



# Skamania County

## Community Development Department

Building/Fire Marshal • Environmental Health • Planning

Skamania County Courthouse Annex

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### STAFF REPORT AND RECOMMENDATION TO THE HEARING EXAMINER

**PROJECT:** Swift Reservoir Spillway Access Improvements

**FILE NO:** SHR-19-01

**REQUEST:** The applicant (PacifiCorp) requests a Shoreline Substantial Development Permit and Shoreline Variance in order to improve access to an existing spillway on Swift Reservoir by adding permanent steel stairs, platforms and ladders for inspection, maintenance and repair of the spillway. Equipment will be attached to the existing structure.

<b>APPLICANT:</b>	Brett Horton, PacifiCorp
<b>PROPERTY OWNER:</b>	PacifiCorp, 825 NE Multnomah Street, Suite 1800, Portland, OR (Flowage Easement from State of Washington)
<b>LOCATION:</b>	A parcel in the NW ¼ of the SW ¼ of Section 28, T7N, R5E of the W.M. Swift #1 Powerhouse.
<b>PARCEL NO.:</b>	07-05-28-0-0-0108-00
<b>ZONING:</b>	Swift Recreational (SR)
<b>COMPREHENSIVE PLAN DESIGNATION:</b>	Swift Recreational (SR)
<b>SHORELINE DESIGNATION:</b>	Conservancy
<b>PARCEL SIZE:</b>	Approximately 30.15 acres

#### PROJECT DESCRIPTION:

The project area is located at the west end of the Swift Reservoir in northern Skamania County, at the Swift Dam (Swift No. 1) which was constructed in 1958 as part of the Lewis River Hydroelectric project. The dam and spillway are owned and operated by PacifiCorp, the applicant. The spillway connects the reservoir with the historic Lewis River channel.

The proposal improves worker access to the spillway for inspection, maintenance, and repair. The existing facility has limited access. While an existing stairway is located on the south side of the spillway and a ladder is located in the center spillway pier, maintenance staff still must either access the spillway from the bottom or rappel down to their work areas. The proposal will include the installation of permanent steel stairs, platforms, and ladders. These facilities will be affixed to the existing concrete structure or located on the adjacent ground north or south of the spillway. All work will be located within the 50 ft. shoreline buffers for the Swift Reservoir and Lewis Rivers.

On the south side of the spillway an existing stairway will be extended down to a work platform near the spillway's tainter gate trunnions. On the northside where no access currently exists, a stairway and work platforms will be installed. The center pier includes a permanent ladder but does not access all work areas, so new permanent ladders will be installed, along with new work platforms on either side of the pier to access the trunnions. All new facilities will have properly designed railings, landings, and toe kicks as required to meet safety regulations.

The subject property is located in the Swift Recreational (SR) zone. The existing hydroelectrical facilities are allowable uses in this zone as semi-public utility systems and water resource management facilities.

While the proposal is located within the 100 ft. riparian buffer required under SCC 21A.04.020(C)(4) in the County's Critical Areas Ordinance, no Critical Areas review is required. The proposal is allowed without review as it expands an existing structure "one hundred percent or less of the original footprint" (SCC 21A.04.020(C)(2)). The proposal is not exempt for requirements under the County's Shoreline Master Program. A Shoreline Substantial Development Permit and Shoreline Variance is required for the proposal.

**ATTACHMENTS:**

(This report will be considered Exhibit 1)

Exhibit 2: Application Materials, including JARPA and attached figures – *Complete March 12, 2019*

Exhibit 3: Notice of Public Hearing – *Published in the Skamania County Pioneer on April 10, 2019, and April 17, 2019.*

Exhibit 4: Notice of Public Hearing – Mailed to agencies and adjacent property owners – *April 10, 2019.*

Exhibit 5: SEPA Determination of Nonsignificance – *April 11, 2019*

**SEPA:**

Skamania County issued a State Environmental Policy Act (SEPA) Determination of Nonsignificance (DNS) for the project on April 11, 2019 (Exhibit 5).

**NOTIFICATION:**

The Notice of Public Hearing was sent to the Skamania County Pioneer, the County's legal paper of record, for publication on April 10, 2019, and April 17, 2019 (Exhibit 3). Notice of the Hearing was sent to all adjacent property owners within 300 ft. of the project area and interested parties on April 10, 2019, and posted on the Community Development Department's webpage on that same day (Exhibit 4).

The following agencies were contacted:

- Washington State Department of Ecology
- Washington State Department of Fish and Wildlife
- Washington State Department of Natural Resources
- Washington State Attorney General
- US Army Corps of Engineers
- Yakama Indian Nation
- Nez Perce Tribe
- Confederated Tribes of the Umatilla Indian Reservation
- Confederated Tribes of Warm Springs Reservation
- Cowlitz Indian Tribe
- Lower Columbia Fish Recovery Board

**COMMENTS FROM THE PUBLIC AND AGENCIES:**

As of the date of this report, no public or agency comment has been received regarding this application.

**COMPREHENSIVE PLAN:**

The subject property is located within the Swift Subarea and is within the Swift Recreational (SR) land use designation. According to the Subarea Plan, the purpose of this designation is to promote recreation opportunities with the Swift Subarea, however the plan acknowledges that much of the land in this designation is owned by public or quasi-public agencies and allows semi-public utility systems and water resource management facilities.

The proposal is consistent with the Comprehensive Plan.

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**STAFF ANALYSIS OF APPLICABLE CODE CRITERIA:**

**TITLE 20**  
**SHORELINE MANAGEMENT**

*§ 20.04.050 – Substantial Development Permits*

- (A) *No substantial development shall be undertaken on the shorelines except those which are consistent with the Shorelines Management Act of 1971, and the County Master Program, and the regulations of this title*
  
- (B) *No substantial development shall be undertaken on the shorelines without first obtaining a substantial development permit in accordance with this title.*

**Findings:**

The proposed project meets the definition of “Substantial Development” as defined in Section 20.12.010(S) of this code as the estimated cost of the project exceeds the fair market value set by the State of Washington, \$7,047 as of September 2017. The applicant indicates that the approximate fair market value of the project is \$200,000.

A shoreline substantial development permit is required.

*§ 20.16.030 - Notice of Application*

- A. *Upon submittal and acceptance of a proper application for a permit, the Planning Department shall cause to be published notices of the application and public hearing for a permit at least once a week, on the same day of the week, for two consecutive weeks in a newspaper circulating and published within Skamania County.*
- B. *In addition, the Planning Department shall insure that additional notice of such application is given by at least one of the following methods:*
  - 1. *Mailing of the notice to the latest recorded real property owners as shown by the records of the County Assessor within at least three hundred feet of the boundary of the property upon which the development is proposed;*
  - 2. *Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or,*
  - 3. *Any other manner deemed appropriate by the Planning Department to accomplish the objectives of reasonable notice to adjacent landowners and the public.*

**Findings:**

A complete application was submitted on March 12, 2019 (Exhibit 2). The Notice of Public Hearing was sent to the Skamania County Pioneer, the County’s legal paper of record, for publication on April 10, 2019, and April 17, 2019. Notice of the Hearing was also sent to all adjacent property owners within 300 ft. of the project area and interested parties on April 10, 2019, and posted on the Community Development Department’s webpage on that same day.

*§ 20.16.040 - Application Distribution*

*The application for a permit and related information shall be submitted to the Hearing Examiner by the Planning Department for a public hearing at their first regular meeting after 30 days from the date of the last publication of the application for a permit.*

*§ 20.16.050 - Interested Parties*

*Within 30 days of the last publication of the notice of application for a permit, any interested person may submit his views on the application in writing to the Hearing Examiner, or may notify the Hearing Examiner of his desire to be notified of the action taken by the Hearing Examiner.*

**Findings:**

The last publication of the hearing notice was April 17, 2019. A public hearing is scheduled for May 20, 2019, which is the first hearing date more at least 30 days after April 17, 2019. The public may submit written comments up to the date of the hearing.

*§ 20.20.010 – Hearing Required*

*The Hearing Examiner shall hold a public hearing for all applications for permits under this title (Ord. 1980-02 '7.10).*

**Findings:**

A hearing before the Skamania County Hearing Examiner is set for Monday, May 20, 2019, at 5:30 PM.

*§ 20.20.020 – Granting or Denial of a Permit*

- (A) *At the public hearing scheduled for consideration of a permit by the Hearing Examiner, the Hearing Examiner shall, after considering all relevant information available and evidence presented, grant a substantial development permit only when the development proposed is consistent with:*
- 1. The policies and procedures of the act;*
  - 2. The provisions of Chapter 173-14 WAC;*
  - 3. The master program.*

**Findings:**

The County, in the Shoreline Master Program, has codified the policies and procedures of the act. Compliance with the Shoreline Master Program will assure compliance with the policies and procedures of the act. The project will be evaluated for compliance with the provisions of the Skamania County Master Program below.

*§ 20.20.040 – Variance Permit*

- (A) *The purpose of a variance permit is strictly limited to granting relief to specific bulk, dimensional or performance standards set forth in the Master Program where there are extraordinary or unique circumstances relating to the property such that the strict implementation of the Master Program would impose unnecessary hardships on the applicant, or thwart the policies set forth in RCW 90.58.020.*

**Findings:**

The Conservancy environment requires a 50 ft. setback from the OHWM for all buildings and structures. The proposal involves installation of access stairways, ladders, and platforms on the existing spillway structure that is already located within the 50 ft. setback and waterward of the OHWM. The proposed improvements must be located within the 50 ft. setback. Strict implementation would prevent the proposal from proceeding in any way.

- (B) *Variance permits should be granted in a circumstance where denial of the permit would result in a thwarting of the policy enumerated in RCW 90.58.020. In all instances extraordinary circumstances should be shown and the public interest shall suffer no substantial detrimental effect.*

**Findings:**

RCW 90.58.020 states in part:

*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:*

- (1) Recognize and protect the statewide interest over local interest;*
- (2) Preserve the natural character of the shoreline;*
- (3) Result in long term over short term benefit;*
- (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 proposal, while requiring a variance, is limited to improving an existing structure that is located within the required 50 ft. setback. The spillway is an integral part of PacifiCorp's Lewis River Hydroelectric project, allowing the utility to manipulate and control the water levels in the Swift Reservoir. The spillway allows for the release of excess water during flood periods, preventing damage to the dam or sudden large releases resulting from the dam being overtopped. The project will allow for continued maintain of the spillway, ensuring the safety of the maintenance workers and general public, and the historic Lewis River channel below the dam.

- (C) *Variance permits for development that will be located landward of the ordinary high water mark as defined in RCW 90.58.030(2)(b), except within those areas designated by the Department as marshes, bogs, or swamps pursuant to Chapter 173-22 WAC, may be authorized; provided that applicant can demonstrate all of the following:*
- 1. That the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes or significantly interferes with a reasonable permitted use of the property;*

**Findings:**

The proposal involves installation of access stairways, ladders, and platforms on the existing spillway structure that is already located within the 50 ft. setback, both landward and waterward of the OHWM. The Conservancy environment requires a 50 ft. setback from the OHWM for all buildings and structures, irrespective of their purpose. The spillway must necessarily be located in-water, the proposed improvements must be located within the 50 ft. setback also. Strict application of this setback would prevent the applicant from improving maintenance access to the existing spillway, which is a reasonable use of the property.

2. *That the hardship described in subsection C1 of this section 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;*

**Findings:**

The proposed improvements are to an existing structure developed by the applicant. While the applicant constructed the spillway in its location within the Swift Reservoir/Lewis River, the spillway must necessarily be located in-water to serve its intended function and therefore so must the improvements. Because of the Shoreline Master Program's strict 50 ft. setback requirement the proposal cannot proceed without a variance.

3. *That the design of the project will be compatible with other permitted activities in the area or qualify as a prior nonconforming use, and will not cause adverse effects to adjacent properties or the shoreline environment designation;*

**Findings:**

Water control devices and structures are permitted uses within the Conservancy environment. The spillway and proposed access improvements are allowable as permitted uses. Existing nearby development consists of hydroelectric power infrastructure operated by the applicant and the Cowlitz County PUD. Because the proposal involves minor improvements to the existing development, the proposal will not cause adverse effects to adjacent properties or the shoreline environment.

4. *That the variance authorized does not constitute a granting of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;*

**Findings:**

Adjacent development predates the County's Shoreline Master Program and therefore includes structural development within 50 ft. of the OHWM or in-water. The use is dependent upon an in-water location. Where possible, the proposed improvements will be mounted to the existing structure. Ground disturbance will be limited to the riprap immediately adjacent to the concrete spillway where necessary for installation of new access stairways.

5. *That the public interest will suffer no substantial detrimental effect.*

**Findings:**

Due to the fact that the proposal involves minor improvements to an existing structure and is a permitted use in the Conservancy environment, granting a variance will not negatively impact the public interest.

(D) *Variance permits for developments that will be located either waterward of the ordinary high water mark as defined in RCW 90.58.030(2)(b), or within marshes, bogs, or swamps as designated by the Department pursuant to Chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:*

1. *That the strict application of the bulk, dimensional or performance standards set forth in the applicable Master Program precludes a reasonable permitted use of the property;*

**Findings:**

The proposal involves installation of access stairways, ladders, and platforms on the existing spillway structure that is already located within the 50 ft. setback, both landward and waterward of the OHWM. The Conservancy environment requires a 50 ft. setback from the OHWM for all buildings and structures, irrespective of their purpose. The spillway must necessarily be located in-water, the proposed improvements must be located within the 50 ft. setback also. Strict application of this setback would prevent the applicant from improving maintenance access to the existing spillway, which is a reasonable use of the property.

2. *That the hardship described in subsection C1 of this section 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;*

**Findings:**

The proposed improvements are to an existing structure developed by the applicant. While the applicant constructed the spillway in its location within the Swift Reservoir/Lewis River, the spillway must necessarily be located in-water to serve its intended function and therefore so must the improvements. Because of the Shoreline Master Program's strict 50 ft. setback requirement the proposal cannot proceed without a variance.

3. *That the design of the project will be compatible with other permitted activities in the area, and will not cause adverse effects to adjacent properties or the shoreline environment designation;*

**Findings:**

Water control devices and structures are permitted uses within the Conservancy environment. The spillway and proposed access improvements are allowable as permitted uses. Existing nearby development consists of hydroelectric power infrastructure operated by the applicant and the Cowlitz County PUD. Because the proposal involves minor improvements to the existing development, the proposal will not cause adverse effects to adjacent properties or the shoreline environment.

4. *That the requested variance will not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief;*

**Findings:**

Adjacent development predates the County's Shoreline Master Program and therefore includes structural development within 50 ft. of the OHWM or in-water. The use is dependent upon an in-water location. Where possible, the proposed improvements will be mounted to the existing structure. Ground disturbance will be limited to the riprap immediately adjacent to the concrete spillway where necessary for installation of new access stairways.

5. *That the public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance;*
6. *That the public interest will suffer no substantial detrimental effect.*

**Findings:**

Due to the fact that the proposal involves minor improvements to an existing structure and is a permitted use in the Conservancy environment, granting a variance will not negatively impact the public interest. The proposal does not affect public access to the shoreline.

- (E) *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 in the area where similar circumstances exist, the total of the variances should also remain consistent with the policies of RCW 90.58.020, and should not produce substantial adverse effects to the shoreline environment.*

**Findings:**

The spillway is part of PacifiCorp's Lewis River Hydroelectric project. PacifiCorp and the Cowlitz County PUD both operate similar structures downstream of the project, so it is possible that improvements similar to the instant proposal may be requested in the future. However, the proposal will not produce adverse effects as it involves minor improvements to an existing structure. No cumulative impacts are anticipated.

**SHORELINE MASTER PROGRAM**

**THE MASTER PROGRAM ELEMENTS**

1. ***ECONOMIC DEVELOPMENT ELEMENT***  
*For the location and design of industries, transportation facilities, port facilities, tourist facilities, commercial and other developments that are particularly dependent on shoreland locations.*

**Findings:**

The proposal involves improvements to a spillway at the Swift Reservoir Dam which is part of a hydroelectric power system dependent on its shoreland location.

2. ***PUBLIC ACCESS ELEMENT***  
*For assessing the need for providing public access to shoreline areas.*

**Findings:**

The proposal does not affect public access.

3. ***CIRCULATION ELEMENT***  
*For assessing the location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other public facilities and correlating those facilities with the shoreline use elements.*

**Findings:**

The project site – an existing dam spillway – does not require any new road construction or access.

4. *RECREATION ELEMENT*

*For the preservation and expansion of recreational opportunities through programs of acquisition, development and various means of less-than-fee acquisition.*

**Findings:**

The proposal does not include any recreational components. PacifiCorp does operate parks and campgrounds in the vicinity, but these will not be affected by this proposal.

5. *SHORELINE USE ELEMENT*

*For considering:*

1. *The pattern of distribution and location requirements of land uses on shorelines and adjacent areas, including, but not limited to, housing, commerce, industry, transportation, public buildings and utilities, agriculture, education and natural resources.*
2. *The pattern of distribution and location requirements of water uses including, but not limited to, aquaculture, recreation and transportation.*

**Findings:**

The proposal involves minor improvements to an existing development and will not affect any nearby land uses including residential, commercial, or recreational.

6. *CONSERVATION ELEMENT*

*For the preservation of the natural shoreline resources, considering such characteristics as scenic vistas, parkways, estuarine areas for fish and wildlife protection, beaches and other valuable natural or aesthetic features.*

**Findings:**

The proposal will allow for continued utilization of the Lewis River's hydroelectric power generation resource. It does not further affect any scenic vistas, parkways, fish and wildlife areas or beaches and other valuable natural or aesthetic features.

7. *HISTORICAL/CULTURAL ELEMENT*

*For protection and restoration of buildings, structures, sites and areas having historic, cultural, educational or scientific values.*

**Findings:**

The Swift Dam (Swift No. 1) which was constructed in 1958 as part of the Lewis River Hydroelectric project. The Swift No. 1 Hydroelectric Project historic district is eligible to the National Register of Historic Places. The applicant consulted with DAHP on the proposal and DAHP concurred that the project would have no adverse effect on the historic district.

*SHORELINE POLICY STATEMENTS FOR THE USE ACTIVITIES*

2. *ARCHEOLOGICAL AREAS AND HISTORIC SITES*

*Archeological areas, ancient villages, military forts, old settlers homes, ghost towns, and trails were often located on shorelines because of the proximity of food resources and because water provided an important means of transportation. These sites are nonrenewable resources and many are in danger of being lost through present day changes in land use and urbanization. Because of their rarity and the educational link they provide to our past these locations should be preserved.*

*Policy Statements:*

- a. Consult with the Skamania County Historical Society to identify archeological areas and historic sites. All archeological and historic sites should be identified and noted in priority. Where possible, such sites should be permanently preserved for scientific study and public observation.*
- b. Shoreline permits, in general, should contain special provisions which require developers to notify local governments if any possible archeological data are uncovered during excavations. In areas known to contain archeological data, local governments should attach a special condition to a shoreline permit providing for a site inspection and evaluation by an archeologist to ensure that possible archeological data are properly salvaged. Such a condition might also require approval by local government before work can resume on the project following such an examination.*
- c. Development which might destroy an archeological or historic site may be delayed until the appropriate agency or organization can be given the opportunity to purchase the site or obtain the desired data. Such delays will not be prolonged if little or no interest is shown, or if the group wanting protection is dilatory.*

**Findings:**

The Swift Dam (Swift No. 1) which was constructed in 1958 as part of the Lewis River Hydroelectric project. The Swift No. 1 Hydroelectric Project historic district is eligible to the National Register of Historic Places.

PacifiCorp consulted with the DAHP at the 30% design to review alternatives and comment on potential impacts to the district's eligible resources. Based on the 30% design plans, the DAHP concurred that the project would have no adverse effect on the historic district. Furthermore, the project does not have any ground disturbance, as the only potential for this would be in the embankment fill.

No comments were received from DAHP or any Native American tribes during the development review. As a **condition of approval**, the following procedures shall be effected in the event that cultural resources are discovered during construction activities:

- a. Halt Construction: All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- b. Notification: The project applicant shall notify the Community Development Department and the Native American Tribal governments within 24 hours.

**20. UTILITIES**

*Utilities are services which produce and carry electric power, gas, water, sewage, communications and oil. At this time the most feasible methods of transmission are by*

*pipes and wires. The installation of this apparatus necessarily disturbs the landscape but can be planned to have minimal visual and physical effect on the environment.*

*Policy Statements:*

- a. Whenever these facilities must be placed in a shoreline area, the location should be chosen so as not to obstruct or destroy scenic views. Whenever feasible, these facilities should be placed underground, or designed to do minimal damage to the aesthetic qualities of the shoreline area.*
- b. Utilities should be located to meet the needs of future populations in areas planned to accommodate this growth.*
- c. To the extent feasible, public and private utilities should attempt to incorporate major transmission line rights-of-way on shorelines into their program for public access to and along water bodies.*
- d. Upon completion of installation/maintenance projects on shorelines, banks should be restored to pre-project configuration, revegetated and provided maintenance care until the newly planted vegetation is established.*

**Findings:**

The project area is located at the west end of the Swift Reservoir at the Swift Dam spillway which is part of PacifiCorp's Lewis River Hydroelectric project. The existing hydroelectric development is a water dependent utility use. The proposed project will not substantially alter the existing development and does not affect the production or transmission of power.

While the project is confined to an existing disturbed and improved area, there is potential for some disturbance to shoreline banks. Staff recommends the following **condition of approval**: Upon completion of the proposal, any disturbed banks should be restored to pre-project configuration, revegetated and provided maintenance care until the newly planted vegetation is established.

**21. WILDLIFE**

*Hunting and fishing is a major recreational activity for residents of Skamania County. Also, a large number of nonresidents from other areas of the state and neighboring Oregonians visit the county to hunt and fish. The wildlife resource of the county also provides a source of enjoyment for those who desire to observe and photograph wildlife. Since wildlife (which include the fish in lakes and streams) constitutes a major use of the county's shorelines, the Shoreline Advisory Committee considers it necessary for the Master Program to include wildlife as a shoreline use. And, to develop policies which give consideration to the habitat requirements of wildlife in order to maintain and enhance this valuable natural resource.*

*Policy Statements:*

- a. Identify rare and endangered wildlife species habitat along shorelines and reserve these areas for wildlife use.*
- b. Winter range is the limiting factor for wildlife populations and should be protected from intensive development that would be detrimental to wildlife.*
- c. Nesting sites for waterfowl, hawks, owls and eagle species should be protected from shoreline uses which would render the habitat unsuitable for nesting areas.*

- d. *In reviewing substantial development permits, recognition should be given to the possible detrimental impact such developments may have on wildlife resources, including the fisheries resource, especially spawning areas for anadromous fish.*

**Findings:**

A review of WDFW Priority Habitat Inventory data indicates that the project area is located near bald eagle and elk habitats. The Lewis River carries Chinook salmon, Coho salmon, Chum salmon, steelhead, and bull trout. While the proposal occurs landward and waterward of the OHWM, no habitat areas will be affected due to the nature of the project. No comments were received from WDFW.

THE ENVIRONMENT REGULATIONS

*CONSERVANCY ENVIRONMENT REGULATIONS*

1. *Purpose: The Conservancy Environment is intended to protect, conserve and manage existing natural resources and valuable historic and cultural areas in order to ensure a continuous flow of recreational benefits to the public and to achieve sustained resource utilization.*

**Findings:**

With the recommended conditions of approval, the proposal will meet the purpose of the Conservancy Environment Regulations.

2. *Uses: The primary uses permitted in the Conservancy Environment are those uses which can utilize resources on a sustained yield basis. Such uses include diffuse outdoor recreation activities, timber harvesting, agricultural uses, low density residential and other related uses.*

*Shoreline Uses permitted within the Conservancy Environment:*

*Low density residential  
Campgrounds, public and private  
Public access areas, roads and trails  
Agriculture  
Aquaculture uses and structures  
Timber harvesting and management  
Necessary bridges  
Dredging  
Watercraft of all kinds  
Small boat ramps and basins  
Boat docks for pleasure craft  
Fishing and other water sports  
Shoreline protection works as part of another use or for  
protection of uplands  
Water control devices and structures  
Piling for log rafts*

*Parking lots for vista purposes, park and ride, and for associated parking with permissible uses in the Conservancy Environment. (Amended 7/3/86)*

*Hotels, motels, condominiums, restaurants, taverns and mining may be allowed as conditional uses only. All other uses are prohibited.*

**Findings:**

The proposal involves improvements to a preexisting permitted use in the Conservancy environment. The spillway is a water control device used to manipulate the level of water within the Swift Reservoir.

3. *Minimum shoreline lot sizes and dimensions: For residential lots within the Conservancy Environment.*
4. *Setback: All buildings and structures shall be setback at least 50 feet from the ordinary high water mark.*
5. *Building height: There shall be a 35 foot maximum building height for all structures.*
6. *Building design: In general, buildings shall be compatible with the surrounding environment. Exterior walls of buildings, including out buildings, shall have a finished surface, preferably wood siding. Exterior walls of non-wood material shall be finished in muted tones by painting, staining or other processing.*

**Findings:**

The proposal does not include any new lots or buildings. The applicant will install new maintenance access improvements to the spillway, including stairs, ladders, and platforms. These will all be installed on the existing spillway structure that is within the 50 ft. setback. The applicant is requesting a variance to this setback.

7. *Restoration: Same as for the Urban Environment except for timber harvesting, which shall comply with the Renewable Resource Regulations.*

**Findings:**

The Urban Environment states: *All shoreline areas, which are disturbed as a result of shoreline development, shall be landscaped, except those areas along the water line where shoreline protection works are specifically allowed by the shoreline development permit. All areas unpaved or reserved for future development shall be either entirely landscaped or screened from public view. Landscaping may consist of trees, shrubbery and grass. All landscape development should be designed particularly to enhance the building scale and form and be compatible with other nearby landscaping. New plantings shall be of such size and density that they are initially effective. The plantings shall be so maintained that they will blend into the urban area in the shortest possible time. Where development shall cause the removal of all debris, litter, dilapidated buildings and structures and old machinery, this removal and restoration shall occur on all of the parcel of property and as far into the water as abandoned piling or other debris may extend within the property ownership. The property owner shall maintain the shoreline area in a neat and orderly manner and not dispose of litter, junk or abandon machinery within the shoreline area. Timber harvesting shall comply with the Skamania County Shorelines Master Program Renewable Resource Regulations.*

The proposed project will not substantially alter the existing development. While the project is confined to an existing disturbed and improved area, there is potential for some disturbance to shoreline banks. Staff has recommended a **condition of approval** under the regulations for construction and operations below will require that any disturbed vegetation should be restored and replanted to its prior natural state.

### THE USE REGULATIONS

#### *CONSTRUCTION AND OPERATIONS REGULATIONS*

The following regulations cover the construction practices that must be observed for substantial developments.

1. *No construction equipment shall enter any shoreline body of water, except as authorized under the terms of a substantial development permit.*

#### **Findings:**

No heavy construction equipment is required for the proposal. New stairways, ladders, and platforms will be bolted to the existing structure. Any minor excavation that might be required will be done with hand tools.

2. *Vegetation along the water shall be left in its natural condition unless the substantial development permit allows otherwise.*

#### **Findings:**

The project area occurs in a developed site and primarily consists of a concrete spillway and adjacent riprap. While there is little probability of disturbance, a **condition of approval** shall state that any disturbed vegetation should be restored and replanted to its prior natural state.

3. *During construction, care will be taken to assure that waste material and foreign matter are not allowed to enter the water.*
4. *All fuel and chemicals shall be kept, stored, handled and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water.*

#### **Findings:**

It is possible that dust and debris may fall into the spillway and enter the Lewis River. The applicant has indicated that a barrier will be placed at the downstream extent of the spillway to catch any debris. It is not anticipated that heavy equipment will be required. A **condition of approval** shall state that all fuel and chemicals shall be kept, stored, handled and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water. Prior to construction, the applicant shall install a temporary barrier to prevent construction debris or other materials from entering the Lewis River.

5. *Protection from siltation and erosion shall be provided for on all earthworks projects.*
6. *Land being prepared for development shall have an adequate drainage system to prevent runoff from entering water bodies.*
7. *Side casting of excess road building material into streams will not be permitted.*

8. *Land clearing operations shall be done in a fashion that does not place machinery or debris within 10 feet of the high water mark and all cleared vegetation shall be burned. This regulation does not apply to timber harvest roads.*

**Findings:**

The proposal does not involve any earthworks, clearing, or road construction. Some minor excavation with hand tools may be required when installing stairways at the perimeter of the spillway.

9. *All construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the shoreline area. No equipment shall be abandoned within the shoreline area.*

**Findings:**

A **condition of approval** shall state that all construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the shoreline area. No equipment shall be abandoned within the shoreline area.

NONCONFORMING STRUCTURES AND USES

1. Structures: All structures which were built prior to the effective date of this Master Program and all structures for which a substantial development permit has been issued prior to the effective date of this Master Program but which do not conform to the goals, policy statements and regulations contained herein, may continue to exist or be completed according to the following provisions:

- (a) No nonconforming structure may be expanded except in conforming to these regulations.
- (b) Nonconforming structures which are destroyed beyond 90% of their value, as that value was last determined by the County Assessor, shall not be restored.
- (c) Nonconforming structures may be maintained and improved however such maintenance and improvement shall not have the effect of expanding the size or bulk of the structure.
- (d) Uses within nonconforming structures may be changed to other uses.

**Findings:**

The existing spillway is nonconforming due to its location within the required 50 ft. shoreline setback. The proposed expansion is subject to review under the Shoreline Master Program and the applicant has requested a variance.

VARIANCES

*Variance deals with specific requirements of the master program and its objective is to grant relief when there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the master program. The property owner must show that if he complies with the provisions he cannot make any reasonable use of his property. The fact that he might make a greater profit by using his property in a manner contrary to the intent of the program is not a sufficient reason for variance. A variance will be granted only after the applicant can demonstrate the following.*

1. *The hardship which serves as basis for granting of variance is specifically related to the property of the applicant.*

**Findings:**

The proposal involves improvements the existing spillway structure that is already located within the 50 ft. setback. The Conservancy environment requires a 50 ft. setback from the OHWM for all buildings and structures, however the spillway is preexisting, and any improvements must necessarily be located in-water.

2. *The hardship results from the application of the requirements of the act and master program and not from, for example, deed restrictions or the applicant's own actions.*

**Findings:**

The Conservancy environment requires a 50 ft. setback from the OHWM for all buildings and structures. While the applicant constructed the spillway in its location within the Swift Reservoir/Lewis River, the spillway must necessarily be located in-water to serve its intended function and therefore so must the improvements. Strict implementation of the Master Program would prevent the proposal from proceeding in any way as the proposed use is not feasible 50 ft. from the OHWM.

3. *The variance granted will be in harmony with the general purpose and intent of the master program.*

**Findings:**

The proposal has been reviewed in this report for consistency with the Shoreline Master Program, and as conditioned will be in harmony with its purpose and intent. The variance will allow the proposal to proceed.

4. *Public welfare and interest will be preserved; if more harm will be done to the area by granting the variance than would be done to the applicant by denying it, the variance will be denied.*

**Findings:**

With the recommended conditions of approval, the public welfare and interest will be preserved.

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**CONCLUSIONS:**

With the recommended conditions of approval, the proposal meets the criteria for granting a Shoreline Substantial Development Permit and Shoreline Variance.

**RECOMMENDATION:**

Staff recommends that the request for a Shoreline Substantial Development Permit and Shoreline Variance be approved with the following conditions:

1. The following procedures shall be effected in the event that cultural resources are discovered during construction activities:

- a. Halt Construction: All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
- b. Notification: The project applicant shall notify the Community Development Department and the Native American Tribal governments within 24 hours.
2. Any disturbed vegetation should be restored and replanted to its prior natural state.
3. Upon completion of the proposal, any disturbed banks should be restored to pre-project configuration, revegetated and provided maintenance care until the newly planted vegetation is established.
4. All fuel and chemicals shall be kept, stored, handled and used in a fashion which assures that there will be no opportunity for entry of such fuel and chemicals into the water. Prior to construction, the applicant shall install a temporary barrier to prevent construction debris or other materials from entering the Lewis River.
5. All construction debris such as fuel and oil containers and barrels and other miscellaneous litter shall be removed from the shoreline area at the conclusion of the study. No equipment shall be abandoned within the shoreline area.



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Alan Peters, AICP  
Assistant Planning Director

May 9, 2019

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Date

**Please Note: The action by the Hearing Examiner shall be final and conclusive, unless within the timeframe provided in RCW 36.70C, the applicant or adverse party makes application to a court of competent jurisdiction for judicial review of this land use decision.**