

**STAFF REPORT
WSDOT - EASTERN REGION
BACKFILL EXCAVATION – SR28 BYPASS**

TO: Douglas County Hearing Examiner
FROM: Douglas County Land Services Staff
RE: WSDOT, SP-09-05
DATE: March 8, 2010

I. GENERAL INFORMATION

Requested Action: An application for a shoreline substantial development permit. WSDOT is constructing a bypass for SR 28 to relieve congestion at the Grant Road Intersection. This application includes borrowing backfill material for the construction of a large retaining wall below Top Foods and other earthwork required for the project. The retaining wall and other earthwork is located inside the city limits of East Wenatchee and the City issued SDP-2009-01 on November 13, 2009.

Location: The subject property is located between SR 28 and the Columbia River within Section 14, Township 22N., Range 20 E., W.M., Douglas County, Washington.

II. SITE INFORMATION

Site Characteristics: The property slopes moderately to steeply down towards the river. The property is currently vacant.

Zoning and Development Standards: The subject property is located within the Waterfront Mixed Use (WMU) and General Commercial (G-C) Zoning Districts.

The WMU waterfront mixed use designation allows a mixture of uses including moderate to high density residential, recreational, and commercial activities to increase the variety of development opportunities where people can enjoy shopping, working, and living in the same area. This district takes advantage of the proximity to the Columbia River. There are three distinct neighborhood that have been designated as waterfront mixed use.

- A. Downtown Waterfront District. This area is envisioned to contain principally mid-rise, higher density residential development with a minor amount of services and retail to serve the immediate areas:
 1. Public access along the river would be provided;
 2. The relatively narrow amount of land available for development, as a result of the highway extension and dramatic topography might produce unusual building forms.

The purpose of the general commercial district encourages the development of commercial uses that will create varied job opportunities and provide services to the community that are not strictly retail in nature. This district will implement the General Commercial category of the comprehensive plan. The uses within this district may require large areas for customer parking, retail service, office establishments, limited outdoor activities, displays and other commercial activities. The businesses locating

within these areas often draw customers from the outlying areas rather than from a more limited trade area. This district is expected to be more automobile-oriented than the CBD district.

III. COMPREHENSIVE PLAN:

The Greater East Wenatchee Area Comprehensive Plan designates the property as Waterfront Mixed Use and General Commercial. The following goals and policies set forth in the comprehensive plan are relevant to this development:

TRANSPORTATION:

GOAL: Provide a balanced transportation system that meets the needs of the community by accommodating the movement of people, goods, and services at an optimum level of safety, economy and efficiency.

POLICY T-16: Design transportation facilities within the Greater East Wenatchee Area that minimize adverse environmental impacts resulting from both their construction and use.

LOS Standard 2: Travel time on Regional Mobility Corridors

Using the traffic model, existing travel times were determined for each corridor. The threshold was then set at a time equivalent to LOS D. Two corridors were forecast to be deficient in the Greater East Wenatchee Area are the Sunset Highway Corridor and Orondo St. in Wenatchee to Grant Road, via the George Sellar Bridge.

IV. SHORELINE MASTER PROGRAM

The Douglas County Shoreline Master Program classifies this portion of the Columbia River shoreline as an High Intensity. The purpose of the high-intensity environment is to provide for high-intensity water oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

A listing of the applicable policies and regulations are found in the analysis section of this staff report.

WASHINGTON ADMINISTRATIVE CODE (WAC)

WAC 173-27 provides updated rules for administering the Shoreline Management Act (RCW 90.58) and the local master program. WAC 173-27-150, establishes minimum review criteria for substantial development permits. This criteria states that a substantial development permit shall be granted only when the proposed development is consistent with:

- The policies and procedures of the Act;
- The provisions of this regulations; and
- The applicable master program adopted or approved for the area.

V. ENVIRONMENTAL REVIEW

WSDOT issued a Determination of Non-significance on May 4, 2007 in accordance with WAC 197-11-340(2). The comment period ended on May 18, 2007.

VI. AGENCY AND PUBLIC COMMENTS:

Applicable agencies have been given the opportunity to review this proposal. The following agencies have been sent copies of the proposal and have commented as indicated below:

Agency Notified	Response Received	Agency Notified	Response Received
WA Department of Ecology	2/10/10	Douglas County Transportation	2/8/10
WA Department of Natural Resources	2/1/10	Chelan County PUD	2/4/10
City of East Wenatchee	N/R	Colville Tribes	N/R
Army Corps of Engineers	N/R	WA Dept of Arch & Hist Pres	N/R
WA Dept of Fish & Wildlife	N/R	Douglas County PUD	N/R
Yakima Tribes	N/R		

* N/R = No Reply

Agency comments have been included as Attachment A.

No public comments were received at the writing of this staff report.

VII. PROJECT ANALYSIS

Upon review of the application materials, site plans, public and agency comments, the Greater East Wenatchee Area Comprehensive Plan, and applicable codes and requirements, planning staff offers the following analysis and recommendations for the subject application:

Comprehensive plan consistency:

The maintenance and improvement of the transportation system in Douglas County is the goal of the transportation element. The proposal is consistent with the goals and policies of the Greater East Wenatchee Area Comprehensive Plan.

Consistency with the Douglas County Shoreline Master Program

Excavation operations are a permitted use in the High Intensity shoreline environment.

4.1 ECOLOGICAL PROTECTION AND CRITICAL AREAS

POLICY 1: Shoreline use and development should occur in a manner that assures no net loss of existing ecological functions and processes and protects critical areas. Uses should be designed and conducted to avoid, minimize, or to fully mitigate in so far as practical, any damage to the ecology and environment.

The project will be located outside of the riparian buffer. Erosion and stormwater control will prevent impacts to the adjacent riparian vegetation and the Columbia River.

REGULATION 1: Mitigation sequencing – applicants shall demonstrate all reasonable efforts have been taken to mitigate potential adverse impacts in the following prioritized order:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
- b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
- c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project;
- d. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;
- e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- f. Monitoring the impact and the compensating projects and taking appropriate corrective measures.

The project will be located outside of the riparian buffer. Erosion and stormwater control will prevent impacts to the adjacent riparian vegetation and the Columbia River.

4.2 WATER QUALITY

REGULATION 3: Best management practices (BMP's) for control of erosion and sedimentation shall be implemented for all development in shorelines through an approved temporary erosion and sediment control plan, identified in the Stormwater Management Manual for Eastern Washington, as amended.

The application proposes to use best management practices to control erosion.

4.3 VEGETATION CONSERVATION

POLICY 1: 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. Disturbance of native plant communities should be avoided. Disturbed areas should be revegetated with native plant species appropriate to the soil and hydrologic conditions.

The project does not propose to disturb native shoreline vegetation. The area of excavation will disturb upland vegetation. The project proposes to revegetate the excavation site with native grasses.

REGULATION 4: Native vegetation clearing shall be limited to the minimum necessary to accommodate approved shoreline development.

The project does not propose to disturb native shoreline vegetation. The area of excavation will disturb upland vegetation. The project proposes to revegetate the excavation site with native grasses.

4.4 ARCHAEOLOGICAL AND HISTORICAL RESOURCES

POLICY 1: Prevent the destruction of or damage to any site having historic, cultural, scientific, or education value as identified by the appropriate authorities, including affected Indian Tribes, and the Washington State Department of Archaeology and Historic Preservation.

As conditioned, the proposal is consistent with this policy.

REGULATION 1: If archaeological resources are uncovered during excavation, developers and property owners shall immediately stop work and notify the local government, the Washington State Department of Archaeology and Historic Preservation and affected Indian Tribes.

As conditioned, the proposal is consistent with this regulation.

5.8 FILLING, GRADING AND EXCAVATION

POLICY 1: Filling, grading, 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 is encouraged.

The proposed excavation is in support of the construction of a large retaining wall below Top Foods and other earthwork required for SR 28 bypass. The retaining wall and other earthwork is located inside the city limits of East Wenatchee and the City issued SDP-2009-01 on November 13, 2009.

POLICY 4: Filling, grading and excavation should be located and developed so that water quality and hydrologic and runoff patterns are not altered.

Runoff patterns and water quality will not be altered by the proposed project.

REGULATION 1: Filling, grading, and excavation shall be minimized to the maximum extent practicable and only authorized along with approved shoreline use and development activities that are consistent with this program.

The amount of excavation is the minimum necessary to supply material for the project.

REGULATION 5: Filling, grading, 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.

As conditioned, the project area will blend physically and visually with the existing topography.

REGULATION 6: Cut and fill slopes shall generally be no steeper than one foot vertical for every three feet horizontal unless a specific engineering analysis has been provided certifying that the proposed slope is stable, and the Administrator determines that the fill blends physically and visually with existing topography.

Slopes will be no steeper than 3:1

REGULATION 7: A temporary erosion and sediment control (TESC) plan, consistent with the standards found in the Stormwater Manual for Eastern Washington, shall be provided for all proposed filling, grading and excavation activities.

A TESC plan, dated December 21, 2009 was submitted for the application/

Consistency with WAC 173-27 and RCW 90.58:

As conditioned below, the project appears consistent with the requirements and criteria of the Shoreline Management and Enforcement Procedures, and the Shoreline Management Act

Agency comments:

Agency comments from the Douglas County Transportation and WA Dept. of Ecology have identified mitigation or project design required for the shoreline permit. These comments have been included as conditions of approval to address these agency concerns.

VIII. RECOMMENDATION

As conditioned below, this application does not appear to be detrimental to the general public health, safety or welfare and meets the basic intent and criteria associated with Title 18 and 19 of the Douglas County Code, the Greater East Wenatchee Area Comprehensive Plan, and the Douglas County Shoreline Master Program. Staff recommends approval of SP#09-05, subject to the following findings of fact and conditions:

Suggested Findings of Fact

1. The applicant is WSDOT Eastern Region, PO Box 98, Wenatchee WA.
2. **General Description:** An application for a shoreline substantial development permit. WSDOT is constructing a bypass for SR 28 to relieve congestion at the Grant Road Intersection. This application includes borrowing backfill material for the construction of a large retaining wall below Top Foods and other earthwork required for the project. The retaining wall and other earthwork is located inside the city limits of East Wenatchee and the City issued SDP-2009-01 on November 13, 2009.
3. The subject property is located between SR 28 and the Columbia River within Section 14, Township 22N., Range 20 E., W.M., Douglas County, Washington.
4. The Comprehensive Plan Designation is Waterfront Mixed Use and General Commercial.
5. The subject property is located in the WMU and G-C zoning districts.

6. The Columbia River Shoreline section of the subject property is designated as "High Intensity" by the Douglas County Shoreline Master Program.
7. WAC 173-27-150 establishes minimum review criteria for Shoreline Management Substantial Development Permits. This criteria states that a substantial development permit shall be granted only when the development proposed is consistent with the policies and procedures of the Act; the provisions of this regulation; and the applicable master program adopted or approved for the area.
8. A Biological Assessment (PBA) dated April 26, 2005 was issued by WSDOT and updated on May 8, 2007.
9. A geologic risk assessment dated September 22, 2009 was submitted for the project. The assessment determined that the excavation work will pose no geologic risk to the area due to the type of soils and location of work.
10. A wetland reconnaissance date November 17, 2009 was submitted for the project. The reconnaissance determined that wetlands are not present in the project area. The study also determined that the riparian buffer for the subject property is 75 feet.
11. Comments from reviewing agencies have been considered and addressed where appropriate.
12. WSDOT issued a Determination of Non-significance on May 4, 2007 in accordance with WAC 197-11-340(2). The comment period ended on May 18, 2007.
13. Surrounding property owners were given the opportunity to comment on the proposals, can request a copy of the decision, and can appeal the decision subject to the requirements outlined in DCC Title 14.
14. Proper legal requirements were met and surrounding property owners were given the opportunity to comment on the proposal at a public hearing.
15. WAC 173-27-090 requires that construction must be commenced within 2 years of the effective date of the shoreline permit and that authorization for construction shall terminate 5 years after the effective date of the shoreline permit.
16. As conditioned, the development will not adversely affect the general public, health, safety and general welfare.

Suggested Conclusions:

1. As conditioned, the development meets the goals, policies and implementation recommendations as set forth in the Greater East Wenatchee Area Comprehensive Plan and the Douglas County Shoreline Master Program.
2. As conditioned, this proposal is consistent with applicable federal and state laws and regulations.
3. As proposed, revised, and conditioned, potential impacts of the project can be mitigated.
4. Public interests will be served by approval of this proposal.
5. As conditioned, the proposal is consistent with Title 18 "Zoning" and Title 19 "Environment" of the Douglas County Code.

Suggested Conditions of Approval

1. The project shall proceed in substantial conformance with the plans and application materials of file submitted on September 23, 2009, November 30, 2009, and January 5, 2010 except as amended by the conditions herein.
2. Prior to building permit issuance, the applicant shall obtain all necessary permits from agencies with jurisdiction. This may include, but is not limited to: the

Washington State Department of Fish and Wildlife (Hydraulic Project Approval), the United States Army Corps of Engineers Regulatory Branch (Section 10 &/or 404) the Washington State Department of Ecology (Section 401 Water Quality Certification), Washington State Department of Natural Resources Aquatic Use Authorization.

3. The applicant shall comply with all applicable local, state and federal regulations.
4. A copy of this permit and attached conditions shall be kept on-site and provided to the contractor and all others working within the shoreline area at all times. The applicant, contractor, machinery operators and all others working within the shoreline area shall have read this permit and attached conditions and shall follow its conditions at all times.
5. Should archaeological materials (e.g. bones, shell, stone tools, beads, ceramics, old bottles hearths, etc.) be observed during project activities, all work in the immediate vicinity should stop and the State Department of Archaeology and Historic Preservation, the County planning office and the affected Tribe(s) should be contacted immediately. If any human remains are observed, all work should cease and the immediate area secured. Local law enforcement, the Douglas County Coroner, State Physical Anthropologist, Department of Archaeology and Historic Preservation, the County planning office and the affected Tribe(s) should be contacted immediately. Compliance with all applicable laws pertaining to archaeological resources and human remains is required.
6. The riparian buffer area shall be temporarily fenced between the excavation activity and the buffer with a highly visible and durable protective barrier to prevent access and to protect the buffer from erosion and siltation.
7. All grading and excavation shall conform to the recently adopted "Grading and Excavation Code, Ordinance No. TLS 09-01-04B.
8. The applicant shall be responsible for preventing mud, dirt, and debris from leaving the site, including stormwater runoff from being tracked or otherwise discharging onto the public right-of-way or adjacent properties.
9. A Temporary Erosion Sediment Control Plan (TESC) has been submitted for the proposed project. This plan shall be maintained on-site at all times and modified as necessary to address erosion issues as they arise. Additional erosion controls shall be implemented as necessary to prevent sediment from leaving the site.
10. Development for this proposal exceeds 1 acre of disturbed ground. This meets the threshold used by the Washington State Department of Ecology in administering their General Permit to Discharge Storm Water Associated with Construction Activity. The permit shall be obtained prior to beginning ground-breaking activities. Acquisition of permits is the responsibility of the applicant.
11. The final slopes shall be no steeper than 3:1.
12. The project area shall be contoured to the existing grade at the upstream and downstream ends so as to not give the appearance of a excavated pit.
13. Where a condition imposed herein may be found inconsistent with the requirements of the Washington State Department of Fish and Wildlife, HPA Permit, or permitting issued by the United States Army Corps of Engineers, the Douglas County Land Services Director shall have discretion to allow for project redesign consistent with the approvals granted by said agencies; if the redesign can be found consistent with the Douglas County Code, the Shoreline Master Program, and the Shoreline Management Act.
14. Substantial progress toward construction of the project for which this permit has been granted must be accomplished within two (2) years of the filing date of this

permit. Authorization to conduct development activities granted by the permit shall terminate five (5) years from the filing date of the permit.

Respectfully Submitted,

Curtis Lillquist, A.I.C.P.
Senior Planner

Attachments