



NOTICE OF DECISION City of Woodinville

Development Services Department

425-489-2754 • 17301 133rd Avenue NE • Woodinville, WA 98072

Desk Hours • Monday – Thursday 7:30am – 5:00pm • Friday 7:30am – 4:00pm

The City of Woodinville has issued a Notice of Hearing Examiner Decision for the following project:

- Project Name:** Sammamish River Bridge and Road (SR 202) Project
- Project Number(s):** SCU16003 (Shoreline Conditional Use Permit), SDP16003 (Shoreline Substantial Development Permit), CAA16003 (Critical Areas Review), SEP16006 (SEPA Review)
- Description of Proposal:** Widen 0.25 miles of SR 202 (NE 175th Street) from the intersection of 131st Avenue NE to Woodinville Redmond Road spanning the Sammamish River. The project includes the construction of a new bridge adjacent to the existing bridge crossing the Sammamish River, and road widening and lane reconfiguration at both the east and west approaches to the bridge. SEPA review is required for all shoreline permits.
- Location of Proposal:** SR 202 (NE 175th Street) from the intersection of 131st Avenue NE (Milepost 0.31) to Woodinville Redmond Road (Milepost 0.55), Woodinville, WA
- Proponent:** Thomas Hansen, Public Works Director
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072
- Project Decision:** Approved with Conditions

SUMMARY OF PROJECT DECISION

A public hearing was held before the Woodinville Hearing Examiner on June 23, 2016 for review of the Shoreline Substantial Development Permit and Shoreline Conditional Use Permit application. After considering comments by the public, City staff, and outside agencies, the project was approved with conditions by the Woodinville Hearing Examiner, subject to the Findings of Fact, Conclusions and Decision.

The Shoreline Substantial Development Permit and Shoreline Conditional Use Permit shall be valid for two (2) years from the date of Department of Ecology's approval. If the work is not started within this period, the permits shall become null and void, and a new permit application would need to be submitted.

The Shoreline Substantial Development Permit and Shoreline Conditional Use Permit shall also be declared void if there is a failure to comply with the approved plans or conditions of approval.

Notice of Decision Date: July 18, 2016

End of Appeal Period Date/Time: August 1, 2016 by 4:00 p.m.

Project Permit Expiration Date: **Two years from date of DOE Approval**

CONTACT INFORMATION

The application, supporting documents, and studies are available for review at the City of Woodinville, 17301 133rd Avenue NE, Woodinville, WA 98072. Contact: Jenny Ngo, AICP, Senior Planner, at (425) 877-2283. Email address: jennyn@ci.woodinville.wa.us.

APPEALS

A Party of Record must file an appeal of this decision within fourteen (14) days from date of this Notice of Decision. The final decision of the Hearing Examiner's Decision is appealable to the Woodinville City Council. Appeals should be filed with the Development Services Department in City Hall, 17301 133rd Avenue NE, Woodinville, WA 98072, by 4:00 p.m., on August 1, 2016.

Appeal filings must be in conformance with Chapter 2.30 and 17.17 WMC. Contact the assigned staff person listed above if you would like to file an appeal to ensure the appeal is filed correctly.

Affected property owners may request a change in valuation with King County for property tax purposes notwithstanding any program of revaluation. For information regarding property valuations and/or assessments, contact the King County Assessor's Office at 206-296-7300.



David Kuhl, Development Services Director

Date: July 18, 2016

1 work was going to be done in the most densely populated part of the city.

2 In rebuttal, Tom Hansen noted that construction of roads during daytime hours is exempt from
3 Woodinville noise standards. The vast majority of work would be done during daytime hours. The
4 code also allows for night time exemptions as well. The city is avoiding pile driving and using shaft
5 construction instead to reduce noise. Night time noise will be very limited to activities such as girder
6 construction, which has to be done at night for safety reasons. The project should be done in about
7 six months by fall of 2017. Woodinville noise regulations don't require any noise mitigation for
8 exempt projects, but labor and industry standards impose noise limits on machinery and the City has
9 focused on noise reduction methods.

10 **Exhibits**

11 The twenty-five exhibits identified at page 13-14 of the June 16, 2016 Staff. The staff power point
12 was admitted as Exhibit 26 during the hearing.

13 **FINDINGS OF FACT**

14 **Procedural:**

- 15 1. Applicant. City of Woodinville.
- 16 2. Hearing. A hearing was held on the subject application on June 23, 2016 at 9:30 am in the
17 Woodinville City Hall Council Chambers.

18 **Substantive:**

19 3. Project Description. The applicant has applied for a shoreline substantial development permit
20 and shoreline conditional use permit to widen SR 202 across the Sammamish River from two lanes to
21 four. More specifically, the applicant proposes to widen 0.25 miles of SR 202 (NE 175th Street) from the
22 intersection of 131st Avenue NE to Woodinville Redmond Road spanning the Sammamish River. The project
23 includes the construction of a new bridge adjacent to the existing bridge crossing the Sammamish River and
24 road widening and lane reconfiguration at both the east and west approaches to the bridge. The project
25 includes construction of bicycle lanes, sidewalks, curbs and gutters on both sides of the road along the
26 project corridor. Other improvements include improved drainage, street light signalization, rail
crossings improvements, and habitat restoration. Proposed work will occur within 200 feet of the
ordinary high water mark (OHWM) of the Sammamish River, including impact to .28 acres of
combined stream and wetland buffer area.

4. Surrounding Area. At the east, SR 202 is a four lane road that runs adjacent to industrial and park
land. The road narrows to two lanes when crossing the Sammamish River and widens back to four lanes
adjacent to commercial and industrial properties. The Sammamish River Trail, a regional trail corridor, runs
north-south underneath the Sammamish River Bridge on the east abutment.

1 5. Adverse Impacts. There are no significant adverse impacts associated with the project. Staff
2 have recommended numerous conditions to address all potential impacts, and all of those conditions
3 have been adopted by this decision. Pertinent impacts are more specifically addressed as follows:

4 A. Shoreline Character and Aesthetics. The proposal will not adversely or materially affect
5 shoreline character or aesthetics. The project area is already composed of a bridge crossing
6 for a two lane SR 202 and the proposal just expands that crossing to four lanes. The
7 surrounding area is already heavily developed with industrial, commercial and residential
8 development. The proposed additional construction will not materially detract from the
9 built aesthetic and character of the surrounding shoreline.

10 B. Critical Areas. The proposal will not adversely affect critical areas to any significant
11 degree. The proposal impacts approximately 0.28 acres within the shoreline jurisdiction,
12 including streams, wetlands, and fish and wildlife habitat conservation areas. Impacts to
13 these environmentally sensitive areas have been thoroughly assessed and proposed
14 mitigation prepared in a wetland delineation report (Ex. 5) and a conceptual mitigation plan
15 (Ex. 10). The reports were prepared by qualified professionals and their recommendations
16 are incorporated into the conditions of approval of this decision. The affected wetland is an
17 872 square foot Class A wetland under Woodinville critical area regulations and the
18 Sammamish River is a Type 1 stream. 8,516 square feet of the 12,286 square feet (the
19 previously mentioned 0.28 acres) of the stream and wetland buffer habitat that would be
20 affected by the project is currently already developed with nonconforming uses composed
21 of the existing SR 202 roadway and and other impervious surfaces associated with
22 surrounding development. Only about 3,770 square feet of the affected buffer is currently
23 vegetated. The mitigation for the proposal is composed of enhancing 0.28 acres of
24 combined stream and buffer habitat along Little Bear Creek located to the north 134th Street
25 and east of SR 522. Compensatory mitigation is proposed off-site due to the lack of
26 suitable acreage on site and constraints of the surrounding urban landscape.

The Sammamish River at the project site also accommodates fish species classified as threatened under the Endangered Species Act, specifically Bull Trout, Chinook Salmon and Steelhead Trout. The Sammamish River is also classified as having critical habitat for the Bull Trout and Chinook Salmon. See Ex. 11. A biologist for AECOM concluded that with recommended mitigation, the proposal would have no effect on the endangered fish species or their critical habitat. Id. This decision imposes the recommended mitigation.

The staff report concludes that the proposal will have no net loss of ecological functions of shoreline resources, but contains no explanation of how this important permitting standard was reached. The conceptual mitigation plan, Ex. 10, provides that the City “proposes” to mitigate buffer impacts off site at the Little Bear Creek site and that “*the overall mitigation goals are to enhance 0.28 acres of stream/wetland buffer habitat to provide a net improvement in overall stream and buffer functions in the same drainage basin.*” In short, the consultant identifies no net loss as a goal of the City’s mitigation plan but offers no expert opinion as to whether the mitigation will achieve this goal. Given (1) the uncontested staff report conclusion that there will be no net loss in ecological function; (2)

1 the low functional values of the wetland identified in the conceptual mitigation plan; and
2 (3) the extensive proposed compensatory mitigation, it is concluded that more likely than
3 not there will be no net loss in ecological function. However, for future impact analysis
4 reports staff should insist that their consultants more clearly address whether or not
5 proposed mitigation will in fact achieve the “no net loss” standard imposed Section 6.4 of
6 the City’s shoreline master program.

7
8 C. Recreation and Navigation. The proposal will not affect any recreational use or navigation
9 of the creek. The height of the bridge addition appears to be the same height as the existing
10 bridge. Consequently the bridge addition will not serve as any greater impediment to
11 navigation than currently exists. Further, the current location of the existing trail along the
12 shoreline will not be affected once construction is completed and during construction a
13 small detour will be available to trail users so that disruption of trail use is minimized.

14
15 D. Noise. A neighbor expressed concerns about noise during the hearing. The City has
16 adopted a noise ordinance, Chapter 8.08 WMC, which adopts what the City Council has
17 determined to be acceptable noise levels. As testified by Mr. Hansen, daytime construction
18 noise is exempt from these noise level restrictions. Mr. Hansen testified that the majority of
19 work would be done during daytime hours. However, night time construction work is not
20 exempt from these noise level restrictions to the extent that the receiving properties are for
21 residential use. See WMC 8.08.050; WAC 173-60-050(3). As correctly noted in the SEPA
22 checklist, Ex. 20, p. 12, the applicant will be required to acquire approval of a noise
23 variance in order to generate noise levels at residential properties during night time hours
24 that exceed applicable noise level restrictions. The planning director, who would make the
25 variance decision, would have the authority to impose mitigation measures to mitigate noise
26 impacts if such a variance is requested. Overall, the City’s adequately address noise
impacts as they are subject to what the City Council has legislatively determined to be
acceptable noise levels for construction work.

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28 E. Pollution. The proposal is not anticipated to adversely affect air or water quality. Air
29 quality impacts conform to state and federal standards as determined in an air quality study
30 prepared for the project, Exhibit 9. The proposal has been reviewed by the City of
31 Woodinville for compliance with the requirements outlined in the 2009 King County
32 Surface Water Design Manual, which assures no adverse impacts to water quality from the
33 completed project. Erosion controls measure will be in place to protect the creek during
34 construction as anticipated in the conceptual mitigation plan.

35 **Conclusions of Law**

36 1. Authority. WMC 17.07.030 classifies shoreline conditional use applications as Type III
processes and shoreline substantial development permits as Type II processes. The processes have
been consolidated into a Type III review process as authorized by WMC 17.07.030. WMC
17.07.030 authorizes the hearing examiner to hold open record hearings on Type III permits and
issue a final decision, subject to closed record appeal to the City Council.

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2 2. Shoreline Designations. The proposal crosses the aquatic, conservancy, and urban
3 conservancy shoreline designations

4 3. Review Criteria. Woodinville Shoreline Master Program (“SMP”) Section 6.1 requires a
5 shoreline conditional use permit for bridge crossings in the aquatic, conservancy and urban
6 conservancy shoreline designations. Conditional use criteria are governed by Section 7.5.3.3 of the
7 Woodinville SMP. Since the proposal also qualifies as a substantial development within shoreline
8 jurisdiction (200 feet of the Sammamish River), a shoreline substantial development permit is also
9 required. WAC 173-27-260 governs the criteria for review of shoreline substantial development
10 permits and provides that approval can only be granted if the proposal is consistent with the policies
11 and procedures of the Shoreline Management Act (Chapter 90.58 RCW), Chapter 173-27 WAC and
12 the Woodinville SMP. All applicable shoreline conditional use criteria are quoted below in italics
13 and applied through corresponding conclusions of law. The criteria for shoreline substantial
14 development permits are all included in the conditional use criteria and so are not addressed
15 separately.

16 **SMP 7.5.3.3(1):** *The proposed use is consistent with the policies of RCW 90.58.020 and the policies of
17 this Master Program.*

18 **RCW 90.58.020:** . . . *[I]t is the policy of the state to provide for the management of the shorelines of
19 the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to
20 ensure the development of these shorelines in a manner which, while allowing for limited reduction of
21 rights of the public in the navigable waters, will promote and enhance the public interest. This policy
22 contemplates protecting against adverse impacts to the public health, the land and its vegetation and
23 wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of
24 navigation and corollary rights incidental thereto.*

25 4. As demonstrated in the Shoreline Master Program section of the staff report, the proposal is
26 consistent with applicable provisions of the Woodinville SMP. One important SMP policy not
specifically addressed in the staff report is SMP 6.4, which provides that “[a]ll shoreline development
and uses should be located and designed to ensure no net loss to shoreline ecological functions, to the
extent feasible”. As determined in Finding of Fact No. 5(B), this standard has been met.

The proposal is consistent with RCW 90.58.020 because as determined in Finding of Fact No. 5, it will
not create any significant adverse impacts, most notably it will not adversely affect shoreline
environmental resources, navigation or recreational use.

SMP 7.5.3.3(2): *The proposed use will not interfere with the normal public use of public shorelines.*

1 4. As determined in Finding of Fact No. 5(C), proposal will not interfere with shoreline
2 navigation or recreation. Consequently the proposal will not interfere with normal public use of
3 shorelines.

4 **SMP 7.5.3.3(3):** *The proposed use of the site and design of the project is compatible with other*
5 *existing and planned uses within the area.*

6 5. For the reasons identified in Finding of Fact No. 5(A), the proposal is compatible with the
7 existing uses of the surrounding area. Since the surrounding area is already largely developed, the
8 proposal is anticipated to be compatible with planned uses as well.

9 **SMP 7.5.3.3(4):** *The proposed use will cause no avoidable adverse effects to the shoreline*
10 *environment in which it is to be located.*

11 6. As determined in Finding of Fact No. 5, no significant adverse impacts will be created by the
12 proposal.

13 **SMP 7.5.3.3(5):** *That water, air, noise, and other classes of pollution will not be more severe than the*
14 *pollution that would result from the uses which are permitted in the particular environment.*

15 7. As determined in Finding of Fact No. 5(D) and (E), no water, air, noise or any other class of
16 pollution is anticipated.

17 **SMP 7.5.3.3(6):** *That none of the goals, policy statements, or specific aims of the particular*
18 *environment would be violated, abrogated, or ignored.*

19 8. As determined in the staff report and this decision, no shoreline goals, policies or aims will be
20 violated, abrogated or ignored by the proposal.

21 **SMP 7.5.3.3(7):** *That no other applicable regulations will be violated.*

22 9. Staff have reviewed the proposal against all applicable development regulations and have found
23 no violations. There is no evidence to the contrary. The criterion is met.

24 **SMP 7.5.3.3(8):** *The public interest suffers no substantial detrimental effect.*

25 10. As determined in Finding of Fact No. 5, the proposal will not create any significant adverse
26 impacts. The proposal is necessary to provide water and fire protection to existing businesses. For
these reasons the public interest suffers no substantial detrimental effect.

11.

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2 **DECISION**

3 Shoreline Conditional Use Permit Application No. CUP16003 and Shoreline Substantial Development
4 Permit SDP16003 satisfies all conditional use shoreline substantial development permit criteria as
5 determined in the Conclusions of Law of this decision and is therefore approved subject to the
6 following conditions:

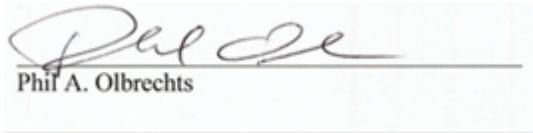
- 7 1. All improvements shall be constructed in reasonable conformance with the approved “Permit
8 Review” level design plans, and as they are amended and clarified by the contracting and
9 design process directed by the Public Works Director. The Development Services Director
10 may approve minor modifications of the plans submitted if the modifications do not change
11 the Findings of Fact or the Conditions of Approval.
- 12 2. The applicant shall obtain all required local, state and federal permits for the proposed
13 project. A Hydraulic Project Approval (HPA) Permit is required from the Washington State
14 Department of Fish and Wildlife. No construction may occur until this permit is obtained, or
15 the applicant submits confirmation from Fish and Wildlife that it is not required.
- 16 3. The applicant shall coordinate with the Woodinville Water District to address any impacts to
17 the locations where water and sewer lines cross SR 202.
- 18 4. Vegetative cover beyond construction limits shall not be disturbed. The clearing limits shall
19 be clearly delineated in the field. Barrier fencing or siltation fencing may be installed before
20 site disturbance in accordance with the approved plans.
- 21 5. The applicant will substantially follow the recommendations outlined in the Conceptual
22 Mitigation Plan (Exhibit 10), Geotechnical Report (Exhibit 8), No Effect Letter (Exhibit 11
23 and 12), Stormwater Design (Exhibit 19), and Air Quality Conformity Analysis (Exhibit 9),
24 including any addendums approved by the Public Works and Development Services Director.
- 25 6. The following conditions shall be met regarding the mitigation area for the impacts to the
26 stream buffer and wetland areas:
 - a. The City will send to the Muckleshoot Indian Tribe Fisheries Division, the Mitigation
Area Maintenance and Monitoring Plan for their review and comment before it is
approved. Both parties (the City of Woodinville and the Muckleshoot Tribe) agree to
work diligently to resolve any concerns and comments.
 - b. City crews, or contractors retained by the City, will be responsible for maintenance of
the mitigation areas. The City’s Development Service Department will check as
required for conformance with the approved Mitigation Area Maintenance and
Monitoring Plan as is required by existing City code.
 - c. Before any future disturbance, modification, or removal of the mitigation areas can
occur, other than activities allowed under the approved Maintenance Plan, both the
Tribe and the City shall agree to the future planned action, including replacement
and/or further mitigation area construction. If either party disagrees, then the
mitigation area shall remain at its present location. Such agreement shall not be
unreasonably withheld.

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7. An approved final road landscaping plan is required prior to start of the construction for the project. The road landscaping plan will be in accordance with the Type II landscaping requirements of Chapter 21.16 WMC, and include a mix of at least 50 percent broadleaf trees (at least 1.75 inch caliper) spaced 20 feet on center, at least 30 percent evergreen trees (at least 6 feet tall) on 15 feet on center, shrubs (number 2 size) spaced five feet on center, and groundcover at a distance to result in total coverage within three years. At least 75 percent of groundcover and shrubs and at least 50 percent of trees shall be native or non-invasive naturalized species, and 60 percent of all plantings shall be drought tolerant. Turf shall be limited to no more than 30 percent of the landscaped area.
8. Stormwater best management practices shall be employed at all times during construction work. Extreme care shall be taken to ensure that no petroleum products, hydraulic fluid, or any other toxic or deleterious materials are allowed to enter or leach into surface waters. The permittee shall report all spill immediately to the Washington Department of Ecology (425-849-7000) and the City of Woodinville.
9. Any soils exposed during construction shall be appropriately re-vegetated consistent with the proposed best management practices. A final temporary erosion control and sedimentation plan shall be prepared in compliance with the 2009 King County Surface Water Design Manual prior to the start of construction work. Proper temporary erosion control best management practices must be used and inspected daily. The Plan must include spill containment procedures, equipment and materials, which must be on site.
10. All storage of construction materials and equipment shall be located outside of the 200-foot shoreline management area.
11. The applicant will prepare a Construction Traffic Control Plan, subject to the approval of the Public Works Director prior to any construction work. The Construction Traffic Control Plan will include an advanced noticing procedure to the City, Fire and Police Departments, and affected property owners within 1,000 feet regarding the commencement of construction.
12. Any damage to paving will be restored to match existing surfaces.
13. The use of herbicides and pesticides is prohibited for maintenance of landscaping along roadways within or immediately adjacent to critical areas or their buffers as defined by the City's Zoning Code (WMC 21.24).
14. The permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statues, ordinances or regulations applicable to this project, but not inconsistent with Shoreline Management Act (RCW 90.58).
15. Construction pursuant to this permit will not begin or is not authorized until twenty-one (21) days from the date the permit decision was filed pursuant to RCW 90.58.140(6), except as provided for in RCW 90.58.140(5).
16. This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms or condition thereof.

1 17. Construction activities shall be commenced within two years of the effective date as set forth
2 in RCW 90.58.143. However, the City may authorize a single extension for a period not to
3 exceed one year based on reasonable factors, if a request for extension has been filed before
4 the expiration date and notice of the proposed extension is given to parties of record on the
5 substantial development permit and to the Department of Ecology.

6 DATED this 7th day of July, 2016.

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Hearing Examiner for City of Woodinville

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11 **Appeal Right and Valuation Notices**

12 WMC 17.07.030 provides that the final decision of the Hearing Examiner is subject to appeal to
13 the Woodinville City Council. WMC 17.17.040(1) requires appeals of the Hearing Examiner's
14 decision to be filed within fourteen (14) calendar days from the date of the Hearing Examiner's
15 decision.

16 Affected property owners may request a change in valuation for property tax purposes
17 notwithstanding any program of revaluation.
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