

**BEFORE THE HEARING EXAMINER
FOR THE CITY OF SNOHOMISH**

In the Matter of the Application of)	No. 10-08
)	
City of Snohomish)	
Public Works Department)	City Shop Expansion
)	
For Approval for a Shoreline Substantial)	FINDINGS, CONCLUSIONS
<u>Development Permit</u>)	AND DECISION

SUMMARY OF DECISION

The request for a Shoreline Substantial Development Permit to retain a 1,440 square-foot mobile office building within the Urban Shoreline Environment of the Snohomish River at 1801 First Street, in Snohomish, Washington, is **GRANTED**. Conditions of approval are necessary to mitigate specific impacts of the proposed development.

SUMMARY OF RECORD

Request:

The City of Snohomish Public Works Department requests approval of a Shoreline Substantial Development Permit (SSDP) to retain a 1,440 square-foot mobile office building within the Urban Shoreline Environment of the Snohomish River at 1801 First Street, in Snohomish, Washington.

Hearing Date:

The City of Snohomish Hearing Examiner held an open record hearing on the request on March 27, 2009.

Testimony:

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

Owen Dennison, City Planner
Mike Johnson, City Facilities Manager, for Applicant

Exhibits:

The following exhibits were admitted into the record:

1. Shoreline Permit Application form, dated March 28, 2008
2. Shoreline Permit handout
3. Land Use Application form, dated March 28, 2008
4. Construction Permit Application form, dated February 15, 2008
5. Critical Areas Report, prepared by Otak, Inc., dated December 5, 2008
6. Access Washington Project Questionnaire

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7. Shoreline Management Master Plan compliance letter, dated March 28, 2008
8. List of Adjacent Property Owners
9. Site map, received March 28, 2008
10. Portable office building floor plan/layout, undated
11. Hand drawn structure elevation, undated
12. Itemized cost estimate for portable structure, undated
13. Color photograph of portable structure, undated
14. City Shop Office Space Expansion site map, dated March 6, 2009
15. County Assessor aerial photo of the site, printed on March 11, 2009
16. County Assessor Real Property Information, printed on February 19, 2008
17. Elevation Certificate, OMB #1660-0008, dated February 27, 2009
18. Design Review Board meeting minutes, dated July 9, 2008
19. Summary of Determination for design review, dated August 4, 2008
20. Email from Sara Noland, ESA Adolfson, RE: review of Critical Areas report, dated December 17, 2008
21. SEPA Checklist, reviewed by Owen Dennison, dated January 7, 2009
22. Determination of Non-Significance, dated January 15, 2009
23. Notice of Determination of Non-Significance, dated January 15, 2009
24. Affidavit of mailing and posting DNS, dated January 16, 2009
25. Affidavit of publication from the Everett Herald, dated January 15, 2009
26. Letter and photograph from Morgan Davis, received January 29, 2009
27. WSDOT Aviation Division publication, Airports and Compatible Land Use, Vol. 1 Rev. February 1999, pages 40 and 41
28. Shop Site Office Space Expansion Land Use Compatibility – Airport Safety Zones map, dated March 1, 2009
29. Landau & Assoc. Technical Memorandum RE: No Effect Determination, dated February 9, 2009
30. Notice of Public Hearing, dated February 27, 2009
31. Affidavit of mailing and posting Notice, dated February 27, 2009
32. Affidavit of publication from the Everett Herald, dated February 27, 2009
33. Staff Report to Hearing Examiner, dated January 12, 2009

The Hearing Examiner enters the following Findings and Conclusions based upon the testimony and evidence admitted at the open record hearing:

FINDINGS

1. The City of Snohomish Public Works Department (Applicant)¹ requests approval of a Shoreline Substantial Development Permit (SSDP) to retain a 1,440 square-foot mobile office building within the Urban Shoreline Environment of the Snohomish River at 1801

¹ The City Staff Report states the proponent is the Public Works Department. *Exhibit 33, Staff Report, page 1.* The land use application and the Shoreline Management Master Plan compliance letter were signed by Mike Johnson, Parks and Facilities Supervisor, a subunit of Public Works. *Exhibit 3; Exhibit 7.*

First Street, in Snohomish, Washington.² *Exhibit 1; Exhibit 14; Exhibit 33, Staff Report, page 1.*

2. The City of Snohomish (City) determined the SSDP application was complete on March 28, 2008. *Exhibit 33, Staff Report, page 1.* On January 15, 2009, the City mailed notice of the application and Determination of Nonsignificance (DNS) to agencies of jurisdiction and adjacent property owners, posted notice on the property and in City Hall, and published notice in *The Herald*. *Exhibit 23; Exhibit 24; Exhibit 25.* On February 27, 2009, the City mailed notice of the public hearing to adjacent property owners, posted notice on the property and in City Hall, and published notice in *The Herald*. *Exhibit 30; Exhibit 31; Exhibit 32.*
3. Pursuant to the State Environmental Policy Act (SEPA) (RCW 43.21C), the City Planning and Development Services acted as lead agency for review of environmental impacts caused by the proposal. The City issued a Determination of Nonsignificance (DNS) on January 15, 2009. The City found that the proposal would not have a probable significant adverse impact on the environment if there is compliance with two conditions: implementation of the December 5, 2008 Critical Area Report recommendations and installation of permanent critical area signs at 100-foot intervals along the enhancement area boundary. *Exhibit 22.*
4. The subject property is zoned Commercial and designated Commercial in the City's Comprehensive Plan.³ The site is bordered by the Snohomish River to the south and State Route 9 to the west; single-family, multi-family and vacant property to the north; and industrial property to the east. Properties to the north have zoning and Comprehensive Plan designations of Open Space, Medium Density Residential, and Commercial. Industrial property to the east has zoning and Comprehensive Plan designation of Commercial. *SMC 14.207.090; Exhibit 33, Staff Report, pages 1 and 3.*

² The property is identified as tax parcel No. 28051300109700. *Exhibit 2.* A legal description is provided in Exhibit 33, Staff Report, page 3.

³ The City Staff Report identified numerous Comprehensive Plan Goals and Policies as relevant to the application: ENVIRONMENTAL PROTECTION GOALS AND POLICIES – Goal EP1, Policies EP 1.1, EP 1.4, EP 1.5; Goal EP2, Policies EP 2.1, EP 2.2, EP 2.3, EP 2.4, EP 2.8; Goal EP 3, Policies EP 3.1, EP 3.7; Goal EP 4, Policies EP 4.1, EP 4.2, EP 4.3; Goal EP 7, Policies EP 7.1, EP 7.3, EP 7.4; Goal EP 8, Policies EP 8.1, EP 8.2; Goal EP 9, Policies 9.1; Goal EP 10, Policies 10.1, 10.4; Goal EP 11, Policies EP 11.1, EP 11.2, EP 11.3, EP 11.4, EP 11.5, EP 11.6; Goal EP 12, Policies EP 12.1, EP 12.2; Goal EP 13, Policies EP 13.1, EP 13.2; Goal EP 14, Policies EP 14.1, EP 14.2, EP 14.3, EP 14.4. ECONOMIC DEVELOPMENT GOALS AND POLICIES – Goal ED 10, Policies ED 10.2. COMMUNITY FACILITIES AND SERVICES GOALS AND POLICIES – Goal CO 3, Policies CO 3.1, CO 3.2, CO 3.3; Goal CO 4, Policies CO 4.6; Goal CO 5, Policies CO 5.1; Goal CO 6, Policies CO 6.5. PARKS, RECREATION, AND OPEN SPCE OPPORTUNITIES AND ACCESS – Goal PRO 2, Policies PRO 2.4. ROLE OF THE CITY'S SHORELINES – Goal PRO 3, Policies PRO 3.1, PRO 3.3. LAND USE GOALS AND POLICIES – Goal LU 2, Policies LU 2.1. COMMERCIAL LAND USE – Goal LU 6, Policies CA 6.1, CA 6.4. TRANSPORTATION GOALS AND POLICIES – Goal TR 1, Policies TR 1.1; Goal TR 7, Policies TR 7.4. UTILITIES GOALS AND POLICIES – Goal UT 2, Policies UT 2.7, Goal UT 8, Policies UT 8.6. CAPITAL FACILITIES GOALS AND POLICIES – Goal CF 2, Policies CF 2.9. POLICY PLAN IMPLEMENTATION GOALS AND POLICIES – Policies PI 1.5, PI 1.6, PI 1.7. *Exhibit 33, Staff Report, Attachment A.*

5. The City installed a 1,440 square-foot (24 feet x 60 feet) mobile office building on the site between an existing building and the Snohomish River. The mobile office building is 12-foot high, compliant with the Americans with Disability Act, and would be used by City employees. A public agency office is a permitted use in the Commercial zone. The subject property measures 351,744 square feet (8.1 acres). The site is currently used as the City's Public Works yard. The Public Works yard contains five buildings, portable storage containers, and road and utility construction material bins. The site is publicly owned and provides public access during working hours. Mike Johnson, City Facilities Manager, testified that the on-site shoreline area along the Snohomish River is used for public fishing. No artifacts or places of archeological importance are known to exist on the site. The City's Staff Report identified four previous shoreline permits for uses and activities, including fill, at the site. The mobile office building has been installed on existing asphalt pavement previously used for parking. Additional parking on-site is available. A Class 3 wetland is located on the west edge of the site. The installed mobile office building lies outside the wetland buffer. *Exhibit 5, pages 3 and 5; Exhibit 7; Exhibit 14; Exhibit 21, page 8; Exhibit 33, Staff Report, pages 1, 2, 9, 11 and 14; Testimony of Mr. Johnson.*

6. Snohomish Municipal Code (SMC) 14.280.060, Table 1 requires a 100-foot wide conservation area buffer for the Snohomish River. The installed portable office building is outside this buffer. The existing conservation buffer on-site contains driveways and parking areas. The Applicant proposes providing shoreline 6,000 square feet of enhancement area within the conservation area buffer. The proposed vegetation enhancement includes installation of native plant species and removal of parking barrier blocks. The proposed enhancement would mitigate for previous impacts to the river buffer and is not intended as mitigation for the proposed project. *Exhibit 5; Exhibit 29, page 3; Exhibit 33, Staff Report, page 2.*

7. The State Shoreline Management Act (SMA) and the Snohomish Shoreline Management Master Program (City SMP) regulate activity within 200 feet of the ordinary high water mark of "shorelines of the state." *RCW 90.58.030(2)(f); RCW 90.58.040.* The Snohomish River is a shoreline of the state pursuant to Section 173-18-350 of the Washington Administrative Code (WAC). The installed portable office building lies within 200 feet of the Snohomish River. Any "substantial development" within the shoreline requires approval of a shoreline substantial development permit (SSDP). Substantial development is any development in which the total cost or fair market value exceeds \$5,718.00, or any development that materially interferes with the normal public use of the water or shorelines of the state. *RCW 90.58.030(3) (e); Exhibit 14.*

8. A goal of the City SMP is to "Provide an effective management tool that would insure the proper use and development of the City's shorelines." *City SMP (adopted 1976),*

*introduction, page 1.*⁴ The City SMP states, “The overall intent of the City’s Shoreline Master Program was to protect the general public’s interest in the use and development of the City’s shorelines while at the same time not placing unnecessary restrictions on desired development patterns and personal property rights.” *City SMP, introduction, page 1.*

9. The City SMP designates the subject property as an Urban Shoreline Environment. The object of the Urban Environment is “to insure optimum utilization of shorelines within urbanized areas by providing for intensive public use and by managing development so that it enhances and maintains shorelines for a multiplicity of urban uses.” The management policies for the Urban Environment include giving priority to water dependent, industrial and commercial uses requiring frontage on navigable waters. “Uses which are not water dependent should be discouraged.” *City SMP, Environment Policies, page 38.*
10. The City SMP contains general requirements for all uses, as well as use regulations specific to the Urban Shoreline Environment. The general use regulations provide minimal development requirements for various use activities so long as the proposed use is consistent with the permitted use and performance standards of the underlying zoning district. In addition, the City SMP contains Goals and General Development Policies including Shoreline Use; Economic Development; Public Access; Historical, Cultural, Scientific; Recreational; and Conservation Elements. The City SMP also includes specific environmental policies for the Urban Environment, as well as specific use activity policies and regulations. Public works facilities are not among the regulated uses listed in the SSMP. The City Staff applied the Commercial Development use activity policies and regulations to the SSDP application. The City Staff Report states that the proposed project would meet City SMP goals and policies. *City SMP, pages 5-7, 20-24, 28-29, 38-39, 60-61; Exhibit 33, Staff Report, pages 8-14.*
11. The City’s long-term plan for the site is redevelopment as a public park. In addition, under the terms of a consent decree, the City plans to construct sanitary sewer improvements in 2010 including conveyance facilities in First Street and a lift station on the site. Access to the site is from First Street. The site frontage is not currently developed to City street standards. The City Staff Report states that construction of street frontage improvements would better be accomplished as part of future sanitary sewer improvements on site. *Exhibit 33, Staff Report, pages 4, 5, 9 and 13.*
12. The site is located in the Accident Safety Zone 2 for the Harvey Field airport. The airport is located on the south side of the river, opposite the site. The City applied the applicable recommendations from Appendix B of the Washington State Department of Transportation’s “Airports and Compatible Land Uses,” Volume 1, revised February

⁴ The Snohomish Shoreline Management Master Program was adopted and amended by resolutions in December, 1976. Two additional map amendments were adopted in 1976 and 1980. The shoreline master program was integrated into the City’s Comprehensive Plan by Ordinance 1966, on December 31, 2000. *City SMP, cover page.*

- 1999: density for non-residential development would be less than five persons per acre; the installed mobile office building is located away from the runway centerline; only low-growing vegetation are proposed for the enhancement area; no high overhead outdoor lighting; lighting would be shaded downward to reduce glare; and overhead electric wires to the installed building would lower than the existing neighboring PUD lines. *Exhibit 5, page 4; Exhibit 27; Exhibit 33, Staff Report, page 6.*
13. The Snohomish River provides rearing or migration habitat for a number of anadromous fish populations, including Chinook and coho salmon, chum salmon, pink salmon, and steelhead. Cutthroat and rainbow trout and mountain whitefish are also present. Bull trout also use the Snohomish River as rearing habitat. Along the existing Public Works yard, the Snohomish River consists of approximately 20 to 30 feet of very steep bank armored with boulders and rip-rap. Above the rock is a thin vegetated strip which transitions to pavement or gravel. *Exhibit 5, pages 3 and 4; Exhibit 33, Staff Report, page 2.*
14. The Federal Emergency Management Agency (FEMA) has designated the proposed site a Special Flood Hazard Area inundated by 100-year flood. The National Marine Fisheries Service (NMFS) has issued a biological opinion regarding the federal Endangered Species Act (ESA) and the National Flood insurance Program. The Applicant submitted a No Effect Determination, prepared by Landau Associates, which concluded that the project would have no adverse effect on Pacific Salmon freshwater essential fish habitat, and was not in conflict with the ESA. The Landau determination states that the site is at a slightly higher elevation than the top of the adjacent Snohomish River levee. Flood events on-site have caused temporary relocation of staff “three to four times in the past 11 years, and flood waters typically recede within a day or two of flooding.” *Exhibit 29, page 2.* The Landau determination states that the portable building would be placed one foot above the base flood elevation, with skirting placed along the base of the building with six-foot gaps on either end of the building. No skirting would be placed adjacent to an access ramp leading to the building on the river facing front of the buildings so as not to impede flood waters or fish beneath the building during high flood events. *Exhibit 29, page 2; Exhibit 33, Staff Report, page 3.*
15. The City’s floodplain regulations in Chapter 14.270 SMC sets out a number of requirements for development within a floodplain. The installed portable building sits on 48 piers and is anchored to the ground by tie rods to prevent flotation, collapse, or lateral movement. *SMC 14.270.070.A.1.* The installed portable building is elevated at least one foot above the base flood elevation. *SMC 14.270.080.B.* The installed portable building has flood openings in the skirting at the base of the structure so as to not impede the passage of flood waters or fish beneath the building during high flood events. *SMC 14.270.080.B.4.* The installed portable building would have a negligible effect on surface water elevation. *SMC 14.270.080.E.* The entire site is within the 100-year floodplain, leaving no non-floodplain location for the structure. *SMC 14.270.100.D.1.* The Applicant provided a critical area report prepared by Otak, Inc., dated December 5, 2008, to

evaluate the critical areas consistency requirements of Chapter 14.255 SMC. ESA Adolphson reviewed the Critical Areas Report for the City and provided minor comments. *SMC 14.270.100. Exhibit 5; Exhibit 20; Exhibit 33, Staff Report, pages 6 and 7.*

16. The City Design Review Board met on July 9, 2008, to consider the Applicant's proposal. On August 4, 2008, Own Dennison, City Planner, made a determination that the project was consistent with all applicable Design Standards and other design criteria, with the following condition: "Prior to issuance of a permit to construct a sanitary sewer lift station on the City shops site, the DRB shall review and the City Planner shall approve a plan for frontage improvements to screen the site." *Exhibit 19.*
17. In the future, the City intends to develop the property as a public park along the Snohomish River shoreline. The City Staff Report states that the installed mobile office building would not be an obstacle to redevelopment as a park. *Exhibit 33, Staff Report, page 9.*
18. City Planner Mr. Dennison testified that the site is expected to be developed as a park in the 2019-2027 time-frame. He testified that sidewalks would be constructed along with street frontage along First Street when water/sewer utility improvements are made on side in 2010. He testified that the installed building is not a water dependent use, but that the SSDP should be granted because the proposed use is temporary and the Shoreline Management Act does not prohibit non-water dependent uses in the shoreline. Mr. Dennison testified that the City had applied its Critical Areas Ordinance, which requires a 100-foot wide buffer from the Ordinary High Water Mark (OHWM). Here the installed mobile office building is setback 140 feet from the OHWM. He testified that the City would enhance 6,000 square feet of the previously impacted river buffer. *Testimony of Mr. Dennison.*
19. Mr. Johnson testified that the City will provide river buffer enhancement as set out in the December 5, 2008, Otak Critical Areas Report (Exhibit 5). He testified that the Federal Emergency Management Agency requires that construction in floodplains obtain a determination that the project would have no adverse effects on listed endangered or threatened species. He testified that Landau Associates had provided the City with a "no effect determination" (Exhibit 29) and that the proposed buffer enhancement would provide better treatment of stormwater runoff. He testified that the City would comply with all proposed conditions and agrees with a condition requiring removal of the structure within 18 years to facilitate the use of the site as a public park. *Testimony of Mr. Johnson.*
20. Morgan Davis, an adjacent property owner, submitted a letter, received January 29, 2009, in opposition to the application. The letter raised concerns about flooding, lack of need for the installed office building, and its temporary nature given the City's plan for a park on site. Mr. Dennison testified that the City Code allows development that meets the City's floodplain regulations; that the mobile office is needed to provide reasonable

working conditions for City employees; and that the use is compatible with the City's future park plans for the site. *Testimony of Mr. Dennison; Exhibit 26.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner is authorized to conduct hearings and make decisions on Shoreline Substantial Development Permits (SSDP). *Snohomish Municipal Code (SMC) 14.50.060.*

Criteria for Review

Chapter 90.58 RCW, the Washington State Shoreline Management Act of 1971 (SMA), establishes a cooperative program of shoreline management between the local and state governments with local government having the primary responsibility for initiating the planning required by the chapter and administering the regulatory program consistent with the Shoreline Management Act. *RCW 90.58.050.* The Snohomish Shoreline Master Program (City SMP) provides goals and policies for ensuring that development within the shorelines of the state is consistent the policies and provisions of Chapter 90.58 RCW.

To be approved by the Hearing Examiner, the SSDP application must be consistent with:

- (a) The policies and regulations of the state Shoreline Management Act; and
- (b) The Snohomish Shoreline Master Program.

RCW 90.58; WAC 173-27-150; SMC 14.250.020.B.

Applicable policies of the Shoreline Management Act (SMA) include those to foster "all reasonable and appropriate uses;" protect against adverse effects to the public health, the land and its vegetation and wildlife; and give priority to single family residences and appurtenant structures in authorizing alterations to the natural condition of the shoreline. Permitted shoreline uses must be designed to "minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." *RCW 90.58.020.*

The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant's permit request. Chapter 173-27 sets forth permitting procedures and permit criteria.

The City Shoreline Master Program provides the following relevant SSDP requirements:

General Requirements, City SMP, page 5

1. The use does not conflict with the goals, objectives, and policies of the Master Program.
2. The use is consistent with the regulations of the City of Snohomish Zoning Code and is a permitted or accessory use in the underlying zoning district.

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- ...
4. The use will be designed and situated so as to conform to the performance standards of the underlying zoning districts.
 5. The use shall not be approved when its safety or viability would be dependent upon another use or structure, which is prohibited within the respective Environment.
 6. In the event of a conflict between the regulations of this program and the regulations of any other federal state or local law, the stricter shall prevail.

Use Regulations for Urban Environment: Commercial Development, City SMP, page 7

1. Any commercial structure or facility, except one which requires or is dependent on direct, contiguous access to the water, shall be set back from the ordinary high water mark by a minimum of ten (10) feet.
2. Commercial development may be located on landfill or over water PROVIDED that such development must require or be dependent on direct, contiguous access to the water or must provide substantial numbers of the public the opportunity to physically or visually enjoy the shoreline.

...

Use Activity Regulations for Commercial Development, City SMP, page 60

1. Applications for commercial development shall include a detailed statement explaining the nature and intensity of water orientation of the proposed activity. . .
- ...
4. Parking associated with commercial developments shall meet the regulations specified under "Roads and Railroads."

Goals and General Development Policies, A. Shoreline Use Element City SMP, page 20

1. Permit only those uses or conditions, which allow optional uses for future generations, unless identified benefits clearly compensate for the physical, social, and/or economic loss to future generations.
 2. Assure that all uses and developments are as compatible as possible with the site, the surrounding area, and the environment.
- ...
4. Identify all existing inappropriate uses and formulate a relocation program, using a variety of incentives to accomplish this objective.
 5. Foster uses which protect the potential long-term benefits to the public from compromise by short-term economic gain or convenience.
 6. Encourage multiple use of shorelines where location and integration of compatible uses or activities is feasible.
 7. Shoreline land and water areas which are particularly suited for specific and appropriate uses should be reserved for such uses whether they are existing or potential.
 8. Prohibit uses not water surface nor shoreline dependent, which permanently alter the shoreline, conflict with, or preempt other shoreline dependent uses.

9. Allow uses, on a specified interim basis, which are not shoreline related, if not permanent and if not requiring permanent modifications of natural shorelines.
10. Implement a management system, which will plan for and permit all reasonable and appropriate uses by providing a system of priorities. Those priorities will be established for each designated environment using the following criteria:
 - a. Protection and enhancement of natural areas or systems - those identified as containing or having unique geological, ecological, or biological significance;
 - ...
- ...
12. Require all developments to plan for and control runoff and when necessary treat it before discharging from the site.

Goals and General Development Policies, B. Economic Development Element, City SMP, page 21

1. Give priority to commercial, industrial, and recreational development that is water surface or shoreline dependent and those developments that will provide substantial numbers of the public an opportunity to enjoy the shoreline.
2. Limit the adverse effects of new commercial, industrial, and recreational development upon the physical environment and natural processes.
3. Prevent commercial and industrial development from scattering randomly or from locating in undeveloped areas prematurely.
- ...
6. Encourage development toward a multi-use concept to provide public access to the shoreline while maintaining the economic viability of the principal use.

Goals and General Development Policies, C. Public Access Element, City SMP, page 22

- ...
2. Locate, design and maintain public access development so as to protect the natural environment and natural processes.
3. Provide for the public health and safety when developing public access.
- ...
5. Provide for and design various types of access which are appropriate to the shoreline environment and its specific uses.
6. Control and regulate public access to insure that the ecology shall not be unduly damaged by public use.

*Goals and General Development Policies,
E. Historical, Cultural, Scientific Element, City SMP, page 23*

- ...
2. Preserve permanently for scientific study and public observation all areas known to contain significant archeological data.
3. Preserve for public benefit, with opportunity for appropriate public utilization, significant historic, scientific, and education areas of the shorelines.

Goals and General Development Policies, F. Recreation Element, City SMP, page 23

1. Identify, obtain, preserve and protect areas with high values for recreation before other development makes such action impossible.

...

Goals and General Development Policies, G. Conservation Element, City SMP, page 24

1. Preserve the scenic and aesthetic qualities of shorelines and vistas.
2. Provide for a beneficial utilization of shoreline related resources without harming other natural systems or the overall quality of the natural environment.

...

5. Give priority to maintaining the function of natural systems.
6. Encourage the best management practices for the sustained yield of replenishable resources.
7. Identify those areas which are necessary for the support of wild and aquatic life and those having unique geological/biological or historical significance and prohibit or severely restrict development in those areas.
8. Encourage public and private shoreline owners to promote the proliferation of wildlife, fish and plants without unduly interfering with existing activities.

...

Use Activity Policies: Commercial Development, City SMP, page 28

1. Strongly encourage new commercial developments on shorelines to locate in those areas where current commercial uses exist.
2. In order to minimize adverse impact, ensure that adequate assessment be made of and consideration given to, the effect a commercial structure will have on a scenic view significant to a given area or enjoyed by a significant number of people.
3. Require that parking facilities minimize their visual impact on the shorelines, and where possible be placed inland away from the immediate water's edge and recreational beaches.
4. Require commercial developments that abut the water's edge to provide physical and/or visual access to the shoreline where appropriate.
5. Ensure that all commercial development respect natural systems.

Environment Policies: Urban Environment, Management Policies, City SMP, page 38

1. Because shorelines suitable for urban uses are a limited resource, emphasis should be given to directing new development into already developed, but underutilized areas.
2. Give priority in Urban Environments to water dependent, industrial and commercial uses requiring frontage on navigable waters. Uses which are not water dependent should be discouraged.
3. Give priority to planning for and developing public visual and physical access to the shoreline in the Urban Environment.

...

5. Design industrial and commercial facilities to permit pedestrian waterfront activities where appropriate.

6. Link, where practical, public access points with non-motorized transportation routes such as bicycle and hiking paths.
- ...
8. Promote redevelopment and renewal of substandard or obsolete urban shoreline areas in order to accommodate future water-dependent users and make maximum use of the available shoreline resource.
9. Actively promote aesthetics when considering urban shoreline development by means of sign control regulations, architectural design standards, planned-unit development standards, landscaping requirements, and other such means.
- ...

Conclusions Based on Findings

1. **With conditions of approval, the proposed development will be consistent with the policies of the Shoreline Management Act.** The policies of the Shoreline Management Act are set forth in RCW 90.58.020 and include “planning for and fostering all reasonable and appropriate uses.” Preferred uses include those that preserve the natural character of the shoreline, result in long-term over short-term benefit and protect the resources and ecology of the shoreline. *RCW 90.58.020*. The installed mobile office building is not water dependent, reduces the natural character of the shoreline, and results in short-term benefits to the Applicant. However, the installed mobile office building is portable and would occupy an existing asphalt parking lot area for a temporary period until the site is further developed with a sanitary sewer lift station and park. The installed mobile office building is set back more than 100 feet from the Snohomish River ordinary high water mark, on a previously disturbed portion of the site. Although not required, the City proposed to enhance a portion of the Snohomish River buffer area, which would help protect the resources and ecology of the shoreline. Conditions of approval are necessary to ensure compliance with all applicable federal, state, and local regulations; to ensure compliance with conditions associated with the SEPA DNS and No Effect Determination, and to ensure the removal of the structure within 18 years so that the City’s future plans for a park on this site are not impeded. *Findings 1-20*.
2. **With conditions of approval, the proposed development will be consistent with Chapter 197-27 WAC.** The Department of Ecology shoreline regulations are located in Chapters 173-26 and 173-27 of the Washington Administrative Code (WAC). Chapter 173-26 sets forth procedures and guidelines for local adoption of shoreline master programs that are not applicable to the Applicant’s permit request. Chapter 173-27 sets forth permitting procedures and permit criteria. The application is being reviewed under the criteria set forth in WAC 173-27-150. These criteria are intended to implement the policies of the SMA, which requires that all shoreline projects be consistent with an approved local Shoreline Master Program. The City Staff Report states that the proposal is consistent with Chapter 173-27 Washington Administrative Code (WAC). All required documents would be filed with appropriate state agencies, according to WAC 173-27-130. Conditions of approval are necessary to ensure compliance with all applicable federal, state, and local regulations; to ensure compliance with conditions associated with the SEPA DNS and No Effect Determination, and to ensure the removal

of the structure within 18 years so that the City's future plans for a park on this site are not impeded. *Findings 1-20.*

3. With conditions, the proposed development would be consistent with the City of Snohomish Shoreline Management Master Program. The proposal requires a Shoreline Substantial Development Permit (SSDP) because it includes an installed mobile office building located within 200 feet of the Snohomish River shoreline. The installed mobile office building is not water dependent, reduces the natural character of the shoreline, and results in short-term benefits to the Applicant. The City SMP allows commercial type development in the Urban Environment provided the development complies with the City zoning ordinance. A public agency office is a permitted use in the Commercial zone. The installed mobile office building is located outside the Snohomish River critical areas buffer, but within 200 feet of the Snohomish River. However, the installed mobile office building is portable and would occupy an existing asphalt parking lot area for a temporary period until the site is further developed with a sanitary sewer lift station and park. The City provided notice of the SSDP application and associated open record hearing in accord with City ordinances. The City Planning and Development Services, acting as lead agency, analyzed the potential environmental impact of the proposal, and after determining that the proposal would not have a probable significant adverse impact on the environment, issued a DNS, with two conditions. The two conditions concern compliance with the recommendations of the December 5, 2008 Critical Area Report and placement of critical area signs at 100-foot intervals along the enhancement area boundary. Conditions of approval are necessary to ensure compliance with all applicable federal, state, and local regulations; to ensure compliance with conditions associated with the SEPA DNS and No Effect Determination, and to ensure the removal of the structure within 18 years so that the City's future plans for a park on this site are not impeded. The project also meets the following City SMP requirements, regulations and policies:

- *City SMP General Requirements.* The installed mobile office building is consistent with the Commercial land use designation of the site, and is not dependent on a prohibited use or structure. The City's Design Review Board reviewed the application and the Director of Planning and Development Services approved the design review with conditions. *Findings 4 and 5.*
- *City SMP Use Regulations for Urban Environment: Commercial Development.* The installed mobile office building is set back more than 100 feet from the ordinary high water mark. The installed building is located on landfill authorized under prior shoreline development permits. The site is publicly owned and provides access to the public during working hours. *Findings 1, 5, 6 and 15.*
- *City SMP Shoreline Use Element Policies.* The installed mobile office building would not permanently alter the shoreline or conflict with shoreline dependent uses. The use would not conflict with future redevelopment of the shoreline or

future public access to the shoreline. The City's long-term plans for the site are as a public park. Proposed shoreline enhancement with native vegetation would help treat and control stormwater runoff from the site. *Findings 1, 5, 7, 11, 13, 15, 17 and 18.*

- *City SMP Economic Development Element Policies.* The installed mobile office building is associated with an existing City use of the site, and will not significantly intensify the use. The installed mobile office building provides public access during business hours. *Finding 5.*
- *City SMP Historical, Cultural, Scientific Element Policies.* No known artifacts or places or archeological importance are known to exist on the site. *Finding 5.*
- *City SMP Recreation Element Policies.* The City plans to provide for future development of the site for public recreation. The installed mobile office building would be a temporary use. *Findings 11, 17, and 18.*
- *City SMP Conservation Element Policies.* The installed mobile office building is outside the 100-foot habitat conservation area buffer. The proposed shoreline habitat enhancement would improve the quality of the shoreline environment. *Findings 2, 5, 6, 13, 18 and 19.*
- *City SMP Commercial Development Use Policies.* The installed mobile office building was placed on a site where there is an existing City use. The modest height of the building and its location relative to other structures would ensure that scenic views are not impacted. No new parking is proposed. The City would enhance the shoreline environment on site. *Finding 5.*
- *City SMP Urban Environment Management Policies.* The installed mobile office building is not a water dependent use and is not a priority use for the site. The long term City plans for the property are as a public park. The installed mobile office building is a temporary use and would not conflict with future park plans. The application was reviewed by the City's Design Review Board. *Findings 1, 5, 11, 13, 16, 17 and 18.*

DECISION

Based upon the preceding Findings and Conclusions, the request for a Shoreline Substantial Development Permit to retain an installed 1,440 square-foot mobile office building within the Urban Shoreline Environment of the Snohomish River at 1801 First Street, in Snohomish, Washington, is **GRANTED**, subject to the following conditions:⁵

⁵ This decision includes conditions required to reduce project impacts as well as conditions required to meet City Code standards.

1. Compliance with all applicable federal, state, and local regulations.
2. Compliance with conditions of the SEPA Determination of Non-Significance issued January 15, 2009.
3. Stormwater best management practices shall be used in conjunction with the removal of invasive species and the enhancement plantings along the shoreline to ensure that disturbed areas are stabilized and that sediment is not transported to the river.
4. Skirting of the structure shall provide apertures for floodwaters and fish movement consistent with the project description in the No Effect Determination dated February 9, 2009.
5. Occupation of the structure shall not begin and is not authorized until 21 days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within 21 days from the date of such filing have been terminated [except as provided in RCW 90.58.140(5)(a) and (b)].
6. In the event that the application is denied or approval is overturned on judicial appeal or by the Shoreline Hearings Board, the proposal shall be modified, including relocation of the structure, as necessary to comply with such decision.
7. The portable office building shall be removed from the site no later than 18 years from the date of this decision to allow for City Park development.

Decided this 9th day of April 2009.



THEODORE PAUL HUNTER
Hearing Examiner