

**BEFORE THE LAND USE HEARING EXAMINER
OF CITY OF WOODLAND, WASHINGTON**

Regarding an application by Carla Morgan for Shoreline) **FINAL ORDER**
Substantial Development and Conditional Use permits to)
restore and stabilize the bank of Horseshoe Lake at 412) **File No. SSD-22-001¹**
Island Aire Drive in the City of Woodland, Washington) **(Morgan Bank Restoration)**

A. SUMMARY

1. Carla Morgan (the “applicant”) requests approval of Shoreline Substantial Development and Shoreline Conditional Use permits for construction activities within the shoreline area of Horseshoe Lake, specifically on a 0.24-acre parcel located at 412 Island Aire Drive; also known as Parcel 64515016 (the “site”). The site and surrounding properties to the east, west, and south are zoned LDR 6 (Low Density Residential, 6,000 square foot minimum lot size). Horseshoe Lake abuts the north boundary of the site.

a. The applicant proposes to restore and stabilize the section of Horseshoe Lake bank on the site. Restoration of the bank is necessary due to the unpermitted construction of three new concrete block retaining walls in the spring and summer of 2022.

i. Prior to the unpermitted construction in 2022, the site was generally stable but had low ecological function due to the non-native vegetation present. The unpermitted excavation and construction created an unstable condition and removed the little existing ecological function by removing the vegetation. While temporary erosion control measures have been put in place, the slope has continued to degrade due to the temporary nature of the erosion control measures and the length of time the measures have been kept in place.

ii. The applicant proposes to remove and demolish the three partially constructed concrete block retaining walls and replace them with a series of tiered vegetated walls to serve as long- term shoreline stabilization. The applicant intends to minimize the number of walls ultimately placed to maximize the planting area and minimize further impacts to the property.

b. The applicant also proposes to redeck the existing residential pier/dock on the site, construct a private path for access to the shoreline, and repair the pre-existing concrete bulkhead along the waterline.

i. Based on City and County records, the existing concrete bulkhead, which runs adjacent to the original waterline, was likely constructed in 1961 with the single-family residence and it likely required maintenance prior to the unpermitted construction, however based on the current state of the site, there is a concern that replacement of the bulkhead may ultimately be required. While repair of the

¹ This Final Order also addresses SCU-22-001 and SEP-22-009.

bulkhead is covered within this application, replacement of the bulkhead may require further approvals from the City of Woodland and/or other agencies.

2. Hearing Examiner Joe Turner (the “examiner”) conducted a public hearing to receive testimony and evidence about this application. City staff recommended approval of the application, subject to conditions of approval, as modified at the hearing. See the City of Woodland Staff Report to the Hearing Examiner dated May 25, 2023 (the “Staff Report”). The applicant testified in support of the application and accepted the findings and conditions in the Staff Report, as modified, without exceptions. No one else testified orally or in writing, other than public service providers and agencies.

3. Based on the findings provided or incorporated herein, the examiner concludes that the applicant sustained the burden of proof that the proposed use does or can comply with the relevant approval standards of the Woodland Municipal Code (the “WMC”) and the and the Shoreline Master Program Policies, provided the applicant complies with conditions of approval recommended by City staff to ensure the proposed use does comply in fact with those standards. Therefore the examiner approves the Shoreline Substantial Development Permit and recommends approval of the Shoreline Conditional Use permit to the Department of Ecology, subject to the conditions at the end of this final order.

B. HEARING AND RECORD HIGHLIGHTS

1. The examiner received testimony at the public hearing about this application on June 2, 2023. All exhibits and records of testimony are filed at the City of Woodland. The examiner announced at the beginning of the hearing the rights of persons with an interest in the matter, including the right to request that the examiner continue the hearing or hold open the public record, the duty of those persons to testify and to raise all issues to preserve appeal rights and the manner in which the hearing will be conducted. The examiner disclaimed any *ex parte* contacts, bias or conflicts of interest. The following is a summary by the examiner of selected testimony and evidence offered at the public hearing.

2. City planner David Lukaczer summarized the Staff Report and the applicable standards, the history of the site, and the proposed development. He noted that the applicant proposes to remove the unpermitted retaining walls on the site, install a “FlexMSE” vegetated wall system to stabilize the bank, construct a path between the residence on the site and the existing pier and dock, redeck the existing pier and dock, and repair the existing bulkhead within the shoreline area of Horseshoe Lake.

a. He noted that the Washington Department of Fish and Wildlife (“WDFW”) submitted an email noting that the applicant will be required to obtain a Hydraulic Project Approval (“HPA”) prior to beginning construction on the site. He requested the examiner add a condition of approval to that effect.

b. The applicant originally proposed to remove a cedar tree on the site. However, the applicant redesigned the project to preserve that tree. The applicant proposed to remove a black cottonwood tree that is damaging the existing

bulkhead/retaining wall. The applicant will plant three new cottonwood trees on the to mitigate for removal of this tree.

c. He noted minor typographical errors in the Staff Report:

i. The first paragraph on page 15 should read “The proposed vegetated wall system will have fewer impacts to the existing ecological functions on site compared to the stone block retaining walls. This is consistent with this section of the Woodland SMP.”

ii. SMP Section 7.3.1(C) is inapplicable, as there is no stream on the site. Finding 53 on page 16 of the Staff Report should be modified to that effect.

iii. The applicant is currently proposing to repair, not replace, the existing bulkhead and retaining wall on the site, located waterward of the Ordinary High Water Line (“OHWL”) of Horseshoe Lake. Findings 63 and 65 should be modified to that effect. If replacement of the bulkhead is required, the applicant may need to obtain additional approvals from the City and other agencies.

iv. Condition of approval 15 should be modified to require the applicant obtain building permits prior to undertaking any additional work on the site.

3. The applicant, Carla Morgan, accepted the findings and conditions in the Staff Report, as amended at the hearing, without objections or corrections.

4. The examiner closed the record at the end of the hearing and announced his intention to approve the Shoreline Substantial Development permit and recommend that ECY approve the Shoreline Conditional Use permit subject to the conditions in the Staff Report as modified at the hearing.

C. DISCUSSION

1. City staff recommended approval of the application, based on affirmative findings and subject to conditions of approval in the Staff Report as modified at the hearing. The applicant accepted those revised findings and conditions without exception.

2. The examiner concludes the Staff Report, as modified at the hearing, identifies the applicable approval standards in the WMC for the application and contains affirmative findings showing that the proposal does or can comply with those standards, provided that the applicant complies with the recommended conditions of approval. The examiner adopts the affirmative findings in the Staff Report, as modified, as his own.

D. CONCLUSION

Based on the findings and discussion provided or incorporated herein, the examiner concludes that File No. SSD-22-001, SCU-22-001, and SEP-22-009 (Morgan Bank Restoration) should be approved, because the application does or can comply with applicable standards of the WMC and the Cowlitz County Shoreline Management Master

Program, provided it is subject to conditions that ensure timely compliance in fact with the WMC and relevant Comprehensive Plan Policies incorporated by reference in the Staff Report. The proposed Shoreline Conditional Use Permit must be reviewed and approved by the proper state and federal agencies, in this instance, the Washington State Department of Ecology.

E. ORDER

The Hearings Examiner recommends the Department of Ecology APPROVE SCU-22-001 subject to the conditions noted below; and

The Hearing Examiner APPROVES File Nos. SSD-22-001 and SEP-22-009 (Morgan Bank Restoration) Shoreline Substantial Development Permit and SEPA subject to the following conditions of approval:

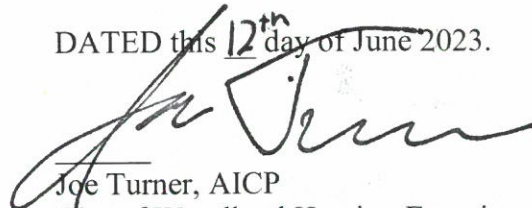
CONDITIONS OF APPROVAL

1. A Right-of-Way permit is required for any work in the Right-of-Way.
2. The applicant shall install and maintain erosion control measures compliant with best management practices and WMC Chapter 15.10.
3. The applicant is responsible for maintaining best management practices (BMPs) for stormwater management during construction and following completion of the development per WMC Chapter 15.12 and the 1992 Stormwater Manual for the Puget Sound Basin.
4. The applicant shall reimburse the City for any professional peer review provided as a part of this application, if applicable.
5. The applicant shall commence construction activities within two (2) years of the effective date of the Shoreline Substantial Development Permit unless an extension is requested and granted per SMP 8.8.C.2.
6. The applicant is liable for all costs, fines, fees, and other repercussions stemming from their violation of the City of Woodland SMP, including costs associated with the restoration of the area to meet its prior condition.
7. The applicant shall provide the city with a final restoration and mitigation plan reflecting the modifications made to the planting plan proposed as a part of the resubmitted plan prior to implementation of the proposed construction. Final restoration plan shall include the location of the trees intended to be planted in the Riparian Habitat Area.
 - a. Applicant shall provide a final restoration and mitigation plan demonstrating that three new cottonwood trees (or approved alternative) will be planted for every tree removed. Final site plan submitted alongside the restoration and mitigation plan shall identify the location these trees will be planted.

- b. Final mitigation planting plan should be provided including the following modifications:
 - i. Final report should reflect modified plan(s);
 - ii. The report's author should be identified and their qualifications provided;
 - iii. The Riparian Habitat Area should be identified and approximate impacts calculated;
 - iv. The report should reflect the City of Woodland's municipal code and shoreline program rather than the Cowlitz County Code.
 - c. The final mitigation plan shall include a monitoring plan for a period through 2028 or for a period of at least three (3) years from the initial planting, and have a survival rate of at least 80% and an 80% ground coverage at the end of that monitoring period.
 - d. An initial planting will be required to document the planting is complete. Monitoring reports for each year will be required annually starting from the date that initial planting report. If any of the annual planting reports are missed, in 2028, at the end of the monitoring period, if it is found that there has not been an 80% survival rate of the initial plantings, replanting will be required and an additional monitoring period of at least 3-years shall be required until such time as the goals of the mitigation plan can be shown to have been met.
 - e. A conservation covenant for the habitat conservation area shall be recorded within one year of the completion of the planting. The recorded covenant may be submitted with the first monitoring report.
8. All soils utilized for any required fill and backfill must match historic and existing soils. The applicant is responsible for ensuring that water quality is not negatively impacted by this restoration project.
9. If it is determined that the bulkhead must be replaced and/or in-water work will be required, additional review as a shoreline permit may be required depending on scope of work.
- a. If it is determined that the bulkhead must be replaced and/or that in-water work will be required, the approval of Hydraulic Permit Approval (HPA) will be required from the Washington State Department of Fish and Wildlife. The HPA will be required prior to undertaking any work on the bulkhead.
 - b. In-water work for the bulkhead will require review under SEPA. A SEPA checklist may be completed with the city or it may be completed with a state agency with jurisdiction, but it is not covered by the SEPA processed with SSD-22-001 and SCUP-22-001.
 - c. Review and approval for the removal/replacement of the bulkhead shall be approved as necessary, by the Department of Ecology prior to commencement of work on the bulkhead.

10. Required building permits must be obtained prior to commencement of any additional work. Stamped engineering drawings and calculations will be required prior to building permit review as necessary under IBC.
11. It is the applicant's responsibility to make any relevant revisions and/or acquire any relevant permits based on provided comments from the Department of Ecology.
12. Work shall not begin until the Washington State Department of Ecology has approved the final Shoreline Conditional Use Permit and this approval has been provided to the applicant.
13. Construction associated with the subject permits shall not begin prior to twenty-one (21) days following the effective date of all associated permits.
14. The applicant shall obtain an approved HPA prior to undertaking construction.
15. Final, engineered building plans for the repair of the existing bulkhead shall demonstrate that its dimensions will not be changed.
16. Applicant shall submit for building permit(s) and building plan review prior to undertaking any work on the site, and provide as-built drawings to lukaczerd@ci.woodland.wa.us once construction is complete.
17. Payment shall be made to the City for any outstanding Professional Consulting Services per WMC 19.02.120.

DATED this 12th day of June 2023.



Joe Turner, AICP
City of Woodland Hearing Examiner

NOTE: Only the decision and the conditions of approval are binding on the applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the city staff, or the Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.

APPEAL

1. Pursuant to WMC 18.310.100.D an appeal of a Type III decision shall be filed with Clark County Superior Court within twenty-one (21) calendar days of the final decision pursuant to State law.
2. Pursuant to WMC 18.310.100.E Appeals of shoreline permit decisions are governed by Chapter 18.800 and relevant WACs.

3. *WMC 18.820.140 provides, in relevant part, “Any person aggrieved by the granting or denying of a permit on shorelines of the city... may seek review from the State Shorelines Hearings Board by filing a request for the same with the Department of Ecology and the Attorney General within thirty days of their receipt of the final action as provided for in RCW 90.58.180(1). Copies of the appeal shall likewise be filed with the city attorney, city clerk, and with the administrator. The burden of proof shall in all cases be upon the person seeking such review.*

