Pacific County
HEARINGS EXAMINER

March 27th, 2024

WA State Parks & Recreation Commission
ATTN: Hannah Ross
P.O. Box 42650
Olympia, WA 98504-2650

RE: Shoreline Variance & Substantial Development Shoreline Conditional Use, Application No. P2300919 & P2400012- **APPROVED** Tax Parcel ID No.: 09110800001

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the March 18th, 2024 hearing to approve the above referenced application. Enclosed you will find a copy of the decision that includes the Findings of Fact and Conclusions of Law. The complete case file is available for review Monday through Thursday, 7:30 a.m. - 12:00 p.m. / 1:00 p.m. – 3:00 p.m., at our Long Beach office. Please contact me to set up an appointment to ensure that we are able to assist you.

The Hearings Examiner decision is final and conclusive unless an appeal is filed in accordance with RCW 36.70C. If no appeal is filed within the 21-day appeal period, the project is allowed to proceed once all other permits have been obtained.

The enclosed invoice is a result of the hearing as determined by the Hearing Examiner. If you have permits pending as a result of this hearing, they cannot be issued until the balance is paid. Any outstanding balance will be forwarded to collections if not paid within 30 days from the date listed above.

If you have any questions, please do not hesitate to contact me at 360-642-9382 or via email zjohnson@co.pacific.wa.us.

Sincerely,

Zane Johnson
Planner
Enclosure

c: Parties of Record
Parcel File

March 26, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2300919

Subject property: Parcel # 09110800001, Cape Disappointment State Park.

Applicant: Hannah Ross on behalf of Washington State Parks and Recreation Commission

Hearing: March 18, 2024, 7013 Sandridge Road, Long Beach, Washington, and over the internet via a Zoom meeting.

Witness:
Zane Johnson, Planner, Pacific County Department of Community Development (DCD)

Documentary Evidence:
DCD application packet, including application and related documents.

Summary of Application and Testimony

This is an application for a variance to allow construction and improvements to a road running through a wetland in a state park. The Parks Commission would replace two culverts by significantly larger culverts. They would repair the road and add a foot path to the side of the road. They propose to mitigate the damage to the wetland by purchasing .429 credits at the Long Beach Mitigation Bank.

Zane Johnson repeated the request from his report and stated its conclusion to approve the request. He adopted the report and its supplementary documents into evidence.

Hannah Ross attended the hearing but did not testify.

Findings of Fact

The Washington State Parks and Recreation Commission (henceforth, "Parks") seeks to improve a roadway from the entrance of Cape Disappointment State Park to its Ft. Canby camping area, Parcel # 09110800001, 248 Robert Gray Drive. The narrow road cuts through a Category II wetland. Silt obstructs the two culverts under this road that link the north and south wetlands. They wish to replace the culverts with much larger concrete culverts. These would be more easily maintained and would

better link the north and south wetland habitats. Parks wants to repair the road that has been damaged by soil subsidence. Finally they want to expand the area intruding into the wetland to accommodate a five-foot wide footpath along the road. Hiking trails link to the road and this is a major footpath from the interior of the park out to the beach area through the coastal wetlands. Currently camping traffic, tourist traffic, and pedestrians must share the narrow road.

Parks proposes to mitigate the damage to the wetland by purchasing .429 credits from the Long Beach Mitigation Bank, a 1.3:1 mitigation ratio for the .33 acre of wetland impacted.

The proposed site is in the Coastal Conservancy shoreline designation of the Pacific County Shoreline Master Program (SMP).

Conclusions of Law

The Pacific County Shoreline Master Program, Ordinance 192, places this property in the Coastal Conservancy designation, § 3.2.E.2.

Ordinance 192 §4.2.B.2 states that "Critical areas, critical area buffers, and shoreline buffers that are within shoreline jurisdiction are regulated by the Critical Area and Resource Lands (CARL) Ordinance Number 193, adopted June 20, 2023, which is herein incorporated by reference into this SMP, with the following clarifications and modifications: a. The following provisions in the CARL do not apply: . . . v. Variance (CARL Section 3.I)."

Because the CARL variance procedure specifically does not apply, the SMP variance procedure, §8.6 does.

Ordinance 192, § 8.6.A states

> The review authority shall have authority to grant a variance from the bulk, dimensional or performance standard provisions of this Master Program, provided that any variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the limitations upon other property in the vicinity and in the designated environment in which subject property is situated.

There was no evidence presented for any comparison whether other similar applications had been permitted or denied in the vicinity. Therefore there is no factual basis from which to determine whether granting the variance would be a "grant of special privilege."

Section B states, "Before any variance is granted, all applicable criteria listed under WAC 173-27-170, as amended, must be satisfied."

WAC 173-27-170 (1) states, "Variance permits should be granted in circumstances where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown and the public interest shall suffer no substantial detrimental effect."

RCW 90.58.020 states:

> It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.
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> The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:
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> (1) Recognize and protect the statewide interest over local interest;
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> (2) Preserve the natural character of the shoreline;
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> (3) Result in long term over short-term benefit;
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> (4) Protect the resources and ecology of the shoreline;
>
> (5) Increase public access to publicly owned areas of the shorelines;
>
> (6) Increase recreational opportunities for the public in the shoreline;
>
> (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

The extraordinary circumstances are that the entirety of the proposed construction would be in a Category II wetland and so no development would be possible without a variance. A safe road and trail to the coast shoreline is in the public interest. Preserving Category II wetlands is in the public interest. With the appropriate mitigation there is no detrimental impact to the public interest. This development conforms to the policies enumerated in RCW 90.58.020.

WAC 173-27-170 (2) states

Variance permits for development and/or uses that will be located landward of the ordinary high water mark (OHWM), as defined in RCW 90.58.030 (2)(c), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes, or significantly interferes with, reasonable use of the property;

Strict application of the standards set forth in the SMP would prevent alteration of the existing road and culvert. If the road and culvert were not fixed, or abandoned, they would slowly erode into the adjacent wetlands. This would prevent use of the very popular Ft. Canby campground and thus significantly interfere with the reasonable use of this property.

WAC 173-27-170 (2)(b) states, "That the hardship described in (a) of this subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions;"

The hardship described in (a) is related to the feature of its being entirely in wetland. The petitioners did not create this hardship, unless developing the property is the creation of the hardship.

WAC 173-27-170 (2)(c) states, "That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment;"

The uses within the area of the project site are those of a major state park. The proposed variance would allow the continued authorized use of the road and its function in allowing park visitors to traverse a wetland to enjoy the authorized uses along the coastal shoreline. The proposed new footpath would cause adverse impacts to the shoreline environment – it would be built in a Category II wetland. However, with sufficient mitigation the public safety of not having pedestrians and recreational vehicles sharing the same narrow road outweighs the environmental impacts

WAC 173-27-170 (2)(d) states, "That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;"

As explained above, this variance will not constitute a grant of special privilege. There has been no evidence submitted concerning other similar requests. There are no neighbors seeking to improve a road to provide access to a public state park.

WAC 173-27-170 (2)(e) states, "That the variance requested is the minimum necessary to afford relief;"

While the proposed adjacent footpath could be eliminated, there is no easy bright-line rule in this situation to determine what is "minimum necessary." Minimum necessary for any access to the beach campground, or minimum necessary for safe access for trucks and pedestrians?

WAC 173-27-170 (2)(f) states, "That the public interest will suffer no substantial detrimental effect."

The impact to the shoreline and wetlands will be minimal. This grant of a variance does not create a slippery slope that would lead to any substantial adverse impacts.

WAC 173-27-170 (3), to the extent that it is relevant, repeats criteria from elsewhere in that regulation, except for sub-(c) "That the public rights of navigation and use of the shorelines will not be adversely affected." The proposed variance has no effect on public rights of navigation or use of the shoreline.

WAC 173-27-170 (4) states

> In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

There is no apparent cumulative impact to the granting of this variance.

The proposed mitigation package appears reasonable, purchasing .429 credits to reflect a 1.3:1 mitigation ratio for impacting .33 acres of permanent wetland.

The property is within the Conservation Land Use Zoning District and Public Preserve Comprehensive Plan Designation and the proposed development is permitted there. The property is outside the FEMA floodplain. It is exempt from SEPA.

The Pacific County Department of Community Development complied with the notice requirements of Pacific County Ordinance 177.

All findings of fact that are also conclusions of law shall be deemed as such. All conclusions of law that are also findings of fact shall be deemed as such.

The application for a variance is approved.

Conclusion

The application is approved with the conditions that:

The development complies with all other county and state regulations and that the applicants receive all necessary permits prior to construction including that from the US Army Corps of Engineers and the Washington State Department of Ecology.

The permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-24-130, as amended, or until all review proceedings initiated within 21 days from the date of such filings have been terminated, except as provided in RCW 900.58.140(5)(c) and (d).

Proof of credit purchase from the Long Beach Mitigation Bank will need to be recorded with the Pacific County Auditor's Office and a copy of that recorded document must be submitted to Pacific County Department of Community Development prior to the issuance of permits.

Please note that any appeal of this decision shall comply with the requirements of RCW 36.70C. The deadline for filing any appeal is both swift and definite. If you have any questions concerning this deadline or the appeals process, please consult an attorney.

Signed this 26th day of March, 2024.

Eric Weston, Hearings Examiner

March 26, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400012

Subject property: Parcel # 09110800001, Cape Disappointment State Park, 248 Robert Gray Drive, Ilwaco.

Applicant: Hannah Ross on behalf of Washington State Parks and Recreation Commission

Hearing: March 18, 2024, 7013 Sandridge Road, Long Beach, Washington, and over the internet via a Zoom meeting.

Witness:
Zane Johnson, Planner, Pacific County Department of Community Development (DCD)

Documentary Evidence:
DCD application packet, including application and related documents.

Summary of Application and Testimony

This is an application for a substantial shoreline development conditional use permit to allow construction and improvements to a road running through a wetland in a state park. The Parks Commission would replace two culverts by significantly larger culverts. They would repair the road and add a foot path to the side of the road. This requires a conditional use permit for the fill, excavation and grading to accomplish the renovation of the road and the installation of a new foot-path. They propose to mitigate the damage to the wetland by purchasing .429 credits at the Long Beach Mitigation Bank. This is a companion to their request for a conditional use permit, DCD # P2400012

Zane Johnson repeated the request from his report and stated its conclusion to approve the request. He adopted the report and its supplementary documents into evidence.

Hannah Ross attended the hearing but did not testify.

Findings of Fact

The Washington State Parks and Recreation Commission (henceforth, "Parks") seeks to improve a roadway from the entrance of Cape Disappointment State Park to its Ft. Canby camping area. The narrow road cuts through a Category II wetland. Silt obstructs the two culverts under this road that link the north and south wetlands. They wish to replace the culverts with much larger concrete culverts. These would be more easily maintained and would better link the north and south wetland habitats. Parks wants to repair the road that has been damaged by soil subsidence. Finally they want to expand the area intruding into the wetland to accommodate a five-foot wide footpath along the road for approximately 1,000 feet. Hiking trails link to the road and this is a major footpath from the interior of the park out to the beach area through the coastal wetlands. Currently camping traffic, tourist traffic, and pedestrians must share the narrow road.

Parks proposes to mitigate the damage to the wetland by purchasing .429 credits from the Long Beach Mitigation Bank, a 1.3:1 mitigation ratio for the .33 acre of wetland impacted.

The proposed site is in the Coastal Conservancy shoreline designation of the Pacific County Shoreline Master Program (SMP).

Conclusions of Law

The Pacific County Shoreline Master Program, Ordinance 192, places this property in the Coastal Conservancy designation, § 3.2.E.2.

Table 5.1 of Ordinance 192 states that "fill and excavation" in a Coastal Conservancy environmental designation requires a conditional use permit.

Ordinance 192, § 8.5.A states

> Any use activity or development not specifically permitted, prohibited, or classified by this Master Program, or a proposed use activity or development listed as a conditional use, shall require a conditional use permit. The review authority may attach to the permit conditions, modifications and restrictions regarding the proposed development as are deemed necessary to assure consistency with this Master Program and assure no net loss of ecological processes or functions.

Section B states, "Before any conditional use permit is granted, all applicable criteria listed under WAC 173-27-160, as amended, must be satisfied."

WAC 173-27-160 (1) states, "Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the applicant

demonstrates all of the following: (a) That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;"

RCW 90.58.020 states:

> It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.
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> The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:
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> (1) Recognize and protect the statewide interest over local interest;
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> (2) Preserve the natural character of the shoreline;
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> (3) Result in long term over short-term benefit;
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> (4) Protect the resources and ecology of the shoreline;
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> (5) Increase public access to publicly owned areas of the shorelines;
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> (6) Increase recreational opportunities for the public in the shoreline;
>
> (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

The extraordinary circumstances are that the entirety of the proposed construction would be in a Category II wetland and so no development would be possible without a variance. A safe road and trail to the coast shoreline is in the public interest. Preserving Category II wetlands is in the public interest. With the appropriate mitigation there is no detrimental impact to the public interest. This development conforms to the policies enumerated in RCW 90.58.020.

WAC 173-27-160 (1)(b) states, "That the proposed use will not interfere with the normal public use of public shorelines;"

This proposed conditional use would not interfere with the normal public use of public shorelines. The public could not use the road during the construction period, but the public could use the shorelines.

(1)(c) states, "That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;"

The proposed use of the site and design of the project is to make the other authorized uses in the area – camping, hiking and other recreation – more useful. There was no evidence concerning planned future uses.

(1)(d) states, "That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;"

The fill, grading and excavation of this project will create significantly adverse effects to the 5' x 1000' of Category II wetland that the new pedestrian path will displace. However, the State's proposed mitigation of purchasing mitigation credits at the Long Beach Mitigation Bank will balance out those negative effects. The proposed mitigation package appears reasonable, purchasing .429 credits to reflect a 1.3:1 mitigation ratio for impacting .33 acres of permanent wetland.

(1)(e) states, "That the public interest suffers no substantial detrimental effect."

The repair of the road, the replacement of the culverts, and the creation of a new pedestrian path – accomplished by the proposed excavation, fill and grading – are all in the public interest.

WAC 173-27-160 (2) states that, "[I]n the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area."

There is unlikely to be similar additional requests for like actions. There are few other state parks in the area with similar needs.

The property is within the Conservation Land Use Zoning District and Public Preserve Comprehensive Plan Designation and the proposed development is permitted there. The property is outside the FEMA floodplain. It is exempt from SEPA.

The Pacific County Department of Community Development complied with the notice requirements of Pacific County Ordinance 177.

All findings of fact that are also conclusions of law shall be deemed as such. All conclusions of law that are also findings of fact shall be deemed as such.

The application for a conditional use permit is approved.

Conclusion

The application is approved with the conditions that:

The development complies with all other county and state regulations and that the applicants receive all necessary permits prior to construction.

The permit shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-24-130, as amended, or until all review proceedings initiated within 21 days from the date of such filings have been terminated, except as provided in RCW 900.58.140(5)(c) and (d).

Proof of credit purchase from the Long Beach Mitigation Bank will need to be recorded with the Pacific County Auditor's Office and a copy of that recorded document must be submitted to Pacific County Department of Community Development prior to the issuance of permits.

Please note that any appeal of this decision shall comply with the requirements of RCW 36.70C. The deadline for filing any appeal is both swift and definite. If you have any questions concerning this deadline or the appeals process, please consult an attorney.

Signed this 26th day of March, 2024.

Eric Weston, Hearings Examiner