

SHR2023-0029 & SHR2023-0030: List of Attachments

EXHIBIT 1 Planning and Community Development Department (PCDD) Staff Report including the following Attachments:

Attachment A	Project Site Plan / Design Plans
Attachment B	Aerial Vicinity & Shoreline Designation Maps
Attachment C	Application Materials for SDP / SCUP / SEPA Determination
Attachment D	Notices / Certificate of Posting / SEPA Determination of Non-Significance
Attachment E	Applicant's Justification for SCUP
Attachment F	Habitat Memo / JARPA / Criteria for Critical Saltwater Habitat

**CITY OF BELLINGHAM HEARING EXAMINER STAFF REPORT
SHORELINE CONDITIONAL USE AND SUBSTANTIAL DEVELOPMENT PERMITS
APRIL 10, 2024**

PROJECT NO: SHR2023-0029 & SHR2023-0030

APPLICANT: Susan Driver, David Evans & Associates; Susan.Driver@deainc.com

PROPONENT: Port of Bellingham

I. OVERVIEW

A. PROPOSAL – Attachment A

Installation of power and telecommunication conduit banks on the underside of the Roeder Avenue bridge that spans the mouth of Whatcom Creek. A total of 12 conduits will be attached to bridge ranging from 2” up to 6” in diameter. Said conduits will not hang further below the existing girders of the bridge. Wing-walls of the bridge will be cut out to allow the conduit to be trenched underground within the Roeder Avenue right-of-way east to Central Avenue and west to C Street. Each end will connect to existing conduit facilities.

These are new over-water utility conduits in an Aquatic shoreline designation and therefore a shoreline CUP is required. A shoreline substantial development permit is also required to construct and implement the proposal. The Hearing Examiner will make a decision on both permits.

Once a decision on the SCUP is issued by the Hearing Examiner, it is forwarded to the Washington State Department of Ecology for a final decision.

B. LOCATION – Attachment B

Roeder Avenue Bridge over Whatcom Creek. Project occurs within the Roeder Avenue right-of-way. Full extent of the project is from C Street east to Central Avenue.

The project is within area 6 of City Center Neighborhood and technical, within the Waterfront District. The portion under the Roeder Avenue bridge is within the aquatic shoreline designation and the upland trenched portions or within the shoreline mixed-use sub-area of the Waterfront District shoreline designation.

II. STAFF RECOMMENDATION

Staff recommends approval with the condition in Section XI of this report.

III. JURISDICTION

The project requires approval of a Type II shoreline substantial development permit (SDP) and a Type III-A shoreline conditional use permit (SCUP). The PCDD Director, or his designee, issues administrative approval on SDPs. The Hearing Examiner is granted authority to hold hearings and make decisions on SCUPs pursuant to BMC 22.06.010 B. The applicant has elected to consolidate the two permit types pursuant to BMC 21.10.060 so the Hearing Examiner will issue a decision on each permit type.

The Hearing Examiner will determine if the project is compliant with the applicable goals, policies and regulations for the SDP, i.e., the *development* of the project. The Hearing Examiner will also determine if the applicant has demonstrated consistency with the SCUP criteria in BMC 22.06.050 C 1-7. The Hearing Examiner's decision on the SCUP (only) is then provided to the Department of Ecology who has final approval authority on the SCUP. Pursuant to WAC 173-27-200 the Department of Ecology has 30-days to render that final decision. (approve, deny or approve with conditions) Simultaneously, DOE will assume jurisdiction on the SDP during the 21-day appeal period. (They do not render a final decision on the SDP.)

IV. CHRONOLOGY

On December 18, 2023, the applicant submitted application materials for an SDP, SCUP and a SEPA determination. **Attachment C**

On February 6, 2024, the PCDD issued a notice of complete application, optional DNS and public hearing for the subject proposal. The comment period expired on March 7, 2024. The public hearing date was specified as April 10, 2024 at 6:00 PM in the City Council chambers at 210 Lottie Street. Said notices were sent to property owners within 500-feet of each end of the proposal. At the time of this staff report, no public comments had been submitted. The SEPA checklist was circulated to agencies that may have jurisdiction on the proposal as part of the optional DNS process. At the time of this staff report, no agency comments had been submitted. (SHR2023-0029 & SHR2023-0030)

On February 7, the applicant provided a certificate of notice posting to the PCDD.

On February 14, 2024 the applicant specified that they are requesting consolidation of the two permits and that they are both to be decided by the Hearing Examiner.

On March 27, 2024, the Hearing Examiner office sent emailed notice of the public hearing to staff and other regularly notice parties and mailed notice of public hearing to property owners within 500-feet of the subject proposal.

On March 27, 2024, the PCDD issued a SEPA determination of non-significance for the proposal. A 30-day comment period was provided as part of the initial notice of optional DNS and therefore, no additional comment period was allotted. (SEP2023-0041)

On March 29, 2024, the PCDD planner posted two notices of public hearing signs – one at each end of the project area.

The notices, certificate of posting and SEPA determination of non-significance are provided on **Attachment D**.

V. EXISTING SITE CHARACTERISTICS

The project area corridor is a completely developed right-of-way and bridge over Whatcom Creek. The entire length of the conduit stretches from C Street to Central Avenue. The over-water portion of the project includes attaching prefabricated conduit banks that will be hung from the underside of the bridge girders but will not extend any lower than the girders – elevation wise. The bridge is 45-feet wide and approximately 525 feet long. It is a two-lane arterial with bike lanes on each side and a 10-foot sidewalk on the south side facing the Whatcom Waterway.

The project area has significant existing superstructure within the Whatcom Creek channel. The BNSF bridge crossing is immediately upstream of the Roeder Avenue

bridge. Both bridges are supported by pilings. A 48-inch city sewer trunk main is also supported by pilings and is located between the two bridges. All three linear features are located at the mouth of Whatcom Creek, which is estuarine in this location. Please note that the Whatcom Creek crossing at West Holly Street severely constricts high flows because the opening is only approximately 25-feet in width. Upstream of the Holly Street crossing of Whatcom Creek is considered a “pocket estuary” where more properly functioning inter tidal areas are located. The City conducted a remedial action under MTCA on the Holly Street Landfill (which now comprises Maritime Heritage Park) and subsequently created large areas of inter-tidal estuarine habitat and public access in approximately 2004. The in-water and upland areas between West Holly Street and Roeder Avenue are heavily impacted by remnant pilings, concrete chunk stabilized stream banks, trash and invasive species.

Despite these existing impacts and compromises to shoreline ecological function, the entire estuary (Whatcom Waterway downstream of the Roeder Avenue bridge upstream to the base of the Whatcom Creek falls is utilized by a variety of marine mammals (seals and otters), mustelids (otter, mink), birds, salmonids (chum, chinook and steelhead) and other marine species and countless invertebrates.

VI. ENVIRONMENTAL AND PUBLIC COMMENT EVALUATION

A SEPA determination of non-significance was issued on March 27, 2024. (SEP2023-0041) At the time of this staff report, no additional public or agency comment was received.

Additional environmental review will be provided in section IX, below.

VII. APPLICABLE REGULATORY SECTIONS OF THE BELLINGHAM MUNICIPAL CODE AND PLANS

BMC 22.03.030 E: Aquatic Shoreline Designation
BMC 22.06.030: Shoreline Substantial Development
BMC 22.06.050: Shoreline Conditional Uses
BMC 22.08: General Regulations
BMC 22.09: Use Activity Regulations

VIII. SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT REVIEW

The conduit bridge-hang portion of the project occurs above water and therefore is in the aquatic shoreline designation. The upland portions of the project where the conduits are trenched within the existing right-of-way, beneath the road surface, are on the dividing line between two different shoreline designations; upstream of the Roeder Avenue bridge is designated urban conservancy and downstream of the Roeder Avenue bridge is designated waterfront district and within the shoreline mixed use sub-area. Both of these ‘upland’ shoreline designations allow utilities – especially when developed within the improved portion of the right-of-way and co-located with other utilities. The compliance review will be focused on the aquatic shoreline designation, conditional use permit criteria as well as other applicable goals, policies and regulations pertaining to utilities.

BMC 22.02.020: Shoreline Goals and Objectives

A. Shoreline Use. The shoreline use element considers the proposed general distribution and general location and extent of the use of shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, utilities and other categories of public and private land use.

1. Goal.
 - a. Coordinate shoreline uses to insure uses that result in long-term over short-term benefit, protect and restore the shoreline resources and ecological functions, increase public access to the shoreline, and promote economic development and accommodate water-dependent uses.

STAFF RESPONSE: The proposal closes an existing gap in the fiber-optic capability and would also provide additional capacity for Puget Sound Energy to serve future development in the Waterfront District. Additional conduits may be used for other future unforeseen utilities. These elements foster economic development in both shoreline and non-shoreline areas. The conduit banks will hang from the underside of the bridge and therefore, no in-water work is proposed. The actual construction methodology will be from either; a barge stationed underneath and secured to the bridge itself as opposed to anchoring to inter-tidal bedlands, or, from a platform that will be hung from the underside of the bridge. Either method will employ netting or other catchment materials to capture bridge particles resulting from drilling and fastening particles from falling into the estuarine portion of Whatcom Creek. Staff expect no net loss of existing shoreline ecological function in this location.

BMC 22.03.030 E: Aquatic Shoreline Designation

1. Purpose. Protect, restore and manage the unique characteristics of the aquatic environment.
2. Management Policies.
 - a. Aquatic uses should not adversely impact critical saltwater and freshwater habitats or their connectivity for salmonids and other aquatic and terrestrial species that migrate within the near-shore environment.
 - b. New aquatic uses should only be allowed for water-dependent uses, public access or ecological restoration and enhancement.
 - c. All developments and uses within navigable waters or their bedlands should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe unobstructed passage of aquatic species and wildlife, particularly those species using those areas for rearing and/or migration.
 - e. Aquatic uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrologic conditions including sediment transport and benthic drift patterns.
3. Designated Waterbodies.
 - a. Areas waterward of the OHWM for all shorelines within the city including wetlands and Bellingham Bay out to the jurisdictional limits of the city.
4. Permitted Uses: Roads, Railways and Utilities are specified as conditional uses in the aquatic shoreline designation.
5. Regulations.
 - a. For development and uses within critical areas or their buffers that occur in the shoreline jurisdiction, the applicable provisions of this program shall apply.
 - b. When aquatic development occurs within shorelines of statewide significance, the policies in Chapter 22.04 BMC shall also apply.

- c. Aquatic uses shall not result in a net loss of shoreline ecological function.
- d. Development shall be consistent with the development regulation matrix in BMC 22.11.030(E), Development regulation matrices.
- e. Aquatic uses shall not disrupt the hydrologic function of the water body in terms of current, wave action or tidal influence.
- g. Aquatic uses shall not interfere with water-dependent uses or compromise the public's ability to safely enjoy access to the shoreline and aquatic areas from uplands and from the water.

STAFF RESPONSE: The proposal is consistent with the policies and regulations specified above. There is no in-water work and catchment mechanisms will be used to catch debris so it doesn't enter the inter-tidal area. No net loss of existing shoreline ecological function is expected. The conduits will be attached to the underside of the bridge. There is very limited water-borne public access upstream of the Roeder Avenue bridge due to the 48" sewer trunk main between the Roeder Avenue bridge and the BNSF bridge. The sewer main is inconveniently located at an elevation that essentially blocks kayak access up into the pocket estuary. Regardless, there will be no impacts to public access and water-dependent uses and it won't preclude future opportunities for restoration actions in the future.

BMC 22.03.030 F: Waterfront District Shoreline Designation

Technically, the upland trenched portions of the proposal are within the Waterfront District shoreline designation. (south side of the Roeder Avenue right-of-way) Due to its location along the marine shoreline and the master planning effort that accompanied the development of the SMP, utilities were anticipated but are not listed as a separate allowed uses like they are in all other shoreline designations: natural, urban conservancy, shoreline residential, urban maritime and aquatic. The uses specified in the Waterfront District are focused on water dependent, water related, water enjoyment, water oriented and non-water oriented because of the policy to preserve areas that have navigational depth for waterborne commercial and industrial commerce. The allowance for utilities in the Waterfront District is provided in BMC 22.08.010 B 4 d; "allowed uses in buffers." Nonetheless, the upland trenched portions of the proposal are consistent with management policies and regulations in the Waterfront District that speak to co-location, undergrounding and avoiding direct impacts.

BMC 22.04: Shorelines of Statewide Significance

- B. This master program gives preference in the following order to uses that:
 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 shoreline;
 6. Increase recreational opportunities for the public in the shoreline; and
 7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

STAFF RESPONSE: The proposal is consistent with the statewide interests specified above. The proposal does not conflict with or preclude any of these elements from occurring at any point in the future.

BMC 22.06.030: Shoreline Substantial Developments

A. A substantial development permit shall be obtained for all proposed use and development of shorelines unless the proposal is specifically exempt pursuant to BMC 22.05.020(A) and (B)(1).

B. Shoreline permits that include analysis and regulation of critical areas pursuant to BMC 22.08.030, Critical areas, shall comply with the applicable critical areas reports and mitigation plan submitted pursuant to BMC 22.06.020, Submittal requirements, as well as the general and specific performance standards specified in BMC 22.08.060 through 22.08.080.

C. In order to be approved, the director must find that the proposal is consistent with the following criteria:

1. All regulations of this program appropriate to the shoreline designation and the type of use or development activity proposed shall be complied with, except those bulk and dimensional standards that have been modified by approval of a shoreline variance under BMC 22.06.040, Variances.
2. All policies of this program appropriate to the shoreline designation and the type of use or development activity proposed shall be considered and substantial compliance demonstrated. A reasonable proposal that cannot fully conform to these policies may be permitted, provided it is demonstrated that the proposal is clearly consistent with the overall goals, objectives and intent of the program.
3. For projects located on shorelines of statewide significance, the policies of Chapter 22.04 BMC shall also be adhered to.

D. Approval of Activities. The director shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions may include, but are not limited to, the following:

1. Establishment of buffer zones;
2. Preservation of critically important vegetation and/or habitat features such as snags and downed wood;
3. Limitation of access to the habitat area, including fencing and signage to deter unauthorized access;
4. Seasonal restriction of construction activities;
5. Establishment of a duration and timetable for periodic review of mitigation activities; and
6. Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

STAFF RESPONSE: The proposal including the submitted materials in the overall application, most notably Attachments E and F, are consistent with the specified elements above. This staff report intends to demonstrate the proposal's consistency with the applicable goals, policies and regulations in BMC Title 22, Shorelines. Please note that the

project is entirely within the developed Roeder Avenue right-of-way. Adverse impacts are not expected. The only conditions that will be recommended by staff will be to employ the catchment mechanisms described above and secure any other local, state or federal permits, as may be required.

BMC 22.08: General Regulations

22.08.010: Shoreline Buffers

A. Policies.

1. Protection of and uses allowed within shorelines and their associated buffers as specified in this title shall be managed in a manner that results in no net loss of shoreline ecological function.
2. The city via the provisions within this title should protect shorelines and their buffers so that they continue to contribute to existing ecosystem-wide processes and shoreline ecological functions.

B. Regulations

4. The following specific activities may only be permitted as part of an authorized use and subject to submittal of a critical area report within a shoreline, or a critical area within shorelines and/or their required buffers when they comply with the applicable policies and regulations of this chapter and Chapters 22.03, 22.04 and 22.09 BMC:

d. Public Utility Facilities. New utility lines and facilities may be permitted to cross watercourses in accordance with an approved critical area report and shall comply with the policies and regulations within BMC 22.09.110, Roads, railways, and utilities;

STAFF RESPONSE: The entire proposal is consistent with the policies and regulations specified above. The project is linear and within a developed right-of-way so a buffer is not required in this case. The intended utilities will serve the general public and therefore are allowed to cross Whatcom Creek. The information provided at Attachment F specifies that the proposal will not result in any net loss of shoreline ecological function in or around the project area.

BMC 22.08.020: Mitigation Sequencing

A. For all developments, applicants shall demonstrate that all reasonable efforts have been examined with the intent to avoid and minimize impacts to shoreline ecological functions. Applicants shall follow the mitigation sequential descending order of preference below:

1. Avoiding the impact altogether by not taking a certain action or parts of an action;
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps, such as project redesign, relocation, or timing, to avoid or reduce impacts;
3. Rectifying the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas and their associated buffers, by repairing, rehabilitating, or restoring the affected environment to the equivalent or better than the conditions existing at the time of the initiation of the project;
4. Reducing or eliminating the impact or hazard over time by preservation and maintenance operations during the life of the action or project;

5. Compensating for the impact to wetlands, critical aquifer recharge areas, frequently flooded areas, and habitat conservation areas and their associated buffers by replacing, enhancing, or providing substitute resources or environments; and
6. Monitoring the hazard or other required mitigation and taking remedial action and appropriate corrective action to fully restore the intended ecological functions of the mitigation action, as proposed.

STAFF RESPONSE: The proposal is consistent with mitigation sequencing. It avoids impacts all together by co-locating with existing infrastructure (the bridge) that crosses Whatcom Creek.

BMC 22.08.040: Critical Saltwater Habitats

A. Policies.

1. Development within critical saltwater habitats including, but not limited to, designated habitats of local significance, all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance, subsistence, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association, should result in no net loss of ecological function, comply with the applicable requirements in this title and those specific use policies and regulations in Chapter 22.09 BMC.
2. Protection of critical saltwater habitats should incorporate the participation of resource agencies including tribal nations to assure consistency with other legislatively created mandates and programs in addition to local and regional government entities. (Including but not limited to Washington State Department of Fish and Wildlife, Lummi Nation, Nooksack Tribe, Port of Bellingham, Puget Sound Action Team, Department of Ecology.)
3. Permitted uses adjacent to or within critical saltwater habitats should not compromise the ability to restore these features in the future.

B. Regulations.

1. No structures of any kind shall be placed in or constructed over critical saltwater habitats unless they result in no net loss of ecological function, are associated with a water-dependent use, comply with the applicable requirements within this chapter and Chapter 22.09 BMC and meet all of the following conditions:
 - a. The project, including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat;
 - b. Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
 - c. The project is consistent with the state's interest in resource protection and species recovery;
 - d. The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
 - e. Shorelands that are adjacent to critical saltwater habitats shall be regulated per the requirements within this program.

2. A qualified professional shall demonstrate compliance with the above criteria in addition to the required elements of a critical area report as specified in Chapter 22.06 BMC.

STAFF RESPONSE: The applicant has provided additional information that demonstrates consistency with the criteria above. (Please see Attachment F.) Staff concurs with the applicant's submitted material in this regard. Please note that subsection 1 specifies that the only way a structure can be constructed over critical saltwater habitats is if it is associated with a water dependent use. However, BMC 22.08.010 B 4 allows bridges and utilities to cross over shorelines of the state, regardless of the nature of the utility or the purpose it solves. So, there is an inherent unintended conflict between the two sections.

The Roeder Avenue bridge was constructed before 1950 and was expanded in approximately 1994 / 1995 to its current configuration. The rule above was instituted in 2013 and was intended to address new over and in-water structures in marine waters, i.e., piers, floats, pilings, wharves, mooring dolphins, etc. The 'use' is already existing and attaching a utility conduit banks to the underside of it do not materially expand or intensify the use or its dimensional configuration, and most notably, it's impact.

Therefore, given the above, staff concludes that the proposal is consistent with this subsection because it; will result in no net loss of existing shoreline ecological function, it avoids direct impacts to critical saltwater habitats and, it does not infringe on the public trust doctrine.

BMC 22.09.110: Roads, railways and utilities

Roads, railways and utilities are necessary to provide efficient public circulation and the shipment of goods and services. These transportation circuits can include but are not limited to roads, highways and interstates, rail lines and spurs, public service water and sewer mains, power generation, transmission and distribution facilities, and wireless communication facilities.

A. Policies.

9. Whenever feasible, utilities should be co-located within existing right-of-way corridors.

10. Utilities within shorelines should be under-grounded and their visual impact minimized to the extent feasible.

B. Regulations

10. New utilities shall avoid critical areas to the maximum extent feasible.

12. New utilities when necessary to be located within shorelines shall be located underground. This requirement does not include a water-dependent generation or transmission facility such as a desalination plant, bio-diesel facility, water-intake or pump/lift stations.

13. New utility systems should be co-located with other existing or planned utilities, roadways and/or railways and/or placed within already disturbed or impacted corridors whenever possible.

STAFF RESPONSE: The proposed conduits are consistent with the policy of co-location specified above. The proposal avoids impacts to critical areas and riparian buffers. Boring a minimum 500-600 linear feet underneath both wing walls, navigating existing and remnant pilings and other barriers that may be in the bedlands of the channel can be significantly more costly and may introduce additional risk of terms of a boring machine getting damaged, stuck or veering significantly of course. The specific area under the bridge has been significantly impacted from a range industrial and commercial operations dating back

to at least 1900. The conduit is located underground on each end, until it daylights at each wing-wall underneath the Roeder Avenue bridge.

IX. SHORELINE CONDITIONAL USE PERMIT REVIEW CRITERIA

The permitted uses table in BMC 22.03.030 E 4 specifies that new utilities in aquatic shoreline designations require the approval of a shoreline conditional use permit (SCUP). An SCUP project must be able to demonstrate consistency with the criteria in BMC 22.06.050 C 1-7. Staff's responses are provided below. The applicant's demonstration of consistency is provided on **Attachment E**. Staff concurs with the applicant's responses to the criteria and provides the following additional analysis. The SCUP at 22.06.050 is as follows:

A. The purpose of the conditional use provision is to provide more control and flexibility for implementing the regulations of the master program in a manner consistent with the policies of the Act. In authorizing a conditional use, special conditions may be attached to the permit by the city or department to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the Act and this program.

B. An applicant for a substantial development permit which also requires a conditional use permit shall submit applications for both permits simultaneously pursuant to Chapter 21.10 BMC.

C. Prior to the granting of a conditional use permit, as specifically required by this program or for uses which are not classified as such by this program, the applicant shall demonstrate consistency with the criteria 1-7 below.

STAFF RESPONSE: The applicant provided applications for both the SDP and SCUP at the same time. In addition, the applicant has provided material demonstrating consistency with the criteria below which can be found at Attachment D. Staff concurs with the applicant's justification and also offers additional responses to the criteria in this section.

1. The provisions spelled out in the master program have been met and the proposed use is consistent with the policies of the Act;

STAFF RESPONSE: The proposal is consistent with two of the major tenets of the SMA; environmental protection and fostering economic development. The hanging of conduit banks underneath the Roeder Avenue bridge avoid impacts to critical saltwater habitats and will result in no net loss of existing shoreline ecological function. The conduit banks also close an existing gap in transmission of electricity and fiber-optic facilities that, if completed, have the potential to additionally serve the marine trades, log pond and shipping terminal sub-area in the waterfront district as well as other Port of Bellingham properties to the west

2. The proposed use will cause no significant, adverse impacts to the shoreline environment, ecological functions, or other uses;

STAFF RESPONSE: The proposed conduit will be hung from underneath the bridge between the girders. Catchment mechanisms will minimize the amount of particulates from entering the water during construction.

3. The proposed use will not interfere with the normal public use of public shorelines;

STAFF RESPONSE: The proposed conduit bank will not hang below the existing bridge girders and therefore public use and view of shorelines in this location will not be affected.

4. That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and the program;

STAFF RESPONSE: The proposal is consistent with other utilities in the immediate vicinity. A 16-inch diameter City water main also hangs from the Roeder Avenue bridge and hangs from the underside of the Holly Street crossing. Holly Street crossing supports a 48-inch gravity sewer main and a Cascade Natural Gas distribution mainline. The proposed conduit is expected to provide additional utility capacity for the Waterfront District and the Old Town overlay district which the Roeder Avenue bridge bisects.

5. The proposed use will not be contrary to the purpose and intent of the environment designation in which it is located and the general intent of the master program;

STAFF RESPONSE: The proposed conduit is consistent with utilities in shoreline jurisdiction all over the City.

6. The proposed use(s) shall provide a long-term public benefit in terms of providing public access or implementing habitat restoration that is consistent with the goals of this program; and

STAFF RESPONSE: The proposal preserves the existing opportunities for public access and future habitat restoration.

7. That the public interest shall suffer no substantial detrimental effect.

STAFF RESPONSE: The public will not suffer any substantial detrimental effect.

D. The hearing examiner or department may require additional conditions as are necessary to ensure proper compliance with the intent and purpose of the environment designation and master program or to ensure protection of the surrounding environment and uses.

STAFF RESPONSE: Please see the recommended conditions in Section XI.

E. In the granting of conditional use permits, consideration shall be given to the cumulative environmental impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the sum of the conditional uses and their impacts shall also remain consistent with the policies of RCW 90.58.020 and shall not produce a significant adverse effect to the shoreline environment.

STAFF RESPONSE: If future conduit banks were proposed – especially where the elevation between the top of the bridge deck and corresponding travel lanes were approximately 15-feet above the ordinary high-water mark, they would likely be hung from an existing bridge or crossing. This would minimize, if not avoid impacts to shoreline ecological function and would not affect existing public access or preclude future habitat restoration opportunities.

F. Any conditional use permit granted by the city must be forwarded to the Department of Ecology for its approval, or approval with conditions, or denial per WAC 173-27-160.

STAFF RESPONSE: The Hearing Examiner’s decision will be forwarded to the Department of Ecology for FINAL review and FINAL decision that may include revised and/or additional conditions if deemed necessary.

X. CONCLUSIONS

Based upon the materials provided by the applicant and the staff responses to the applicable goals, policies and regulations in BMC Title 22, shoreline, this shoreline substantial development permit should be approved. The request for the SCUP should be approved because it is consistent with the criteria specified in BMC 22.06.050 C 1-7 and subsection E in regard to cumulative impacts. Both permits are subject to the conditions specified below in section XI.

XI. CONDITIONS

The project shall be implemented as proposed, generally, provided that the following conditions shall apply to both the SDP and SCUP for the subject proposal:

1. A debris containment system shall be employed for all portions of the project that are associated with hanging the conduit banks and cutting the holes in each of the wing-walls for upland underground trenching.
2. Work shall not occur until all other required local, state and/or federal permits are approved.
3. If a barge is utilized to perform any portion of the work it shall be secured to the Roeder Avenue bridge or other out of water structure – as opposed to anchoring within abutting bedlands.

The SCUP approval does not excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations that may be applicable to this project. In the event the owner/applicant fails to comply with the terms of the conditions herein, the permit(s) may be rescinded. All work must be completed according to these permits.

Prepared and Approved By:



Steven Sundin
Senior Planner