

**BEFORE THE HEARING EXAMINER
FOR SKAMANIA COUNTY**

In the Matter of the Application of)	NO. SHR-19-02/CA-19-01
)	
PacifiCorp)	Eagle Cliff Park Improvements
)	
)	
For Approval of a Shoreline Substantial)	FINDINGS, CONCLUSIONS, AND
Development Permit and a Critical)	DECISION
<u>Area Variance</u>)	

SUMMARY OF DECISION

The request for approval of a shoreline substantial development permit and critical areas variance to improve and relocate facilities at Eagle Cliff Park is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

PacifiCorp (Applicant) requested approval of a shoreline substantial development permit (SSDP) and critical areas variance (CAV) to improve and relocate facilities at Eagle Cliff Park, which is located on the west side of the Lewis River at the US Forest Service Road (USFS) 90 crossing.

Hearing Date

The Skamania County Hearing Examiner held an open record hearing on the request on May 20, 2019.

Testimony

The following individuals presented testimony under oath at the open record hearing:

1. Alan Peters, Assistant Planning Director, Skamania County
2. Brett Horton, PacifiCorp

Exhibits

1. Community Development Department Staff Report, dated May 9, 2019
2. Revised Site Plan,¹ submitted May 6, 2019
3. Application materials, including the following:²
 - Critical Area Water Resource Buffer Variance Application Supplemental Information Form

¹ The document entered into the record as “Exhibit 2: Revised Site Plan” (see Exhibit 1, page 2) is titled “Landscape Restoration Plan.” It differs from the version of the Landscape Restoration Plan entered into the record as Exhibit 3, page 49.

² Citations to pages within Exhibit 3 will be to the page numbers assigned by County staff (at the tops of the pages) and not to the page numbers of the individual documents.

- JARPA Form
 - Critical Areas Variance Narrative
 - SEPA Environmental Checklist
 - Vicinity Map
 - Photographs
 - Plan Set
4. Notice of Public Hearing (as published)
 5. Notice of Public Hearing (as mailed to agencies and adjacent property owners)
 6. SEPA Revised mitigated determination of non-significance (MDNS), issued April 25, 2019
 7. Comment letter from Christian Nauer, Archaeologist for Confederated Tribes of the Warm Springs Reservation of Oregon, dated April 15, 2019

Upon consideration of the testimony and exhibits admitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. The Applicant requested approval of an SSDP and CAV to improve and relocate facilities at Eagle Cliff Park, which is located on the west side of the Lewis River at the US Forest Service Road (USFS) 90 crossing.³ *Exhibits 1, 2, and 3.*
2. The subject property is 93.84 acres in area and is situated within the Swift Recreational (SR) zoning and Comprehensive Plan designations. The purpose of the SR land use designation is to promote recreation opportunities within the Swift Subarea. Allowed uses include trails, scenic viewpoints, picnic areas, restrooms, and parking areas. *Exhibit 1, pages 1 and 3; Skamania County Code (SCC) 21.68.110.*
3. The park use has existed on the subject property for more than 50 years. Existing facilities include a restroom, signage, pathway and picnic tables on the south side of USFS 90, and an asphalt driveway, gravel parking lot, steel gate, concrete mat, and fish release structure on the north side of USFS 90. Many of these features are located within 100 feet of the ordinary high water mark of the Lewis River. Adjacent properties are used for recreation, timber production, and wildlife habitat. *Exhibit 3, pages 6, 20, 38, 39, 40, and 43.*
4. The proposed park improvements are designed to comply with Federal Energy Regulatory Commission (FERC) license requirements and Lewis River Settlement Agreement requirements that are applicable to the Applicant. The project would remove

³ The legal description of the subject property is a portion of the Northeast quarter of Section 26, Township 7 North, Range 6 East, W.M.; also known as Parcel No. 07-06-26-0-0-0100-00. *Exhibit 1.*

the facilities located on the south side of USFS 90 and restore the disturbed areas with grasses, trees, and shrubs, and to relocate the picnic area to the north side of USFS 90, north of the existing parking area. The Applicant proposed to: pave the parking lot and provide ADA parking stalls; install a new double vault toilet (total height of 15 feet to top of vent pipes); install two ADA barrier-free picnic sites, which would be located on concrete pads; construct a paved trail to provide access to the toilets and ADA picnic sites; install six picnic tables on individual crushed stone pads; install a welcome kiosk; relocate existing parking lot boulders; replace the access gate; and install landscaping. *Exhibit 1, pages 1, 2, 14 and 19; Exhibit 2; Exhibit 3, page 7.*

5. The Lewis River is classified as a Class I river under the County's critical areas ordinance (CAO) and is a regulated shoreline pursuant to the Shoreline Management Act and the County's Shoreline Master Program (SMP). The SMP designates the affected portion of the Lewis River shoreline as a Conservancy shoreline environment. The minimum buffer required by the CAO is 100 feet (SCC 21A.04.030(C)(4)), and the minimum buffer required by the SMP is 50 feet (Conservancy Environment Regulations, No. 4). The CAO allows certain activities and structures within the 100-foot buffer, including structures less than 120 square feet in area that do not require a building permit, and expansions of existing structures of 100% or less of the original footprint. The proposed six picnic tables on crushed rock pads and the parking lot improvements are exempt from the CAO buffer requirement; the only portion of the development within 100 feet of the ordinary high water mark that is not exempt is the paved trail and the two concrete picnic pads along the trail. These would be 50 feet from the ordinary high water mark at their closest point. Pursuant to SCC 21A.04.030(C)(3), hearing examiner approval of a CAV is required to authorize the improvements within the 100-foot buffer. However, a variance from the provisions of the SMP is not required because the minimum 50-foot buffer would be satisfied. *Exhibit 1, pages 1, 11, 18-21; Exhibit 2.*
6. The topography of the subject property makes siting the park improvements outside of the CAO buffer infeasible. There is a 20-foot slope to the west of the park site that separates the park from the remainder of the Applicant's property. The Lewis River borders the site to the east and USFS Road 90 borders the park site to the south. *Exhibit 1, pages 20 and 21; Exhibit 2.* Planning Staff submitted that improvements compliant with CAO setback would require much more site disturbance. *Alan Peters Testimony.*
7. As of September 2017, projects within Shoreline Management Act jurisdiction valued at less than \$7,047 are exempt from the requirement for an SSDP. The approximate fair market value of the project is \$275,000; it is not exempt and requires SSDP approval. *Exhibit 3, page 8; Exhibit 1, page 4.*
8. No in-water work is proposed. Excavation would not be required other than minor leveling and dirt removal for new paved areas. *Exhibit 3, pages 8 and 13.*
9. The proposed paving of the parking area would result in a reduced parking lot footprint compared to the existing conditions. While the existing gravel lot has an area of

approximately 13,500 square feet, the proposed paved lot would have an area of approximately 12,600 square feet. *Exhibit 1, page 19.*

10. The Applicant submitted an erosion control plan depicting use of a straw wattle sediment barrier along the entire eastern edge of the project area to prevent material from entering the Lewis River, and biofilter bag check dams in the northeast portion of the project area. *Exhibit 3, page 46.* All disturbed soils that are not paved, covered with crushed gravel, or planted with trees and shrubs would be hydroseeded. *Brett Horton Testimony.*
11. The Applicant proposed to construct a stormwater swale to filter parking lot runoff. *Exhibit 3, page 25.*
12. The project would require removal of vegetation on the north side of USFS 90 within the 100-foot CAO buffer. The Applicant proposed to mitigate this impact by planting 20 native trees and 20 native shrubs. This mitigation would be in addition to the proposed landscaping around the improved parking lot and new picnic area, which would consist of grass and nine shrubs. County Staff submitted that the mitigation would satisfy County requirements and recommended that the Applicant be required to submit a detailed planting plan for review and approval prior to construction. *Exhibit 1, pages 12 and 22; Exhibit 3, page 44; Exhibit 2; Alan Peters Testimony.*
13. The Washington Department of Fish and Wildlife priority habitat and species (PHS) maps identify areas in the vicinity of the project area as elk winter range. The project is not expected to affect the habitat or elk behavior because construction is proposed to occur during late summer or early fall. Other priority species potentially located in the project area would also not be affected. *Exhibit 3, pages 16, 23, and 32.*
14. Although the subject property is within the 100-year floodplain of the Lewis River, the only building proposed (the restroom) would be outside of the floodplain. *Exhibit 1, page 14.*
15. Skamania County assumed the role of lead agency for review of the environmental impacts of the proposal under the State Environmental Policy Act (SEPA). The County issued a mitigated determination of non-significance (MDNS) on April 11, 2019. The MDNS included conditions addressing the following: dust suppression; landscaping of disturbed areas; erosion control; stormwater management; permitting requirements; and stop work/notice requirements for discovery of cultural resources. In response to timely comments submitted by the archaeologist for the Confederated Tribes of the Warm Springs Reservation of Oregon, the County issued a Revised MDNS on April 25, 2019, which added a condition requiring that the Applicant conduct a cultural resource survey prior to project approval. The Applicant submitted the required survey on May 8, 2019, which did not identify any cultural resources in the project area. As of the hearing date, the Confederated Tribes had not submitted further comments in response to the survey. *Exhibits 6 and 7; Alan Peters Testimony.*

16. Notice of the public hearing was mailed to adjacent landowners within 300 feet. Notice was also posted on the Community Development Department's webpage on April 10, 2019 and published in The Skamania County Pioneer on April 10, 2019 and April 17, 2019. Other than the previously described comments submitted by the Confederated Tribes, there was no comment on the application. *Exhibit 1, page 3; Exhibits 4 and 5.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted authority to conduct hearings and make decisions on critical areas variances pursuant to SCC 2.80.060(A)(9) and on shoreline permits pursuant to SCC 20.20.010.

Criteria for Review:

Shoreline Substantial Development Permit:

Pursuant to Skamania County Code 20.20.020.A, the Hearing Examiner shall grant a substantial development permit only if the proposal is consistent with:

1. The policies and procedures of the Shoreline Management Act;
2. The provisions of Chapter 173-14 [now 173-27] WAC; and
3. The Skamania County Shoreline Master Program.

Shoreline Management Act

The policy of the Shoreline Management Act is set forth in RCW 90.58.020 as follows:

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to ensure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

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

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. ...

Applicable regulations from the Washington Administrative Code

WAC 173-27-140 Review criteria for all development.

- (1) No authorization to undertake use or development on shorelines of the state shall be granted by the local government unless upon review the use or development is determined to be consistent with the policy and provisions of the Shoreline Management Act and the master program.
- (2) No permit shall be issued for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

WAC 173-27-150

- (2) Local government may attach conditions to the approval of permits as necessary to assure consistency of the project with the act and the local master program.

WAC 173-27-190 Permits for substantial development, conditional use, or variance.

- (1) Each permit for a substantial development, conditional use or variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

*Skamania County Shoreline Master Program
Shoreline Policy Statements for Use Activities*

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2. Archeological Areas and Historic Sites

Archaeological 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 archaeological 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 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.

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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.

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.

Conservancy Environment Regulations

The following are the applicable conservancy environment regulations for the proposed development.

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.
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, and low-density residential and other related uses. Shoreline uses permitted within the Conservancy Environment: Public access areas, roads and trails ... Parking lots for vista purposes, park and ride, and for associated parking with permissible uses
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, preferable wood siding. Exterior walls of non-wood material shall 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. 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 Use Regulations

The Use Regulations are intended to govern the manner in which the particular use or type of development is placed in each environment so that there are no effects detrimental to achieving the objectives of the particular environment.

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

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.

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.

Critical Areas Variance

Pursuant to SCC 21A.04.030(3), an applicant for a critical areas variance to reduce a stream buffer for a non-residential use must demonstrate compliance with the following criteria:

SCC 21.16.070(B):

1. Any variance granted . . . 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;
2. 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;
3. 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;

SCC 21A.04.030(3)(c):

4. That no practicable alternative exists to locating the proposed development within a . . . buffer area; and
5. That on-site mitigation measures agreed to by the applicant are adequate to avoid significant degradation of the [critical area].

Conclusions Based on Findings:

1. With conditions of approval, the criteria of approval for an SSDP are satisfied.
 - a. Consistent with RCW 90.58.020, the proposal is a reasonable and appropriate use of the shoreline, which would increase recreational opportunities for the public and which would be protective of the resources and ecology of the shoreline. The conditions of approval address construction issues such as fuel storage, erosion control, and debris removal. *Findings 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, and 15.*
 - b. The proposal is consistent with the regulations of the Shoreline Management Act, in that it is being reviewed under the applicable SSDP criteria and will be conditioned for consistency with the Master Program and with the 21-day waiting period required by WAC 173-27-190. No structure of more than 35 feet above average grade is proposed. *Findings 4, 5, and 7.*
 - c. The proposal is consistent with the Skamania County Shoreline Master Program. The use is allowed in the Conservancy Environment. The project has been evaluated for potential impacts to cultural resources, and the conditions of approval include stop work and notice requirements if cultural resources are

identified during construction. The proposal would facilitate public access to the shoreline by adding ADA improvements that are not present currently. The location of the parking lot would not change and would be set back at least 50 feet from the shoreline. The construction window would prevent adverse impacts to elk, whose winter range is in the project vicinity. Because no in-water work is proposed, the project would not affect fisheries. The minimum 50-foot setback for the Conservancy environment would be maintained. No structure would be higher than 35 feet. Disturbed areas (including areas on the south side of USFS 90 that will no longer contain park facilities) would be restored. Erosion control measures and drainage improvements are proposed. The conditions of approval address the exterior finish of the proposed restroom facility, additional construction requirements, and signs. *Findings 3, 4, 5, 8, 10, 11, 12, 13, and 15.*

2. As conditioned, the criteria of approval for a critical areas variance are satisfied.
 - a. The variance would not be a grant of special privilege. The park is a pre-existing use within the 100-foot buffer, is allowed in the zone, and is consistent with the use of surrounding properties. The overall scale of the park would not increase as a result of the variance; the Applicant proposed only to relocate/replace elements of the use and add pavement and accessibility improvements consistent with Federal requirements. *Findings 1, 2, 3, 4, and 9.*
 - b. Due to topographic constraints and the location of the access road and river, strict application of the 100-foot buffer would deprive the Applicant of the ability to upgrade the park consistent with applicable legal requirements. *Findings 4, 5, and 6.*
 - c. The granting of the variance would not be materially detrimental to the public welfare or injurious to property or improvements in the vicinity or the SR zone. Only a paved trail and two paved picnic sites would be within the 100-foot buffer. The use of the property would not change and would remain consistent with surrounding land uses. Erosion control measures would be implemented to ensure that material does not enter the Lewis River. The site has been evaluated for cultural resources, and none were identified. A condition would ensure that work would stop and appropriate agencies would be contacted in the event of any inadvertent discovery. *Findings 3, 5, 9, 15, and 16.*
 - d. Due to the location of existing park facilities and topographic constraints, no practicable alternative exists to locating the proposed improvements within the buffer. *Findings 3, 4, 5, and 6.*
 - e. The on-site mitigation agreed to by the Applicant, along with proposed erosion control measures, would be adequate to avoid significant degradation of the shoreline. *Findings 10 and 12.*

DECISION

Based upon the preceding findings and conclusions, the requested shoreline substantial development permit and critical areas variance to improve and relocate facilities at Eagle Cliff Park are **APPROVED** subject to the following conditions:

1. The following procedures shall be followed if 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 shall 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 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.

12. Construction pursuant to this permit shall not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have been terminated; except as provided in RCW 90.58.140 (5)(a) and (b).

DECIDED June 6, 2019 by



Sharon A. Rice
Skamania County Hearing Examiner

Note regarding the shoreline substantial development permit: Pursuant to Skamania County Code 20.20.060, any person aggrieved by the granting or denial of a permit by the Hearing Examiner may seek review from the Shorelines Hearings Board, pursuant to State Statute 90.58.180. This section of state law is included in the appendix attached to the ordinance codified in this title and filed in the office of the County Clerk. (Ord. 1980-02 '7.60)

Note regarding the critical area variance: 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.