BEFORE THE HEARING EXAMINER
FOR WOODINVILLE

In the Matter of Application of	)	NO. SCU12001/SEP12002
	)	
Thomas E. Hansen, PE, Public Works Director	)	FINDINGS, CONCLUSIONS AND
City of Woodinville	)	DECISION
For Approval of a Shoreline Conditional Use Permit	)	
	)	

SUMMARY OF DECISION

A Shoreline Conditional Use Permit is granted for a proposal to widen approximately .25 miles of State Route (SR) 202 from the intersection of 131st Avenue NE (Mile Post 0.31) across the Sammamish River to Woodinville-Redmond Road NE (Mile Post 0.55). SR 202 provides a local connection to the Woodinville downtown core to the east and the tourist district to the south, and a regional connection for communities between Woodinville to Redmond and North Bend. The Permit is granted subject to compliance with the conditions listed herein.

SUMMARY OF RECORD

Request:
The City of Woodinville has proposed to widen approximately .25 miles of State Route (SR) 202 from the intersection of 131st Avenue NE (Mile Post 0.31) across the Sammamish River to Woodinville-Redmond Road NE (Mile Post 0.55). SR 202 provides a local connection to the Woodinville downtown core to the east and the tourist district to the south, and a regional connection for communities between Woodinville to Redmond and North Bend. The Washington State Department of Transportation (WSDOT) and the City of Woodinville jointly maintain SR 202. Some of the proposed work is projected to occur within 200 feet of the ordinary high water mark (OHWM) of the Sammamish River. It has been estimated that the work within the OHWM will impact approximately .28 acres of combined stream and wetland buffer area. The proposal is subject to the policies and requirements of the City of Woodinville Shoreline Management Program (WSMP). Transportation projects are listed as a conditioned use in the WSMP and therefore a Shoreline Conditional Use Permit (SCUP) is required for the instant project. The City of Woodinville issued a State Environmental Policy Act (SEPA) threshold decision of Determination of Nonsignificance (DNS).

Hearing Date:
A hearing on the request was held before the Hearing Examiner of Woodinville on October 29, 2012.

Testimony:
At the hearing, the following individuals presented testimony under oath:

Erin Martindale, Senior Planner, City of Woodinville
Thomas Hansen, City Engineer
Linda Howard
Christian Hoffman

Exhibit 1	Staff Report
Exhibit 2	Application materials, project narrative and site plans, (January 24, 2012 and January 25, 2012.
Exhibit 3	Construction Plans (prepared by AECOM) January 12, 2012, September 7, 2012 and October 17, 2012
Exhibit 4	Application Notification-Complete Application, dated January 23, 2012
Exhibit 5	Wetland Delineation (Shannon and Wilson) dated April 10 2007
Exhibit 6	Hydraulic Report (Northwest Hydraulic Consultants) dated May 10, 2007
Exhibit 7	Cultural Resources Assessment (Western Shore Heritage Services) dated June 20, 2012
Exhibit 8	Draft Geotechnical Report (Shannon and Wilson) dated August 21, 2007
Exhibit 9	Air Quality Conformity Analysis (AECOM) dated November 2011
Exhibit 10	Conceptual Mitigation Plan (AECOM) December 2011
Exhibit 11	"No Effect Letter" (AECOM) dated December 14, 2011
Exhibit 12	Stormwater Design Technical Memo (AECOM) January 25, 2012
Exhibit 13	Noise Study Report (AECOM) January 2012
Exhibit 14	Request of *De minimis* (4f) exemption dated December 14, 2011
Exhibit 15	Potential geotechnical effects letter (Shannon and Wilson) June 27, 2012
Exhibit 16	Attachment 4, Hazardous and Problem Wastes, January 12, 2012 (received by City)
Exhibit 17	Attachment 7, documentation for environmental justice (AECOM) (received by City on January 12, 2012)
Exhibit 18	AREMA Manual for Railway Engineering (received by City on September 7, 2012)
Exhibit 19	Notice of Application
Exhibit 20	SEPA checklist and attachments (received by City on July 2012)
Exhibit 21	Response to SEPA comments (received by City on July 10, 2012)
Exhibit 22	Response to SEPA comments (received by City on August 7, 2012)
Exhibit 23	Response to SEPA comments (City official Hansen to Erin Martindale) on September 4, 2012
Exhibit 24	SEPA supplemental information memorandum from Thomas Hansen to Erin Martindale dated September
Exhibit 25	SEPA Determination of Nonsignificance issued October 1, 2002
Exhibit 26	Public Hearing Notice
Exhibit 27	Agency Comments
Exhibit 28	Email (Hansen to Martindale and Walter) dated October 19, 2012
Exhibit 29	Letter (Schuyler from Hansen) re: environmental information (exhibit includes 13 pages)
Exhibit 30	Power point hardcopy
Exhibit 31	Approved Channelization Plan

Based on the testimony and evidence submitted at the open record hearing, the Hearing Examiner enters the following Findings and Conclusions to support the final decision:

FINDINGS

1. State Route (SR) 202, jointly maintained by the Washington State Department of Transportation (WSDOT) and the City of Woodinville, serves as one of five entrances to the downtown core of the City and is a local connection to the Woodinville downtown core to the east and the tourist district to the south. SR 202 is also a regional connection for communities that are between Woodinville to Redmond and Woodinville to North Bend. As a means of reducing congestion in the downtown core of the city, a road widening project that would include approximately .25 miles of State Route (SR) 202 from the intersection of 131st Avenue NE (mile post 0.31) across the Sammamish River to Woodinville-Redmond Road NE (mile post 0.55) has been proposed.

   At completion the improvements of this section of SR 202 would be: four continuous lanes with a new two-lane bridge adjacent to the existing bridge, widened road approaches; and reconfigured travel lanes. In addition there would be bicycle lanes, sidewalks, curbs and gutters on both sides of the road along the project corridor. Other improvements would include improved drainage, light signalization, rail crossings and habitat restoration. *Exhibit 1, Staff Report, pg. 2; exhibit 3.* The adjoining properties abutting the portion of the SR 202 have been developed with commercial and industrial uses.

   The project will be within the 200-foot shoreline jurisdiction of the Sammamish River (Type 1 stream) and is subject to City Shoreline review. Within the project area, there are two existing at-grade rail crossings and a public trail crosses under SR 202 on the east side of the Sammamish River. *Exhibit 1, Staff Report, pg. 2; exhibit 3.*

2. The cost of the project, estimated to be $6.5 million, exceeds the threshold maximum of $5,718 for a shoreline permit review exemption. The project does not qualify for any of the other exemptions listed in the WSMP Section 6.1 and WAC 173-27-040. *Testimony of Mr. Hansen*; *Exhibit 1, Staff Report, pg. 2*

3. The existing roadway of SR 202 is four lanes in width at 131st Avenue NE that narrows to two lanes at the bridge, and then widens to three lanes at Woodinville-Redmond Road. The road has been designated as by the Washington State Department of Transportation as (WSDOT) as a managed access highway and as a five-lane principal arterial by the City of Woodinville. The Level of Service (LOS) at the project limits, SR 202 intersections at 131st Avenue NE and Woodinville-Redmond Road NE, are LOS D and LOS E respectively. Although neither intersection is considered below an acceptable service level (below LOS E), traffic is heavily impacted at this section of road. Because of the traffic and safety concerns, the City of Woodinville has identified the SR 202 road widening and reconfiguration as a top priority for the six-year Transportation Improvement Plan and the adopted Transportation Master Plan. *Exhibit 1, Staff Report, pg. 2; Testimony of Mr. Hansen.*

4. The WSMP designates the subject site's shoreline as "Aquatic", "Conservancy", and "Urban Conservancy". A portion of the project has an Aquatic designation within the OHWM of the Sammamish River, a Conservancy designation within 100 feet of the OHWM landward, and an Urban Conservancy designation between 100 and 200 feet of the OHWM. *Testimony of Mr. Hansen*; *Exhibit 1, Staff Report, pg. 2; exhibit 3.* The proposed bridge improvement is allowed in the Conservancy, Urban Conservancy and Aquatic Management Environments if it is necessary to cross a river or stream, However, the project requires approval of a shoreline conditional use permit. The proposed bridge will cross the Sammamish River and will preserve existing access and improve the existing capacity of the roadway. *Exhibit 1, Staff Report, pg. 4.*

   Some of the proposed work is projected to occur within 200 feet of the ordinary high water mark (OHWM) of the Sammamish River. It has been estimated that the work within the OHWM will impact approximately .28 acres of combined stream and wetland buffer area. The proposal is subject to the policies and requirements of the City of Woodinville Shoreline Management Program (WSMP). Transportation projects are listed as a conditioned use in the WSMP and a Shoreline Conditional Use Permit (SCUP) is required for the instant project. The Shoreline designations as established in the WSMP are Aquatic, Conservancy and Urban Conservancy. *Exhibit 1, Staff Report, pgs 2 and 3. 2; Testimony of Mr. Hansen.*

5. As noted in Finding of Fact 4, the proposed bridge use is allowed in the respective shoreline designations. However, it is permitted for the sole purpose as being necessary to cross a river or stream, and, the use requires approval of a SCUP. The bridge designs call for crossing the Sammamish River with existing bridges at the current location. This design would preserve existing access and would improve the existing capacity of the roadway. It has reasonably been determined by the Applicant that another location for the bridge is not economically feasible because of land ownership patterns; and that widening the existing bridge is expected to have less impact on the shoreline area than a new bridge in a different location. *Exhibit 1, Staff Report, pg. 4; Testimony of Mr. Hansen.* WSDOT has approved the proposed traffic channelization plan. *Exhibit 31.*

6. The proposed road and bridge improvements include new and improved sidewalks and bicycle lanes across the Sammamish River. The sidewalks and lanes will provide improved pedestrian and bicycle access from the west side of the river to the Sammamish River Trail and to the Woodinville downtown core. The bridge's elevation above the water will also provide a unique visual connection to the river. While no changes to existing trail or public access points on the Sammamish River are proposed, during construction a safe detour will be provided and notice of the detour will be posted in advance of temporary closures. *Exhibit 1, Staff Report, pg. 5; Exhibit 3; Testimony of Mr. Hansen; Exhibit 2, pg. 9*

7. The construction project will conform to environmental construction standards required in regulations and guidelines set forth in the Woodinville Municipal Code,

WSDOT Standard Specification for Road, Bridge and Municipal Construction, King County Stormwater Design Manual, and WSMP. Adherence to said regulations will ensure environmental protection of the Sammamish River and associated shorelands. The constructed product will preserve nonrenewable resources and enhance and/or restore natural resources that make Woodinville shorelines uniquely attractive and valuable to a large ecosystem. *Exhibit 1, Staff Report, pg. 7*

8. The river is near the existing Sammamish River Trail on the northeast bank of the river. The trail, owned and operated by King County Parks Department, is 10 feet wide with no shoulders. The vertical clearance to the existing bridge is 10 feet 9 inches. Access to the trail from SR 202 is through Wilmot Gateway Park. *Exhibit 15, pg. 2.* The proposed road improvements will not negatively impact access to the water along the existing trail and will provide a safe link to the trail and improve pedestrian and bicycling circulation. *Exhibit 1, Staff Report, pg. 6; Exhibit 3; Testimony of Mr. Hansen*

9. The Applicant's designs considered the environmental impacts and the uses of adjacent lands prior to choosing the proposed corridor and design. It will be compatible with the existing transportation corridor that currently serves the industrial and retail land uses in the immediate area and the projected land use developments. The new corridor will have an elevated crossing that will result in the least significant impact to sensitive areas along the Sammamish River. Mitigation of environmental impacts is part of the conditions of the permit for this proposal. The proposed road improvement project uses and expands an existing transportation corridor and thereby removes need to consider additional corridors *Exhibit 1, Staff Report, pg. 5; Exhibit 2, pg. 9; Exhibit 3; Testimony of Mr. Hansen*

10. The Applicant coordinated review with WSDOT to ensure the project is consistent with WSDOT and City of Woodinville road standards. WSDOT approved the channelization plans and design of the project on July 28, 2011. *Exhibit 31.* The proposed improvements, including sidewalks and bicycle lanes on both sides of the road, will result in safe east-west access across the Sammamish River for all transportation modes. The designs provide a non-motorized facility and links from the west side of the Sammamish River to the Sammamish River Trail. *Exhibit 1, Staff Report, pg. 5; Exhibit 2, pg. 9; Exhibit 3; Testimony of Mr. Hansen.* The proposal will result in wider sidewalks and include marked bicycle lanes to create a safer east-west connection to the Sammamish River Trail. No changes are proposed to the Sammamish River Trail below the bridge, however intermittent and temporary construction closures will include signage and safe detour route. *Exhibit 4.*

11. The project will undergo further engineering and building review to ensure safety and functionality. The submitted design calls for using the existing alignment to provide the least amount of visual and physical disruptions to motorists, adjacent properties and trail users, to have least impact on the Sammamish River ecology, and to minimize the amount of right-of-way needed to build the project. *Testimony of Mr. Hansen.*

12. Realignment of SR 202 to land that is outside of the shoreline jurisdiction was not a feasible alternative available to the Applicant. Such realignment was considered difficult because of length and flow patterns of the Sammamish River's and the function of SR 202 as being one of the few east-west connections in the area. Based on these difficulties, as well as the current land development in the area and the existing SR 202 alignment within the proposed construction zone, alternatives for the realignment of SR 202 to avoid the shoreline areas was not feasible alternative. *Exhibit 1, Staff Report, pg. 5; Exhibit 2, pg. 5; Exhibit 3; Exhibit 3; Exhibit 20, checklist item 11; Testimony of Mr. Hansen.*

13. As part of the SCUP review the City is charged to "... protect and restore those aspects, buildings, sites, and areas of shoreline having historic, cultural, scientific, or educational values or significance. [RCW 90.58.100(2)(g)]" As part of meeting this requirement the Applicant presented a Cultural Resource Assessment, prepared by Western Shore Heritage Services, Inc. *Exhibit 7.* The report did not identify any significant archaeological resources in the project area. *Exhibit 1, Staff Report, pg.7*

14. Restoration of the construction area is required to ensure invasive species removal, native plantings of groundcover, shrubs and trees, and a maintenance and monitoring plan. Because of the impacts related to the construction to the Sammamish River buffer area identified in the reports submitted for the project, the Applicant must comply with mitigation measures and recommendations outlined in the Conceptual Mitigation Plan (planting), Geotech Report, Drainage Report, and Air Quality Conformity Analysis. The proposal includes off-site restoration of habitat along Little Bear Creek near the creek's connection to Sammamish River. Additional off-site restoration is proposed on-site under the SR 202 bridge. *Exhibit 1, Staff Report, pg.7; Exhibits 8, 9 and 12.*

15. Within shorelines in the City of Woodinville, all development and uses should be located and designed to ensure no net loss to shoreline ecological functions, to the extent feasible. The proposed project would impact .28 acres within the 200-foot shoreline jurisdiction. Because of these impacts, mitigation is required to provide a net improvement in overall stream and buffer function and value. The Applicant has proposed mitigation to improve ecological function for both on-site and off-site. On-site improvements would include invasive species removal, re-vegetation with native ground covers and erosion control. The proposed off-site mitigation would occur on a .28 acre portion of a city-owned property along Little Bear Creek. The mitigation will also remove invasive species, increase native species and habitat structural diversity, and will include minor grading, if necessary, to stabilize soils. *Exhibit 1, Staff Report, pg.8; Exhibit 10; Testimony of Mr. Hansen.*

16. As part of the City's WSMP, all debris, overburden, and other waste materials from construction should be disposed in order to prevent any entry by erosion from drainage, high water, or other means, into the stream way. (WSMP section 6.23.2). The Applicant submitted that best management practices (BMPs) will be used during construction to prevent materials from entering the water. The BMPs include

identification of construction limits, use of containment BMPs to prevent any materials from entering the water, minimizing soil disturbances, silt fencing, erosion control blankets, baker tanks and inlet protection. *Exhibit 1, Staff Report, pg.8; Exhibit 4; Testimony of Mr. Hansen.*

17. Pursuant to WSMP section 6.23.2, scenic corridors with public roadways must include safe pedestrian and other non-motorized travel. Also, provisions are required for sufficient view points, rest areas, and picnic areas in public shorelines. The proposed work on SR 202 would have sidewalks and bicycle lanes on both sides of the road to provide safe bridge crossing for non-motorized travel. *Exhibit 1, Staff Report, pg.9; Exhibit 3; Testimony of Mr. Hansen*. On the bridge and the connection between the proposed non-motorized facility and the existing path to the Sammamish River Trail, there will be views of the river and Wilmot Gateway Park. *Exhibit 1, Staff Report, pg.9*

18. As part of the transportation regulations of the WSMP, all bridges and other water-crossing structures are to be designed in a manner that does not impede normal annual high water or the passage of wood and sediment. Where feasible, bridge structures should be located outside the floodway. Bridge approaches and side slopes shall be planted with a suitable native, non-invasive ground cover. *WSMP section 6.23.2.* The proposed bridge and highway improvements and are to be elevated 15.47 feet above the OHWM. These improvements will be located outside the floodway, and will not impede normal annual high water and the passage of wood or sediment. *Exhibit 1, Staff Report, pg.9; Exhibit 3; Testimony of Mr. Hansen*

19. Railroad tracks must be designed and operated to ensure compatibility with pedestrian and recreation usage within the shoreline management corridor. The railroad shall provide public easements across any tracks in the shoreline management corridor, deemed necessary by the City, to provide convenient public access to publicly-controlled river frontage. The Port of Seattle owns railroad tracks in the construction area and negotiations are occurring to provide an easement granting public access across the railroad tracks. *Exhibit 1, Staff Report, pg.9; Exhibit 3; Testimony of Mr. Hansen* The project design, which has been reviewed pursuant to the 2011 Manual for Railway Engineering, will improve railroad crossings on SR 202 through better signalization and road connections, and thereby reducing conflict between road and rail users. The use of grade separation for road and rail is not feasible due to physical site constraints. *Exhibit 1, Staff Report, pg. 5; Exhibit 3; Testimony of Mr. Hansen*

20. The project will not create a new transportation corridor, but will use and expand the existing SR 202 corridor. The proposed improvements would require the minimum amount of paved surface possible with implementation of the designed road dimensions which are the minimum size necessary to add two vehicular travel lanes, bicycle lanes and sidewalks. *Exhibit 1, Staff Report, pg.9; Exhibits 2 and 3*

21. The proposal will serve public transit interests with the facilitation of an efficient public transit asset with increased road capacity and improved signalization. *Exhibit 1, page 10.*

22. As required in the WSMP, all changes in contour for roadways shall include provisions for drainage by proper channeling and culverts, unless the natural drainage system can be effectively and attractively remain as a natural stream bed/pathway and be traversed by a bridge structure. All culverts or other stormwater management structures, where required, shall be consistent with the requirements of the City's adopted Surface Water Design Manual and relevant engineering standards *Section 6.23.2 Regulations for Transportation Facilities, section 6 (a and b).* A technical memorandum prepared by AECOM states that the all drainage systems have been designed to conform to the requirements of the 2009 King County Surface Water Design Manual which has been adopted by the City of Woodinville. *Exhibit 1, Staff Report, pg.11; Exhibits 2 and 3*; *Exhibit 12*

23. The western portion of the project will utilize a Filterra system to capture and treat stormwater. The system includes plants and an engineered filtration media that will treat the runoff prior to discharge. The eastern portion of the project will connect to an existing stormwater system. *Exhibit 1, Staff Report, pg.11; Testimony of Mr. Hansen*

24. The WWSMP requires consideration of hydrologic effects from construction activity. Construction of roadways shall incorporate features that leave existing beneficial hydrologic effects as little disturbed as possible. Fill material, where allowed for a roadbed, shall be coarse and permeable enough to allow continued circulation of groundwater and prevent damming it on the upland side. *Section 6.23.2 Regulations for Transportation Facilities, section 7.* The proposal has been designed to meet the 2009 King County Surface Water Design Manual requirements to prevent disruption of beneficial hydrologic effects, *Exhibit 6*; and has been reviewed by the City for compliance with the Manual. *Exhibit 1, Staff Report, pg.13*

25. As noted, the shape and length of the Sammamish River eliminates other east-west alignment options that could be constructed without entering the shoreline jurisdiction (Finding 12). The bridge expansion has been designed to be the minimum size necessary for circulation. The vertical supports for the new bridge will not impact watercrafts in the river, or the circulation of horses, bicycles, skaters or pedestrians on the Sammamish River Trail. *Exhibit 1, Staff Report, pg.11; Exhibit 2; Testimony of Mr. Hansen*

26. Section 5(j) of the WSMP establishes two criteria for a SCUP in a Conservancy designated environment. The two separate criteria are:
    i. Minor arterials, and neighborhood and local access streets shall be allowed as a conditional use only where essential connections must be made to

circulate traffic to urban activity centers and subject to the conditions listed in this section.

ii. The only roadway construction permitted in the Conservancy Environment shall be that deemed necessary for maintenance, security, and/or low intensity visitor access. Any substantial volume of traffic or parking must be accommodated upland with parking consolidated there and with pedestrian/bicycle/equestrian connections to the shore.

The limitation on minor arterials and local and neighborhood access streets is not relevant because SR 202 is not categorized as any of these types of roads. A portion of SR 202 is located in the Conservancy Environment and is an established use in an established corridor. The improvements to SR 202 is necessary for maintenance of a safe access road to the City. *Section 6.23.2 Regulations for Transportation Facilities, section 5 (j); Exhibit 1, Staff Report, pg.11*

27. Pursuant to *Section 6.23.2 Regulations for Transportation Facilities, subsection 8,* a landscaping plan is required for the project. In the construction plans prepared by AECOM, landscaping was addressed. The plant palette of the preliminary landscaping plan (Exhibit 3) meets the City's requirements of non-invasive or native plantings and species listed in the approved tree species list. A final landscaping plan that complies with the landscaping requirements of Chapter 21.16 WMC is required prior to permit approval and/or construction of the project. *Exhibit 3; Exhibit 1, Staff Report, pg.12*

28. Transportation and primary utility facilities shall be required to make joint use of rights-of-way and to consolidate crossings of water bodies where adverse impact to the shoreline can be minimized by doing so, and it is physically feasible. *Section 6.23.2 Regulations for Transportation Facilities, subsection 9.* The Applicant is working with utility providers to ensure efficient co-use of the SR 202 right-of-way. *Exhibit 4; Exhibit 1, Staff Report, pg.12*

29. Storm drainage of the roadway is addressed in *Section 6.23.2 Regulations for Transportation Facilities, subsection 12.* The requirements are: "Roadway construction shall include a design for impoundment structures that trap contaminants, such as oil and salt, and dispose of runoff contaminants safely without allowing incursion into the stream way". The Applicant has developed a drainage system that is consistent with the King County Surface Water Design Manual and one that will prevent runoff contaminants from entering the water. The design for the drainage improvements is described in Exhibit 12. *Exhibit 12, pgs 1 and 2; Exhibit 1, Staff Report, pg. 12.*

30. The State of Washington Shoreline Management Act of 1971 (RCW 90.58) establishes guidelines and requirements for shoreline development in the state. The proposal will comply with the policies of RCW 90.58.020 by providing increased public access to publicly-owned land and preserving statewide interest while preserving recreational opportunities and the natural character of the shoreline.

The proposal, a conditioned use within the shoreline area, complies with the WWSMP. *Exhibit 1, Staff Report, pg. 12; Testimony of Mr. Hansen.*

31. The bridge is elevated above the shoreline and will not impact or interfere with normal public use of the shore or the Sammamish River Trail upon its completion. Potential impacts or closure of the trail to public use will be mitigated with safe detour route and noticing. *Exhibit 1, Staff Report; Testimony of Mr. Hansen*

32. The proposed project is compatible with zoning and known future projects in the area. *Exhibit 1, Staff Report, pg. 13; Testimony of Mr. Hansen*

33. The proposal has been evaluated by City Staff to determine if it meets the codes and regulations of the City of Woodinville. The Staff has made a determination that the project does, but has required that all required federal and state permits must be secured prior to work being commenced. In developing the project the Applicant is required to adhere and follow the recommendations that have been made in the various reports to prevent increases in pollution. *Exhibit 1, Staff Report, pg. 13; Testimony of Mr. Hansen*

34. The public interest is served by this project, as it will aid in traffic congestion and help control traffic movement in the community. *Exhibit 1, Staff Report, pg. 13; Testimony of Mr. Hansen*

35. Pursuant to the SEPA required review (RCW 42.21C), the City was designated as the lead agency for the environmental review. On October 2, 2012, subsequent to submittal of relevant environmental documents, including the Checklist, the City issued a DNS for the proposed project. Although comments were submitted to the City, no appeals were filed. *Exhibits 20-25; Exhibit 1, Staff Report, pg. 13.* The proposal will not cause avoidable adverse effects to the shoreline environment. *Exhibit 1, Staff Report, pg. 13*

36. During construction of the project, construction vehicles and equipment would temporarily increase noise levels in the project area. According to the Applicant's noise consultant, who conducted a Noise Study Report to describe the existing noise environment and identify potential future traffic noise impacts, "[C]onstruction noise impacts would be minimized by complying with construction noise regulation contained in the City of Woodinville Municipal Code Chapter 8.08 (Noise Regulation), limiting nighttime construction activities, and using the best available noise abatement technology on construction equipment." *Exhibit 13 pgs. 2 and 4.*

37. Pursuant to the consistency test outlined in the Growth Management Act (RCW 36.70B.040) before making a decision or recommendation on an application, the City must consider whether a project meets the adopted development regulations and/or Comprehensive Plan policies. The subject property is located in the SR 202 road corridor. Included in the review of road improvements in the SR 202 corridor were the following elements: zoning requirements, drainage, public street

improvements, lighting, critical areas, fire protection and utilities.[1] *Exhibit 1, Staff Report, pgs. 13 and 14.*

38. As noted in finding number 29, the proposal has been reviewed by the City of Woodinville for compliance with the requirements outlined in the 2009 King County Surface Water Design Manual. Final construction plans will be subject to review and approval by the City of Woodinville prior to start of the construction for the project. *Exhibit 12, pgs 1 and 2; Exhibit 1, Staff Report, pg. 12 and 13.*

39. The proposal must comply with the City of Woodinville's 1999 Transportation Infrastructure Standards and Specifications (TISS). Preliminary construction plans demonstrate that the proposal meets or exceeds the infrastructure standards listed in TISS. Final construction plans will be subject to review and approval by the City of Woodinville prior to start of the construction for the project. *Exhibit 1, Staff Report, pg. 14; Exhibit 3*

40. Lighting proposed in the project shall comply with the City of Woodinville's TISS. Preliminary construction plans (Exhibit 3) demonstrate that the lighting proposed meets the requirements outlined in Section 2-2.4 TISS. *Exhibit 1, Staff Report, pg. 14; Exhibit 3*

41. Critical areas, including wetlands, streams, steep slopes, and fish and wildlife habitat areas are regulated with compliance with Chapter 21.24 WMC, during and after construction. In its review the City determined that the Applicant has demonstrated that the proposal complies with Chapter 21.24 WMC and the WSMP. The supporting documentation of compliance was provided in the following reports: SEPA checklist (Exhibit 4), wetland delineation (Exhibit 5), hydraulic report (Exhibit 6), geotechnical report (Exhibit 8), conceptual mitigation plan (Exhibit 10), and stormwater design memo (Exhibit 12). *Exhibit 1, Staff Report, pg. 14*

42. The requirements of the 2009 Edition of the International Fire Code (WMC 15.15.010) must be satisfied. Woodinville Fire and Rescue was included in agency mailings but submitted no comments regarding the proposal. If there are any road closures or water shutoffs, the Applicant will be required to notify Woodinville Fire and Rescue. *Exhibit 1, Staff Report, pg. 14*

43. Requirements for utilities (as outlined in the Woodinville Municipal Code 15.39.010, 13.03) and the requirements of each utility provider must be satisfied. The Applicant submitted that "coordination with utility owners/operators that have infrastructure within the project corridor has been ongoing and will continue" *Exhibit 4; Exhibit 1, Staff Report, pg. 14.* No requirements have yet to be identified by utility providers.

44. During its review the City received numerous comments from various agencies with an interest in the project. Summaries of the comments are:

[1] Zoning standards are not applicable for the instant application.

a) Comments were received from the Woodinville Police Department requesting advanced warning of street closures in order to prevent potential response impacts and delays. In response the City submitted that a Construction Traffic Control Plan, including advanced notice to nearby and affected properties and agencies, was included as a recommended condition of approval. *Exhibit 1, Staff Report, pg. 15*
b) Comments were received from the Olympic Pipeline giving the City notice that the company has two pipelines nearby project site. Although neither of the pipelines is within 100 feet of the project the Applicant has been in touch with the Company. *Exhibit 1, Staff Report, pg. 15*
c) Comments were received from the Stillaguamish Tribe of Indians expressing concern about cultural resources within 500 feet of project area. The Tribe requested that an archaeological survey, monitoring and UDP protocol be included to protect potential cultural resources. *Exhibit 1, Staff Report, pg. 15.* A cultural resource assessment was prepared and submitted with the application. The Management Summary section of the report stated that the "Survey did not result in the identification of any potentially significant cultural materials in the vicinity of the project area. No further archaeological assessment work is recommended necessary at this location. *Exhibit 1, Staff Report, pg. 15; Exhibit 7*
d) Comments were received from the Woodinville Public Works Department requesting clarification of short-term construction activities, specifically in regards to noise, transit stops, timing and agencies performing utilities work. The Department also requested clarification of the submitted geotechnical report regarding fill work and usage of retaining walls. In response to the concerns the Applicant submitted a revised SEPA checklist on July 10, 2012. The revised checklist updated information related to transit stops, timing and utility work. While the City's allows nighttime noise work from highway projects (Chapter 8.08 WMC), the Applicant submitted a plan to request a noise exemption for road construction. *Exhibit 1, Staff Report, pg. 15*
e) Three separate comment letters were received from the Muckleshoot Indian Tribe:
    1. A letter received on February 29, 2012, requested clarification on proposal's impacts to the 2003 WSDOT mitigation work on the Sammamish River; details on proposed mitigation on Little Bear Creek; and the inclusion of a planting plan and further discussion on opportunities for restoration. In response the City submitted that an on-site mitigation planting plan and off-site conceptual mitigation plan had been submitted by the Applicant. The Applicant in the plan indicates that they will make an effort to preserve the 2003 WSDOT mitigation trees in the final engineered design. The Applicant also has reviewed the potential for mitigation along the Sammamish River and chose a city-owned site on Little Bear Creek where it connects to the Sammamish River. The Applicant identified that area "as an important riparian corridor…that could benefit from restoration and enhancement activities." *Exhibit 1, Staff Report, pg. 16; Exhibit 10*

2. A letter received on July 27, 2012 requested verification that proposal's impacts to the 2003 WSDOT mitigation work is allowable pursuant to an approved Army Corps of Engineers Permit. The Tribe also requested more detail on mitigation opportunities on the Sammamish River, and, a copy of the planting plan. In the summary of agency comments the City submitted: "The applicant states that they have contacted WSDOT and have investigated impact to the 2003 WSDOT mitigation site. The applicant has included an explanation of the mitigation site selection, stating that limited space availability on-site and potential for riparian restoration on a city-owned property on Little Bear Creek led to the selected site." *Exhibit 1, Staff Report, pg. 16; Exhibit 10*
3. A letter received on October 12, 2012 requested additional details regarding proposed mitigation planting that is to occur under the bridge and on Little Bear Creek. The Tribe desired more detail as to whether the mitigation under the bridge is sufficient to offset environmental impacts and whether a monitoring plan would be put in place for that mitigation. Further it inquired if the Little Bear Creek off-site mitigation area will be placed into a protective easement. ." *Exhibit 1, Staff Report, pg. 16; Exhibit 10.* In response the City submitted that the area of on and off site mitigation is approximately .28 acres, which is a similar sized area of shoreline impacted by the project. Mitigation is not required to be in excess of that necessary to ensure no net loss of shoreline ecological functions. *Exhibit 1, Staff Report, pg. 16; Exhibit 10.* Additional information regarding a monitoring plan or any easements is required when mitigation plans are finalized during the building permit stage. In anticipation of the required plans the Applicant, on October 19, 2012, provided information of the proposed planning plan and maintenance plan for on-site mitigation beneath the new bridge structure, stormwater management plans and a map showing the project alignment over the new bridges. These conceptual documents and plans will be reviewed and agreements for implementation will be part of the approval conditions. *Exhibit 1, Staff Report, pg. 16; Exhibit 3, pg. 3.*

f) Two comment letters were submitted by the Port of Seattle:
1. A letter received March 7, 2012 requested clarification of the SEPA checklist and addition to the checklist on issues of site ownership and impact to functioning rail line. More specifically the agency desired that the Applicant:
   - obtain approval from property owner (Port of Seattle) and other agencies with interest (PSE, Starcom) for the proposal through agreements and easements
   - address the proximity of bridge to the train trestle, clearance requirements, compliance with regulations established by the Port, Federal and State agencies and professional Railway Engineering Association

- adequately address erosion control measures to protect Port-owned improvements
- adequately address stormwater measures in order to sufficiently manage water on Port-owned property
- Reserved right to build a recreation trail by King County
- Update timeline to include permit approvals.

In response the City stated that The applicant had provided a revised SEPA Checklist, *Exhibit 4*; had submitted plans demonstrating compliance with erosion standards, *Exhibit 8*; railroad standards outlined in the American Railway Engineering and Maintenance-of-Way Association (AREMA) Manual for Railway Engineering, *Exhibit 18;* and a geotechnical letter prepared by Shannon and Wilson, Inc. *Exhibit 15*. The City also state that "... the applicant is working with all property owners and interests in obtaining approval for the proposal" *Exhibit 1, Staff Report, pg. 16*

2. A second letter from received by the City from the Port on July 31, 2012, restated comments made in the March 7, 2012 letter, including:
   - no approval from the Port of Seattle has been obtained for an easement through the property; the bridge design must comply with established regulatory standards regarding railway;
   - soil settlement and stormwater issues must be adequately addressed to prevent impact to Port-owned properties;
   - federal government approval is required for any reserved trail rights;
   - the proposed timeline should be less optimistic regarding permit approval.

   In response the City submitted that the applicant provided SEPA Checklist Attachments, including right-of-way plans, conceptual mitigation plan, geotechnical memo, and construction detail maps on August 9, 2012.

g) Comments were received from Sound Transit stating that proposal as designed will not impact high capacity easement through the rail corridor and no further revisions are needed if the easement is not impacted.

45. No written public comment letters or oral testimonies were provided for this project.

46. The City is required to review the proposed project subject to the provisions and requirements of RCW 36.70B.040 – Determination of Consistency and WMC 17.13.100 be reviewed for consistency with a local government's development regulations. During project review the following are considered: the type of land use; the level of development; the infrastructure, including public facilities and services needed to serve the development; and the characteristics of the development, such as development standards. The City has reviewed the request, considered the information provided and has recommended approval subject to

proposed conditions listed. Based on this analysis the City determined that the Sammamish River Bridge and Road Project has met the requirements of the City of Woodinville Infrastructure Standards, 2009 Comprehensive Plan, and Woodinville Municipal Code. The shoreline conditional use proposal has made appropriate provisions for the public health, safety, and general welfare by:

a) Providing stormwater drainage and treatment improvements;
b) Installing street improvements to meet the adopted transportation infrastructure standards;
c) Providing non-motorized transportation facilities, including sidewalks and bicycle lanes;
d) Protection of shoreline and critical areas through site mitigation and ensuring no net loss of ecological function.

Exhibit 1, Staff Report, pg. 17 and 18; Testimony of Mr. Hansen

CONCLUSIONS

Jurisdiction:

The Hearing Examiner is granted jurisdiction to hear and decide applications for Reasonable Use Exceptions and associated variances pursuant to Chapter 36.70 of the Revised Code of Washington and WMC Chapter 21. 24. A critical area exception is required to be processed pursuant to WMC 2.30, Appeal Procedures. Per WMC 21.24.080, the Hearing Examiner conducts a closed record hearing to review the recommendation from the Development Services Director on critical area exceptions:

Applicable Ordinances and Regulations

The applicable ordinances have been identified in the City's Staff Report, Exhibit 1. The goals and policies of the Woodinville Comprehensive Plant pertinent to the instant application are set on pages 3 and 4 of the Staff Report; The applicable shoreline regulations, goals and policies are set forth on pages 4 through 12 of the Report; and the criteria for conditional use approval as set forth in WSMP Section 7.5.3.3, on pages 12 and 13 of the Report.

Conclusions based on Findings

1. State Route (SR) 202, jointly maintained by the Washington State Department of Transportation (WSDOT) and the City of Woodinville, serves as one of five entrances to the downtown core of the City and is a local connection to the Woodinville downtown core to the east and the tourist district to the south. SR 202 is also a regional connection for communities that are between Woodinville to Redmond and North Bend. As a means of reducing congestion in the downtown core of the city, a road widening project that would include approximately .25 miles of State Route (SR) 202 from the intersection of 131st Avenue NE (Mile Post 0.31) across the Sammamish River to Woodinville-Redmond Road NE (Mile Post 0.55) has been proposed .

   The WSMP designates the subject site's shoreline as "Aquatic", "Conservancy", and "Urban Conservancy". A portion of the project has an Aquatic designation within the OHWM of the Sammamish River, a Conservancy designation within 100 feet of the OHWM landward, and an Urban Conservancy designation between 100 and 200 feet of the OHWM. The proposed

bridge is allowed in the Conservancy, Urban Conservancy and Aquatic Management Environments if it is necessary to cross a river or stream and the project requires approval of a shoreline conditional use permit. The proposed bridge will cross the Sammamish River and will preserve existing access and improve the existing capacity of the roadway. *Findings Nos. 1 and 26.*

2. The proposed road and bridge improvements are consistent with the Woodinville Comprehensive Plan goals and policies. The applicable goals and policies have been correctly identified by the City and are set forth in Exhibit 1, pgs 3-4. *Findings of Fact Nos. 1, 4, 5, 6, and 10*

3. The proposed road and bridge improvements are consistent with the Woodinville Shoreline Master Program. The applicable shoreline regulations, goals and policies have been correctly identified by the City and are set forth in Exhibit 1, pgs 4-12. *Findings of Fact Nos. 4-30, 44 and 46.*

4. The proposed road and bridge improvements satisfy the criteria for conditional use approval as set forth in WSMP Section 7.5.3.3, which is cited in Exhibit 1, pgs. 12 and 13. *Findings of Fact No. 30-34*

5. The City has reviewed the request and has determined that it is consistent with the zoning ordinances and standards of the City of Woodinville; the drainage regulations and ordinances of the City; the requirements for public street improvements; regulations for critical areas; fire safety standards and utility requirements and standards. *Findings of Fact Nos.37-44*

6. Pursuant to the SEPA required review (RCW 42.21C), the City was designated as the lead agency for the environmental review. Subsequent to submittal of relevant environmental documents, including the Checklist, on October 2, 2012, the City issued a DNS for the proposed project. Although comments were submitted to the City, no appeals were filed. The proposal will not cause avoidable adverse effects to the shoreline environment. *Findings of Fact Nos.35 and 44*

DECISION

Based on the preceding Findings of Fact and Conclusions and the information provided in the administrative record of the Hearing, **APPROVAL** of the City of Woodinville Sammamish River Bridge Widening Project, Permit No. SCU12001, is granted subject to the following conditions:

1. All improvements shall be constructed in reasonable conformance with the approved "Permit Review" level design plans, as accepted or amended and clarified by the contracting and design process directed by the City of Woodinville Public Works Director. The City of Woodinville Planning Director may approve minor modifications of the submitted plans if they are consistent with the Findings of Fact or the Conditions of Approval of this Decision.

2. The Applicant shall obtain all required local, state and federal permits for the proposed project. A Hydraulic Project Approval (HPA) Permit is required from the Washington State Department of Fish and Wildlife. No construction may occur until the HPA permit is obtained, or the Applicant submits confirmation from Fish and Wildlife that it is not required.
3. The Applicant shall coordinate with the Woodinville Water District to address any impacts to the locations where water and sewer lines cross SR 202.
4. The clearing limits shall be clearly delineated in the field. Vegetative cover beyond construction limits shall not be disturbed. No site improvements may occur except for fencing. Barrier fencing or siltation fencing may be installed before site disturbance, in accordance with the approved plans.
5. The Applicant will substantially follow the recommendations outlined in the Conceptual Mitigation Plan (Exhibit 10), Geotechnical Report (Exhibit 8), Stormwater Design (Exhibit 12), and Air Quality Conformity Analysis (Exhibit 9), including any addendums approved by the Public Works and Planning Director.
6. The following conditions for the mitgiation area for the impacts to the stream buffer and wetland areas shall be satisfied:
   a. The City will send to the Muckleshoot Indian Tribe Fisheries Division, the Mitigation Area Maintenance and Monitoring Plan for review and comment before Plan is approved. Both parties (the City of Woodinville and the Muckleshoot Tribe) agree to work diligently to resolve any concerns and comments. If there is unreasonable delay, the issue shall be presented to the Hearing Examiner for further directions.
   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 make determinations as required for conformance with the approved Mitigation Area Maintenance and Monitoring Plan mandated 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.
7. An approved final road landscaping plan is required prior to start of the construction of the project. The road landscaping plan shall satisfy Type II landscaping requirements of Chapter 21.16 WMC, and shall include: a minimum of 50 percent broadleaf trees (at least 1.75 inch caliper) spaced 20 feet on center, a minimum of 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 that will 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

Applicant, or its designees, shall report all spill immediately to the Washington Department of Ecology (425-849-7000) and the City of Woodinville.

9. Any and all soils exposed during construction shall be appropriately revegetated consistent with the proposed best management practices. A final temporary erosion control and sedimentation plan in compliance with the 2009 King County Surface Water Design Manual shall be prepared 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 shall 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 be provided to the City, Fire and Police Departments, and affected property owners within 1,000 feet regarding the commencement of construction.
12. Work requiring traffic control shall occur between the hours of 8:30 AM and 3:30 PM Monday through Friday, or with special permission of the Public Works Director. Access for emergency vehicles shall be maintained at all times. In there are any road closure or restrictions, water shut off or hydrants out of service, the Applicant shall notify Woodinville Fire and Rescue and the Woodinville Police Department.
13. Any damage to paving must be restored to match existing surfaces.
14. 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 Code (WMC 21.24).
15. The permit is granted pursuant to the Shoreline Management Act of 1971. This permit and its contents shall not 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).
16. 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).
17. 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.
18. Construction activities shall be commenced within two years of the effective date as set forth in RCW 90.58.143. However, the City may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the Department of Ecology.

Dated this 14th day of November, 2012.

James M. Driscoll-Hearing Examiner