Pacific County
HEARINGS EXAMINER

May 28th, 2024

Washington State Parks and Recreation Commission
Attn: Hannah Ross
P.O. Box 42650
Olympia, WA 98505-2650

RE: CARL Variance Permit, Application No. P2400326 - Approved
Tax Parcel ID No.: 09110550002

Dear Property Owner/Applicant:

The Pacific County Hearings Examiner acted at the May 13th, 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.

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

May 25, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400326

Subject property: Parcel #09110550002, Cape Disappointment State Park, 248 Robert Gray Drive, Ilwaco.

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

Hearing: May 13, 2024, 7013 Sandridge Road, Long Beach, Washington, and over the internet via a Zoom meeting.

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

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

Summary of Application and Testimony

This is an application for a variance to allow construction of a new welcome center, driveway and associated parking lot that would impact 896 square feet of Category II and III wetlands and 19,668 square feet of wetland buffers.

Senior Planner Zane Johnson testified, stating the request and proposed conclusions.

Hannah Ross was present to answer questions but did not testify.

Findings of Fact

The United State Corps Army Corps of Engineers own Cape Disappointment State Park, Pacific County tax parcel 0911055002, with the address of 248 Robert Gray Drive, Ilwaco. The Washington State Parks Commission manages the operation of the park. The park has existed since the early 1900s. The current welcome center with its parking lot and driveway are located within a network of eleven separate Category II and III wetlands with their associated buffers. Parks has applied to remove and replace this complex of welcome center, parking lot, and roadway to improve traffic flow, improve parking, improve pedestrian safety, and reduce the

impact to those wetlands and buffers. More particularly, this project would impact approximately 896 square feet of Category II and III wetlands and approximately 19,668 square feet of buffers. The building site is encumbered by a network of three Category I wetlands, two Category II wetlands, and six Category III wetlands with their associated buffers. Parks proposes to fill a portion of the wetland to allow this construction. The project would also temporarily impact an additional 16,436 square feet of wetland buffers during this construction. The removal of the current development would allow Parks to mitigate the new construction by re-establishing and enhancing 37,042 square feet of wetland and 39,903 square feet of wetland buffer in this site. They plan to monitor and report on the mitigation for a five-year period.

The project site is mostly developed now, with a large grassy flat field surrounding the existing welcome center, entrance driveway, parking area, and exiting roadway.

The proposed mitigation plan would restore much of this area back to wetland and buffers by removing compacted gravel roads, campground surfaces and concrete foundations and by restoring the elevations back to those of neighboring wetlands.

The proposed mitigation of the wetlands and buffers would be far beyond the required ratios.

Conclusions of Law

I have jurisdiction to hear this proposal. The CARL Ordinance 193 §3.I.1 states, "The Administrator shall process variance requests according to a Type II procedure delineated in Ordinance 177. The burden of proof shall be on the person requesting the variance to bring forth evidence in support of the variance." Section 3.I.2 sets the criteria. "The Administrator shall grant a variance if the person requesting the variance demonstrates that the requested variance conforms to all of the criteria set forth below:"

a. (S)pecial conditions and circumstances exist that are peculiar to the land;

The subject property is nearly entirely encumbered by a wetland or wetland buffer. Little development is possible on parcel 09110550002 without a variance.

b. (L)iteral interpretation of the provisions of this Ordinance would deprive the person seeking the variance of rights commonly enjoyed by other properties conforming to the terms of this Ordinance;

Literal interpretation of the provisions of Ordinance 193, without a variance, would deny further development on this property, even development that creates a net gain of ecological functioning. The improvements to be removed existed before the CARL ordinance. There was no evidence of similarly situated people or property

from which to discern whether this would be a deprivation. If this variance were denied but another similar application was granted, it would be a deprivation of right commonly enjoyed by others.

> c. (T)he special conditions and circumstances do not result from the actions of the person seeking the variance;

The special conditions and circumstances are inherent in the subject property and do not result from the actions of the applicants.

> d. (T)he granting of the variance requested will not confer on the person seeking the variance any special privilege that is denied by this Ordinance to other lands, structures, or buildings under similar circumstances;

The answer to this criterion is similar to that of "b" above. There have been no other properties or requested variances offered into evidence from which to compare. If this application were granted, it might create a new 'floor' for similar requests but that is inchoate. There is no evidence that any similarly situated applicant was previously denied.

> e. (T)he variance requested is the minimum necessary to afford relief;

The relief requested is a new entrance to the park, with a welcome center, parking, and better traffic flow. The applicant proposes to mitigate the impact to the wetlands and buffers by remediating much of the impacts created by the existing development before there was a CARL ordinance. There would be a net gain of ecological functioning in this critical area, and thus the variance requested is the minimum necessary to afford relief.

> f. (T)o afford relief the requested variance will not create significant impacts to critical areas and resource lands and will not be materially detrimental to the public welfare or contrary to the public interest.

The requested variance does not create significant impacts to critical areas and resource lands. In fact it restores critical areas to their natural state. There is a net gain of ecological functioning. This is a material benefit to the public welfare and public interest.

The applicant has met its burden of proof set by Ordinance 193.

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

Conclusion

The application is approved with the conditions that:

1. The development complies with all other county and state regulations;

2. The applicants receive all necessary permits prior to construction including those required by the US Army Corps of Engineers and the Washington State Department of Ecology;

3. The applicant must submit a copy of the As-Built Installation plan, prepared by a professional, to Pacific County prior to any building permits being finalized on the property;

4. The applicant must mitigate the impacts to the wetlands and buffers as detailed in its mitigation report that was submitted in its application. The applicant must submit the monitoring reports for five years as per the plan; and

5. The applicant must record the variance decision on the title and provide proof of recording to the Pacific County Department of Community Development prior to issuance of the permit once the appeal period has concluded.

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).

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 25th day of May, 2024.

ERIC WESTON

Eric Weston, Hearings Examiner