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: Substantial Shoreline Development Permit, Application No. P2400193 - Approved
Tax Parcel ID No.: 09110800001 & 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 28, 2024

Pacific County Hearing Examiner's Decision

Permit application: P2400193

Subject property: Parcels # 09110800001 and 09110550002, 248 Robert Gray Drive, Ilwaco. Cape Disappointment State Park boat launch area.

Applicant: Hannah Ross on behalf of Washington State Parks and Recreation Commission (Henceforth, "Parks")

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

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

Physical Evidence
DCD application packet, including application and related documents.

**Summary of Application and Testimony**

The Washington State Parks and Recreation Commission applied to convert approximately 600 linear feet of one lane of a two-lane bidirectional road into a paved pedestrian trail. The sole remaining vehicle lane would then become part of a loop road to and from the boat launch area.

Zane Johnson testified, stating the State's request, summarizing his conclusions, and entering his report and its accompanying documents into the record.

Hannah Ross was present but did not testify.

**Findings of Fact**

Washington State Parks and Recreation and the U.S. Army Corps of Engineers own Cape Disappointment State Park. There is currently a road east from State Route 100 to a boat launch area to Baker Bay in the day use area of the park. Parks has applied to convert approximately 600 linear feet of one lane of this road into a pedestrian trail, separated from the road and linking to the existing Three Waters pedestrian trail. This trail currently ends in the driving lane. The proposed pedestrian path would extend the Three Waters trail to another existing trail. Parks

would convert the remaining vehicular lane of the road into a looping access to and from the boat launch area.

The construction would be entirely in the existing footprint of the road and within 200 feet of the Columbia River. The trail would be approximately seven feet wide, made of concrete and oyster shell.

**Conclusions of Law**

Ordinance 192 §8.3 states that

> No authorization to undertake use or development on shorelines of the state shall be granted by Pacific County unless upon review it is determined that the proposed development is consistent with the policy and provisions of the Act and this Master Program.

The property of this permit application is within 200 feet of the Columbia River at a boat launch area into Baker Bay. Ordinance 192 §3.2.D.2 defines this particular area as "High Intensity."

> A "high intensity" environment designation shall be assigned to those shoreline areas owned or managed by the public Ports of Pacific County or other areas that support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses (e.g., Bay Center, Tokeland).

Section 5.1 sets a matrix table of various modifications to the various Shoreline Environment Designation regions. The proposed construction is "Recreational Development, water-oriented." By this table, where water-oriented recreational development intersects the High Intensity designation, the modification requires a permit. Ordinance 177 §3.4 states that Commercial (non-Residential) Development requires a Type III hearing, thus this hearing examiner's jurisdiction over the application.

Ordinance 192 §8.4.B sets review procedures and criteria.

Section 8.4.B.3 states that, "The review authority shall make its decision by applying the review criteria for substantial development permits . . . that are contained in WAC 173-27-150 . . . as amended."

WAC 173-27-150 states,

> (1) A substantial development permit shall be granted only when the development proposed is consistent with:
>
> (a) The policies and procedures of the act;
>
> . . .

"The act" to which this regulation refers is Title 90.58 RCW, the Shoreline Management Act of 1971. 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.

Cape Disappointment State Park is a jewel among the state's recreational facilities and improving safe pedestrian access is a reasonable appropriate use of the shoreline property.

RCW 90.58.020, continued,

> 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. The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance.

The proposed pedestrian path promotes and enhances the public interest. The trail will keep pedestrians from having to share a roadway with vehicles towing boats on trailers. It will link existing trails to the recreational benefit of park attendees. This proposal infringes on no one's rights and is beneficial to all.

RCW 90.58.020, continued,

> In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

The proposed substantial development permit would encourage a use unique to and dependent upon the state's shoreline, Baker Bay of the Columbia River, one of the nation's finest intersections of historic and recreational interest.

RCW 90.58.020, continued,

> Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

This project was designed to eliminate any damage to the ecology and environment of the shoreline area. Because the pedestrian trail will be constructed in the existing roadway there will be no environmental degradation to the site. There will be no interference with the public's use of the water once the construction ends.

WAC 173-27-150 continued,

> (1) A substantial development permit shall be granted only when the development proposed is consistent with:
>
> . . .
>
> (b) The provisions of this regulation; and
>
> (c) The applicable master program adopted or approved for the area. . . .

This substantial development permit is consistent with the applicable master program. Ordinance 192 §5.18.A states eleven policies:

> 1. Encourage diverse recreational opportunities in shoreline areas that can support such use and development without risk to human health, safety, and/ or security, and without adverse effects on shoreline functions, processes, values, private property rights, and/or neighboring uses.

The proposed pedestrian trail construction encourages recreational opportunities in this shoreline area, improving health and safety. It will have no adverse effect on the shoreline functions, values, or neighboring uses. There is no private property in the area.

> 2. Recognize that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public.

The proposed pedestrian trail construction has no net loss of ecological function, has no significant adverse impact on the aesthetic quality of the shoreline, and does not conflict with navigation or other water-dependent uses.

> 3. Preserve and enhance existing parks.

The proposed pedestrian trail is an enhancement of an existing park.

4. Provide for both active and passive recreational needs when developing recreational areas.

The proposed trail construction encourages active recreation of hiking while not significantly impeding the passive recreation of being driven by a boat launch.

5. Active shoreline recreational access, developments, and opportunities should be allowed to expand only in those areas already used for such purposes or on those shorelines environmentally capable of supporting such activities.

This proposed trail expands into an existing footprint of a road. There will be no apparent pollution or damage to the environment. This shoreline environment has demonstrated capability of supporting this activity.

6. Encourage the linkage of shoreline parks, recreational areas, and public access points with linear systems, such as hiking paths, bicycle paths, easements and/or scenic drives..

This proposal links existing pedestrian trails while keeping people safe from existing traffic.

7. Support other governmental and non-governmental efforts to acquire and develop additional shoreline properties for public recreational use.

Not applicable.

8. Locate and design recreational developments to preserve, enhance, or create scenic views and vistas.

The proposed trial enhances scenic views and vistas by protecting people from vehicular traffic, allowing them to focus on the view and not the traffic.

9. Design and locate recreational uses and facilities to ensure no net loss of shoreline ecological functions.

Because the proposed trail would be constructed in the existing footprint of a vehicular roadway, there would be no not loss of ecological function in this shoreline area.

10. Develop, as an economic asset, the recreation industry along shorelines in a manner that will enhance public enjoyment.

The proposed trail would be an economic asset to the recreation industry drawing people to enjoy the public park along the shoreline.

11. Encourage maintenance, but not expansion, of existing public access points for beach driving, and recognize that the number of public access points at North Cove, Seaview, Long Beach, Klipsan Beach, Ocean Park, and Oysterville is sufficient to meet existing demand. Discourage additional public access points for beach driving.

The proposed transformation of one lane of vehicular travel into one lane of pedestrian trail has no impact on beach driving.

Ordinance 192 §5.18.B.1 – 4 provides a list of requirements for recreational development. The proposed development:

1. Is designed and located to take maximum advantage of and enhance the natural character of the shoreline area, ensuring no net loss of shoreline ecological function. The construction will be within existing development. The lure of the trail will be to enjoy the natural character of the shoreline area.

2. Is located, designed and operated consistent with the purpose of the environmental designation in which it is located, the high-impact recreational area. There will be no adverse impacts to mitigate.

3. Is designed to allow the greatest use of its proximity to the water - providing viewing areas - and is compatible with the aesthetic quality of the site and character of the local environment.

4. Is designed to relate primarily with water-oriented recreational activities – hiking around the bay. There is no non-water-oriented activity in this proposal.

5. Is designed to protect public health, by keeping pedestrians from distracted drivers. Parks is likely to provide trash cans as they have throughout the park.

Ordinance 192 §5.18.B.6 states: "Review of proposed shoreline recreation development shall consider:"

a. Impact of the activities and development on the existing shoreline environment;

The proposed conversion of a vehicular traffic lane into a pedestrian trail will have no impact on the development of the existing shoreline environment. It will impact the activity in this environment by making it safer and thus more attractive to responsible use of the area.

b. Impact of the activities and development on the adjacent and nearby shoreline environment and land and water uses;

The proposed pedestrian trail should have limited impact on the adjacent shoreline environment. By its design it encourages people to stay on the easy trail rather than bushwhack through protected shoreline environments.

> c. Demand for recreation. Applicants shall estimate growth projections and evaluate level-of-service standards established by the comprehensive plan or parks, recreation, and open space plan;

The report and application are devoid of growth projections or evaluations of level-of-service standards. Despite the mandatory language of this provision, the lack of such analysis by Parks is not fatal to this application. This hearings examiner takes judicial notice that the boat launch facilities have inherent limitations on traffic volumes and that a loop for vehicular traffic would not impede use because the launch area is the bottle-neck. This hearings examiner takes judicial notice that the linkage of trails expands the potential use of the individual trails, providing greater opportunities for recreation in this shoreline area.

> d. The necessity and extent of alteration of the shoreline environment to meet design objections and requirements;

The proposed hiking trail conversion will not alter the shoreline environment.

> e. The proximity to and impact upon required public utilities and services.

The proposed trail will have no impact on public utilities and services. The remaining vehicle lane should provide sufficient access to emergency service vehicles if it retains a shoulder onto which blocking traffic can move onto.

Ordinance 192 §5.22 regulates development of Transportation and Parking. The proposed development does not add parking or vehicular transportation. To the extent that the proposal removes a vehicular lane, that removal has no deleterious effect on the shoreline ecology or environment. Section 5.22.4 encourages trail and bicycle paths where measures are included to address pollution impacts from the activity. The proposal would create a net gain of ecological protection by transforming part of a road into a trail.

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

Washington State Parks and Recreation has proved by a preponderance of the evidence that its application meets all the requirements of a Substantial Shoreline Development Permit and thus the permit is granted.

**Conclusion**

Because the applicant, Washington State Department of Parks and Recreation, has proven by a preponderance of the evidence that it has complied with the criteria established by Pacific County Ordinance 192 (Shoreline Master Program) and WAC 173-27-150, the application for a Substantial Development Permit to allow the removal of a vehicular lane and its replacement by a pedestrian trail is approved with the following conditions:

The project shall remain consistent will all of the SMP sections outlined in the DCD report and in its application and materials presented in support.

Any other required state and federal permitting shall be completed prior to initiating the project.

The proposed project shall adhere to all applicable, local, state and federal laws.

Pacific County may revoke this permit if permittee fails to comply with the conditions listed.

The permit shall not begin and is not authorized until at least 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 90.58.140(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 strict deadline or the appeals process, please consult an attorney.***

Signed this 25th day of May, 2024.

Eric Weston, Hearings Examiner