



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: Eagle Cliff Park Improvements

FILE NO: SHR-19-02, CA-19-01

REQUEST: The applicant (PacifiCorp) requests a Shoreline Substantial Development Permit and Critical Areas Variance for improvements to Eagle Cliff Park. The applicant proposes to improve an existing park by expanding and reorganizing a parking lot to accommodate parking and facilitate movement of fish trucks for fish release, relocate and expand a parking lot boulder line, add ADA parking, install a new double vault toilet, add two ADA barrier free picnic sites, construct a new concrete sidewalk, remove an existing vault toilet structure and pit toilet, replace an access gate, install a welcome kiosk, relocate existing picnic tables and add plantings at the intersection of US Forest Service Road 90 and the Lewis River.

APPLICANT:	Brett Horton, PacifiCorp
PROPERTY OWNER:	PacifiCorp, 825 NE Multnomah Street, Suite 1800, Portland, OR
LOCATION:	Property is located in the NE ¼ of Section 26, T7N, R6E of the W.M. on the west side of the Lewis River at the intersection with USFS Road 90.
PARCEL NO.:	07-06-26-0-0-0100-00
ZONING:	Swift Recreational (SR)
COMPREHENSIVE PLAN DESIGNATION:	Swift Recreational (SR)
SHORELINE DESIGNATION:	Conservancy
PARCEL SIZE:	Approximately 93.84 acres

PROJECT DESCRIPTION:

The project area is located at the east end of the Swift Reservoir in northern Skamania County where USFS 90 Road crosses the Lewis River. The site is owned and operated by PacifiCorp and

is used as a day use park. The facility includes a gravel parking area, fish release site, trails, and picnic tables. The existing trails and tables are located south of the USFS 90 Road, while the parking area is located north of the road. The picnic area is reach by a trail crossing below the road along the Lewis River. The site is primarily used by fisherman, boaters, and other recreational users.

The proposed project is a requirement of PacifiCorp's renewed license for the Lewis River Hydroelectrical Project per Federal Energy Regulatory Commission license requirements and the Lewis River Settlement Agreement. The applicant proposes to abandon the existing trail and picnic area, along with a restroom facility. After removal of the existing facilities, the area will be replanted with grasses and some native trees and shrubs. The existing facilities will be replaced with more compact facilities near the parking area north of the road. The existing gravel parking area will be improved with a better-defined asphalt pavement parking lot. A new sidewalk/trail will be installed north of the parking lot, providing ADA accessibility to a new double-vault toilet. An ADA trail will access two ADA picnic tables. Six additional tables will be built on crushed stone pads.

The subject property is located in the Swift Recreational (SR) zone. The zone's intent is to promote recreational opportunities within the Swift Subarea. Trails, scenic viewpoints, picnic areas, and restrooms are listed as allowable uses within this zone. The proposal is subject to both the County's Shoreline Master Program and Critical Areas Ordinance. The project occurs within the 200 ft. area of Shoreline jurisdiction for the Lewis River/Swift Reservoir. No buildings or structures will be constructed within the 50 ft. shoreline setback. A Shoreline Substantial Development Permit is required.

Portions of the proposal are located within the 100 ft. riparian buffer required under SCC 21A.04.020(C)(4) in the County's Critical Areas Ordinance. Some of the improvements are allowed outright, but a critical areas variance is required for those portions that do require review.

ATTACHMENTS:

(This report will be considered Exhibit 1)

Exhibit 2: Revised Site Plan – *May 6, 2019*

Exhibit 3: Application Materials, including JARPA and attached figures – *Complete March 12, 2019*

Exhibit 4: Notice of Public Hearing – *Published in the Skamania County Pioneer on April 10, 2019, and April 17, 2019.*

Exhibit 5: Notice of Public Hearing – Mailed to agencies and adjacent property owners – *April 10, 2019.*

Exhibit 6: SEPA Revised Mitigated Determination of Nonsignificance – *April 25, 2019*

Exhibit 7: Comment Letter - Christian Nauer, Archaeologist for Confederated Tribes of the Warm Springs Reservation of Oregon – *April 15, 2019*

SEPA:

Skamania County issued a State Environmental Policy Act (SEPA) Mitigated Determination of Nonsignificance (MDNS) for the project on April 11, 2019. A Revised MDNS was issued on April 25, 2019 (Exhibit 6), in response to comments received on the MDNS.

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 4). 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 5).

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, only one comment was received in response to the project notices. Christian Nauer, Archaeologist for Confederated Tribes of the Warm Springs Reservation of Oregon, provided comments on April 15, 2019 (Exhibit 7), requesting additional information regarding cultural resources. The County revised the MDNS to add a requirement for the applicant to conduct a cultural resource survey. The County received a survey report on May 8, 2019, and submitted the survey to Mr. Nauer, other Native American tribes, and DAHP that same day.

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. The plan states that trails, scenic viewpoints, picnic areas, restrooms, and parking areas should be allowed.

The proposal is consistent with the Comprehensive Plan.

STAFF ANALYSIS OF APPLICABLE CODE CRITERIA:

TITLE 2 – ADMINISTRATION AND PERSONNEL **CHAPTER 2.80 – OFFICE OF HEARING EXAMINER**

§ 2.80.090 - Applications.

Applications for all matters to be heard by the hearing examiner shall be presented to the community development department, to be processed according to the applicable provisions of the code. The community development director, or the community development director's designee, shall be responsible for assigning a date for the public hearing, and providing relevant public and adjacent property owner notices for each application as required. The hearing examiner may consider two or more applications relating to a single project concurrently, and the findings of fact, conclusions and decision on each application may be covered in one written decision.

Findings:

The proposed project requires a Shoreline Substantial Development Permit and a Critical Areas Variance. The applicant submitted the required applications for both permits on March 12, 2019 (Exhibit 3). A revised site plan was submitted on May 6, 2019 (Exhibit 2). Both applications will be reviewed in this Staff Report. The Hearing Examiner may consider both applications concurrently and issue one written decision.

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 \$275,000.

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:

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.

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 an existing recreational park on the Lewis River. This is a water-related recreational use dependent on its shoreline location.

2. *PUBLIC ACCESS ELEMENT*

For assessing the need for providing public access to shoreline areas.

Findings:

The proposal provides public access with improved ADA accessible facilities including parking, restrooms, picnic tables, and a trail.

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 park is an existing facility. While the facility will be upgraded, the upgrades will not affect the existing road infrastructure.

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 is an improvement to an existing recreational facility. The ADA improvements will provide expanded recreational opportunities to disabled persons.

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 recreational development and will not affect any nearby land uses including residential or commercial.

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 allows for the continue use of Eagle Cliff Park as a scenic viewpoint and recreation area. The improvements also will consolidate the park's amenities to a more compact footprint, allowing for restoration of the existing park area south of the roadway. The existing improvements consisting of trails, picnic tables, and a restroom facility will be abandoned and revegetated.

7. **HISTORICAL/CULTURAL ELEMENT**

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

Findings:

The Washington Department of Archaeology and Historic Preservation (DAHP) archaeological probability model indicates the project area as having a very high risk of containing archaeological resources. A cultural resource survey was required.

PacifiCorp submitted a cultural resource survey report to the County on May 8, 2019. The survey identified no cultural resources on the site.

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 Washington Department of Archaeology and Historic Preservation (DAHP) archaeological probability model indicates the project area as having a very high risk of containing archaeological resources. A cultural resource survey was required.

After conducting the required survey, PacifiCorp submitted a cultural resource survey report to the County on May 8, 2019. The survey identified no cultural resources on the site, and the survey report concluded that the project is unlikely to have any impact on cultural resources.

The survey report was sent to the Yakama Indian Nation, the Nez Perce Tribe, The Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs Reservation, and the Cowlitz Indian Tribe on May 8, 2019. The County requested comments by May 20, 2019, the date of the hearing for this application.

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.

15. RECREATION

Recreation is the refreshment of body and mind through forms of play, amusement or relaxation. Water-related recreation accounts for a very high proportion of all recreational activity in the Pacific Northwest. The recreational experience may be either an active one involving boating, swimming, fishing or hunting or the experience may be passive such as enjoying the natural beauty of a vista of a lake, river or saltwater area.

Policy Statements:

- a. Priority will be given to developments, other than single-family residences which are exempt from the permit requirements of the act, which provide recreational uses and other improvements facilitating public access to shorelines.*
- b. Access to recreational locations such as fishing streams and hunting areas should be a combination of areas and linear access (parking areas and easements, for example) to prevent concentrations of use pressure at a few points.*

- c. *Encourage the linkage of shoreline parks and public access points through the use of linear access. Many types of connections can be used such as hiking paths, bicycle trails and/or scenic drives.*
- d. *Develop standards for the preservation and enhancement of scenic views and vistas.*
- e. *To avoid wasteful use of the limited supply of recreational shoreland, parking areas should be located inland away from the immediate edge of the water and recreational beaches. Access should be provided by walkways or other methods. Automobile traffic on fragile shoreland resources should be discouraged.*
- f. *Recreational developments should be of such variety as to satisfy the diversity of demands from groups in nearby population centers.*
- g. *The supply of recreation facilities should be directly proportional to the proximity of population and compatible with the environment designations.*
- h. *Facilities for intensive recreational activities should be provided where sewage disposal can be accomplished to meet public health standards without adversely altering the natural features attractive for recreational uses.*
- i. *In locating proposed recreational facilities such as playing fields and golf courses and other open areas which use large quantities of fertilizers and pesticides in their turf maintenance programs, provisions must be made to prevent these chemicals from entering water. If this type of facility is approved on a shoreline location, provision should be made for protection of water areas from drainage and surface runoff.*
- j. *State health agencies have broad regulations which apply to recreation facilities and recreation watercraft which should be consulted in preparing use regulations and issuing shoreline permits.*

Findings:

The proposal is an improvement to an existing recreational facility, Eagle Cliff Park, which is owned and operated by PacifiCorp. The park is one of several recreational facilities owned by PacifiCorp associated with the Lewis River Hydroelectric Project along the Lewis River.

The improvements will provide improved shoreline access by the public due to the improved parking lot, restroom facilities, trail, and picnic tables. The parking area will be outside of the 50 ft. shoreline setback and is better defined, restricting vehicular access to the parking area to prevent damage to the adjacent shoreline.

With the improvements, the park will remain a viable part of the applicant's recreational network along the Lewis River and will remain accessible to a variety of users.

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 Rocky Mountain elk habitat and mountain whitefish, rainbow trout, eastern brook trout, Chinook salmon, Coho salmon, steelhead, cutthroat trout, and bull trout. The applicant's JARPA indicates that several other priority habitats or species have been observed near the project area.

The proposal includes no in-water work. New improvements will be confined to the existing park area. While improvements will require the removal of existing vegetation and construction of impervious surfaces, mitigation plantings and the abandonment of the existing facility will offset these new impacts. No comments were received from WDFW concerning the project.

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. Eagle Cliff Park is a recreational facility with public access areas and trails. A new vault toilet facility and picnic tables associated with this use will also be installed. The proposed improvements are allowable uses.

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.*

Findings:

No new buildings or structures will be located within 50 ft. of the ordinary high water mark.

5. *Building height: There shall be a 35 foot maximum building height for all structures.*

Findings:

The applicant will install a new precast vault toilet facility. The height of the building will be 12 ft. Two vent pipes will protrude an additional 3 ft. for a total height of 15 ft.

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 new vault toilet building is constructed of precast concrete. The exterior walls will be formed to replicate horizontal lap siding and vertical board and batten siding. The roof will replicate cedar shakes. The application materials did not identify finish colors, so a **condition of approval** will require that the building be finished in muted tones by painting, staining or other processing.

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 applicant has proposed planting a total of 20 native shrubs and 20 native trees for the removal of existing vegetation in the project area and the increased impervious surface. The applicant has not yet provided a detailed planting plan, however a revised plan states that plantings will be located on the southwest side of the roadway and throughout the improved park area. A detailed mitigation planting plan will be required prior to project construction.

In addition to the 40 plantings, the applicant will also be abandoning the existing park facilities located across and south of the USFS 90 Road. These facilities include existing trails, picnic tables, and a vault toilet facility. All will be abandoned and removed as part of this project and disturbed areas replanted with grass seed and some of the 20 native trees and 20 native shrubs will also be planted in this area.

As conditioned elsewhere in this report, the proposal satisfies the restoration requirements.

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 in-water work is proposed. A **condition of approval** shall state that no construction equipment shall enter any body of water.

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

Findings:

The applicant will be installing a new concrete sidewalk/trail and picnic tables. While these structures will be located outside of the 50 ft. shoreline setback, some existing vegetation will be removed and replanted with grass. These impacts will be offset by mitigation plantings throughout the project site. A **condition of approval** shall state that, except as indicated in the project plans, 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.*
- 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:

No construction will occur in-water, however work will occur along the shoreline. 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. Additionally, a **condition of approval** shall state that an erosion control barrier, such as silt fencing or straw wattles shall be installed prior to any ground disturbance and remain in place until vegetation is established to ensure that waste material and foreign matter are not allowed to enter the water.

- 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.

SCENIC VISTA AND VIEW PROTECTION REGULATIONS

These regulations are intended to protect and enhance existing or potential scenic views and vistas.

- 1. No advertising signs or billboards shall be permitted within the shorelines except those signs identifying the names and business of the persons or firm occupying a particular site. Such identifying signs may be painted or mounted flush onto the exterior face of*

buildings and shall not rise higher than the buildings they are affixed to. Illuminated signs are permitted provided they are placed on that side of the building furthest from the water. Flashing and moving signs shall not be permitted. The size and design of all identifying signs shall be compatible with the surrounding environment. Preferable signs should be constructed of wood with routed lettering and finished in muted tones.

2. *All electrical and telephone service shall be brought underground into the development site and to buildings.*
3. *Buildings and structures shall be no higher than 35 feet if there is the possibility that they might interfere with the views of a substantial number of upland properties.*

Findings:

No advertising signs or billboards are proposed, however existing signage will be maintained, and a new sign kiosk will be installed on the sidewalk adjacent to the parking lot. A **condition of approval** shall state that the size and design of all signs shall be compatible with the surrounding environment and finished in muted tones.

Only one new building will be constructed. The height of the vault toilet facility will be 12 ft. Two vent pipes will protrude an additional 3 ft. for a total height of 15 ft. The building is located in a manner that will not obstruct shoreline views.

FLOOD PLAIN DEVELOPMENT REGULATIONS

1. *No buildings other than farm buildings may be built in a flood plain, unless the flood plain is adequately flood proofed to protect developments.*

Findings:

According to the applicant's JARPA, the FEMA Flood Insurance Rate Map (FIRM) indicates that the project area is located within the 100-year floodplain. Only one building is proposed, a vault toilet setback 100 ft. from the OHWM. Staff's review of the FIRM maps shows that while a portion of the existing park area is within the floodplain, the proposed building is not within the floodplain. Additionally, the applicant has noted that the surface water level is controlled by PacifiCorp.

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:

A portion of the existing parking lot extends into the required 50 ft. setback. The parking lot will be improved asphalt paving but will not expand beyond its existing footprint.

TITLE 21A
CRITICAL AREAS

21A.03.010. ADMINISTRATION - CRITICAL AREA DEVELOPMENT PERMITS REQUIRED

- A. No building, structure or land shall be used, and no building, structure or road shall be hereafter erected, altered or enlarged, including those proposed by state or federal agencies, in any designated critical area governed by this Title, except as allowed by this Title.*
- B. The issuance of a critical areas permit under this Title shall be in addition to, and not a substitute for, any other development permit, review or authorization required by Skamania County. Issuance of a critical areas permit under this Title shall not be interpreted as an approval of any other permit or authorization required for a development or use.*

Finding:

The applicant has applied for a critical areas variance for improvements to the Eagle Cliff Park on the Lewis River, above the Swift Reservoir. Portions of the proposal area located within the required 100 ft. buffer from the OHWM of the Lewis River. In addition to a critical areas variance, the proposal requires a Shoreline Substantial Development Permit and Clearing & Grading Permit.

21A.03.030 APPLICATION REQUIREMENTS

- A. Two types of applications are established under this Title:
 - 1. Applications for variances to the buffers established under CHAPTER 21A.04 governing watershed protection areas; and*
 - 2. Applications for development reviews under CHAPTER 21A.05 (Fish and Wildlife Habitat Areas) and CHAPTER 21A.06 (Geologically Hazardous Areas).**
- B. Applications for both variances and development reviews under this Title shall be made on forms provided by the Department. An application shall be accompanied by the required application fee, if any, together with the following:
 - 1. The applicant's name, address and telephone number;*
 - 2. The land owner's name, address and telephone number, if different from the applicant's;*
 - 3. The section, quarter section, township and range in which the proposed use or development would be located;*
 - 4. The tax lot number(s) of the of parcel(s) on which the development or use would occur;*
 - 5. The size (number of acres) of the parcel(s) involved;*
 - 6. A description of the current land use(s) of the parcel(s) involved;*
 - 7. A written description of the proposed use or development;*
 - 8. A map of the project area, prepared at a scale of 1-inch equals 200 feet, or one providing greater detail, shall include the following elements:
 - a. boundaries, dimensions and size of the subject parcel;***

- b. existing and proposed structures;*
- c. existing and proposed services, including wells or other water supplies, sewage disposal systems, power and telephone poles and lines;*
- d. groupings and species of trees or other vegetation on the parcel;*
- e. location and species of vegetation that would be removed;*
- f. proposed excavation and fill;*
- g. existing and proposed drainage facilities and/or natural drainage channels;*
- h. topography and significant terrain features or landforms;*
- i. the location and width of existing and proposed roads, driveways and trails;*
- j. slopes on the site; and*
- k. streams, creeks, rivers, lakes, ponds, or wetlands located within 300 feet of any proposed use or development.*
- 9. Any additional information which the applicant feels will assist in evaluating the proposal;*
- 10. The signature of the applicant and property owner; and*
- 11. The signature of any renters, lessees or caretakers living on the property, authorizing the Director or the Director's designees reasonable access to the site to evaluate the application.*

Finding:

A complete application was submitted on March 12, 2019. A revised site plan was submitted on May 6, 2019.

21A.03.040 REVIEW PROCESS.

A. Applications For Development Reviews And Variances.

1. General Provisions

- a. Upon submittal of an application for a critical areas variance or development review under this Title, the Department shall have ten working days within which to determine if the application is complete.*
- b. If an application is incomplete, Department staff shall notify the applicant, in writing, of all deficiencies in the application.*
- c. Upon submittal of a complete application, the Director shall make every effort to complete the project evaluation within twenty working days, unless the review and approval procedures of another applicable development permit necessitates a longer evaluation period.*
- d. Development reviews conducted under this Title shall be coordinated with other reviews administered by either the Department of Planning and Community Development or the Building Code Enforcement Section of the Skamania County Public Works Department.*
- e. In almost every instance, the evaluation will include a site investigation of the property by Department staff.*

Finding:

A complete application was submitted on March 12, 2019. The applicant also submitted a SEPA checklist and applications for a Shoreline Substantial Development Permit and Clearing & Grading Permit. Project review could not be completed within twenty working days due to the requirements of SEPA and the need for a public hearing. Staff performed a site visit on April 3, 2019.

2. *Notice of Variance or Development Review Applications.*
 - a. *If public notice and comment is required under other County requirements affecting the proposed development or use, then notice of a critical areas variance or review shall be combined with notice of the other development review.*
 - b. *If no public notice and comment period is required under other County laws affecting the proposed development or use, then the Director shall issue notice of a proposed development review or variance to all persons owning property within 300 feet of the parcel(s) on which the development or use would occur and any other interested persons.*
 - c. *The notice shall provide the following information:*
 - i. *The name of the applicant.*
 - ii. *The location of the subject property as set out in the application.*
 - iii. *A brief description of the proposed action.*
 - iv. *The deadline for filing comments on the proposed action.*
 - d. *The notice shall state that the application and supporting documents are available for inspection at Department offices during regular business hours.*
 - e. *If a hearing is held before the Hearing Examiner, then notice shall be published in a newspaper of general circulation in the County at least ten calendar days prior to the date of hearing.*
 - f. *Persons receiving notice of an application under this Title shall be given fourteen (14) calendar days from the date upon which the notice of a variance or development review application is mailed to them by the Department within which to comment upon the proposed action.*

Finding:

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, consistent with the requirements under SCC Title 20 – Shoreline Management.

21A.03.050 APPEALS.

D. Appeals From Decisions Of The Hearing Examiner.

A signed written Final Order of the Hearing Examiner shall be final and conclusive, unless within the timeframe provided in RCW 36.70C, the applicant or any adverse party makes application to a court of competent jurisdiction for judicial review of the land use decision.

Finding:

The Hearing Examiner's Decision is appealable within the guidelines of RCW 36.70C.

21A.04.010 WATERSHED PROTECTION AREAS - GENERAL PROVISIONS.

A. Relationship To Shorelines Management Master Plan And Shorelines Management Act Permits Ordinance.

In the event of any conflict between this Title and regulations contained in the Shorelines Ordinance, those regulations which provide greater protection of Critical Areas shall apply.

Proposed new development on residential properties located adjacent to any Watershed Protection Area shall be setback according to the provisions contained herein, unless it can be demonstrated that within 300 feet up and down stream of the subject property, the average setback of existing structures is less. If less, new structures may be setback from the water body the same distance as the average distance that the existing structures are setback from the ordinary high-water mark.

Finding:

The proposal is located on the Lewis River, a shoreline and Class I river with a required Critical Areas buffer of 100 ft. A shoreline setback of 50 ft. also applies to this proposal. The application is being reviewed for consistency with both the Skamania County Shoreline Ordinance and Critical Areas Ordinance.

21A.04.030

C. Streams, Creeks and Rivers.

- 1. Definition of Regulated Streams, Creeks and Rivers. Rivers, streams and creeks that are naturally occurring bodies of periodic or continuously flowing water contained within a channel (an open conduit either naturally or artificially created); except artificially created irrigation, return flow or stockwatering channels.*

Finding:

The Lewis River satisfies this definition.

- 2. Allowed Uses in Streams, Creeks and Rivers and their Buffers. The following uses are allowed within streams, creeks and rivers and their buffer areas, without review by the department:*
 - a. Fish and wildlife management;*
 - b. Research;*
 - c. Boating;*
 - d. Fishing;*
 - e. Hunting;*
 - f. Swimming;*
 - g. Repair, maintenance and operation of existing serviceable structures, trails, roads and utility facilities;*
 - h. Structures under one hundred twenty square feet in area which are not subject to building permit requirements;*
 - i. Existing structures already located within watershed protection area buffers that expand one hundred percent or less of the original footprint;*
 - j. All other new uses and developments within streams, creeks and rivers and their buffer areas will require a variance under subsection (C)(3) below.*

Finding:

The proposal involves improvements to an existing park facility that includes the expansion and reconfiguration of an existing parking lot partially located within the required 100 ft. Critical Areas buffer.

While the applicant describes this as an expansion to the parking area, in reviewing the application materials, staff determined that the actual parking lot pavement area will be reduced by approximately 900 sq. ft. The existing gravel lot has a footprint of approximately 13,500 sq. ft. while the new asphalt paved lot has a footprint of approximately 12,600 sq. ft. This portion of the proposal is an allowed use as it involves an existing structure already located within a watershed protection area that expands one hundred percent or less of the original footprint.

The proposal includes eight picnic tables that would be located within the 100 ft. buffer. Six of the tables would be located on individual crushed stone pads approximately 115 sq. ft. in size. Two would be placed on concrete pads along the proposed trail. The six tables and crushed stone pads are also allowed uses as they are each under 120 sq. ft. in areas and are not subject to building permit requirements.

The parking lot improvements and the six tables will not be further reviewed.

3. Variances.

- a. The buffer widths established in subsection (C)(4) below, may be varied by not more than fifty percent for residential uses by the director administratively, under Section 21A.03.040.*
- b. Variances to buffer widths in excess of fifty percent for residential uses and all variances for commercial or industrial uses may be granted by the hearing examiner, after public hearing thereon, as set out in Section 21.16.060(B) of the Skamania County Code.*

Finding:

At its nearest point, the proposed sidewalk and trail is located 50 ft. from the OHWM. The required buffer is 100 ft. The applicant requests a 50% reduction in the required setback for the trail. "Rough lawn" will be planted around the trail area, as close as 32 ft. from the OHWM. Because this is not a residential use, a variance may only be granted by the hearing examiner after a public hearing.

- c. In addition to the criteria set out in Section 21.16.060(B) of the Skamania County Code, any applicant for a variance under this chapter must further show:
 - i. That no practicable alternative exists to locating the proposed development within a pond, lake or buffer area; and**

Finding: The project proposes improvements to the existing Eagle Cliff Park. The area is largely improved already with the existing parking area and park area to the north. While no structures are present north of the existing parking lot, a primitive trail provides access to the area for picnicking and viewing of the Lewis River. The proposed improvements will allow for continuation of these uses, but with an improved ADA accessible trail, restroom facilities, and picnic tables.

Only the sidewalk/trail and two ADA picnic table will be located within the 100 ft. buffer. The applicant has revised their original proposal so that the proposed vault toilet is located 100 ft. away from the OHWM and outside of the setback. The applicant has also modified the proposal so that all structural improvements – including picnic tables and trails – will be located outside of the 50 ft. shoreline setback.

There are no practicable alternative locations to allow for these access improvements that can comply with the 100 ft. buffer as much of the parcel is already within the buffer area. While the park is located on an approximately 93.84-acre parcel, the existing park improvements are confined to a smaller portion of the property (approximately 1 acre in size) that is physically constrained. This area is bounded on the south by USFS 90 Road, on the east by the Lewis River, and on the west by a steep 20 ft. slope that separates the park from the rest of the property. Strict compliance with the buffer requirement would require extensive excavation of the adjacent hill side, causing greater disturbance and resulting in the removal of many additional trees and plantings.

- ii. That on-site mitigation measures agreed to by the applicant are adequate to avoid significant degradation of the pond or lake.*

Finding: The applicant has proposed planting a total of 20 native shrubs and 20 native trees for the removal of existing vegetation in the project area and the increased impervious surface. The applicant has not yet provided a detailed planting plan, however a revised plan states that plantings will be located on the southwest side of the roadway and throughout the improved park area. Staff recommends a **condition of approval** requiring the applicant to submit a detailed mitigation planting plan prior to project construction.

In addition to the 40 plantings, the applicant will also be abandoning the existing park facilities located across and south of the USFS 90 Road. These facilities include existing trails, picnic tables, and a vault toilet facility. All will be abandoned and removed as part of this project and disturbed areas replanted with grass seed and some of the 20 native trees and 20 native shrubs will also be planted in this area.

The proposed plantings and abandonment of existing park facilities are sufficient mitigation. Staff also recommends the following **conditions of approval**:

1. All-natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
2. Temporary and permanent control measures shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems and culverts.

4. Buffer Widths.

- a. Classes I, II, III, and IV streams, creeks and rivers are described in Appendix C.*
- b. Except as specifically allowed under subsection (C)(3) above, undisturbed buffers shall be preserved around all regulated streams, creeks and rivers.*
- c. The required width of undisturbed buffer areas shall depend upon the class of water represented by the stream, creek or river protected, the type or scale of use or development proposed by an applicant and the vegetative community adjacent to the water body.*
 - i. For Class I streams, creeks and river, the standard buffer zone width shall be one hundred feet.*
 - ii. For Class II streams, creeks and rivers, the standard buffer zone width shall be one hundred feet.*

- iii. For Class III streams, creeks and rivers, the standard buffer zone width shall be one hundred feet.*
- iv. For Class IV streams, creeks and rivers, the standard buffer zone width shall be fifty feet.*
- v. For Class V streams, creeks and rivers, the standard buffer zone width shall be twenty-five feet. (Ord. 2007-02 (part); Ord. 1996-03 (part))*

Finding: The Lewis River is a shoreline and Class I river with a standard buffer width of 100 ft. The proposal occurs largely within this 100 ft. buffer, however the parking lot improvements and placement of six picnic tables are exempted from review under Section 21A.04.030(C)(2). A new vault toilet will be located outside of the 100 ft. setback.

A new sidewalk/trail located north of the parking area will provide access to the vault toilet and picnic area. The landscape will be planted with rough lawn. These improvements are located within 100 ft. of the OHWM and a variance is required.

TITLE 21 **ZONING**

21.16.070 HEARING EXAMINER - DUTIES AND RESPONSIBILITIES

The Hearing Examiner shall hear and decide:

B. Application for variances from the terms of this title, with the exception of minimum lot size/density; 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 properties in the vicinity and zone in which the subject property is situated, and that the following circumstances are found to apply;

- 1) Because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings, the strict application of the zoning ordinance is found to deprive subject property of rights and privileges enjoyed by other properties in the vicinity and under identical zone classification and/or special purpose district;*

Finding:

While the park is located on an approximately 93.84-acre parcel, the existing park improvements are confined to a smaller portion of the property (approximately 1 acre in size) that is physically constrained. This area is bounded on the south by USFS 90 Road, on the east by the Lewis River, and on the west by a steep 20 ft. slope that separates the park from the rest of the property. Much of the existing park and all of the proposed trail location is located within the 100 ft. buffer. While the parcel has acreage outside of the buffer, strict compliance with the buffer requirement would require extensive excavation of the adjacent hill side, causing greater disturbance and resulting in the removal of many additional trees and plantings, including within the buffer area.

The proposal involves reasonable upgrades to the existing facility to allow for ADA accommodations. While the proposal does not involve any new uses, trails and picnic areas are allowed uses within the Swift Recreational (SR) zone. Adjacent properties lacking the constraints of this property are allowed these uses.

- 2) *That the granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone classification and/or special purpose district in which subject property is situated;*

Finding:

The proposal is consistent with the property's Comprehensive Plan Designation and Zoning which allows for recreational trails, viewpoints, and picnic areas. The improvements will benefit the public welfare by providing ADA access to the existing park facility and providing mitigation through the abandonment of the existing facility south of USFS 90.

CONCLUSIONS:

With the recommended conditions of approval, the proposal meets the criteria for granting a Shoreline Substantial Development Permit and Critical Areas 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. The vault toilet building shall be finished in muted tones by painting, staining or other processing.
3. No construction equipment shall enter any body of water.
4. Except as indicated in the project plans, any disturbed vegetation should be restored and replanted to its prior natural state.
5. 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.
6. An erosion control barrier, such as silt fencing or straw wattles, shall be installed prior to any ground disturbance and remain in place until vegetation is established to ensure that waste material and foreign matter are not allowed to enter the water.
7. 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.
8. The size and design of all signs shall be compatible with the surrounding environment and finished in muted tones.
9. The applicant shall submit a detailed mitigation planting plan prior to project construction.
10. All-natural vegetation shall be retained to the greatest extent practicable, including aquatic and riparian vegetation.
11. Temporary and permanent control measures shall be applied to minimize erosion and sedimentation when riparian areas are disturbed, including slope netting, berms and ditches, tree protection, sediment barriers, infiltration systems and culverts.



Alan Peters, AICP
Assistant Planning Director

May 9, 2019

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.