impair existing, legal access facilities and/or rights. Area and/or facility requirement should be commensurate with the scale and character of the development and should be a reasonable, fair and effective means of mitigating any such impacts identified during public review of the proposal.

23.90.50 – In review of all shoreline substantial development or conditional use permits, consideration of public access shall be required. Provisions for adequate public access shall be incorporated into a shoreline development proposal for each shoreline substantial development or conditional use permit unless the applicant demonstrates one or more of the provisions outlined in 23.90.50(a)(1) – 23.90.50(a)(5).

Staff Comment – As stated in the above policy, public access should be required in cases where significant development activity is proposed that would either generate a demand for specific forms of such access or would impair existing legal public access facilities and/or rights to the public. Based on staff review, the proposed sewer line extension project does trigger the nexus and proportionality to require public access as a condition of either the substantial development or shoreline conditional use permit. No long impacts to existing public access to rights have been identified by this administrator.

Conformance to Other Plans, Policies and Regulations

23.90.29 – All use and development activities should conform to all applicable plans, policies, standards, guidelines and regulations of other agencies with jurisdiction in shoreline areas.

23.90.56 – Use and development activities shall conform to all zoning, subdivision, health and other applicable requirements of Whatcom County and other agencies with jurisdiction in shoreline areas. In the case of conflicting requirements, the more restrictive shall apply.

Staff Comment – In addition to approval of the requested zoning conditional use permit as recommended within this staff report, this approval recommendation has been conditioned to address the above-referenced code provisions.

Miscellaneous Provisions

23.90.65(b)(2) – Underground utilities, other than septic systems, are not subject to setbacks.

Sewage Disposal

23.100.180.32(e) – Sewage disposal facilities and treatment plants shall not be located any closer to the shoreline than necessary. Design, construction and maintenance of all public or private sewage disposal systems shall be in accordance with all applicable health and water quality standards of the State and Whatcom County.

23.100.180.13 – Sewage trunk lines, interceptors, pump stations, and treatment plants are not shoreline dependent and should be located away from shorelines unless alternatives are infeasible.

Staff Comment – The design of the proposed sewer extension line incorporates measures necessary to minimize disturbance to the shoreline environment in the short and long term. Given the location of the existing sewer line infrastructure within the area of the Harbor Shores Plat, location of the sewer line farther away from the shoreline in this case would likely cause an increase in impact to such environments than currently designed.

Utilities

23.90.24 – Intensive developments should only be located in areas where adequate utilities are already developed, or planned officially, or may be provided without significant damage to shore features. Appropriate materials and techniques should be utilized to protect natural features and other users. Exterior finish of structures and materials should be of a non-reflective character compatible with the surrounding area.

Staff Comment – The proposed sewer line extension is located within an area of pre-existing residential development. The Harbor Shores Plat was originally created in the 1960s and is currently zoned for urban levels of residential development. Portions of the project within shoreline jurisdiction consist of subsurface development. Upon completion, no visual impacts are anticipated. Disturbed areas will be re-vegetated and restored to a condition as good or better than existing.

Planning and Coordination

23.100.180.11 – New utility development should be consistent and coordinated with all local government and state planning, including comprehensive plans and single purpose plans. Site planning and rights-of-way for utility development should provide for compatible multiple uses such as shore access, trails, and recreation or other appropriate use whenever possible; utility right-of-way acquisition should also be coordinated with transportation and recreation planning.

Staff Comment – Please refer to the zoning conditional use permit analysis in regards to the above-referenced code provision.

Shoreline Conditional Use Permit

In the review of shoreline conditional use permits, the Administrator or Hearing Examiner, as appropriate, must find that the proposal is consistent with all of the following criteria:

A. That the proposed use will be consistent with the policies of RCW 90.58.020 and the SMP:

Staff Comment – RCW 90.58.020 recognizes residential development as a preferred use of shorelines of the state as long as such development of such use is conducted in a way that minimizes adverse impacts to the shoreline environment and public rights. Staff has determined that the proposed sewer line extension is consistent with the above policies enumerated in 90.58.020 through compliance with the development provisions discussed previously within this staff report.

B. That the proposed use will not interfere with normal public use of public shorelines:

Staff Comment – No interference with normal public use of public shorelines was identified by this administrator during review of the proposed sewer line extension project other than some minor view interference during construction. Any such impacts are temporary and considered minor by this administrator.

C. That the proposed use of the site and design of the project will be compatible with other permitted uses within the area.

Staff Comment: The area surrounding the proposed project location is currently developed for residential purposes. The proposed utility infrastructure will service residential development, consistent with current residential zoning of the area and existing residential use. As the portions of the proposed project within shoreline jurisdiction are subsurface, no concerns regarding design compatibility are applicable.

D. That the proposed use will cause no unreasonable adverse effects to the shoreline environment in which it is to be located:

Staff Comment – As stated previously within this staff report, the proposed sewer line extension has been designed to minimize impacts to the shoreline environment. Temporary impacts to shoreline associated wetlands will occur as complete avoidance of these features is not feasible according to the applicant. Disturbed wetland areas will be restored upon completion of the utility work by backfilling with native wetland soils stockpiled following excavation and re-vegetation with a native seed mix. This approval recommendation has been conditioned that the site be monitored by a qualified professional until such re-vegetation has successfully occurred. Unavoidable impacts to shoreline associated wetlands will therefore be short term, and will cause no adverse effects to the shoreline environment upon completion of the project.

E. That the public interest suffers no substantial detrimental effect:

Staff Comment – As stated previously, no long-term adverse effects to the shoreline environment is anticipated following completion of the proposed sewer line extension, nor will the proposal adversely effect existing access or other public rights to the shoreline. No adverse public comment was received by this administrator during the course of the permit review.

F. In the granting of all conditional use permits, consideration shall be given to the cumulative environmental impact of additional request for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts should also remain consistent with the policies of RCW 90.58.020 and should not produce a significant adverse effect to the shorelines environment.

Staff Comment – Based on the design of the proposed project and conditions associated with this approval recommendation, no long-term adverse effects to the shoreline environment are anticipated. The route of the proposed sewer line extension has been designed with input from a qualified professional. Impacts to shoreline associated wetlands have been minimized as much as feasible, and staff concurs that the route selected is the least damaging to the shoreline environment. Wetland impacts will be temporary and occur in previously-impacted areas of relatively low function consisting predominantly of pasture grasses. No mature vegetation will require removal within the jurisdiction of the shoreline program. As such, approvals of other sewer infrastructure projects where similar circumstances exist, would not likely result in cumulative environmental impacts to the shoreline environment.

Zoning Conditional Use Permit

In order for the Conditional Use permit to be approved, the proposal must satisfy the criteria of WCC 20.84.200 (.200) 1 through 8. In summary, these criteria state that the proposal must: be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity, and that such use will not change the essential

character of the same area, will not be hazardous or disturbing to existing or future neighboring uses, be serviced adequately by essential public facilities such as highways, streets, police and fire protection, drainage structures, refuse disposal, water and sewers, and schools; or that the persons or agencies responsible for the establishment of the proposed use shall be able to provide adequately any such services, not create excessive additional requirements at public cost for public facilities and services, and will not be detrimental to the economic welfare of the community, not involve uses, activities, processes, materials, equipment and property, or the general welfare by reasons of excessive production of traffic, noise, smoke, fumes, glare or odors, have vehicular approaches to the property which shall be so designed as not to create an interference with traffic on surrounding public streets, and not result in destruction, loss or damage of any natural, scenic or historic feature of major importance.

Applicable Policies:

Utility structures located above ground such as pump stations, equipment buildings and similar structures greater than 100 square feet in area may be conditionally permitted pursuant to WCC 20.82.030 (6).

The Whatcom County Comprehensive plan states the following goals and policies related to utility services of this kind:

Goal 5D: Minimize the time required for processing utilities permits.

Policy 5D-1: Streamline and simplify permitting processes relating to installation of utility facilities designed to serve existing or approved development.

Goal 5T: Support development of new sewage treatment facilities, including new pipelines and extensions of existing pipelines, to areas designated for urban-level growth.

Policy 5T-1: Discourage extension of sewer lines in areas not designated as urban growth, Small Towns, resort/recreational Subdivisions, or the Gateway Industrial Transportation Corridor, unless that are serious public health or environmental concerns.

Staff Findings:

Site description

The proposed project is wholly contained within the Urban Growth Area of Blaine. The subject parcels are existing platted lots within the Plat of Harbor Shores. The proposed project is within the Urban Residential Zone (UR4).

Zoning Comments

Utility structures located above ground such as pump stations, equipment buildings and similar structures greater than 100 square feet in area may be conditionally permitted pursuant to WCC 20.82.030 (6).

The applicant is proposing an above grade electrical equipment structure that will be approximately 265-square feet and 13feet tall and is related to the sewer pump station and appurtenances. The applicant is also proposing a gravel access road.

Blaine Road is classified as a State Highway. Therefore, the front yard setback requirement is 45-feet to the property line, and side and rear yard setbacks are 5-feet to the property lines, per WCC 20.80.210. The structures are required to meet the zoning setbacks. Staff will ensure zoning setbacks are met during review of any necessary building permits.

The applicant did not provide a landscaping or a parking plan for the associated structures with the application. Staff will ensure landscaping and parking requirements are reviewed at the time of building permit application.

Lot coverage in the UR zone is limited to 35% of the overall lot size per WCC 20.20.450. Staff will ensure compliance with WCC 20.20.450 at the time of building permit application.

There is nothing in the record to indicate that the proposal will result in any hazardous or disturbing impacts to neighboring properties, and staff has not identified any uses, activities, processes, materials or equipment that will be detrimental to any persons, property, or the general welfare by reasons of excessive production of smoke, fumes, or odors.

V. PUBLIC COMMENTS

Requirements for public notice are contained in WCC 2.33.

Notice of Application: The Notice of Application for this proposal was published on April 16, 2009. Notice was also mailed to property owners within 300 feet of the site.

- Public Input: During the public comment period for the Notice of Application, the County received no public comment and one inquiry from an interested party regarding the size and location of the equipment shelter.

Notice of Public Hearing: The Notice of Public Hearing for this project was posted on the site. The notice was included in a one-time newspaper publication.

VI. AGENCY COMMENTS

On July 18, 2008, WCPDS received comment from Ms. Gretchen Kaehler, Assistant State Archaeologist from the State Department of Archaeology and Historic Preservation (DAHP). Ms. Kaehler states in her letter dated July 16, 2008, that the proposed sewer line extension project is located within the boundaries of a known cultural and/or historic site and that a professional assessment is required by a State-licensed archaeologist.

Staff Comment – A Cultural Resource Assessment dated May 5, 2008, was completed for the project area by Alfred Reid Archaeological Consulting (ARAC). The ARAC report was forwarded to DAHP and the affected tribes and no comment has been received by this Administrator during the course of permit review. The ARAC report recommends that the construction be monitored for the presence of cultural resources by a professional archaeologist amongst other conditions to ensure the protection of such resources in the area of the project. Such conditions have been incorporated within this approval recommendation.

On July 2, 2008, Ms. Sanja Barasic of Whatcom County Public Works – Engineering Division, recommended that the permit be conditioned that the applicant obtain a Revocable Encroachment Permit prior to any construction work in County-owned right-of-way. This condition has been incorporated into this approval recommendation.

On August 31, 2009, Mr. Michael Kershner of WCPDS provided comments and conditions regarding the TESC plan submitted by the applicant. Such conditions have been incorporated into this staff recommendation.

Agency comments regarding the Zoning Conditional Use Permit Application:

On May 12, 2009 Ms. Sanja Barasic of Whatcom County Public Works – Engineering Division, provided comments and requirements. These requirements have been incorporated as conditions into this staff report.

On May 14, 2009, Larry Kwiatkowski, Whatcom County Plans Examiner provided comments and conditions. These conditions have been incorporated into this staff report.

On April 27, 2009, Ms. Lyn Morgan Hill, Senior Planner, Natural Resources, Whatcom County PDS provided comments and conditions which have been incorporated as conditions into this staff report.

On April 16, 2009, Bill Hewett, Whatcom County Fire Inspector provided an e-mail in which he stated he had no comments or conditions.

VII. RECOMMENDATIONS

Based on the above findings and technical review, **Staff recommends approval** of the request for a zoning conditional use permit, shoreline substantial development permit, and shoreline conditional use 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 and 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. The applicant shall contact the Washington State Department of Fish and Wildlife (WDFW) to obtain a Hydraulics Project Approval (HPA) or any other required approvals as determined by WDFW. A copy of the issued HPA shall be provided to the Shoreline Administrator prior to starting any development activity.
3. 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.
4. Prior to any development activity, the applicant shall obtain a land disturbance permit (LDP) from Whatcom County Planning and Development Services for all development located outside of the jurisdiction of the Whatcom County Shoreline Management Program.
5. Construction and/or demolition debris shall be wholly removed from water/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.
6. Use of heavy equipment shall be limited to previously impacted surfaces to the extent practicable within wetland areas to minimize compaction and other impacts to wetland soils and vegetation. Excavation spoils to be stockpiled for replacement within wetland areas shall be staged in upland locations and covered until ready for replacement.
7. Mitigation associated with temporary impacts to shoreline-associated wetlands shall be consistent with the Revised Critical Areas Assessment Report dated March 2009 by David Evans and Associates (DEA) along with the following additional provisions.
 - Upon re-vegetation of the affected areas within shoreline jurisdiction, DEA or another qualified professional shall submit a monitoring report documenting success of the mitigating

measures as proposed. The report shall be provided to the Whatcom County Shoreline Administrator and provided as soon as re-vegetation has occurred on the subject property but no later than one (1) year following completion of the site disturbance associated with the proposed shoreline project.

8. A revised stormwater and pollution protection plan (SWPPP) shall be submitted incorporating the following revisions as determined by WCPDS:

- Element #3 of the SWPPP plan shall be revised to protect downstream properties and waterways from increases in velocity and peak flow rates.
- The SWPPP shall indicate a Certified Erosion and Sedimentation Control Lead (CESCL) for the project including phone numbers, electronic mail addresses, and/or associated company information.

9. An erosion and sedimentation control (ESC) inspection shall be required at the beginning and at the end of the project. The ESC inspection at the beginning shall be performed prior to the commencement of any land disturbance activities. The ESC inspection at the end of the project shall be performed after all permanent ESC measures have been installed.

10. 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.

11. The use and location on the site shall not be modified or changed in any way without further approval of the Whatcom County Hearing Examiner.

12. The applicant shall comply with the attached conditions of the Division of Engineering's memo dated May 12, 2009, unless modified by the Division of Engineering or appealed to the appropriate agency.

13. The applicant shall comply with the conditions of the attached Whatcom County Plans Examiner's memo dated, May 14, 2009, unless modified by the Plans Examiner or appealed to the appropriate agency.

14. The applicant shall comply with the attached conditions of the Critical Areas Review Memo provided by Ms. Lyn Morgan Hill, Senior Planner dated April 27, 2009.

Report prepared by:

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

AND

Brenda Wilson
Senior Planner
Whatcom County Planning and Development Services