

## Marysville City Council Work Session

October 3, 2011

7:00 p.m.

City Hall

### Call to Order

### Pledge of Allegiance

### Roll Call

### Committee Reports

### Presentations

### Discussion Items

### Approval of Minutes (Written Comment Only Accepted from Audience.)

1. Approval of September 26, 2011 City Council Meeting Minutes.

### Consent

2. Approval of September 21, 2011 Claims in the Amount of \$604,381.54; Paid by Check Number's 72561 through 72683.
3. Approval of September 20, 2011 Payroll in the Amount of \$907,119.46; Paid by Check Number's 24716 through 24764.

### Review Bids

### Public Hearings

### New Business

4. Service Agreement with Frontier Communications Northwest Inc. in the Amount of \$43,740.00.
5. An **Ordinance** of the City of Marysville, Affirming the Decision of the Hearing Examiner, Rezoning Approximately 2.10-Acres of Property Generally Located Between State and Columbia Avenues and 7th and 8th Street from R-8 (Single-Family, High Density) to DC (Downtown Commercial), and Amending the Official Zoning Map of the City.
6. A **Resolution** of the City of Marysville Affirming the Recommendation of the Hearing Examiner and Granting a Conditional Shoreline Substantial Development Permit for Qwuloolt Estuary Restoration Project to Allow the Construction of a 4,000 LF Levee; Excavation and Removal of 1,800 LF of Existing Dike; Creation of 1.1 Acre Fill Pad (Phase 2 & 3 of Christofferson Grading Project); and Filling of Agricultural Ditches as Part of a Process to Restore Tidal Agricultural Ditches as Part of a Process to Restore Tidal Processes to Approximately 341.5 Acres of Fallow Farmland.

### Legal

## Marysville City Council Work Session

October 3, 2011

7:00 p.m.

City Hall

### Mayor's Business

7. Tulalip Tribes Class III Gaming Proceeds Thank You Letter.

### Staff Business

### Call on Councilmembers

### Executive Session

#### A. Litigation

#### B. Personnel

#### C. Real Estate

### Adjourn

**Special Accommodations:** The City of Marysville strives to provide accessible meetings for people with disabilities. Please contact the City Clerk's Office at (360) 363-8000 or 1-800-833-6384 (Voice Relay), 1-800-833-6388 (TDD Relay) two days prior to the meeting date if any special accommodations are needed for this meeting.

***Work Sessions are for City Council study and orientation - Public Input will be received at the October 10, 2011 City Council meeting.***

**CITY OF MARYSVILLE**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 10, 2011**

AGENDA ITEM: Claims	AGENDA SECTION:	
PREPARED BY: Sandy Langdon, Finance Director	AGENDA NUMBER:	
ATTACHMENTS: Claims Listings	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

Please see attached.

**RECOMMENDED ACTION:**

The Finance and Executive Departments recommend City Council approve the **September 21, 2011** claims in the amount of **\$604,381.54** paid by **Check No.'s 72561 through 72683.**

**COUNCIL ACTION:**

BLANKET CERTIFICATION

**CLAIMS**  
FOR  
**PERIOD-9**

I, THE UNDERSIGNED, DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE **CLAIMS** IN THE AMOUNT OF **\$604,381.54 PAID BY CHECK NO.'S 72561 THROUGH 72683** ARE JUST, DUE AND UNPAID OBLIGATIONS AGAINST THE CITY OF MARYSVILLE, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND TO CERTIFY SAID CLAIMS.

  
\_\_\_\_\_  
AUDITING OFFICER

  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
DATE

WE, THE UNDERSIGNED COUNCIL MEMBERS OF MARYSVILLE, WASHINGTON DO HEREBY APPROVE FOR PAYMENT THE ABOVE MENTIONED **CLAIMS** ON THIS **10TH DAY OF OCTOBER 2011.**

\_\_\_\_\_  
COUNCIL MEMBER

**CITY OF MARYSVILLE**  
**INVOICE LIST**  
**FOR INVOICES FROM 9/15/2011 TO 9/21/2011**

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
72561	REVENUE, DEPT OF	SALES & USE TAXES-AUGUST 2011	CITY CLERK	0.13
	REVENUE, DEPT OF		COMMUNITY DEVELOPMENT-	9.26
	REVENUE, DEPT OF		POLICE ADMINISTRATION	22.46
	REVENUE, DEPT OF		GOLF COURSE	52.29
	REVENUE, DEPT OF		GENERAL FUND	76.47
	REVENUE, DEPT OF		INFORMATION SERVICES	93.47
	REVENUE, DEPT OF		ER&R	146.69
	REVENUE, DEPT OF		CITY STREETS	169.94
	REVENUE, DEPT OF		WATER/SEWER OPERATION	232.84
	REVENUE, DEPT OF		PRO-SHOP	693.24
	REVENUE, DEPT OF		UTILITY CONSTRUCTION	1,671.26
	REVENUE, DEPT OF		STORM DRAINAGE	6,225.75
	REVENUE, DEPT OF		GOLF COURSE	12,653.93
	REVENUE, DEPT OF		SOLID WASTE OPERATIONS	26,439.37
	REVENUE, DEPT OF		UTIL ADMIN	57,310.81
72562	ADVANTAGE BUILDING S	JANITORIAL SERVICES	WATER FILTRATION PLANT	37.73
	ADVANTAGE BUILDING S		MAINT OF GENL PLANT	67.86
	ADVANTAGE BUILDING S		WASTE WATER TREATMENT	403.76
	ADVANTAGE BUILDING S		COMMUNITY CENTER	435.49
	ADVANTAGE BUILDING S		ADMIN FACILITIES	535.16
	ADVANTAGE BUILDING S		PUBLIC SAFETY FAC-GENL	605.88
	ADVANTAGE BUILDING S		PARK & RECREATION FAC	620.40
	ADVANTAGE BUILDING S		COURT FACILITIES	950.52
	ADVANTAGE BUILDING S		UTIL ADMIN	1,032.75
72563	AFTS	REMITTANCE PROCESSING-AUG 2011	UTILITY BILLING	948.25
	AFTS	WEB PAYMENT SERVICES-AUG. 2011	UTILITY BILLING	970.25
	AFTS	BILL PRINTING SERVICES	UTILITY BILLING	7,680.29
72564	ALBERTSONS	SUPPLY REIMBURSEMENT	COMMUNITY CENTER	9.21
	ALBERTSONS		COMMUNITY EVENTS	49.75
	ALBERTSONS		BAXTER CENTER APPRE	56.52
72565	AMERICAN CLEANERS	DRY CLEANING SERVICE	DETENTION & CORRECTION	41.24
	AMERICAN CLEANERS		POLICE PATROL	41.69
	AMERICAN CLEANERS		OFFICE OPERATIONS	43.44
	AMERICAN CLEANERS		POLICE ADMINISTRATION	72.68
	AMERICAN CLEANERS		POLICE INVESTIGATION	149.33
72566	ARAMARK UNIFORM	UNIFORM CLEANING	MAINTENANCE	14.28
	ARAMARK UNIFORM		MAINTENANCE	14.28
	ARAMARK UNIFORM		MAINTENANCE	14.28
	ARAMARK UNIFORM		MAINTENANCE	28.94
72567	ASSET MANAGEMENT SPE	UB 058921000000 5615 89TH PL N	WATER/SEWER OPERATION	16.42
72568	ASSOC OF SHERIFFS	DUES-KRUSEY	POLICE ADMINISTRATION	75.00
	ASSOC OF SHERIFFS	DUES-LAMOUREUX,R	POLICE ADMINISTRATION	75.00
72569	BANK OF AMERICA	PARKING REIMBURSEMENT	EXECUTIVE ADMIN	14.50
72570	BANK OF AMERICA	SUPPLY REIMBURSEMENT	PARK & RECREATION FAC	24.42
72571	BANK OF AMERICA	MEAL REIMBURSEMENT	UTIL ADMIN	43.40
72572	BANK OF AMERICA	TRAINING REIMBURSEMENT	EXECUTIVE ADMIN	490.00
72573	BARKER, SHERYL	RENTAL DEPOSIT REFUND	GENERAL FUND	300.00
72574	BARTLETT, KERI		GENERAL FUND	200.00
72575	BAUDVILLE	CERTIFICATE PAPER-VOLUNTEER AP	GENERAL FUND	-8.29
	BAUDVILLE		EXECUTIVE ADMIN	104.64
72576	BELMARK PROPERTY MNG	GEDDES MARINA MANAGEMENT-08/11	STORM DRAINAGE	1,255.34
72577	BETTENDORF, JOLINE	CLASS REFUND-INSUFFICIENT REGI	PARKS-RECREATION	79.00
72578	BICKFORD FORD	GAS CAP-#P121	EQUIPMENT RENTAL	15.31
72579	BLUMENTHAL UNIFORMS	VEST-WADE	POLICE ADMINISTRATION	868.80
	BLUMENTHAL UNIFORMS	VEST-SHACKLETON	POLICE INVESTIGATION	885.09
72580	BOYD, RAE	INMATE MEDICAL CARE	DETENTION & CORRECTION	2,360.00
72581	BRINKS INC	ARMORED TRUCK SERVICE	GOLF ADMINISTRATION	99.29

**CITY OF MARYSVILLE  
 INVOICE LIST**

**FOR INVOICES FROM 9/15/2011 TO 9/21/2011**

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
72581	BRINKS INC	ARMORED TRUCK SERVICE	COMMUNITY DEVELOPMENT-	173.82
	BRINKS INC		UTIL ADMIN	173.82
	BRINKS INC		POLICE ADMINISTRATION	319.74
	BRINKS INC		UTILITY BILLING	319.74
	BRINKS INC		MUNICIPAL COURTS	319.74
72582	CALLAGAN, JESSICA	REFUND	PARKS-RECREATION	32.00
72583	CAMPBELL, NANCY	UB 911030000003 1701 3RD ST	WATER/SEWER OPERATION	21.31
72584	CORRECTIONS, DEPT OF	INMATE MEALS	DETENTION & CORRECTION	1,804.70
72585	COSTLESS SENIOR SRVC	INMATE PRESCRIPTIONS	DETENTION & CORRECTION	468.88
72586	DB SECURE SHRED	SHREDDING SERVICES	CITY CLERK	7.31
	DB SECURE SHRED		FINANCE-GENL	7.31
	DB SECURE SHRED		UTILITY BILLING	7.32
	DB SECURE SHRED		EXECUTIVE ADMIN	9.56
	DB SECURE SHRED		LEGAL - PROSECUTION	9.57
	DB SECURE SHRED		PERSONNEL ADMINISTRATIO	19.13
72587	DIAMOND B CONSTRUCT	HVAC MAINTENANCE	SOURCE OF SUPPLY	96.65
	DIAMOND B CONSTRUCT		MAINT OF GENL PLANT	149.53
	DIAMOND B CONSTRUCT		PARK & RECREATION FAC	202.39
	DIAMOND B CONSTRUCT		COMMUNITY CENTER	299.07
	DIAMOND B CONSTRUCT		WATER FILTRATION PLANT	611.62
	DIAMOND B CONSTRUCT		MAINTENANCE	669.19
	DIAMOND B CONSTRUCT		COURT FACILITIES	800.54
	DIAMOND B CONSTRUCT		ADMIN FACILITIES	864.24
	DIAMOND B CONSTRUCT		UTIL ADMIN	910.84
	DIAMOND B CONSTRUCT		WASTE WATER TREATMENT	1,023.61
	DIAMOND B CONSTRUCT		LIBRARY-GENL	1,116.55
	DIAMOND B CONSTRUCT		PUBLIC SAFETY FAC-GENL	1,234.24
72588	DICKS RESTAURANT SUP	AIRPOTS (2)	EXECUTIVE ADMIN	137.97
72589	DICKS TOWING	TOWING EXPENSE	POLICE PATROL	43.44
72590	DRUG BUY FUND	REPLENISH DRUG BUY FUND	POLICE PATROL	1,500.00
72591	E&E LUMBER	MDF TRIM-24'	MAINT OF GENL PLANT	10.16
	E&E LUMBER	GALV. SPIKES, DRILL BIT	PARK & RECREATION FAC	27.59
	E&E LUMBER	STAKES (2 BUNDLES)	PARK & RECREATION FAC	31.19
	E&E LUMBER	3/4" CDX	PUBLIC SAFETY FAC-GENL	48.65
	E&E LUMBER	TREATED LUMBER	PARK & RECREATION FAC	49.52
	E&E LUMBER	GRAFITTI SUPPLIES	COMMUNITY DEVELOPMENT-	61.41
72592	EMERALD HILLS	COFFEE SERVICE & SUPPLIES-KBCC	BAXTER CENTER APPRE	100.73
72593	EVERETT MUNICIPAL	BAIL POSTED	GENERAL FUND	250.00
72594	FULLERTON & ASSOCIAT	PROFESSIONAL SERVICES	GMA - STREET	330.00
72595	GAGNAT, DONNA	CLASS REFUND-INSUFFICIENT REGI	PARKS-RECREATION	79.00
72596	GIBSON, MATT	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
72597	GOVCONNECTION INC	I.S. EQUIPMENT & SUPPLIES	COMPUTER SERVICES	92.85
	GOVCONNECTION INC		COMPUTER SERVICES	182.40
72598	GRACE ACADEMY	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
72599	GRANITE CONST	MODIFIED B ASPHALT	GMA-PARKS	5,741.87
	GRANITE CONST		GMA-PARKS	16,181.76
72600	GRAY AND OSBORNE	PROFESSIONAL SERVICES	SEWER CAPITAL PROJECTS	3,789.83
72601	GREATER EVERETT COMM	HALL OF FAME BANQUET (4)	EXECUTIVE ADMIN	55.00
	GREATER EVERETT COMM		PARK & RECREATION FAC	55.00
	GREATER EVERETT COMM		CITY COUNCIL	110.00
72602	HACH COMPANY	WATER QUALITY SAMPLING	WATER QUAL TREATMENT	1,481.98
72603	HALL, SHIRLEY	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
72604	HAMMOND, ROBIN	UB 250010200000 10714 58TH DR	WATER/SEWER OPERATION	23.18
72605	HARRIS, BARBARA	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
72606	HD FOWLER COMPANY	IRRIGATION BOX LID	PARK & RECREATION FAC	45.08
	HD FOWLER COMPANY	LOCATE FLAGS (BLUE & GREEN)	UTILITY LOCATING	325.80
	HD FOWLER COMPANY	GROVE ST. DRAINAGE PROJECT	STORM DRAINAGE	546.55

**CITY OF MARYSVILLE  
 INVOICE LIST**

**FOR INVOICES FROM 9/15/2011 TO 9/21/2011**

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
72607	HENDERSON, DAVE	UB 240568652001 5328 102ND ST	WATER/SEWER OPERATION	120.07
72608	HERTZ EQUIPMENT RENT	EXCAVATOR RENTAL	WATER CAPITAL PROJECTS	1,330.35
	HERTZ EQUIPMENT RENT		WATER CAPITAL PROJECTS	5,701.50
72609	HORIZON	FUNGICIDE	MAINTENANCE	309.27
72610	JP COOKE COMPANY,THE	LIFETIME ANIMAL LICENSE TAGS	GENERAL FUND	-7.45
	JP COOKE COMPANY,THE		COMMUNITY DEVELOPMENT-	94.06
72611	JUDD & BLACK	FREEZER-JAIL	TRIBAL GAMING-GENL	677.66
	JUDD & BLACK	50" LG PLASMA TV-PW SHOP	MAINT OF GENL PLANT	806.89
72612	KIMBERLY GREGORIUS	UB 731430000006 6926 21ST DR N	WATER/SEWER OPERATION	20.00
72613	KNUTSON, JILL	CLASS REFUND-INSUFFICIENT REGI	PARKS-RECREATION	36.00
72614	KRISTOFFERSEN, MONIK	INSTRUCTOR SERVICES	RECREATION SERVICES	39.60
72615	L.E.E.D.	AMMUNITION	POLICE TRAINING-FIREARMS	3,686.79
72616	LASTING IMPRESSIONS	TOUCH A TRUCK SHIRTS	UTIL ADMIN	273.05
	LASTING IMPRESSIONS		RECREATION SERVICES	273.06
72617	LAWSON PRODUCTS	DISCS	MAINTENANCE	140.33
72618	LINKS TURF SUPPLY	MARKING PAINT	MAINTENANCE	180.82
72619	MARYSVILLE PAINT	1 GALLON OF PAINT	WASTE WATER TREATMENT	32.22
72620	MARYSVILLE PRINTING	ENVELOPES	COMMUNITY DEVELOPMENT-	59.77
72621	MARYSVILLE SCHOOL	FACILITY USAGE-ALLEN CREEK	RECREATION SERVICES	2,548.00
72622	MARYSVILLE, CITY OF	WTR/SWR-6802 84TH ST NE	PRO-SHOP	177.80
72623	MASTRI, BOBBI	CLASS REFUND-INSUFFICIENT REGI	PARKS-RECREATION	79.00
72624	MATERIALS TESTING &	PROFESSIONAL SERVICES	ROADS/STREETS CONSTRUC	1,340.75
72625	MCCONNELL & ASSOC	HEARING EXAMINER SERVICES	COMMUNITY DEVELOPMENT-	2,988.50
72626	MICRO DATA	CITATIONS	POLICE PATROL	354.46
	MICRO DATA	INFRACTION FORMS	POLICE PATROL	729.55
72627	MICROFLEX INC	TAX AUDIT PROGRAM-AUG. 2011	FINANCE-GENL	50.06
72628	MOTOR TRUCKS	LONG STROKE PIGGY BACK AIR CAN	EQUIPMENT RENTAL	64.92
72629	NATIONAL SAFETY INC	MESH VESTS	ER&R	41.03
72630	NORTH COAST ELECTRIC	HOFFMAN EXHAUST FAN	WATER RESERVOIRS	307.00
72631	NORTHERN HOLDINGS LL	UB 241230800000 12308 56TH DR	WATER/SEWER OPERATION	74.04
72632	NORTHWEST PLAYGROUND	PLAYGROUND REPAIR	PARK & RECREATION FAC	1,661.68
72633	OFFICE DEPOT	OFFICE SUPPLIES	EXECUTIVE ADMIN	3.18
	OFFICE DEPOT		CITY CLERK	14.62
	OFFICE DEPOT		COMMUNITY DEVELOPMENT-	38.97
	OFFICE DEPOT		COMMUNITY DEVELOPMENT-	107.36
	OFFICE DEPOT		EXECUTIVE ADMIN	107.92
	OFFICE DEPOT		POLICE PATROL	131.78
	OFFICE DEPOT		UTILITY BILLING	148.03
72634	OSBORN, JASON	ENDORSEMENT REIMBURSEMENT	GENERAL SERVICES - OVERH	61.00
72635	PACIFIC NW BUSINESS	TONER	POLICE ADMINISTRATION	43.33
	PACIFIC NW BUSINESS		UTIL ADMIN	70.53
	PACIFIC NW BUSINESS		COMMUNITY DEVELOPMENT-	70.54
72636	PARTS STORE, THE	MISC. PARTS - #V007	EQUIPMENT RENTAL	61.90
	PARTS STORE, THE	POWER STEERING RACK	EQUIPMENT RENTAL	224.11
72637	PEACE OF MIND	MINUTE TAKING SERVICES	CITY CLERK	105.40
	PEACE OF MIND		COMMUNITY DEVELOPMENT-	155.00
72638	PETTY CASH-COMM DEV	PETTY CASH REIMBURSEMENT	COMMUNITY DEVELOPMENT-	44.00
72639	PLANNING & DEVELOP.	SCT DINNER MEETING (2)	EXECUTIVE ADMIN	32.00
	PLANNING & DEVELOP.		CITY COUNCIL	32.00
72640	POTTS, ALVIN	UB 201160000000 4902 133RD PL	WATER/SEWER OPERATION	30.79
72641	PUD	ACCT #2024-6102-6	MAINT OF GENL PLANT	31.19
	PUD	ACCT #2009-7395-6	SEWER LIFT STATION	31.49
	PUD	ACCT #2004-4880-1	TRANSPORTATION MANAGEM	84.20
	PUD	ACCT #2016-2888-0	WASTE WATER TREATMENT	103.10
	PUD	ACCT #2016-7563-4	WASTE WATER TREATMENT	718.99
	PUD	ACCT #2021-7733-3	MAINT OF GENL PLANT	1,293.71
	PUD	ACCT #2015-8728-4	WASTE WATER TREATMENT	1,442.60

**CITY OF MARYSVILLE  
 INVOICE LIST**

**FOR INVOICES FROM 9/15/2011 TO 9/21/2011**

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
72641	PUD	ACCT #2016-3968-9	MAINT OF GENL PLANT	1,745.07
72642	PUGET SOUND ENERGY	ACCT #433-744-084-8 DELTA BLDG	NON-DEPARTMENTAL	33.92
	PUGET SOUND ENERGY	ACCT #856-208-715-8	NON-DEPARTMENTAL	33.92
	PUGET SOUND ENERGY	ACCT #922-456-500-3	MAINT OF GENL PLANT	36.19
	PUGET SOUND ENERGY	ACCT #433-744-264-6	PRO-SHOP	37.32
	PUGET SOUND ENERGY	ACCT #549-775-008-2 CITY HALL	ADMIN FACILITIES	47.63
	PUGET SOUND ENERGY	ACCT. # 549-775-373-0	MAINT OF GENL PLANT	52.21
	PUGET SOUND ENERGY	ACCT.# 616-190-400-5	COMMUNITY CENTER	55.47
	PUGET SOUND ENERGY	ACCT #835-819-211-3	COURT FACILITIES	56.78
	PUGET SOUND ENERGY	ACCT. # 435-851-700-3	MAINT OF GENL PLANT	99.08
	PUGET SOUND ENERGY	ACCT #753-901-800-7	PUBLIC SAFETY FAC-GENL	245.41
72643	RADIOSHACK	OFFICE SUPPLIES	COMPUTER SERVICES	3.79
72644	REVENUE, DEPT OF	QTRLY SERVICE FEES-BUS. LICENS	COMMUNITY DEVELOPMENT-	490.08
72645	ROUTH, CRABTREE & OL	UB 980098000214 6432 40TH ST N	WATER/SEWER OPERATION	43.02
72646	ROWLEY, MICHELLE	RENTAL DEPOSIT REFUND	GENERAL FUND	100.00
72647	SAN DIEGO POLICE EQU	AMMUNITION	POLICE TRAINING-FIREARMS	2,415.09
72648	SANDBLASTERS INC	SAND BLASTING SERVICES	PARK & RECREATION FAC	93.75
72649	SATURAY, RODANTE	UB 849003600501 6310 78TH PL N	WATER/SEWER OPERATION	20.40
72650	SIERRA, REY & ENRICA	UB 570703800001 17610 29TH AVE	WATER/SEWER OPERATION	58.58
72651	SISKUN POWER EQUIPME	DIAPHRAM PUMP & HOSE KIT	WATER CAPITAL PROJECTS	2,122.85
72652	SMOKEY POINT CONCRET	MATERIAL HAULED IN	STORM DRAINAGE	80.04
72653	SNO CO TREASURER	2011 PROP TAXES	GMA - STREET	248.97
72654	SNO CO TREASURER	JAIL HOUSING-AUGUST 2011	DETENTION & CORRECTION	24,942.64
72655	SNOPAC	DISPATCH SERVICES	COMMUNICATION CENTER	64,984.53
72656	SONITROL	SECURITY SERVICES-SEPT. 2011	PUBLIC SAFETY FAC-GENL	93.00
	SONITROL		PARK & RECREATION FAC	122.00
	SONITROL		COMMUNITY CENTER	132.00
	SONITROL		WASTE WATER TREATMENT	232.33
	SONITROL		WATER FILTRATION PLANT	232.33
	SONITROL		PARK & RECREATION FAC	308.00
	SONITROL		UTIL ADMIN	391.00
72657	SOUND PUBLISHING	LEGAL ADS	GMA - STREET	49.39
72658	SOUND PUBLISHING	LEGAL NOTICES	CITY CLERK	120.79
72659	SOUND PUBLISHING	LEGAL ADS	COMMUNITY DEVELOPMENT-	796.42
72660	SOUND SAFETY	HEARING BANDS	SOLID WASTE OPERATIONS	42.30
	SOUND SAFETY	GLOVES	ER&R	274.76
72661	SPARLING	PROFESSIONAL SERVICES	SEWER CAPITAL PROJECTS	3,326.90
72662	SPRINGBROOK NURSERY	TOPSOIL (2 YDS)	PARK & RECREATION FAC	31.23
72663	STATE PATROL	BACKGROUND CHECKS	PERSONNEL ADMINISTRATIO	130.00
72664	STILTNER, MARTHA L	UB 561280000001 17620 31ST DR	WATER/SEWER OPERATION	26.81
72665	TEXTRON FINANCIAL	EZ GO CART LEASE	MAINTENANCE	435.00
72666	TMG SERVICES INC	PUMP DIAPHRAGM	WASTE WATER TREATMENT	427.41
72667	TORO NSN	IRRIGATION SOFTWARE LEASE	MAINTENANCE	134.00
72668	TRANSPORTATION, DEPT	FINAL BILLING FOR EBAY SLOUGH	WATER CAPITAL PROJECTS	8,794.24
72669	TYLER TECHNOLOGIES	SOFTWARE INTERFACE SUPPORT	COMPUTER SERVICES	3,258.00
72670	UNION STREET HOLDING	UB 285411124000 5411 124TH ST	WATER/SEWER OPERATION	8.11
72671	UNITED PARCEL SERVIC	SHIPPING EXPENSE	POLICE PATROL	9.22
72672	VERIZON/FRONTIER	ACCT# 03 0275 1054427570 10	EXECUTIVE ADMIN	23.02
	VERIZON/FRONTIER	ACCT #404449227007	PERSONNEL ADMINISTRATIO	56.50
	VERIZON/FRONTIER	ACCT #109471572710	POLICE INVESTIGATION	56.54
	VERIZON/FRONTIER	ACCT. # 03 0254 1039572340 07	WASTE WATER TREATMENT	64.95
	VERIZON/FRONTIER	ACCT #1109792481505	UTIL ADMIN	74.92
	VERIZON/FRONTIER	ACCT #109471572710	RECREATION SERVICES	81.38
	VERIZON/FRONTIER	ACCT #102746380105	COMMUNICATION CENTER	99.24
	VERIZON/FRONTIER	ACCT #102857559902	LIBRARY-GENL	104.92
	VERIZON/FRONTIER	ACCT #404449227007	MUNICIPAL COURTS	212.58
	VERIZON/FRONTIER	ACCT #106241644206	CENTRAL SERVICES	653.39

**CITY OF MARYSVILLE  
 INVOICE LIST**

**FOR INVOICES FROM 9/15/2011 TO 9/21/2011**

<u>CHK #</u>	<u>VENDOR</u>	<u>ITEM DESCRIPTION</u>	<u>ACCOUNT DESCRIPTION</u>	<u>ITEM AMOUNT</u>
72673	VERIZON/FRONTIER	ACCT. # 971967546-00001	TRIBAL GAMING-GENL	-181.15
	VERIZON/FRONTIER		LEGAL-GENL	43.01
	VERIZON/FRONTIER		COMPUTER SERVICES	43.01
	VERIZON/FRONTIER		ENGR-GENL	54.83
	VERIZON/FRONTIER		UTIL ADMIN	54.83
	VERIZON/FRONTIER		MUNICIPAL COURTS	54.83
	VERIZON/FRONTIER		FINANCE-GENL	54.83
	VERIZON/FRONTIER		PARK & RECREATION FAC	54.83
	VERIZON/FRONTIER		PERSONNEL ADMINISTRATIO	54.83
	VERIZON/FRONTIER		LEGAL - PROSECUTION	109.66
	VERIZON/FRONTIER		EXECUTIVE ADMIN	120.90
	VERIZON/FRONTIER		UTIL ADMIN	129.07
	VERIZON/FRONTIER		POLICE ADMINISTRATION	480.44
	VERIZON/FRONTIER		TRIBAL GAMING-GENL	2,040.38
	VERIZON/FRONTIER		IS REPLACEMENT ACCOUNTS	4,796.92
72674	VINYL SIGNS & BANNER	SIGNS	PARK & RECREATION FAC	632.05
72675	WEBCHECK	WEBCHECK SERVICES	UTILITY BILLING	960.00
72676	WEED GRAAFSTRA	JON & SARA MURRAY	GMA - STREET	267,194.56
72677	WEST PAYMENT CENTER	WEST INFO. CHARGES	LEGAL - PROSECUTION	570.16
72678	WESTERN EQUIPMENT	CREDIT RETURN	MAINTENANCE	-1,401.59
	WESTERN EQUIPMENT		MAINTENANCE	-1,086.00
	WESTERN EQUIPMENT	O-RINGS	MAINTENANCE	14.19
	WESTERN EQUIPMENT	FILTER, SWITCH, WIRE HARNESS	MAINTENANCE	109.06
	WESTERN EQUIPMENT	IRRIGATION REPAIR PARTS	MAINTENANCE	227.14
	WESTERN EQUIPMENT		MAINTENANCE	289.58
	WESTERN EQUIPMENT		MAINTENANCE	634.22
	WESTERN EQUIPMENT		MAINTENANCE	1,127.40
	WESTERN EQUIPMENT		MAINTENANCE	3,656.72
72679	WESTERN FACILITIES	JANITORIAL SUPPLIES	MAINTENANCE	181.68
72680	WESTERN SYSTEMS	SCHOOL ZONE BEACON, POLE MOUNT	TRANSPORTATION MANAGEM	2,790.66
72681	WILCO-WINFIELD, LLC	FERTILIZER	MAINTENANCE	426.88
	WILCO-WINFIELD, LLC		MAINTENANCE	559.66
72682	WILDERNESS HAY INC.	STRAW	GMA-PARKS	402.82
72683	YMCA	POOL USAGE	RECREATION SERVICES	60.00
<b>WARRANT TOTAL:</b>				<b><u><u>604,381.54</u></u></b>

**REASON FOR VOIDS:**

- INITIATOR ERROR
- WRONG VENDOR
- CHECK LOST IN MAIL
- UNCLAIMED PROPERTY

**CITY OF MARYSVILLE**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 10, 2011**

AGENDA ITEM: Payroll	AGENDA SECTION:	
PREPARED BY: Sandy Langdon, Finance Director	AGENDA NUMBER:	
ATTACHMENTS: Blanket Certification	APPROVED BY:	
	MAYOR	CAO
BUDGET CODE:	AMOUNT:	

<b>RECOMMENDED ACTION:</b> The Finance and Executive Departments recommend City Council approve the September 20, 2011 payroll in the amount \$907,119.46 Check No.'s 24716 through 24764.
<b>COUNCIL ACTION:</b>

**CITY OF MARYSVILLE AGENDA BILL**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: 10/10/2011**

AGENDA ITEM: Authorizing the Mayor to sign Service Agreement with Frontier Communications Northwest Inc..	
PREPARED BY: Worth Norton DEPARTMENT: Finance / Information Services	DIRECTOR APPROVAL: 
ATTACHMENTS: Frontier Communications Northwest Service Agreement, ICB Case no. 2011-518749	
BUDGET CODE: 50300090 542000 and others	AMOUNT: \$43,740.00

**SUMMARY:**

We are proposing switching our telecom services from Integra Telecom (formally Eschelon Telecom) to Frontier Communications Northwest Inc. (formally Verizon). Frontier was the winning vendor for a Telecommunication Services Request for Proposal (RFP) with a due date of April 29, 2011. Our current contract expires November 28, 2011.

Integra currently provides the City with PRI (Primary Rate Interface) services and long distance. We have three PRI lines, one for each main building, Public Works, Public Safety and City Hall. These PRI lines provide our local phone service connection to our VoIP (voice over IP) call servers.

Frontier's proposal is based on an ICB (Individual Case Basis) from the Washington State Utilities and Transportation Commission (WUTC). Once signed by the City and Frontier, the contract must be approved again by the WUTC which will take approximately 30 days. The proposed rate plan has an initial term of 36 months.

**RECOMMENDED ACTION:**

City staff recommends that the City Council authorizes the Mayor to sign the attached Service Agreement with Frontier Communications Northwest Inc..

**SERVICE AGREEMENT**

(Intrastate ICB)

Routing Code: 5V

Customer Name	City of Marysville ("Customer")	Main Billing Tel. No:	360-363-8000
and address:	1049 State Avenue, Marysville, WA 98270	ICB Case No.	2011-518749

**Services.** Customer hereby requests and agrees to purchase from the Frontier company(ies) identified in the applicable Exhibit(s) ("Frontier") the services identified in Exhibit(s) A attached to this Agreement, and in any Addendum expressly made a part hereof, and as further described in Frontier's applicable tariffs, (the "Services") for the service period stated in the Exhibit or Addendum applicable to such Service (the "Service Period"), subject to Frontier's receipt of any necessary regulatory and other governmental approvals required to provide the Services under the terms hereof. The Services will be provided under the terms of this Agreement to the Customer locations specified in the Exhibit(s) and Addenda attached to or made a part hereof.

**Charges.** Customer will pay the rates and charges set forth in the attached Exhibit(s) and in any Addendum made a part hereof, and shall also pay all applicable taxes, fees, and charges, including Federal End User Common Line Charges, charged pursuant to applicable law, regulations, or tariffs in connection with the Services. If Customer cancels or terminates this Agreement or any Services prior to expiration of the Service Period, Customer will promptly pay to Frontier termination charges as set forth in the applicable Exhibit(s) and Addendum(a). Any tariffed back billing limitations otherwise applicable to the Services shall not apply under this Agreement.

**NOTICE** - Any written notice either Party may give the other concerning the subject matter of this Agreement shall be in writing and given or made by means of certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective parties as follows:

To Customer: At Customer's address shown above  
 Attention: WORTH NORSTON

To Frontier: Frontier Communications Northwest Inc.  
 Attention: General Manager  
 1800 41<sup>st</sup> Street  
 Everett, Washington, 98201

Copy to:  
 Citizens Telecom Services Company L.L.C.  
 Attention: Associate General Counsel  
 3 High Ridge Park  
 Stamford, CT 06905

Such notice shall be deemed to have been given or made when actually received as specified above. Each Party hereto may change its address by a notice given to the other Party in the manner set forth above.

**Miscellaneous.** (a) Neither party will disclose the terms of this Agreement to any other person without the prior written consent of the other party, except as may be necessary to comply with applicable law, regulation, or filing requirements. Either party may issue or permit issuance of a press release or other public statement concerning this Agreement provided its contents have been reviewed and agreed upon by the parties.

(b) In the event of a claim or dispute, the law and regulations of the jurisdiction in which Frontier provides to Customer the particular Service that is the subject of such claim or dispute shall apply. This Agreement and its provisions shall not be construed or interpreted for or against any party hereto because that party drafted or caused that party's legal representative to draft any of its provisions.

(c) No liability shall result from Service failures caused by fires, floods, severe weather, acts of government or third parties, strikes, labor disputes, inability to obtain necessary equipment or services, or other causes beyond such party's reasonable control.

(d) If any provision of this Agreement or the provision of any Service under the terms hereof is illegal, invalid, or otherwise prohibited under applicable law or regulation in any State or jurisdiction, or does not receive any governmental or regulatory approval required by law in any State or jurisdiction, then this Agreement shall be construed as if not containing such provision or requiring the provision of such invalid, illegal, prohibited, or unapproved Service in such State or jurisdiction.

(e) Frontier may assign or transfer part or all of this Agreement to any affiliate or successor to substantially all of its assets in the locations where Service is provided hereunder. Upon reasonable prior written notice to Frontier, Customer may assign or transfer this Agreement to any company that is the successor to substantially all of its assets, provided all charges for Services provided prior to such transfer or assignment are paid in full when due. Except as otherwise required by applicable law or regulation, all other attempted assignments shall be void without the prior written consent of the other party.

(f) Except as otherwise required by applicable law or regulation, the Services provided hereunder may not be resold by Customer.

**Tariffs and Limitation of Liability.** The terms and conditions that shall apply in connection with these Services, and the rights and liabilities of the parties, shall be as set forth herein and in all applicable tariffs now or hereafter filed with the applicable state

regulatory commission and/or the Federal Communications Commission. In no event shall Frontier be liable for any special, indirect, incidental, or consequential damages arising in connection with this Agreement or the provision of any Services, whether claim is sought in contract, tort (including negligence), strict liability or otherwise. This Agreement (including the Exhibits attached hereto and any Addenda made a part hereof) and all applicable tariffs constitute the entire agreement between the parties and shall supersede all prior oral or written quotations, communications, negotiations, representations, understandings or agreements made by or to any employee, officer, or agent of any party on the subject matter hereof. This Agreement may not be modified or rescinded except by a writing signed by authorized representatives of each party.

AGREED AND ACCEPTED:

City of Marysville (Customer)

Frontier Communications Northwest Inc. (Frontier)

By \_\_\_\_\_

By \_\_\_\_\_

Name/title \_\_\_\_\_

Name/title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit A**

**Frontier company name:** Frontier Communications Northwest Inc. (referred to in this Exhibit as "Frontier")  
**State:** Washington  
**Customer name:** City of Marysville  
**ICB Case No.:** 2011-518749

**Customer must sign and date this Agreement on or before November 26, 2011 or the proposed Service arrangement and pricing will no longer be available.**

**1. Services and Quantity Commitments.** Customer agrees to purchase the following Services from Frontier at the rates set forth below and in quantities set forth below for the Service Period identified below. Any other work, services or facilities required will be provided subject to prevailing tariff rates and charges, or if no tariff is applicable, under separate individual case basis agreement or formal amendment to this Agreement. Customer shall provide to Frontier at each Customer location suitable and secure space, with suitable environmental conditions and uninterruptible power supply, building entrance facilities and conduit, for placement of the facilities and equipment to be used by Frontier to provide such Service.

<u>Quantity</u>	<u>Service Item</u>	<u>Monthly Unit Rate</u>	<u>Non-recurring Charge / Unit</u>
3	ISDN PRI Term and Volume, Flat Rate with DS1	\$355.00, each	n/a
3	First 100 DID Number Block	\$25.00, each	n/a
	Additional 100 DID Number Block	\$25.00, each	n/a

Notes:

- a) These charges do not include federally mandated end user common line charges, any applicable local, state, or federal fees, taxes, surcharges or other applicable tariff charges.
- b) The DID interface is included with each Port provided above.
- c) Optional PRI Features are available pursuant to standard tariff rates, terms and conditions.
- d) There are no non recurring charges for Customer's initial Service configuration and installation. Applicable tariff non recurring charges will apply to changes from Customer's initial Service configuration and PRI Feature installs.

**2. Effective Date/Regulatory Filing and Review.** This Agreement, and any subsequent amendment(s), shall be filed with the Washington Utilities and Transportation Commission (Commission). This Agreement (and any subsequent amendment(s)) shall become effective on either (a) the thirty-first (31<sup>st</sup>) calendar day after the date of such filing, unless the Agreement (or subsequent amendment) is rejected by the Commission prior to the expiration of thirty (30) calendar days following the date of such filing, or (b) on another date as determined by the Commission. This Agreement shall at all times be subject to such changes or modifications by the Commission as the Commission may from time to time direct in the exercise of its lawful jurisdiction.

**3. Service or Term Period.** Customer shall purchase such Services for a period of thirty-six (36) consecutive months from the in-service date. The in-service date shall be the date, after the effective date defined above, on which Frontier's provisioning has been completed and the Service is available for Customer's use.

**4. Termination Charges.** If Customer cancels this Agreement in whole or in part or terminates any Services prior to the expiration of the Service Period, Customer shall pay to Frontier a termination charge equal to one hundred percent (100%) of the applicable monthly rate for the terminated Service multiplied by the number of months remaining in the unexpired portion of the Service Period. Any such termination liability charge shall be due and payable in one lump sum within thirty (30) days of billing. If Customer terminates this Agreement subsequent to the execution of this Agreement by the Parties but prior to the in-service date, Customer shall pay to Frontier all costs incurred by Frontier for contract and service preparation. Termination charges will not apply if an exception contained in Frontier's applicable tariff applies.

**5. Additional Provisions.**

- a. Conditions. The parties acknowledge that the rates and other terms of this Agreement are premised on Customer's commitments, unique network design requirements, and Customer's service mix, usage patterns and concentration, and other characteristics.
- b. Service Continuation. (i) If, at the time of expiration of the Service Period, a new agreement or tariffed service arrangement with Frontier for the Services is not effective as defined above and Customer has not requested, in writing, disconnection of the Services, then the Services will be reverted to applicable tariff or other Commission-authorized rate(s) for the minimum service commitment period available. The applicable tariff or other Commission-authorized arrangement will govern the service arrangement prospectively, including rates, terms and conditions, which may include charges for termination prior to the end of the minimum tariff service commitment period. If there is no applicable tariff or other Commission-authorized service arrangement, then the Service will be

subject to disconnection upon the expiration of the Service Period of this Agreement. If, upon expiration of the Service Period, there is a delay in reverting rates to the applicable tariff or other Commission-authorized rate(s), or in disconnecting the Services if no tariff or Commission-authorized service arrangement is available, the Service Period shall be deemed temporarily extended on a month-to-month basis until such reversion of rates or disconnection of Services is completed. In no event, however, will such temporary extension of the Service Period continue more than twelve months after the expiration of the initial Service Period.

(ii) If Customer indicates to Frontier in writing that it desires to negotiate a new contract or tariffed service arrangement to continue or replace the Services provided for herein, this Agreement shall automatically be extended for a period not to exceed 60 days from the end of the initial Service Period to allow the parties to finalize a new agreement or to transition to a tariffed service arrangement. Written notice must be provided by Customer at least 30 days prior to the end of the initial Service Period. For purposes of this paragraph only, written notice may be by facsimile or electronic mail.

c. Detariffing. In the event any of the Services are hereafter detariffed, then the terms of the tariffs in effect immediately prior to such detariffing shall be deemed to be incorporated by reference and shall continue to apply to the provision of the Service to the same extent as such tariffs applied hereunder prior to such detariffing.

d. Facilities. Additional charges may be required if suitable facilities are not available to provide Services at any locations, or if any additional work, services, or quantities of Services are provided. In the event installation of additional network facilities is required to provide Services, Frontier will inform Customer of such applicable charges, and Frontier will install such facilities only upon mutual written agreement of the parties to such additional charges. If Customer does not agree to pay such additional charges, then this Agreement will be subject to termination by Frontier without application of the termination charges described above.

6. **Locations.** The Services shall be provided to Customer under the terms hereof at the following locations, which are in Frontier's tariffed exchange service areas in Washington. Other Customer locations may be added to this Agreement only upon mutual assent of the parties.

1049 State Avenue	Marysville	98270	360-363-8000
80 Columbia Av	Marysville	98270	360-363-8100
1635 Grove	Marysville	98270	360-363-8300

**CITY OF MARYSVILLE**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 10, 2011**

<b>AGENDA ITEM:</b> PA 11010 – Totem Middle School Rezone	<b>AGENDA SECTION:</b> New Business	
<b>PREPARED BY:</b> Chris Holland, Senior Planner	<b>APPROVED BY:</b>	
<b>ATTACHMENTS:</b> 1. Ordinance, Site Map & HE Recommendation 2. HE Minutes, dated 08/25/11 3. Staff Recommendation dated 08/19/11 4. DNS dated 07/20/11 5. Application Materials		
	<b>MAYOR</b>	<b>CAO</b>
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>	

**DESCRIPTION:**

Marysville School District No. 25 submitted a NON-PROJECT action rezone of approximately 2.1-acres of property from R-8 (single-family, high density) to DC (downtown commercial). The proposed rezone request is generally located between State & Columbia Avenue and 7<sup>th</sup> & 8<sup>th</sup> Street and is a portion of Totem Middle School, which is located at a site address of 1605 7<sup>th</sup> Street.

Rezoning the property would allow Marysville School District No. 25 to surplus the property for commercial development if the Totem Middle School site was redeveloped in the future. The boundary of the proposed rezone area would be consistent with the current zoning and Comprehensive Plan designation (DC) to the north and south, along State Avenue.

The Hearing Examiner held a public hearing on the rezone application on August 25, 2011 and adopted Findings, Conclusions and Recommendation of approval of the rezone request subject to three (3) conditions.

**RECOMMENDED ACTION:**

Staff recommends council affirm the decision of the Hearing Examiner, rezoning the property from R-8 (single-family, high density) to DC (downtown commercial), and authorize the Mayor to sign the ordinance amending the official zoning map of the City.

**COUNCIL ACTION:**

# CITY OF MARYSVILLE

Marysville, Washington

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF MARYSVILLE, AFFIRMING THE DECISION OF THE HEARING EXAMINER, REZONING APPROXIMATELY 2.10-ACRES OF PROPERTY GENERALLY LOCATED BETWEEN STATE & COLUMBIA AVENUES AND 7<sup>th</sup> & 8<sup>th</sup> STREET FROM R-8 (single-family, high density) TO DC (downtown commercial), AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY**

WHEREAS, Marysville School District No. 25 owns approximately 2.10-acres of property generally located between State & Columbia Avenues and 7<sup>th</sup> & 8<sup>th</sup> Street, said property being depicted in **Exhibit A** attached hereto; and

WHEREAS, Marysville School District No. 25 submitted an application to the City of Marysville requesting a site specific, NON-PROJECT action, zone reclassification of approximately 2.10-acres from R-8 (single-family, high density) to DC (downtown commercial); and

WHEREAS, on July 20, 2011, the City issued a State Environment Policy Act Threshold Determination of Non-significance (DNS), which addresses the environmental impacts of the site specific, NON-PROJECT action, zone reclassification; and

WHEREAS, the City of Marysville Hearing Examiner held a public hearing on the site specific, NON-PROJECT action, zone reclassification application on August 25, 2011 and adopted Findings, Conclusions and Recommendation of approval of the rezone subject to three (3) conditions, as set forth in the attached **Exhibit B**; and

WHEREAS, the Marysville City Council held a public meeting on said rezone on October 10, 2011 and concurred with the Findings, Conclusions and Recommendation of the Hearing Examiner;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. The Findings, Conclusions and Recommendation of the Hearing Examiner, as set forth in the attached **Exhibit B**, are hereby approved and adopted by this reference, and the City Council hereby finds as follows:

- (1) The rezone is consistent with the purposes of the comprehensive plan;
- (2) The rezone is consistent with the purpose of Title 22 MMC;
- (3) There have been significant changes in the circumstances to warrant a rezone;
- (4) The benefit or cost to the public health, safety and welfare is sufficient to warrant the rezone.

Section 2. The property depicted in the attached **Exhibit A** is hereby rezoned from R-8 (single-family, high density) to DC (downtown commercial).

Section 3. The zone classification for the property depicted in **Exhibit A** shall be perpetually conditioned upon strict compliance with each of the conditions set forth in the

Findings, Conclusions and Recommendation of the Hearing Examiner. Violation of any of the conditions of said decision may result in reversion of the property to the previous zoning classification and/or may result in enforcement action being brought by the City of Marysville.

Section 4. The official zoning map of the City of Marysville is hereby amended to reflect the reclassification of the property depicted in **Exhibit A.**

Section 5. This decision shall be final and conclusive with the right of appeal by any aggrieved party to Superior Court of Snohomish County by filing a Land Use Petition pursuant to the Land Use Petition Act within twenty-one (21) days after passage of this ordinance.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or work of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase or word of this ordinance.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

CITY OF MARYSVILLE

By: \_\_\_\_\_  
JON NEHRING, MAYOR

Attest:

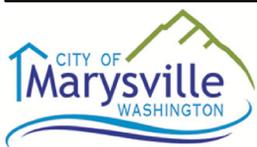
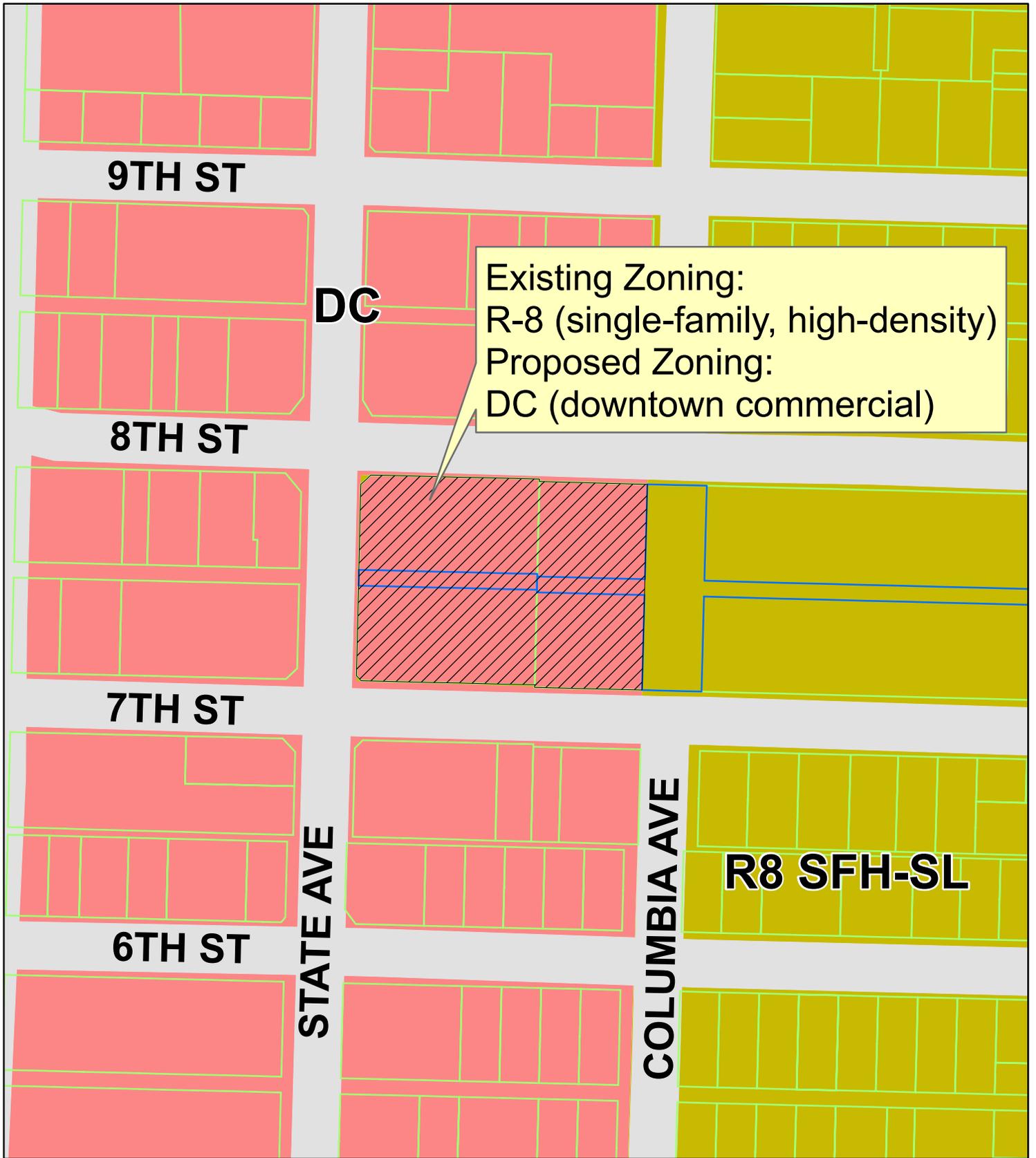
By: \_\_\_\_\_  
CITY CLERK

Approved as to form:

By: \_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY

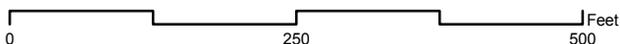
Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_



# Totem Middle School Rezone

## EXHIBIT A



- Downtown Commercial
- R8 Single Family High Small Lot
- Rezone area
- Unopen ROW

**EXHIBIT B**  
**CITY OF MARYSVILLE**  
**Hearing Examiner**  
**Findings, Conclusions and Recommendation**

---

**APPLICANT:** Marysville School District #25

**CASE NO.:** PA 11010

**LOCATION:** Generally located between State & Columbia Avenue and 7<sup>th</sup> and 8<sup>th</sup> Streets

**APPLICATION:**

**SUMMARY OF RECOMMENDATION:**

Planning Staff Recommendation: Approve with conditions

Hearing Examiner Decision: Approve with conditions

**PUBLIC HEARING:**

After reviewing the official file, which included the Staff Advisory Report, and after visiting the site, the Hearing Examiner conducted a public hearing on the application. The hearing on the application was opened at 7:00 p.m., August 25, 2011, in the Council Chambers, Marysville, Washington, and closed at 7:03 p.m. Participants at the public hearing are listed in the minutes of the hearing. A verbatim recording of the hearing and more complete minutes are available in the Planning Department. A list of exhibits offered and entered at the hearing and a list of parties of record are attached to this report.

**HEARING COMMENTS:**

As noted in the minutes of the hearing, comments were offered by:

Cheryl Dungan, Planning Manager  
Greg Dennis, School District Representative

No one from the general public attended the public hearing.

**WRITTEN COMMENTS:**

No correspondence was received from members of the general public.

**INTRODUCTION:**

The applicant has requested A NON-PROJECT action rezone of approximately 2.1-acres of property from R-8 (single-family, high-density) to DC (downtown commercial). If the proposed rezone request is approved by City Council, all future project action development proposals will be subject to all applicable Marysville Municipal Codes (MMC) and project level State Environmental Policy Act (SEPA) review, at the time of application.

**FINDINGS CONCLUSIONS AND DECISION:**

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

**A. FINDINGS AND CONCLUSIONS:**

1. The information contained in Sections 1.0 and 2.0 of the Staff Advisory Report (Hearing Examiner Exhibit 23) is found by the Hearing Examiner to be supported by the evidence presented during the hearing and by this reference is adopted as portion of the Hearing Examiner's findings and conclusions. A copy of said report is available in the Community Development Department.
2. The minutes of the meeting accurately summarize the testimony offered at the hearing and by this reference are entered into the official record.
3. The subject property is surrounded on three sides by property zoned Downtown Commercial. If approved as conditioned below, the development will be consistent with Ordinance No. 2709 regarding rezones of property at the edges of land use districts, and it lies within a portion of Planning Area No. 1 – "Downtown." Therefore, the proposal is consistent with the general provisions of the comprehensive plan, and it will meet the requirements and intent of the Marysville Municipal Code.
4. The School District has no plans to develop the subject site in the near future. However, if the proposal is approved as conditioned below, future commercial development of the site will provide through access along Columbia Avenue.
5. If approved as conditioned below, the development will be beneficial to the public health, safety and welfare and will be in the public interest.
6. If approved as conditioned below, the development will not lower the level of service of transportation and/or neighborhood park facilities below the minimum standards established within the comprehensive plan.
7. The area, location and features of land proposed for dedication are a direct result of the development proposal are reasonably needed to mitigate the effects of the development, and are proportional to the impacts created by the development.

**B. RECOMMENDATION:**

Based on the foregoing findings and conclusions, the Hearing Examiner recommends APPROVAL of the site specific NON-PROJECT action rezone from R-8 (single-family, high density) to DC (downtown commercial), subject to the following conditions.

1. All future project action development proposals will be subject to all applicable Marysville Municipal Codes (MMC) and project level State Environmental Policy Act (SEPA) review, at the time of application.
2. All future project action development proposals will be subject to the traffic study and mitigation requirements outlined in MMC 22D.030.060 as well as the access and circulation requirements outlined the Marysville Engineering Design and Development Standards (EDDS).
3. When the existing structure(s) located within the future Columbia Avenue right-of-way extension are demolished, and the site is redeveloped with commercial uses, the applicant shall dedicate sufficient right-of-way and construct frontage improvements in order to provide through access along Columbia Avenue. Columbia Avenue shall be designed and improved as a "Standard Street" typology, as outlined in the Downtown Master Plan, or as otherwise approved by the City Engineer. Right-of-way dedication and frontage improvements shall not be required for a change of use if the existing structure(s) located along State Avenue, or other structures as approved by the Community Development Director, are utilized for commercial uses. However, a change of use for the above described structure(s) shall be subject to all other applicable design and development standards outlined in the Downtown Master Plan and Marysville Municipal Code.

Dated this 29th day of August 2011



Ron McConnell, FAICP  
Hearing Examiner

**RECONSIDERATION:**

A party to a public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the director within fourteen (14) days of the final written decision. The request shall comply with MMC 15.11.020(3). The examiner shall consider the request within seven (7) days of filing the same. The request may be decided without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the hearing examiner may immediately revise and

reissue its decision. Reconsideration should be granted only when a legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

**COUNCIL ACTION:**

Recommendations by the Examiner on rezones or shoreline conditional use permits will constitute a final action by the City unless a timely written request for a closed record appeal is filed with the City Council within 14 days after issuance of the recommendation. In the event of a timely appeal, the City Council will conduct a closed record hearing of this case. Closed record hearings shall be on the record and no new evidence may be presented. The City Council's action will be the final action of the City.

**JUDICIAL APPEAL:**

- (1) Appeals from the final decision of the hearing examiner, or other city board or body involving MMC Titles 15 to 20 and for which all other appeals specifically authorized have been timely exhausted, shall be made to Snohomish County superior court pursuant to the Land Use Petition Act, RCW 36.70C within 21 days of the date the decision or action became final, unless another applicable appeal process or time period is established by state law or local ordinance.
- (2) Notice of the appeal and any other pleadings required to be filed with the court shall be served as required by law within the applicable time period. This requirement is jurisdictional.
- (3) The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The record of the proceedings shall be prepared by the City or such qualified person as it selects. The appellant shall post with the city clerk prior to the preparation of any records an advance fee deposit in the amount specified by the city clerk. Any overage will be promptly returned to the appellant.

**EXHIBITS:**

The following exhibits were offered and entered into the record:

1. Receipt
2. Master Permit Application
3. Snohomish County property information
4. Marysville School District – Cover letter, 05.10.11
5. Chicago Title – Title report
6. 8 ½ x 11 aerial photo
7. Vicinity map and legal description
8. Environmental Checklist
9. 11 x 17 Site map
10. 8 ½ x 11 Rezone map

11. RFR Checklist
12. Affidavit of Posting – NOA
13. Affidavit of Publication – NOA, 05.18.11
14. Technical Review, 05.20.11
15. DNS, 05.20.11
16. Affidavit of Posting – DNS
17. Affidavit of Posting – NOH
18. Ordinance # 2709
19. Ordinance # 2788
20. 8 ½ x 11 Rezone map
21. Letter of Completeness, 05.10.11
22. Affidavit of Posting – Revised Hearing Date
23. Staff Recommendations

**PARTIES of RECORD:**

John W. Bingham  
Marysville School District #25  
4220 80<sup>th</sup> St. NE  
Marysville, WA 98270-3498

Greg Dennis  
Marysville School District #25  
4220 80<sup>th</sup> St. NE  
Marysville, WA 98270-3498

Community Development Department



**Marysville Hearing Examiner**

**August 25, 2011**

**7:00 p.m.**

**Marysville City Hall**

**CALL TO ORDER**

Hearing Examiner Ron McConnell opened the hearing at 7:00 p.m.

**ATTENDANCE**

The following staff was noted as being present:

Hearing Examiner Ron McConnell, Planning Manager-Land Use Cheryl Dungan, and Recording Secretary Amy Hess

**PUBLIC HEARING**

1. **PA 11010 – Totem Middle School Rezone** –Non-Project action rezone of approximately 2.1 acres of property from R-8 (single-family, high density) to DC (downtown commercial)

**Applicant:** Marysville School District

**Location:** Between State and Columbia Avenue and 7<sup>th</sup> & 8<sup>th</sup> Street

**Staff Comment:**

Ms. Dungan reported that nothing had come in since the staff report was submitted.

**Applicant Comment:**

Greg Dennis, Marysville School District 4220 80<sup>th</sup> St. NE Marysville WA 98270

Mr. Dennis noted that they were pleased to present this request. Development of the property was not going to happen immediately, but that it was important for future.

2. **PA 11017 – Donker Variance** –Variance in order to legalize an SFR that was constructed in 1983 and a setback variance in order to allow a 483 SF addition to the south and east side of the SFR

**Applicant:** Colleen Donker

**Location:** 8710 59<sup>th</sup> Drive NE

Hearing Examiner McConnell noted that he had received an additional Exhibit; Exhibit number 17.

**Staff Comment:**

Ms. Dungan made a correction to the Staff Report on Page 2, correcting the square footage listed to 2200 square feet.

**Applicant Comment:**

Colleen Donker 8710 59<sup>th</sup> Dr. NE Marysville WA 98270

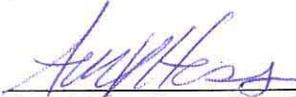
Ms. Donker noted that she had looked at the staff report and agreed with the conditions proposed. She added that the addition was minor, but that she felt it would make a rather big difference.

Mr. McConnell noted that he thought Ms. Donker was doing a beautiful job with her addition.

Ms. Donker noted that she had worked with a Geotech company in Arlington and that she was told that everything looked good and that she would provide the city with a written report once she got it.

**ADJOURNMENT:**

Mr. McConnell stated that he would have his decision very shortly. Hearing was adjourned at 7:06 p.m.



---

Amy Hess, Recording Secretary



COMMUNITY DEVELOPMENT DEPARTMENT  
80 Columbia Avenue ♦ Marysville, WA 98270  
(360) 363-8100 ♦ (360) 651-5099 FAX

## STAFF RECOMMENDATION – Totem Middle School Rezone

**File Number:** PA 11010

**Date of Report** August 19, 2011

**Date of Hearing** August 25, 2011

**Applicant:** Marysville School District #25

**Contact:** John W. Bingham  
Marysville School District #25  
4220 80th Street NE  
Marysville, WA 98270-3498  
(360) 653-0846

**Location of Proposal:** Generally located between State & Columbia Avenue and 7th & 8th Street

**Tax Parcel(s):** All of 00508100400000 and a portion of 00528400500000

**Current Use:** Totem Middle School

**Property size:** Approximately 2.10-acres

**Current Zoning:** R-8 (single-family, high density)

**Comp. Plan Designation:** High Density, Single-family

**Nature of Request:** Site specific NON-PROJECT action Rezone from R-8 (single-family, high density) to DC (downtown commercial)

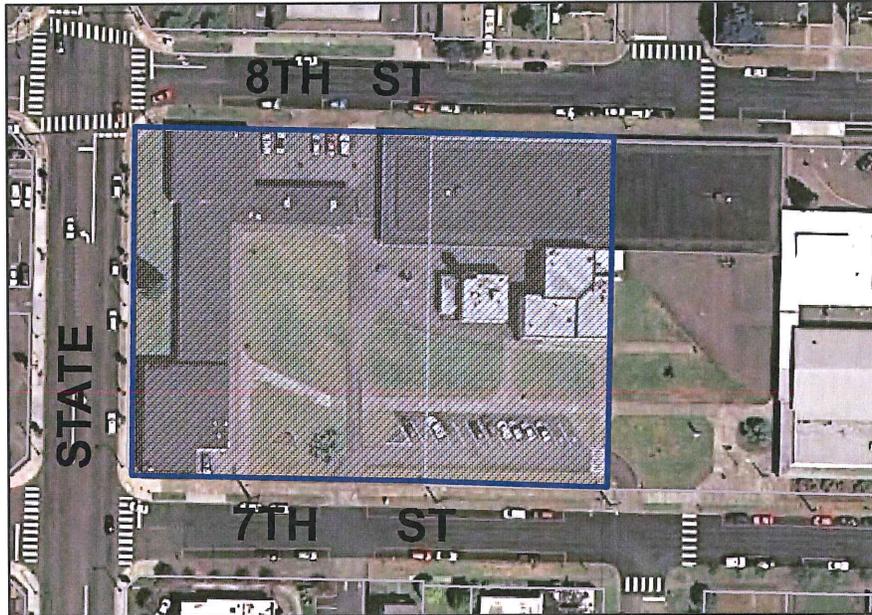
**STAFF RECOMMENDATION:** *APPROVE WITH CONDITIONS, AS OUTLINED IN SECTION 3.0 AND FORWARD TO MARYSVILLE CITY COUNCIL FOR FORMAL ADOPTION*

**EXHIBIT**  
23

## 1.0 FINDINGS

**Description of Proposal:** A NON-PROJECT action rezone of approximately 2.1-acres of property from R-8 (single-family, high-density) to DC (downtown commercial). If the proposed rezone request is approved by City Council, all future project action development proposals will be subject to all applicable Marysville Municipal Codes (MMC) and project level State Environmental Policy Act (SEPA) review, at the time of application.

**Location of Proposal:** The rezone area is generally located between State & Columbia Avenue and 7th & 8th Street and is a portion of Totem Middle School, which is located at a site address of 1605 7th Street and is identified as all of Assessor's Parcel Number (APN) 00508100400000 and a portion of APN 00528400500000.



**Site Description:** The proposed rezone area currently houses a portion of Totem Middle School. Several large buildings, including classrooms, cafeteria, mechanical and other supporting structures currently occupy the site. Vegetation consists of large areas of lawn grass and a few evergreen and ornamental deciduous trees.

Surrounding properties to the north, south and west are zoned DC and are developed with commercial uses with a few legal non-conforming single-family and multi-family residences. The remainder of the Totem Middle School campus is located east of the proposed rezone area and is zoned R-8.

**Critical Areas:** The proposed rezone area has no known regulated or non-regulated critical areas located on-site.

**Traffic and Circulation:** The proposed rezone area is bounded by 8<sup>th</sup> Street to the north, 7<sup>th</sup> Street to the south and State Avenue to the west. Columbia Avenue dead-ends on both the north and south boundary of the Totem Middle School campus. The proposed rezone is a non-project action, therefore, there are no anticipated trips that will be generated with this proposal. However, all future project action development proposals will be subject to the traffic study and mitigation requirements outlined in MMC 22D.030.060 as well as the access and circulation requirements outlined the Marysville Engineering Design and Development Standards (EDDS).

MMC 12.02A.110 *Dedication of road right-of-way – Required setbacks*, requires property owners to dedicate to the city sufficient property to widen all abutting public rights-of-way to the full width as measured from the right-of-way centerline, so as to conform to the applicable city standards. Such dedication shall be at no cost to the city for any rezone, when the city finds that the proposed development will adversely affect pedestrian or vehicular traffic and finds that such dedication is necessary to protect against, and is roughly proportional to, such adverse affects.

The proposed rezone is a non-project action. However, if the rezone is approved, future commercial development would adversely affect pedestrian and vehicular traffic within the surrounding neighborhood. Pedestrian and vehicular trips would increase throughout the day, not just during the AM peak and PM peak times for normal middle school activities.

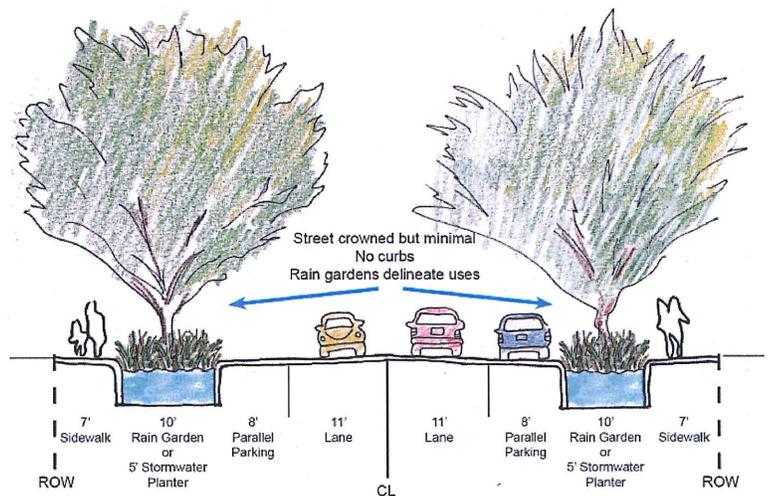
Of the 2.1-acres proposed to be rezoned, approximately 32,000 SF of buildings for middle school activities occupy the site. Conservatively assuming that the existing structures would be occupied by commercial uses, the following new vehicular trips would be generated as outlined in the Institute of Transportation Engineers (ITE) Trip Generation Manual 8<sup>th</sup> Edition, utilizing Land Use 522 (Middle/School/Junior High School) and Land Use 814 (Specialty Retail Center):

LAND USE	SIZE	ADT	AMPHT	PMPHT
Specialty Retail Center (new trips)	32,000 SF	1,418	219	87
Middle School (existing)	32,000 SF	-441	-139	-38
<b>TOTAL (new trips)</b>		<b>977</b>	<b>80</b>	<b>55</b>

State Avenue is designated a principal arterial. The Marysville Engineering Design and Development Standards establish access standards for arterial streets. Specifically, where a property has frontage on more than one roadway, access will generally be limited to the lowest volume roadway where the impacts of a new access will be minimized. In addition access onto other higher volume roadways may be denied or restricted in the interest of traffic safety or in order to lessen congestion on the higher volume road.

Based on the access standards all new vehicular trips would be directed towards 7<sup>th</sup> Street, 8<sup>th</sup> Street and the surrounding residential neighborhoods due in part because Columbia Avenue dead-ends on the north and south sides of Totem Middle School.

In order to lessen the adverse impacts future commercial development would have on the surrounding residential neighborhood, due to increased pedestrian and vehicular traffic, sufficient right-of-way shall be dedicated and frontage improvements constructed in order to provide through access along Columbia Avenue, at the time of commercial redevelopment. Columbia Avenue shall be designed and improved as a "Standard Street" typology, as outlined in the Downtown Master Plan, or as otherwise approved by the City Engineer. The "Standard Street" section provides on-street parking, raingardens and wide sidewalks.



**Standard Street with Raingardens**

**City of Marysville Comprehensive Plan:** The proposed rezone area is located within a portion of Planning Area No. 1 – “Downtown.” Marysville City Council adopted Ordinance No. 2788, on October 26, 2009, amending the Marysville Comprehensive Plan and adopting the “Downtown Master Plan (DMP).” The DMP is a policy document that provides implementation directive in downtown infrastructure planning and design. All future project-action proposals will be required to demonstrate compliance with all applicable provisions of the DMP.

The Comprehensive Plan land use designation of the proposed rezone area is High Density, Single-family. The Comprehensive Plan land use designations bordering the proposed rezone area include Downtown Commercial to the north, south and west and High Density Single-family to the east.

Marysville City Council adopted Ordinance No. 2709, on November 13, 2007, adding language to the Marysville Comprehensive Plan regarding rezones of property at the edges of land use districts. The adopted language outlined in Chapter IV *LAND USE ELEMENT* – Section A. V. *Land Use Development*, states:

“Property at the edges of land use districts can make application to rezone property to the bordering zone without applying for a comprehensive plan amendment if the proponent can demonstrate:

1. The proposed land use district will provide a more effective transition point and edge for the proposed land use district than strict application of the comprehensive plan map would provide due to neighboring land uses, topography, access, parcel lines or other property characteristics; and
2. The proposed land use district supports and implements the goals, objectives, policies and text of the comprehensive plan more effectively than strict application of the comprehensive plan map; and
3. The proposed land use change will not affect an area greater than 10-acres, exclusive of critical areas.”

After evaluation of the application materials, and other supporting documentation on file with the City, the proposed rezone complies with the rezone criteria outlined in Ordinance No. 2709, and as conditioned herein, will be consistent with the pertinent development goals and policies outlined in the Marysville Comprehensive Plan.

**Title 19 MMC, Zoning:** Pursuant to MMC 22G.010.420, *Zone reclassification*, a zone reclassification (rezone) shall be granted only if an applicant demonstrates that the proposal is consistent with the comprehensive plan and complies with the following criteria:

- a) There is a demonstrated need for additional zoning as the type proposed;
- b) The rezone is consistent and compatible with uses and zoning of the surrounding properties;
- c) There have been significant changes in the circumstances of the property to be rezoned or surrounding properties to warrant a rezone; and
- d) The property is practically and physically suited for the uses allowed in the proposed rezone.

The applicant submitted a written response to the criteria outlined above. After evaluation of the applicant’s written response, application materials and other supporting documentation on file with the City, the proposed rezone, as conditioned herein, complies with the rezone criteria and pertinent development standards outlined in Title 22 MMC, *Unified Development Code*.

**Project History:** The NON-PROJECT action rezone application was submitted and determined to be complete on May 10, 2011. A duly advertised public hearing has been

scheduled before the Hearing Examiner on Thursday, August 25, 2011 7:00 PM at Marysville City Council Chambers.

**Public Comments:** As of the date of this report, no comments have been received from the public or surrounding property owners. The application was routed to affected public agencies, and the comments received, to date, are outlined in [Exhibit 14](#).

**Conformance with State Environmental Policy Act:** After evaluation of the environmental checklist and supporting documentation submitted with the application, and review of information on file with the City, a Determination of Non-Significance (DNS) was issued on July 20, 2011. No appeals on the DNS were filed on or before the August 4, 2011 deadline. This determination is hereby adopted by reference as part of this report as [Exhibit 15](#).

## 2.0 CONCLUSIONS

1. Marysville School District #25 is proposing a NON-PROJECT action rezone of approximately 2.1-acres of property from R-8 (single-family, high-density) to DC (downtown commercial).
2. The NON-PROJECT action rezone application was submitted and determined to be complete on May 10, 2011.
3. The proposed rezone area is located within a portion of Planning Area No. 1 – “Downtown” and is generally located between State & Columbia Avenue and 7th & 8th Street and is a portion of Totem Middle School, which is located at a site address of 1605 7th Street.
4. The proposed rezone area has no known regulated or non-regulated critical areas located on-site.
5. The proposed rezone is a non-project action, therefore, there are no anticipated trips that will be generated with this proposal.
6. If the rezone is approved, future commercial development would adversely affect pedestrian and vehicular traffic within the surrounding neighborhood.
7. Conservatively, future commercial development within the rezone area would generate 977 ADT, 80 AMPHT and 55 PMPHT.
8. In order to lessen the adverse impacts future commercial development would have on the surrounding residential neighborhood, due to increased pedestrian and vehicular traffic, sufficient right-of-way shall be dedicated and frontage improvements constructed in order to provide through access along Columbia Avenue, at the time of commercial development.
9. The proposed rezone complies with the rezone criteria outlined in Ordinance No. 2709, and as conditioned herein, will be consistent with the pertinent development goals and policies outlined in the Marysville Comprehensive Plan.
10. The proposed rezone, as conditioned herein, complies with the rezone criteria and pertinent development standards outlined in Title 22 MMC, *Unified Development Code*.
11. The proposed rezone, as conditioned herein, will make appropriate provisions for the public use and interest, health, safety, and general welfare.
12. As of the date of this report, no comments have been received from the public or surrounding property owners.

13. A DNS was issued on July 20, 2011, satisfying the State Environmental Policy Act (SEPA) requirements.
14. A duly advertised public hearing has been scheduled before the Hearing Examiner on Thursday, August 25, 2011 7:00 PM at Marysville City Council Chambers.

### 3.0 STAFF RECOMMENDATION

Based on the foregoing findings and conclusions, the Community Development Department recommends **APPROVAL** of the site specific NON-PROJECT action rezone from R-8 (single-family, high density) to DC (downtown commercial), subject to the following conditions.

1. All future project action development proposals will be subject to all applicable Marysville Municipal Codes (MMC) and project level State Environmental Policy Act (SEPA) review, at the time of application.
2. All future project action development proposals will be subject to the traffic study and mitigation requirements outlined in MMC 22D.030.060 as well as the access and circulation requirements outlined the Marysville Engineering Design and Development Standards (EDDS).
3. When the existing structure(s) located within the future Columbia Avenue right-of-way extension are demolished, and the site is redeveloped with commercial uses, the applicant shall dedicate sufficient right-of-way and construct frontage improvements in order to provide through access along Columbia Avenue. Columbia Avenue shall be designed and improved as a "Standard Street" typology, as outlined in the Downtown Master Plan, or as otherwise approved by the City Engineer. Right-of-way dedication and frontage improvements shall not be required for a change of use if the existing structure(s) located along State Avenue, or other structures as approved by the Community Development Director, are utilized for commercial uses. However, a change of use for the above described structure(s) shall be subject to all other applicable design and development standards outlined in the Downtown Master Plan and Marysville Municipal Code.

Prepared by:     cli    

Reviewed by:     CDS



COMMUNITY DEVELOPMENT DEPARTMENT
80 Columbia Avenue ♦ Marysville, WA 98270
(360) 363-8100 ♦ (360) 651-5099 FAX

DETERMINATION OF NONSIGNIFICANCE

File Number: PA 11010
Applicant: Marysville School District #25
Contact: John W. Bingham
Marysville School District #25
4220 80th Street NE
Marysville, WA 98270-3498
(360) 653-0846
Lead Agency: City of Marysville
Community Development Department
SEPA Contact: Chris Holland
360-363-8207
cholland@marysvillewa.gov

Description of Proposal: A NON-PROJECT action rezone of approximately 2.1-acres of property from R-8 (single-family, high-density) to DC (downtown commercial). If the proposed rezone request is approved by City Council, all future project action development proposals will be subject to all applicable Marysville Municipal Codes (MMC) and project level State Environmental Policy Act (SEPA) review, at the time of application.

Location of Proposal: The rezone area is generally located between State & Columbia Avenue and 7th & 8th Street and is a portion of Totem Middle School, which is located at a site address of 1605 7th Street and is identified as Assessor's Parcel Number(s) 00508100400000 & 00528400500000.

Threshold Determination: The lead agency has determined that this proposal does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is NOT required under RCW 43.21C.030(2)(c). This decision was made after review by the City of Marysville of a completed environmental checklist and other information on file with this agency. This information is available for public review upon request.

Prepared by: [Signature]
Reviewed by: [Signature]

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 15 days from the date below. Comments must be submitted by August 4, 2011.

Responsible Official: Gloria Hirashima
Position: CAO/Community Development Director
Address: 80 Columbia Ave.
Marysville, WA 98270

Date: 07/20/2011 Signature: Cheryl Dungan
Cheryl Dungan, Planning Manager - Land Use, for responsible official

The issuance of this Determination of Non-Significance should not be interpreted as acceptance or approval of the subject proposal as presented. The City of Marysville reserves the right to deny or approve said proposal subject to conditions if it is determined to be in the best interests of the City and/or necessary to the general health, safety and welfare of the public to do so.

**Distribution:**

**State Agencies:**

Department of Ecology, SEPA Unit

**Tribal Government:**

Tulalip Tribes

**City Government:**

City of Arlington

City of Everett

City of Lake Stevens

**News Media:**

Marysville Globe

**SEPA Appeal Procedure:**

A fee of \$500.00 must accompany all SEPA appeals that require a separate public hearing.

MMC 22E.030.180 Appeals.

The city of Marysville adopts WAC 197-11-680, with the following clarifications:

- (1) Any agency or aggrieved person may appeal the procedures or substance of an environmental determination of the responsible official under SEPA as follows:
  - (a) Only one administrative appeal of a threshold determination or of the adequacy of an EIS is allowed; successive administrative appeals on these issues within the same agency are not allowed. This limitation does not apply to administrative appeals before another agency.
  - (b) A DNS. Written notice of such an appeal shall be filed with the responsible official within 15 days after the date of issuance of the DNS. The appeal hearing shall be consolidated with the hearing(s) on the merits of the governmental action for which the environmental determination was made.
  - (c) A DS. Written notice of the appeal shall be filed with the responsible official within 15 days after the date of issuance of the DS. The appeal shall be heard by the city council within 30 days thereafter.
  - (d) The Adequacy of an EIS. Written notice of appeal shall be filed with the responsible official within 15 days after the issuance of the final EIS. The appeal hearing shall be consolidated with the hearing(s) on the merits of the governmental action for which the EIS was issued.
  - (e) Appeals of intermediate steps under SEPA (e.g., lead agency determination, scoping, draft EIS adequacy) shall not be allowed.
  - (f) For any appeal under this section, the city shall provide for a record that shall consist of the following:
    - (i) Findings and conclusions;
    - (ii) Testimony under oath; and
    - (iii) A taped or written transcript.
  - (g) Determination by the responsible official shall carry substantial weight in any appeal proceeding.

# MARYSVILLE SCHOOL DISTRICT

Chris Holland

City of Marysville

80<sup>th</sup> Columbia Ave.

Marysville, WA 98270

Subject: Property Rezone

Parcel Number: 1 and 2

Dear Chris,

We are pleased to submit this rezone project application for our Totem Middle School located at 1605 7<sup>th</sup> St. NE. This request is for a change from current R-8 to downtown commercial (DC). This request is provided in response to the Marysville School Districts long term property use planning.

Ten 8 ½ x 11 exhibits are included to help describe this request, we also show the location of this proposal on the current City's Comprehensive Plan.

Development of this property is not anticipated immediately but we feel it is prudent to position the property to meet our future needs.

We feel this rezone will better address areas the overall needs and support the City's long term planning.

Sincerely,

  
John Bingham

Marysville School District

Capital Projects Director

Received

MAY 10 2011

City of Marysville  
Community Development

EXHIBIT  
4



COMMUNITY DEVELOPMENT DEPARTMENT  
80 Columbia Avenue, Marysville, WA 98270  
(360) 363-8100, (360) 651-5099 FAX

### MASTER PERMIT APPLICATION

FOR AGENCY USE ONLY

DATE: \_\_\_\_\_

FILE NUMBER: PA11010

APPLICATION FEE: \_\_\_\_\_

PLEASE TYPE

Owner

Applicant

Contact Person  
(if different than owner or applicant)

Name:	MARYSVILLE School District		John Bingham
Mailing Address:	4220 80th St.		
City, State, Zip:	Marysville WA 98270		
Phone/business:	360-653-0846		
Phone/home: cell	425-508-0042		

Relation of Applicant to property (check one) :

Owner  Contract Purchaser  Lessee  Other (specify) \_\_\_\_\_

Name, mailing address, and telephone number of property owner, if different from applicant: Same

Address and general location of property (including nearest intersection): 1605 7th Street  
Marysville WA. East side of State Avenue  
between 7th and 8th streets

Section 28 Township 30 Range 05  
Legal description of property: Attachment

Received

MAY 10 2011

City of Marysville  
Community Development

**EXHIBIT**

2

List all assessor's tax account numbers involved (all 14 digits) :

00508100400000		
00528		

Approximate acreage: 1.34

Present use of property: School

Present zoning: R-8

Source of water supply, and name of water district, if any: City of Marysville

Method of sewage disposal, and name of sewer district, if any: City of Marysville

Permits needed from the City of Marysville (please check with staff) :

- Rezone                       Shoreline Management                       Variance                       Annexation
- Preliminary Plat                       Shoreline Management Variance                       Plan Modification                       Critical Areas Review
- Conditional Use                       Shoreline Conditional Use                       Plat Modification
- Comprehensive Plan Amendment                       Preliminary Short Plat                       Other \_\_\_\_\_

Please explain your request or proposed use: Change zoning from R-8 to downtown Commercial

PLEASE FILL IN ALL APPROPRIATE SECTIONS

REZONE APPLICATIONS ONLY

Requested zoning: downtown Commercial

Has anyone applied for a rezone of this property within the last five years?  Yes  No

If yes, who? \_\_\_\_\_

PLAT APPLICATIONS ONLY

Plat name: \_\_\_\_\_ Number of lots: \_\_\_\_\_

County Assessor verification [Completed by City] \_\_\_\_\_

SHORELINE MANAGEMENT PERMITS ONLY

Total cost or fair market value (whichever is higher) of project (please state total value of all construction and finishing work for which the permit will be issued, including all permanent equipment to be installed on the premises) :

\$ \_\_\_\_\_

Construction dates for which permit is requested (month and year) :

Begin: \_\_\_\_\_ and End: \_\_\_\_\_

Does this project require a shoreline/floodplain location? [ ] Yes [ ] No

If yes, please explain. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Water area and/or wetlands involved: \_\_\_\_\_

VARIANCES and SHORELINE MANAGEMENT VARIANCES ONLY

Code requirement involved: \_\_\_\_\_

ALL PERMITS

Please list any additional information not covered above which might help to clarify your request:

\_\_\_\_\_  
*See attached proposal statement*  
\_\_\_\_\_

**A NOTARIZED AFFIDAVIT IS REQUIRED TO BE COMPLETED BY ALL PERSONS HAVING AN OWNERSHIP INTEREST IN THE SUBJECT PROPERTY AND THE APPLICANT, IF DIFFERENT FROM THE PROPERTY OWNER(S). IF THE SIGNATORY IS NOT LISTED AS THE OWNER IN THE TITLE REPORT, OR IF THE SIGNATORY IS SIGNING ON BEHALF OF AN ENTITY, DOCUMENTATION AUTHORIZING THE SIGNATORY TO SIGN THE 'DECLARATION OF OWNERSHIP' ON BEHALF OF THE INDIVIDUAL OR ENTITY SHALL BE PROVIDED.**

STATE OF WASHINGTON )

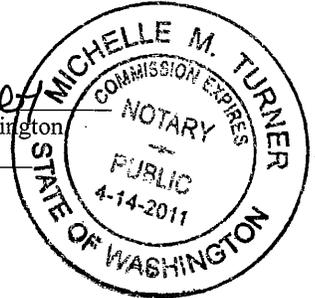
) ss

I (We) LARRY NYKUD, being duly sworn, depose and say that I am (we are) the OWNER (s) of the property involved in this application, and that I (we) have familiarized myself (ourselves) with the rules and regulations with respect to preparing and filing this application and that the statements and information submitted herewith are in all respects true and correct to the best of my (our) knowledge and belief. Further, I (we) grant permission for City employees, agents of the City and/or other agency officials to enter the subject property, if necessary, for the purpose of site inspection.

Signed [Signature]  
Property Owner

Subscribed and sworn to before me this 13 day of January, 2011

Michelle M. Turner  
Notary Public in and for the State of Washington  
residing at Mapleville, WA



STATE OF WASHINGTON )

) ss

I (We) \_\_\_\_\_, being duly

19.54.070 Zone Re-Classification

A zone reclassification shall be granted only if the applicant demonstrates that the proposal is consistent with the comprehensive plan and applicable functional plans and complies with the following criteria's:

- (1) There is a demonstrated need for additional zoning as the type proposed.

*Additional DC zoning supports to the overall goal of the city to encourage business development in the down town core. This proposal adds the proper type of zoning to support this.*

- (2) The zone reclassification is consistent and compatible with uses and zoning to the surrounding properties.

*This proposal brings this property currently zoned residential, into alignment with neighboring properties.*

- (3) There have been significant changes in circumstances of the property to be rezoned on surrounding properties to warrant a change in classifications.

*As time has passed, the surrounding properties have been changed from residential zoning to commercial to support the growth of the community. This rezone brings this property in line with their zoning type.*

- (4) The property is practically and physically suited for the uses allowed in the proposed zone reclassification.

*The property is located along State Avenue, the main roadway serving Marysville. Most all properties on this road are zoned commercial. It makes sense that this property also becomes commercial as a part of the overall city and district plans.*

**WAC 197-11-960 Environmental checklist.**

ENVIRONMENTAL CHECKLIST

*Purpose of checklist:*

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

*Instructions for applicants:*

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

*Use of checklist for nonproject proposals:*

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

A. BACKGROUND

1. Name of proposed project, if applicable:
  
2. Name of applicant: **Marysville School District**
3. Address and phone number of applicant and contact person: **John Bingham**  
**4220 80<sup>th</sup> ST NE Marysville, WA 98270**
  
4. Date checklist prepared: **May 10, 2011**
5. Agency requesting checklist: **City of Marysville**
6. Proposed timing or schedule (including phasing, if applicable): **Summer 2011**
  
7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain. **Not at this time**

Received

MAY 10 2011

City of Marysville  
Community Development

**EXHIBIT**

8

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal. **None**

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain. **None**

10. List any government approvals or permits that will be needed for your proposal, if known. **City Action**

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

**Requesting a rezone from R-8 to DC**

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist. **Totem Middle School, 1605 7<sup>th</sup> St NE Marysville, WA 98270 Supporting information in submittal packet**

TO BE COMPLETED BY APPLICANT

EVALUATION FOR  
AGENCY USE ONLY

**B. ENVIRONMENTAL ELEMENTS**

**1. Earth**

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous,  
other . . . . . **Flat**

b. What is the steepest slope on the site (approximate percent slope)? **1-2%**

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland. **Sandy**
- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe. **No**
- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill. **No fill proposed**
- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe. **No**
- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)? **No change**
- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any: **N/A**
- a. **Air**
- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known. **N/A**
- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe. **No**
- c. Proposed measures to reduce or control emissions or other impacts to air, if any: **N/A**

**3. Water****a. Surface:**

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into. **No**
  
- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans. **No**
  
- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material. **N/A**
  
- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known. **N/A**
  
- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan. **No**
  
- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge. **No**

**b. Ground:**

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known. **N/A**
  
- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve. **N/A**

c. Water runoff (including stormwater):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe. **N/A**

2) Could waste materials enter ground or surface waters? If so, generally describe. **N/A**

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any: **N/A**

4. **Plants**

a. Check or circle types of vegetation found on the site:

\_\_\_\_\_  deciduous tree: alder, maple, aspen, other

\_\_\_\_\_  evergreen tree: fir, cedar, pine, other

\_\_\_\_\_  shrubs

\_\_\_\_\_  grass

\_\_\_\_\_ pasture

\_\_\_\_\_ crop or grain

\_\_\_\_\_ wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other

\_\_\_\_\_ water plants: water lily, eelgrass, milfoil, other

\_\_\_\_\_ other types of vegetation

b. What kind and amount of vegetation will be removed or altered? **None**

c. List threatened or endangered species known to be on or near the site. **None**

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any: **None**

5. **Animals**

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:

birds: hawk, heron, eagle, songbirds, other:

mammals: deer, bear, elk, beaver, other:

fish: bass, salmon, trout, herring, shellfish, other:

b. List any threatened or endangered species known to be on or near the site. **None**

c. Is the site part of a migration route? If so, explain. **None**

d. Proposed measures to preserve or enhance wildlife, if any: **N/A**

**6. Energy and natural resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc. **N/A**

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe. **N/A**

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any: **N/A**

**7. Environmental health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe. **No**

1) Describe special emergency services that might be required. **No**

2) Proposed measures to reduce or control environmental health hazards, if any: **N/A**

**b. Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)? **None**

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site. **N/A**

3) Proposed measures to reduce or control noise impacts, if any: **N/A**

**8. Land and shoreline use**

a. What is the current use of the site and adjacent properties?

**Site: School is adjacent to Business and Residential**

b. Has the site been used for agriculture? If so, describe. **No**

c. Describe any structures on the site. **Existing School buildings**

d. Will any structures be demolished? If so, what? **No**

e. What is the current zoning classification of the site? **R-8**

f. What is the current comprehensive plan designation of the site? **R-8**

g. If applicable, what is the current shoreline master program designation of the site? **N/A**

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify. **No**

i. Approximately how many people would reside or work in the completed project? **N/A**

j. Approximately how many people would the completed project displace? **N/A**

k. Proposed measures to avoid or reduce displacement impacts, if any: **N/A**

1. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any: **N/A**

**9. Housing**

- a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing. **N/A**
- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing. **N/A**
- c. Proposed measures to reduce or control housing impacts, if any: **N/A**

**10. Aesthetics**

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed? **N/A**
- b. What views in the immediate vicinity would be altered or obstructed? **None**
- c. Proposed measures to reduce or control aesthetic impacts, if any: **N/A**

**11. Light and glare**

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur? **N/A**
- b. Could light or glare from the finished project be a safety hazard or interfere with views? **N/A**
- c. What existing off-site sources of light or glare may affect your proposal? **N/A**
- d. Proposed measures to reduce or control light and glare impacts, if any: **N/A**

**12. Recreation**

- a. What designated and informal recreational opportunities are in the immediate vicinity?  
**City park and School ball fields**
  
- b. Would the proposed project displace any existing recreational uses? If so, describe. **No**
  
- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any: **N/A**

**13. Historic and cultural preservation**

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe. **No**
  
- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site. **None**
  
- c. Proposed measures to reduce or control impacts, if any: **N/A**

**14. Transportation**

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any. **State Street to the west, 7<sup>th</sup> Street to the South, 8<sup>th</sup> Street to the North**
  
- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop? **Yes**
  
- c. How many parking spaces would the completed project have? How many would the project eliminate? **N/A**
  
- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private). **No**



- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe. **N/A**
- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur. **N/A**
- g. Proposed measures to reduce or control transportation impacts, if any: **N/A**

**15. Public services**

- a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe. **No**
- b. Proposed measures to reduce or control direct impacts on public services, if any. **N/A**

**16. Utilities**

- a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.
- b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed. **N/A**

**C. SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: John Engler

Date Submitted: **May 10, 2011**

D. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?  
**The proposal to change the zoning would not have any of these impacts.**

Proposed measures to avoid or reduce such increases are: **N/A**

2. How would the proposal be likely to affect plants, animals, fish, or marine life? **No affect**

Proposed measures to protect or conserve plants, animals, fish, or marine life are: **N/A**

3. How would the proposal be likely to deplete energy or natural resources? **N/A**

Proposed measures to protect or conserve energy and natural resources are: **N/A**

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands? **N/A**

Proposed measures to protect such resources or to avoid or reduce impacts are: **N/A**

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans? **No affect**

Proposed measures to avoid or reduce shoreline and land use impacts are: **N/A**

6. How would the proposal be likely to increase demands on transportation or public services and utilities? **N/A**

Proposed measures to reduce or respond to such demand(s) are: **No conflict**

7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment. **No conflict**

**CITY OF MARYSVILLE**

**EXECUTIVE SUMMARY FOR ACTION**

**CITY COUNCIL MEETING DATE: October 10, 2011**

<b>AGENDA ITEM:</b> Qwuloolt Estuary Restoration Project - Conditional Shoreline Development Permit	<b>AGENDA SECTION:</b> New Business	
<b>PREPARED BY:</b> Cheryl Dungan, Planning Manager-Land Use	<b>APPROVED BY:</b>	
<b>ATTACHMENTS:</b> 1. Hearing Examiner Recommendation dated 09/13/2011 2. Hearing Examiner Minutes dated 08/11/2011; 09/08/2011 3. Staff Recommendation dated 08/02/2011 4. Resolution 5. Site Plan 6. Vicinity Map	<b>MAYOR</b>	<b>CAO</b>
	<b>BUDGET CODE:</b>	
<b>BUDGET CODE:</b>	<b>AMOUNT:</b>	

**DESCRIPTION:**

The Hearing Examiner is recommending approval of a Conditional Shoreline Substantial Development Permit to allow the construction of a 4,000 lineal foot levee; excavation and removal of 1,800 lineal feet of existing dike; creation of a 1.1 acre fill pad (phase 2 and 3 of Christofferson grading project); and filling of agricultural ditches as part of the process to restore tidal processes to approximately 341.5 acres of allow farmland. This is the final phase of the Qwuloolt Estuary Restoration Project. Pursuant to MMC, Conditional Shoreline Substantial Development Permits require final approval by the Marysville City Council.

The Hearing Examiner’s Recommendation/Decision (Attachment 1) is a phased report which also includes a final decision by the Hearing Examiner on an appeal to an Administrative Shoreline Substantial Development Permit regarding Phase 1 of the Qwuloolt Estuary Restoration Project. Pursuant to MMC, appeals of administrative decisions are reviewed by the Hearing Examiner and his Decision is final and appealable to the Shoreline Hearings Board. The Hearing Examiner’s Decision on the appeal was forwarded to Department of Ecology for their review and approval on September 21, 2011.

**RECOMMENDED ACTION:** Community Development staff recommends that the Council authorize the Mayor to sign the Resolution approving the Conditional Shoreline Substantial Development Permit to allow the construction of a 4,000 lineal foot levee; excavation and removal of 1,800 lineal feet of existing dike; creation of a 1.1 acre fill pad (phase 2 and 3 of Christofferson grading project); and filling of agricultural ditches as part of the process to restore tidal processes to approximately 341.5 acres of fallow farmland.

**COUNCIL ACTION:**

**CITY OF MARYSVILLE**  
**Hearing Examiner**  
**Findings, Conclusions and Recommendation/Decision**

---

**APPLICANT:** Tulalip Tribes (Owuloolt Estuary Restoration Project)

**CASE NO.:** PA10013

**LOCATION:** North of Ebey Slough, south and west of Sunnyside Blvd, east of the WWTP

**APPLICATION:** Request for approval of a Conditional Shoreline Substantial Development Permit to allow the construction of a 4,000LF levee; excavate and remove 1,800 LF of existing dike; create 1.1 acre fill pad (phase 2 & 3 of Christofferson grading project); and fill farm ditches.

**APPELLANT:** John Mack

**APPEAL:** Appeal of the July 20, 2011 City Staff Administrative Approval of a Shoreline Substantial Development Permit for file #PA 10013.

**SUMMARY OF RECOMMENDATIONS / DECISION:**

**Conditional Shoreline Substantial Development Permit:**

**Planning Staff Recommendation:** Approve with conditions

**Hearing Examiner Recommendation:** Approve with conditions

**Shoreline Substantial Development Permit Appeal:**

**Planning Staff Recommendation:** Uphold Administrative Approval

**Hearing Examiner Decision:** Uphold Administrative Approval

**JOINT PUBLIC HEARING:**

After reviewing the official file, and after visiting the site, the Hearing Examiner conducted a joint public hearing on the application and the appeal. The portion of the hearing on the Conditional Shoreline Substantial Development application was opened at 7:03 p.m. August 11, 2011, in the Council Chambers, Marysville, Washington, and at 8:03 p.m. the hearing was continued to September 8, 2011 to conduct the portion of the hearing on appeal of the

administrative approval of the shoreline substantial development permit. Prior to September 8, 2011, the Examiner reviewed all documents submitted during the continuance. The public hearing was reopened at 7:00 p.m., September 8, 2011 and was closed at 8:32p.m. Participants at the public hearing are listed in the minutes of the hearing. A verbatim recording of the hearing and minutes are available in the Community Development Department. A list of exhibits offered and entered during the hearing, and a list of parties of record are included at the end of this report.

## **PUBLIC HEARING:**

### **Conditional Shoreline Substantial Development Permit:**

As noted in the minutes of the hearing, the following persons spoke on August 11, 2011 regarding the Conditional Shoreline Substantial Development Permit.

- Kurt Nelson, Tulalip Tribes Natural Resources Department, reviewed Exhibit 130 and submitted it into the record.
- Erik Stockdale, Washington State Department of Ecology, said he had been working on this project for 14 years, and noted that a tremendous amount of study and planning has occurred on this very complex restoration project. He noted the project is part of the City's Shoreline Master Program, and is part of a Federal Program.
- John Fitzpatrick, U.S. Corps of Engineers, said a lot of time and money has been spent on this project. He noted this project is the #3 priority for the District out of about 300 active projects, and is on of the top restoration projects in the Northwest.
- Tim Walls, Snohomish Basin Salmon Recovery Forum, said this project is part of a 1,237 acre project identified for restoration in the Snohomish Basin, and noted it is critical to salmon restoration beyond its' boundaries.
- Dan Christofferson, Commisioner, Dike District 3, said he can't see any better use for the land than what is being proposed. He noted the main purpose of the Dike District is to protect life and property, and he noted the proposed dike will far exceed what now exists. He also said the new dike will make it much easier for the salmon to spawn. He felt there are no negatives related to the proposal.
- Jeff Davidson, Neighboring property owner, expressed concerns about rodents and drainage that may impact neighboring property owners.
- Sherleen Yanez, Neighboring property owner, said she thinks drainage issues will improve with this project, and she is excited about the prospect of more salmon in the streams.
- Chris Lundberg, Neighboring property owner, expressed a concern about added traffic in the neighborhood and said he would like to see a speed bump installed if traffic increases. He also asked if Allen Creek would provide storm water storage.
- Zac Corum, U.S. Corps of Engineers, addressed concerns about ground water infiltration onto adjacent properties. He said infiltration from rainwater would be about 200 times greater than from saltwater that may seep from the project site. He also noted that

stormwater is now discharged directly into Allen Creek, and that after the new levee is constructed there will be additional stormwater storage provided.

- John Mack, Neighboring property owner, said there is no guarantee there would be no groundwater seepage, and he submitted a letter into the record (Exhibit 128, which was read aloud at the hearing by the Hearing Examiner).
- Steve Winter, ESA Adolfsen Consultants, said drainage from uphill properties is being addressed as part of a drainage system now entering into final design to insure proper drainage for those properties.
- Cheryl Dungan, City of Marysville Land Use Planning Manager reviewed the recommended conditions of approval found in the staff advisory report (Exhibit 124).

**Appeal of the Staff Decision on the Shoreline Substantial Development Permit:**

As noted in the minutes of the hearing, the following persons spoke on September 8, 2011 regarding the Appeal of the Staff Decision on the Shoreline Substantial Development Permit.

- Cheryl Dungan, City of Marysville Land Use Planning Manager, reviewed the history of the project and reviewed the staff response to the appeal (Exhibit 140).
- John Mack, Appellant and neighboring property owner, requested the hearing be continued for an additional 30 days because he felt he did not have time to properly prepare for the hearing, especially since he had not received responses to his appeal issues until a few days before the hearing.
- Kurt Nelson, Tulalip Tribes Natural Resources Department said the approved permit will allow 10 actions, none of which were directly appealed by Mr. Mack. He noted this part of the project has been underway since 2004, and there have been multiple studies prepared, which have been reviewed by multiple city, state and federal agencies. He extended an invitation to visit the 10-acre test mitigation site at the mouth of Allen Creek. He also listed a number of public benefits (found in Exhibit 141), which he felt the proposed project would provide including:
  - Increase the quality and quantity of habitats for natural resources used for recreational and commercial purposes,
  - Provide foraging area and refuge for many marine and freshwater aquatic species,
  - Provide feeding and refuge for waterfowl,
  - Provide significant water quality improvements to Allen Creek, Jones Creek and Ebey Slough by providing tidal flushing and treating stormwater from the currently untreated water from the industrial park.
- Eric Stockdale, Washington State Department of Ecology (DOE), said DOE believes projects such as this are critical to salmon habitat recovery. He also said the biggest risk at present is the safety of the existing levee, which is over 100 years old. The proposed project would replace that levee, and the design of the new levee would be reviewed by the Corps of Engineers to insure safety. He also listed what he felt would be public benefits resulting from the proposed project.

- John Mack, Appellant, raised an issue relating to page 6 of Exhibit 141. He said the letter (Exhibit 141) states “The Project Site is not being used for Mitigation” and then it goes on to say: “Mr. Mack is incorrect in this assumption; a portion of the project area is slated to be used for mitigation by the City, as well as for the Sound Transit Everett to Seattle Commuter Rail.” He went on to say this is typical of the responses he has received from the Tribes and other agencies. He said the Tribes and the agencies want it both ways.
- Kurt Nelson, responded that the heading “The Project Site is not being used for Mitigation” was intended to identify one of Mr. Mack’s appeal issues, and the language following was his response to what he felt was Mr. Mack’s issue.
- Chris Lundberg, Neighboring property owner, said he has seen lots of people involved and activity on this site. He feels lots of work has gone into it to this point. He visited the 10-acre test site and noticed a light smell. He said he is not concerned about rodents from the site, but is concerned about the smell. He noted the smell is not too bad and is not in favor of delaying the project.
- Josh Meiday, Restoration Ecologist, Tulalip Tribes, questioned whether or not you could separate the smell of the salt water from the nearby sewage treatment plant.
- John Mack, Appellant, said he concurred with Mr. Lundberg, and that he too is concerned about the stench, and is also concerned about salt water intrusion. He feels that would be an encroachment on personal property. He would like to mitigate the issue before a problem occurs. He wants a cement wall below the levee to prevent any saltwater intrusion.
- Steve Winter, ESA Adolphson Consultants, responded that levees are designed for each individual site and the Corps of Engineers will review and approve the final plans before the levee is built.
- John Mack, Appellant, said he is concerned it will be possible for salt water intrusion and for a higher water table on his property, if this project is built. He feels that will be a trespass on his property and he wants a guarantee the ground water level doesn’t rise and that there will be no saltwater intrusion.
- Eric Stockdale, Washington State Department of Ecology, said when the residential development on the east side of the project was constructed several years ago, the developer gave an easement along the shoreline with this project in mind.
- Josh Meidev, Restoration Ecologist, Tulalip Tribes, said he wanted to set the record straight regarding the issue raised by Mr. Mack on mitigation. He said the last statement of Mr. Mack’s letter dated August 4, 2011 (Exhibit 126) states: “This is to confirm we are not opposed to the project provided answers and mitigation are forthcoming.” He said the Tribe tried to respond to that concern on page 6 of Exhibit 141.
- John Mack, Appellant, responded that the Tribe’s response reflected wetland mitigation. He was concerned about mitigation relative to saltwater infiltration. He has a well on his property that will be ruined if there is saltwater intrusion.

During the hearing Mr. Mack said he needed more time to review the files and respond to responses to his appeal. He also said was unaware that all files at the City are open to public review and inspection. The Hearing Examiner asked Cheryl Dungan how Mr. Mack had been aware of the proposal, and she said he had been on the mailing list since January 2011.

The minutes of the public hearing accurately summarize the comments/testimony offered at the hearing and by this reference are entered into the official record.

## **FINDINGS CONCLUSIONS AND DECISIONS:**

Having considered the entire record in this matter, the Hearing Examiner now makes and enters the following:

### **I. REGARDING THE CONDITIONAL SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT:**

#### **A. FINDINGS:**

1. Chapter 8 of the City of Marysville Shoreline Master Program sets forth the following provisions for Conditional Shoreline Development Permits:

#### **Conditional Shoreline Development Permits:**

The Hearing Examiner shall have the authority to hear and make findings, conclusions, and recommendations, and the City Council shall have the authority to grant, in appropriate cases and subject to appropriate conditions and safeguards, conditional shoreline development permits as authorized by Chapter 18.16 of the Marysville Municipal Code (MMC), as consistent with the SMA (RCW 90.58.100(5)) and WAC 173-27-160. The application for a conditional shoreline development permit shall be made on forms prescribed by the Planning Department and shall be processed pursuant to the rules of the Hearing Examiner. Review will be for purposes of determining consistency with:

- The legislative policies stated in the Shoreline Management Act, RCW 90.58.020 (SMA).
- The Shoreline Management Waste Program of the City of Marysville. Notice of public hearings shall be published in the same manner as provided in the Marysville Municipal Code.

#### **Conditional Shoreline Development Permit Criteria:**

The purpose of a conditional use permit is to allow greater flexibility in administering the use regulations of the master program in a manner consistent with the policies of the SMA. Conditional use permits may also be granted in circumstances where denial

of the permit would result in a thwarting of the policy enumerated in the SMA. The criteria for granting conditional use permits is the following:

- a. The uses which are classified or set forth in the master program as conditional uses may be authorized, provided the applicant can demonstrate all of the following:
  - (1) That the proposed use will be consistent with the policies of the SMA and the policies of the master program.
  - (2) That the proposed use will not interfere with the normal public use of public shorelines.
  - (3) That the proposed use of this site and design of the project will be compatible with other permitted uses within the area.
  - (4) That the proposed use will cause no unreasonably adverse effects to the shoreline environment designation in which it is to be located.
  - (5) That the public interest suffers no substantial detrimental effect.
- b. Other uses which are not classified or set forth in the master program may be authorized as conditional uses provided that the applicant can demonstrate, in addition to the criteria set forth in Subsection a of this section, that extraordinary circumstances preclude reasonable use of the property in a manner consistent with the use regulations of the master program.
- c. In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests or like actions in the area.

**Imposition of Conditions:**

To ensure compliance with the criteria stated in the Marysville Municipal Code, the Hearing Examiner shall have the authority to recommend, and the City Council shall have the authority to require and approve, a specific plan for a proposed use, to impose performance standards that make the use compatible with other permitted uses within the area, and to increase the requirements set forth in Chapter 18.16 MMC which are applicable to the proposed use. In no case shall the City have the authority to decrease the requirements of Chapter 18.16 MMC when considering an application for a conditional shoreline development permit; any such decrease shall only be granted upon the issuance of a variance.

2. The evaluations contained in Section I of the Staff Advisory Reports (Hearing Examiner Exhibit 124) are found by the Hearing Examiner to be supported by the evidence in the record, and by this reference are adopted as the Hearing Examiner's findings. A copy of said report is available in the Community Development Department.

3. In addition to the information submitted prior to the hearing, the applicant submitted Exhibit 130 at the August 11, 2011 portion of the hearing. That exhibit is a copy of the power point presentation used by the Applicant's representative. The presentation included a summary, which identified the project partners, identified salmon recovery and ecosystem benefits, reviewed the project action, reviewed the levee location and preliminary levee design, and discussed concerns from citizens and the applicants' responses to those concerns.
4. John Mack submitted Exhibit 128, which states in part:

*The Tribal employee reasonably knew there was a sandy layer below the proposed wetlands, and as we all know water is capable of traveling through sand. When the water level is 13' higher than my property at high tide, hydrostatic pressure could easily force salt water onto my property.*

*According to my research mosquitoes proliferate in salt water; kill 2 million people per year and are considered the planets' most dangerous blood sucking predators.*

*The Tribe convinced uninformed city officials that wetlands help salmon runs. The documented research in my list of concerns proves that statement to be false.*

#### **B. CONCLUSIONS:**

1. The conclusions contained in Section II of the Staff's Advisory Report (Hearing Examiner Exhibit 124) are found by the Hearing Examiner to be supported by the evidence in the record, and by this reference are adopted as portion of the Hearing Examiner's conclusions relative to the Conditional Shoreline Substantial Development Permit. A copy of said report is available in the Community Development Department.
2. The Examiner acknowledges concerns were expressed at the hearing about the proposal. However, after review of the record, the Examiner concludes issues raised including: possible rodent infestation, drainage impacts to adjacent property owners, traffic impacts during construction, saltwater intrusion on adjacent properties, mosquito infestation, and alleged false statements about wetlands helping salmon run have been adequately addressed at the hearing and in documents (Exhibits 124 & 130) by the applicant, the applicants' consultant, the representative from the U. S. Corps of Engineers, and city staff. Other documents in the file, which address concerns raised include Exhibits 5, 11, 12, 13, 16, 22, 24, 29, 34, 64, 68, 85, 94, & 95.
3. The Examiner concludes that if approved as conditioned below, the proposed development will be consistent with, and will meet the requirements and intent of the City of Marysville Shoreline Master Program, the City's Critical Areas Ordinance, and the City's Floodplain Ordinance.

**C. RECOMMENDATION:**

Based upon the foregoing findings of fact and conclusions, it is recommended the Conditional Shoreline Substantial Development Permit be approved, subject to the following conditions:

1. Prior to levee removal, the applicant must either secure ownership of all parcels within the project work area and/or obtain flood easements over the affected properties. If flood easements cannot be obtained, those properties must be removed from the project and adequate measures must be taken to prevent flooding of said properties. A Memorandum of Agreement between the City of Marysville and the Tulalip Tribes is required prior to flooding of city-owned lands. Also, the title issue related to BLA 98-004 recorded under AF# 9808035010 must be resolved prior to any activity occurring on parcel 29050300200100.
2. Prior to levee removal, the applicant shall grant recreational/trail easements over the following areas:
  - a. The newly constructed levee along the west project boundary;
  - b. Adjacent to Sunnyside Blvd on TP# 30053400102100 to connect the existing northern end of the Harborview Village trail to Sunnyside Blvd; and
  - c. Connection of southern end of Ebey Waterfront Trail to the planned City park located on TP#(s) 29050300108500 & 290503108400 – provided the NRCS easement can be amended to allow trail construction.

The easements shall be recorded with the Snohomish County Auditor's Office prior to levee removal.

3. The Restoration project will be required to incorporate all measures, including alternative design levee breach, as recommended in the modeling efforts by Batelle and PWA referenced in the issued technical memorandum, or as updated during final engineering design. These measures include, but are not limited to: (MDNS #1)
  - a. Brashler Industrial Park drainage improvements including construction of a stormwater detention facility as described in the 12/02/08 PWA preliminary design analyses;
  - b. Construction of levees to protect existing industrial and residential properties as described in the 12/02/08 PWA memo as the 'West Levee';
  - c. Internal berms that shall be designed as wave breaks and designed to help promote channel stability;
  - d. Removal and replacement of storm drain level spreaders that are below the +12' NAVD contour;

- e. Raising the existing trail (Harborview system) where the trail is below 12'
4. The applicant will provide annual monitoring reports to the City of Marysville for a 5-year monitoring period and then a final monitoring report at 10 years, evaluating the following improvements: (MDNS #2)
  - a. West Levee and related industrial park drainage facilities;
  - b. Water control structure evaluation for industrial park and monitoring reports for groundwater levels behind the levee system;
  - c. Monitoring of south side of wastewater treatment plant (WWTP) levee to evaluate post-project conditions resulting from restoration project.
5. The applicant will implement measures to repair any degradation or failure of project improvements identified in the monitoring reports listed in condition 2 above. (MDNS #3)
6. The applicant shall submit a pre- and post- construction road evaluation report, as approved by the City Engineer, and repair any post-construction related road damage caused by heavy truck traffic generated as a result of project construction. (MDNS #4)
7. Prior to commencement of construction activities related to the Christofferson grading project, the applicant shall submit a traffic control plan to the City Traffic Engineer for review and approval. The plan shall include the following elements: 1) The haul vehicle should be limited to vehicles not larger/longer than 10 wheel, 10-12 yard dump trucks; and 2) the access on to and off of 61st St (Sunnyside Blvd) be controlled by two way flagging control capable of safely holding approaching traffic during the access maneuvers. (MDNS #5)
8. The applicant shall mow the existing vegetation within the inundation area, or apply other vegetation management strategies to reduce the amount of organic matter immediately prior to dike breaching. (MDNS #6)
9. Post dike construction, the applicant shall be required to monitor and evaluate salt water intrusion onto adjacent properties and as necessary, initiate appropriate mitigation measures to address the situation. (MDNS #7)
10. The applicant will repair or armor the WWTP levee if any damages result from channel velocities or scour, as documented in the monitoring report for condition 2c above. The applicant will also be required to repair or armor the southern, city-owned levee if any damages result as a result of channel velocities or scour. Maintenance vehicle access shall be maintained to the south levy post dike breach. (MDNS #8)

**II. REGARDING THE APPEAL OF THE ADMINISTRATIVE APPROVAL OF THE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT:**

**A. FINDINGS:**

1. On July 20, 2011, the Community Development Director approved a Shoreline Substantial Development Permit to prepare staging areas; excavate connection to Allen & Jones Creeks; create internal berms for protection from wave energy; stockpile material; provide cathodic protection of sewer trunk line; construct water quality treatment wetland; excavate outlet channel; raise portion of city trail; make adjustments to private drainage systems; and conduct Phase 1 Christofferson grading project (see Exhibit 119).
2. On August 4, 2011, John Mack appealed the staff determination (Exhibit 126). In his appeal letter, he made the allegations below, which are followed by responses from the Hearing Examiner.

*The City's Staff report is misplaced and inaccurate.*

Hearing Examiner response: This statement provides no factual basis to indicate how or where the staff report is misplaced and inaccurate.

*A public trail next to private property is a hazard and not a benefit to private property owners.*

Hearing Examiner Response: This statement provides no factual basis to indicate how a public trail next to private property is a hazard and is not a benefit to private property owners. The project as approved does not include the addition of any new trail locations. It does allow a portion of the existing trail to be raised. However, it should be noted: The Ebey Waterfront Trail is identified as a segment of the planned regional trail in the City's Shoreline Master Plan, Comprehensive Plan, Downtown Master Plan and Parks Plan.

*As cited below, as presented, constructing the proposed wetlands is not a public benefit and certainly not in the public interest.*

Hearing Examiner Response: This statement provides no factual basis to indicate why or how constructing the specific wetland in question is not a public benefit and not in the public interest. Several exhibits in the file, including 124 and 130, and statements at the public hearing address this issue in some detail.

*Saltwater infiltration prevention assurances have not been forthcoming.*

Hearing Examiner Response: The administrative approval being appealed does not cover levee removal and restoration of tidal influence to the site. Therefore, the threat of saltwater intrusion/infiltration does not exist as a direct result of the project as approved (the subject of this appeal). However, the issue is addressed in several

exhibits, including Exhibit 124, as part of the Conditional Shoreline Substantial Development Permit process. Furthermore, as indicated by the applicant at the hearing, design for the levee is only 35% complete at this point, and the applicant indicated in Exhibit 141 that the levee would be built in accordance with strict US Army Corps of Engineering engineering manuals. At the August 11, 2011 portion of the hearing, a representative from the US Army Corps of Engineers said infiltration from rainwater would be about 200 times greater than saltwater that would seep from the project wetlands. In Exhibit 142, the Project Manager for the Corps of Engineers responded to the Appellants' contention by writing in part: "the validity of Mr. Mack's contentions appear largely unsupported by facts....."

*Rodent and mosquito infestation lead to disease outbreaks including but not limited to West Nile Virus and Bird Flu.*

Hearing Examiner Response: This statement provides no factual basis to support this allegation relative to the subject project and site. The record shows this issue has been raised and discussed in public meetings before the public hearing. The applicants' representatives also addressed this issue at the August 11, 2011 portion of the hearing (see minutes of hearing, and Exhibits 130 and 141).

*Other issues are the potential of sewage infiltration that could be mitigated by a covenant to prevent sewage pond/plant / sewage smell.*

Hearing Examiner Response: This statement provides no factual basis to support this allegation relative to the subject project and site. City staff, and the applicants' representatives addressed these issues at the public hearing and in their submittals for the appeal hearing (see minutes of the hearing, and Exhibits 130, 140, and 141).

*A fishing channel can become a public benefit as well as mitigating the odiferous smell of tidelands. Of course this needs to be accompanied by a covenant to keep the channel clean.*

Hearing Examiner Response: The applicant has responded in Exhibit 141 that there is physically no room to establish a secondary fishing channel in the floodplain adjacent to the Mack property.

*No consideration has been proffered by the loss of oxygen caused by loss of vegetation.*

Hearing Examiner Response: The loss of vegetation from this proposal is expected to be minimal.

*I find no soil testing for iron.*

Hearing Examiner Response: No response.

*Mud flats suffer from oxygen starvation just a few millimeters below their surface. Oxygen-free layers have black color, which is caused by iron sulfide. This iron sulfide arises from the reaction between iron and hydrogen sulfide. The hydrogen sulfide also causes the bad smell of rotten eggs on mud flats.*

Hearing Examiner Response: This statement provides no factual basis to support this allegation relative to the subject project and site.

*To prevent saltwater infiltration we have been amenable to the Tribe filling our property to road level or top of dike whichever is greater.*

Hearing Examiner Response: No response.

*To mitigate a known smell and rodent infestation aka public nuisance it has been suggested a channel be constructed between the dike and the mud flats replete with a dock construction easement.*

Hearing Examiner Response: From the information found in the file, it is unlikely smell and rodent infestation will become a significant problem. The appellants' statement above provides no factual basis to indicate the proposed mitigation would resolve any issue related to smell and rodent infestation – should they even become a problem.

*Although the above has been discussed, no substantive answers have been received. This is to confirm we are not opposed to the project provided answers and mitigation are forthcoming.*

Hearing Examiner Response: At the September 8, 2011 portion of the hearing, the applicants' representative responded to this issue by discussing wetland mitigation, and the appellant said that is not what he meant. He said wants mitigation for possible saltwater intrusion on his property. This is another example of Mr. Macks' allegations being unclear, unspecific, and open to misunderstanding.

3. The adopted provisions for appeal of an appeal of and administrative approval are set forth as follows:

***22G.010.530 Appeal of administrative interpretations and approvals.***

*(1) Administrative interpretations and administrative approvals may be appealed by applicants or aggrieved adjacent property owners to the hearing examiner. Appeals shall be filed within 14 days of the notice of decision.*

*(2) Filing. Appeals of administrative interpretations and administrative approvals shall be filed in writing with the director within 14 calendar days following the date of the director's decision and shall be accompanied by the appropriate filing fee.*

(3) *Grounds for Appeal. The grounds for reconsideration of a hearing examiner decision or for filing an appeal of an administrative decision shall be limited to the following:*

- (a) *The examiner/director exceeded his jurisdiction;*
- (b) *The examiner/director failed to follow the applicable procedure in reaching his decision;*
- (c) *The examiner/director committed an error of law or misinterpreted the applicable city regulation, ordinance or other state law or regulation;*
- (d) *The examiner's/director's findings, conclusions and/or conditions are not supported by the record; and/or*
- (e) *Newly discovered evidence alleged to be material to the examiner's decision which could not reasonably have been produced prior to the examiner's/director's decision.*

*Requests for reconsideration may use the additional grounds:*

- (f) *Changes to the application proposed by the applicant in response to deficiencies identified in the decision.*

(4) *Contents of Appeal. The notice of appeal shall contain a concise statement identifying:*

- (a) *A detailed statement of the grounds for appeal, making reference to each finding, conclusion, or condition which is alleged to contain error;*
- (b) *A detailed statement of the facts upon which the appeal is based;*
- (c) *The name and address of the appellant and his interest(s) in the matter;*
- (d) *The appeals fee.*

(5) *Within 21 calendar days following timely filing of a complete appeal with the city, notice of the date, time, and place for hearing examiner consideration shall be mailed to the appellant, to the examiner, and to all other parties of record.*

(6) *All appeal proceedings shall be limited to those issues expressly raised in a timely written appeal.*

(7) *The director's decisions, which have been timely appealed shall go to the hearing examiner for consideration within no sooner than 21 nor longer than 60 days*

*from the date the appeal was filed. Said appeal shall be conducted as an open record hearing. Public comment and testimony shall be heard at such public hearing. (Ord. 2852 § 10 (Exh. A), 2011).*

4. During the appeal period, John Mack submitted several other exhibits into the record:

- Exhibit 127, dated 8/5/11, includes additional information and his request for mitigation relating largely to his belief the proposal will offer no public benefit resulting from the proposed project.
- Exhibit 128, Mr. Macks' is written presentation submitted at the hearing on 8/11/11, and is discussed above in Section I.A.4.
- Exhibit 129 (undated) is a 38 page submittal, which does not make any specific reference to the subject proposal,
- Exhibit 138, dated 8/26/11 & received by the City on 8/29/11, is a request for any and all correspondence related to the proposed Tribal Wetland, in accordance with the The Public Records Act,

Hearing Examiner Response: None of the exhibits listed above directly relate to the specific facts of the subject appeal. However, it is interesting to note that at the September 8, 2011 portion of the hearing, Mr. Mack indicated he was unaware city records were available for public review, and yet on August 26, 2011 he submitted a request to the City for any and all correspondence related to the proposed Tribal Wetland (Exhibit 138),

- Exhibit 144 (submitted at the hearing on 9/8/11), is a request for a 30-day continuance to allow Mr. Mack and his consultants additional time to respond to responses received from the City, the Tulalip Tribes, and the Corps of Engineers they submitted in response to the concerns he listed in his appeal.

Hearing Examiner Response: The Examiner ruled at the September 8, 2011 portion of the hearing that the public hearing would be closed that night, and would not be continued for another 30 days.

5. On August 2, 2011, the Washington State Department of Ecology (DOE) acknowledged the City of Marysville's approval of the Shoreline Substantial Development Permit and provided information on "what happens next." See Exhibit 132. On August 11, 2011, DOE rescinded the approval of the subject permit after being notified by the City of an administrative appeal on the City's determination. See Exhibit 134.
6. City staff submitted a response to Mr. Macks' appeal concerns on August 31, 2011 (Exhibit 140).
7. The Tulalip Tribes submitted a response to Mr. Macks' appeal concerns on August 31,

2011 (Exhibit 141).

7. The US Army Corps of Engineers submitted a response to Mr. Macks' appeal concerns about increased salinity levels and flooding on September 6, 2011 (Exhibit 142).
8. The City Attorney responded to two letters from Mr. Mack (Exhibit 143).

**B. CONCLUSIONS:**

1. The evaluations contained in Section B of the Staff Advisory Reports (Hearing Examiner Exhibit 140) are found by the Hearing Examiner to be supported by the evidence presented, and by this reference are adopted as portion of the Hearing Examiner's conclusions. A copy of said report is available in the Community Development Department.
2. Responses to the appeal, submitted by the Applicant and by the US Corps of Engineers are supported by the evidence in the record.
3. After review of the file, the Examiner concludes Mr. Macks' appeal submittals lack substance directly related the subject proposal, and do not meet the burden under MMC 22G.010.530 to show the Administrative Approval of the Shoreline Substantial Development Permit should be overturned.
4. After review of the exhibits and conducting two nights worth of hearings, the Examiner concluded the responses to Mr. Macks' appeal issues were merely restatements of information already in the file. The Examiner did not find any substantive new information in the responses. Therefore, the Examiner determined there was no justification to continue the hearing for another 30 days. Mr. Mack had between the date of his appeal (8/4/11) and the hearing on his appeal (9/8/11) to substantiate his allegations and concerns and he failed to do so.

**C. DECISION:**

Based upon the foregoing findings and conclusions, the Appeal of the City Staff Determination for the Shoreline Substantial Development Permit is DENIED and the City Staff Determination is UPHELD.

Dated this 13th day of September 2011



Ron McConnell, FAICP  
Hearing Examiner

**RECONSIDERATION:**

A party to a public hearing may seek reconsideration only of a final decision by filing a written request for reconsideration with the director within fourteen (14) days of the final written decision. The request shall comply with MMC 15.11.020(3). The examiner shall consider the request within seven (7) days of filing the same. The request may be decided without public comment or argument by the party filing the request. If the request is denied, the previous action shall become final. If the request is granted, the hearing examiner may immediately revise and reissue its decision. Reconsideration should be granted only when a legal error has occurred or a material factual issue has been overlooked that would change the previous decision.

**PROCEDURE FOR APPEAL OF THE HEARING EXAMINER RECOMMENDATION ON THE CONDITIONAL SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT:**

**COUNCIL ACTION:**

Recommendations by the Examiner on rezones or shoreline conditional use permits will constitute a final action by the City unless a timely written request for a closed record appeal is filed with the City Council within 14 days after issuance of the recommendation. In the event of a timely appeal, the City Council will conduct a closed record hearing of this case. Closed record hearings shall be on the record and no new evidence may be presented. The City Council's action will be the final action of the City.

**APPEAL OF COUNCIL ACTION:**

If the Council action is appealed; the underlying decision being appealed is a shoreline substantial development permit involving a shoreline of the state. RCW 90.58.180 states: "Any person aggrieved by the granting, denying, or rescinding of a permit on the shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of receipt of the decision as provided for in RCW 90.58.140(6)." Thus, it appears that any appeal of the Hearing Examiner's decision regarding the shoreline substantial development permits should be made to the Shorelines Hearings Board in accordance with RCW 90.58.180.

**PROCEDURE FOR APPEAL OF THE HEARING EXAMINER DECISION ON THE SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

This current proceeding represents an appeal of administrative decision of the City Community Development Director approving a shoreline substantial development permit. MMC 22E.050.080 provides that "[a]ppeals of administrative decisions by the community development director shall be heard by the hearing examiner in accordance with the manner prescribed in Chapter 22G.010 MMC, Article VIII, and Chapter 22G.060 MMC."

MMC 22G.060.130 provides that “all decisions of the hearing examiner shall be final action by the city” and that “[h]earing examiner decisions shall be appealable pursuant to Chapter 22G.010 MMC, Article VIII, Appeals.” MMC 22G.010.520(2) states: “Appeals of hearing examiner’s decisions shall be made to superior court as provided in MMC 22G.010.540.”

MMC 22G.010.540(1) provides that an appeal from the final decision of the Hearing Examiner “shall be made to Snohomish County superior court pursuant to the Land Use Petition Act, Chapter 36.70C RCW, within 21 days of the date of the decision or action becomes final, unless another applicable appeal process or time period is established by state law or local ordinance.”

In this case, the underlying decision being appealed is a shoreline substantial development permit involving a shoreline of the state. RCW 90.58.180 states: “Any person aggrieved by the granting, denying, or rescinding of a permit on the shorelines of the state pursuant to RCW 90.58.140 may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines hearings board by filing a petition for review within twenty-one days of the date of receipt of the decision as provided for in RCW 90.58.140(6).” Thus, it appears that any appeal of the Hearing Examiner’s decision regarding the shoreline substantial development permits should be made to the Shorelines Hearings Board in accordance with RCW 90.58.180.

#### **EXHIBITS:**

The following exhibits were offered and entered into the record:

1. Receipt for Shoreline Permit Application
2. Master Permit Application
3. 8 ½ x 11 map of Shoreline Master Plan
4. Grading/Clearing Permit
5. SEPA Checklist, received 05.28.10
6. JARPA application
7. Critical Area Letter, 05.28.10
8. Critical Area Study, March ‘07
9. 11 x 17 Estuary Site Plan
10. 11 x 17 Christofferson Plan
11. Environmental Assessment, Feb. ‘09
12. Wetland Assessment, Dec. ‘06
13. Comment Response Table, 05.28.10
14. ESA- Transmittal sheet, 05.28.10
15. CD- Master Permit application package, 06.02.10

16. Geotechnical Report, 12.17.04
17. nhc-Potential Impacts on City-owned properties, May '04
18. 8 ½ x 11 Vicinity maps
19. US Fish & Wildlife Service- Cultural Resources compliance, 10.13.06
20. PWA- Assessment of flood risk, 12.01.08
21. 8 ½ x 11 Site plans
22. PWA- Qwuloolt Tidal Wetland Preliminary Design, 12.02.08
23. PWA- Outboard Levee Breach & Tidal Channel Sizing, 12.01.08
24. PWA-Industrial Park Stormwater Improvements, 12.01.08
25. PWA- Allen Creek Flood Modeling, 12.01.08
26. PWA- Prelim. Model results: Restoration Impacts on Ebey Slough, 01.30.05
27. Estimate of Probable Cost for Habitat Restoration, 06.02.10
28. Kleinfelder- Geotechnical Engineering Report, 11.02.09
29. Kleinfelder- Subsurface Explorations & Lab Testing Data Report, 09.15.08
30. USACE- Qwuloolt/Poortinga Technical Report, 01.17.02
31. Revised Wetland Assessment for Restoration- 12.06.06
32. SEPA Checklist, received 06.02.10
33. Batelle- Hydrodynamic Modeling Study, Oct. '07
34. USACE- Environmental Assessment, Feb. '09
35. Agreement for property conveyance and development-recorded, 12.30.08
36. Pacific NW Title- Title Report
37. 24 x 36 Site Plans of Tidal Wetland Restoration
38. 24 x 36 Site Plan of Chistofferson Property
39. CD-Qwuloolt Project Additional Tulalip Title, 06.07.10
40. CD-Title Reports, 06.07.10
41. 11 x 17 FEMA flood maps
42. Qwuloolt Alternatives Assessment, June '06
43. 11x17 Harbor View Village maps, '99
44. USACE- Public Notice Env. Assessment & Clean Water Act, 02.04.09
45. USACE- Comments to Env. Assessment, 02.24.09
46. RFR Checklist
47. Notice of Application
48. Affidavit of Posting-NOA
49. 11 x 17 Hydraulic Model Basemap
50. 11 x 17 1938 Aerial Photograph

51. Letter regarding Ownership questions, 10.27.08
52. Email-from Maria Calvi- Identified parcels, 04.08.10
53. USACE- H&H Appendix, June '10
54. Deryl Taylor- RFR response
55. Email requesting RFRs sent to DOE &NFIP, July '10
56. Tulalip Tribes- Proposed Phasing, 06.25.10
57. Citizens emails of concern regarding project, 07.07.10
58. Affidavit of Publication—NOA, 07.07.10
59. Floodplain Management, 07.02.10
60. Responses to citizen email, 07.07.10
61. Citizen/Jim Seaver-Letter of concern, 07.15.10
62. Technical Review, 07.19.10
63. RFR Agency responses
64. ESA Adolphson- Add'l info re; high water levels, flooding ,erosion, 08.26.10
65. 11 x 17 map of drainage & pump station
66. Master Permit application, 09.09.10
67. ESA-Response to City comments, 09.02.10
68. SEPA Checklist, 09.09.10
69. Ph 1 Env. Site Assessment-Rasmussen property, 09.09.10
70. Ph 1 Env. Site Assessment-Poortinga property, 09.09.10
71. Ph 1 Env. Site Assessment-Archie property, 09.09.10
72. Engineering Plan review, 09.21.10
73. Tulalip Tribes- List of Tulalip properties and title reports, 09.21.10
74. Agenda for Technical meeting, 08.26.10
75. Table summary of comments, 08.26.10
76. RFR checklist
77. Affidavit of Posting- Notice of Neighborhood meeting
78. Sign-in sheets & Notice for Neighborhood meeting, 09.30.10
79. Data sheet for neighborhood meeting, 09.30.10
80. 11 x17 Existing Outfall map
81. Kleinfelder-Add'l Subsurface Explorations & Lab testing Data report, 10.08.10
82. 2nd Technical review, 10.18.10
83. ESA- Agenda/Infrastructure Design meeting, 11.04.10
84. 11 x 17 Christofferson Plan set, 10.29.10
85. USACE- Appendix G, Dec. '10

86. Newspaper article regarding floods, Jan. '11
87. Sound Transit-Christofferson Fill pad in-take meeting, 02.03.11
88. Agenda & 11 x 17 maps regarding status of project, 02.15.11
89. Emails and data regarding fill pad, 02.03.11
90. Qwuloolt City/Trustee meeting sign-in sheet, 02.15.11
91. ESA- Settlement monitoring plan for Christofferson fill pad, 02.24.11
92. 11 x 17 Wetland Reserve maps
93. Email between NOAA and Dungan w/Wetland rating form, 03.23.11
94. Qwuloolt Section 544 Ecosystem Restoration project report, April '11
95. ESA- Responses to City of Marysville binder, 04.07.11
96. Tulalip Tribes- Cover letter, 04.08.11
97. ESA- Design memo, 03.29.11
98. 11x17 perimeter planting plan drawings
99. CD- Perimeter Planting plan drawing & memo, 04.08.11
100. RFR Checklist
101. RFR comments from Anne Miller, 05.13.11
102. ESA- Response to 1st Grading civil construction review, 06.07.11
103. Determining Construction site sediment damage potential form
104. CD- Revised Christofferson grading permit materials, June '11
105. 2nd grading civil construction plan review, 06.14.11
106. Tulalip Tribes-Cover letter req. a SSDP & Responsibilities chart, 06.14.11
107. 11 x 17 Aerial map showing Phase 1 actions
108. MDNS, 06.29.11
109. Affidavit of Posting-MDNS
110. Return receipt from DOE, 07.25.11
111. Affidavit of Publication, 07.06.11
112. Cover letter & permit app, staff rept & decision, Permit data sheet, SEPA doc
113. Affidavit of posting-NOH
114. Affidavit of Publication-NOH, 07.27.11
115. Notice of Administrative Approval
116. 8 ½ x 11 Public Access maps
117. 11 x 17 Plan set, 35% submittal
118. Citizen email/Janette Moore, 07.07.11
119. Staff report & decision, 07.20.11
120. 8 ½ x 11 aerial photo maps

121. DOE- review comments, 07.13.11
122. Technical review, 07.19.11
123. Affidavit of posting- Admin Approval, 07.21.11
124. Staff Recommendation, 08.02.11
125. Receipt for Appeal of Staff Determination
126. Appeal of City Staff Determination, received 08.04.11
127. Additional information and request for mitigation, 08.05.11
128. Letter from John Mack, received at the hearing – 08.11.11
129. Concerns and issues raised by John Mack, received at the hearing – 08.11.11
130. Applicants' hearing presentation
131. Administrative Provisions
132. Dept. of Ecology – Approval letter, 08.02.11
133. Email to DOE: regarding appeal-to rescind their approval, 08.11.11
134. DOE – SDP Approval rescinded docs, 08.11.11
135. Notice of Hearing continuance-Sept. 8, 2011
136. Returned postcards-noticing continuance of Hearing for Sept. 8, 2011
137. Affidavit of Posting-NOH
138. Request to the City Planning Department for any and all correspondence related to the proposed Tribal Wetland from John Mack, 08.26.11
139. CD of responsive emails regarding Qwuloolt project, 09.01.11
140. Staff Recommendation (Staff response to the appeal of the Shoreline Substantial Development Permit), 08.31.11
141. Response letter to appeal from The Tulalip Tribes, 08.31.11.
142. Response letter to the appeal from the Corps of Engineers, 09.06.11
143. Letter to John Mack from the City Attorney, 09.07.11
144. Memo from John and Jane Mack requesting a 30 day continuance to the hearing, 09.08.11

**PARTIES of RECORD:**

Kurt Nelson  
Natural Resources Department  
Tulalip Tribes  
7515 Totem Beach Road  
Tulalip, WA 98271

Erik Stockdale, Unit Supervisor  
Washington Department of Ecology  
1390 160<sup>th</sup> SE  
Bellevue, WA 98008

Josh Fitzpatrick  
Corps of Engineers  
4735 East Marginal Way South  
Seattle, WA 98106

Dan Christofferson, Commissioner  
Dike District #3  
5016 61<sup>st</sup> St. NE  
Marysville, WA 98270

Sherleen Yanez  
5528 61<sup>st</sup> NE  
Marysville, WA 98270

Zac Corum  
Corps of Engineers  
4735 East Marginal Way South  
Seattle, WA 98106

Steve Winter  
ESA Adolfson  
5309 Shilshole NW, #200  
Seattle, WA 98107

Community Development Department  
City Administrator  
City Attorney

Tim Walls  
Snohomish Basin Salmon Recovery Forum  
% Snohomish County  
3000 Rockefeller, MS-607  
Everett, WA 98201

Jeff Davidson  
4930 60<sup>th</sup> NE  
Marysville, WA 98270

Chris Lundberg  
5015 60<sup>th</sup> NE  
Marysville, WA 98270

John Mack  
15316 77<sup>th</sup> Ave NE  
Arlington, WA 98223

Josh Meidav  
Restoration Ecologist  
Tulalip Tribes  
7515 Totem Beach Road  
Tulalip, WA 98271



## Marysville Hearing Examiner

August 11, 2011

7:00 p.m.

Marysville City Hall

### CALL TO ORDER

Hearing Examiner Ron McConnell opened the hearing at 7:00 p.m. and noted this was a meeting at the request of the Tulalip Tribes. He added that there were 125 exhibits entered up to this point and that these exhibits would be discussed at tonight's hearing. The hearing would be continued until September 8, 2011. That meeting would be to hear an appeal from Mr. John Mack. Two additional Exhibits were entered into record, which were submitted at the beginning of the meeting by Mr. Mack.

### ATTENDANCE

The following staff was noted as being present:

Hearing Examiner Ron McConnell, Planning Manager-Land Use Cheryl Dungan, Public Works Director Kevin Nielsen, Program Engineer – Surface Water Supervisor Kari Chennault, and Recording Secretary Amy Hess

### PUBLIC HEARING

1. **PA10013 – Qwuloolt Estuary Restoration Project** – request approval of a Conditional Shoreline Substantial Development permit to allow the final phase of construction for the Qwuloolt Dike Breach/Restoration Project.

**Applicant:** The Tulalip Tribes of WA  
Kurt Nelson  
7515 Totem Beach Road  
Tulalip, WA 98271

**Location:** North of Ebey Slough, south and west of Sunnyside Blvd,  
east of 47th Ave NE

### Applicant Comment:

Kurt Nelson of the Tulalip Tribes introduced the staff that he had present with him tonight. He began an overview of the proposed Conditional Shoreline Substantial Development permit. Mr. Nelson gave a Power Point presentation of the project. The presentation touched on the intent of the project as well as the boundaries and proposed levee breaches and channels.

Hearing Examiner McConnell notified Mr. Nelson that his presentation would be entered into the record as Exhibit 130.

Erick Stockdale, Dept. of Ecology 3190 160<sup>th</sup> Ave SE Bellevue WA 98008

Mr. Stockdale discussed that he had been working on this project for about 14 years. He noted that there had been a large amount of planning, property acquisition as well as strong relationships

*Marysville Hearing Examiner  
August 11, 2011 Hearing Minutes  
Page 1 of 4*

**ORIGINAL**

formed. He described some of the history behind the project. Mr. Stockdale stated that this was a keystone project, not only for the City, but for the entire watershed. He was in unequivocal support of this project. Lastly, this project was part of the approved Shoreline Master Program. He felt that this was a very meaningful restoration project and added that it was noted of national significance.

Josh Fitzpatrick, Army Corps Seattle District, 4735 East Marginal Way S. Seattle WA 98106

Mr. Fitzpatrick noted that the Seattle District of the Corps had been working on the project for about 10 years. Washington DC had identified the Puget Sound Region as one of ten nationally significant waterways of the United States; and this project is one of the top 2 or 3 estuary restoration projects in the district. He was very supportive of the project and would love to see it move forward.

Tim Walls, Snohomish Basin Salmon Recovery Forum C/O Sno Co. 3000 Rockefeller Ave. MS-607 Everett WA 98201

Mr. Walls gave some background of the Forum and who it was made up of which included individuals and businesses from the entire basin. He noted that the Qwuloolt Estuary Restoration was a critical project to advancing salmon recovery in the basin.

Dan Christofferson 5016 61<sup>st</sup> Street NE Marysville WA 98270

Mr. Christofferson stated that he was a lifetime resident of Snohomish County. He noted that approximately 5 acres of his property was in the flood plain and felt that there was no better use for that land than what was being proposed. He is also a Dyking Commissioner for Dyke District 3; the proposed dyke construction standards far exceed what is currently in place. He felt that the new dyke would be a huge benefit for all involved. The future of the Dyke district was also discussed by Mr. Christofferson.

He is also the Business Manager and Secretary Treasurer of Labors Local 292 of Everett which is a construction craft local. He stated that in Snohomish County, the unemployment rate of his members has been as high as 35-40%. This is a construction project that presents an opportunity to put local citizens back to work in a time when the need is very high.

Mr. Christofferson also noted that he loves to fish. By removing the floodgates, he felt that the fish habitat would be improved, making it easier for the fish to get upstream to spawning grounds. He would like to see trails established in the area; noting that it would be a huge benefit to the community as a whole.

**Public Comment:**

Jeff Davidson 4930 60<sup>th</sup> Ave Marysville WA 98270

Mr. Davidson noted that he is an avid sportsman, but also a homeowner that has grave concerns that have not been addressed. He was worried about the increase in rodent population and felt that there needed to be a proactive approach, not a reactive approach. He was also concerned about drainage and wanted to know if that had been addressed. Mr. Davidson wanted to know who he would go to if his property values tank or his home becomes unlivable due to this project. He didn't feel that this issue had been addressed.

Sherleen Yanez 5528 61<sup>st</sup> St. NE Marysville WA 98270

Ms. Yanez noted that the Corps had been to her house showing her what would be going on with the project. She was excited about the prospect of the project, specifically the Chinook restoration. She noted that the Orca population could benefit from an increase in the Chinook salmon population.

Chris Lundberg 5015 60<sup>th</sup> Ave NE Marysville WA 98270

Mr. Lundberg was concerned about possible added traffic to his neighborhood. He wanted to know who was going to cover possible needs that could arise from an increase in traffic. He had some

questions about how Allen Creek would be used for drainage; how would this water be treated. He also suggested updated information on the website.

John Mack 15316 77<sup>th</sup> Ave NE Arlington WA 98223

Mr. Mack requested that Hearing Examiner McConnell read his letter to the other neighbors and citizens present at the hearing. The letter overviewed Mr. Mack's concerns about information that had been with-held from him and that his signature was obtained by deception.

**APPLICANT RESPONSE:**

Mr. Nelson responded that the average high tide on the site was 9 feet, not 13 feet as the letter from Mr. Mack had stated in his letter. He noted that the hydro static head would not be high enough to create the perceived problems of Mr. Mack. He addressed the soil types on the site and noted that those would prevent salt water from infiltrating Mr. Mack's property. The amount of infiltration through the levee onto Mr. Mack's property would be very low.

Zac Corum Army Corps Seattle District, 4735 East Marginal Way S. Seattle WA 98106

Mr. Corum responded to the concerns about ground water and stated that they had looked at it in several ways. There would be a very small volume of water that would seep through the levee. The amount of rainwater would out-weigh the seepage by approximately 200 times. Their estimates noted that if brackish water were to mix with the stormwater pond, the salinity would be well under the threshold for being classified as fresh water. Based in this, they were not greatly concerned about this issue.

Mr. Corum also responded as to how Allen Creek would handle run-off. The new levee would incorporate a large stormwater facility which would capture the runoff and store it for treatment. The grasses in the pond would passively treat the water before being released in controlled releases.

John Mack 15316 77<sup>th</sup> Ave NE Arlington WA 98223

Mr. Mack questioned Mr. Corum's estimates and if he could guarantee that there would be no salt water infiltration onto his property. Mr. Corum responded that he did not say there would be no seepage, but that they had used their best available judgments as engineers.

Steve Winter, ESA Consultants 5309 Shiishol Ave NW Suite 200 Seattle 98107

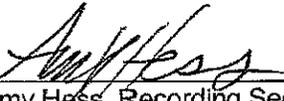
Mr. Winter responded to the drainage concerns on the South East corner of the site. He noted that this was currently in the design phase and that the majority of the catch basins are above the 100 year flood plain. There were four areas that would need modification to allow the tide to flow out, but not back in.

**Staff Comment:**

Ms. Dungan entered into the record Staff's Recommendations and the ten conditions approval was subject to. All properties proposed for flooding would be required to be under ownership of the tribes or easements would be required to be obtained prior to levee breach. If easements could not be obtained, that portion of the trail would be removed from the project. She overviewed the conditions that would have to be met for the restoration portion of the project. Annual monitoring requirements were discussed by Ms. Dungan. Pre, during, and post dyke construction measures would be required. Pre and post evaluation construction reports would be required in response to potential damage caused by heavy truck traffic resulting from the amount of dirt that would need to be moved in construction of the proposed levee.

**ADJOURNMENT:**

Mr. McConnell continued the hearing until September 8, 2011 when the appeal portion would be addressed. Hearing was adjourned at 8:01 p.m.

  
\_\_\_\_\_  
Amy Hess, Recording Secretary



DRAFT

## MARYSVILLE HEARING EXAMINER

September 8, 2011

7:00 p.m.

City Hall

### CALL TO ORDER

The meeting was called to order by Hearing Examiner Ron McConnell at 6:57 p.m.

### ATTENDANCE

Staff: Cheryl Dungan, Planning Manager - Land Use  
Gloria Hirashima, Chief Administrative Officer  
Laurie Hugdahl, Recording Secretary

### PUBLIC HEARING

**PA10013 - Qwuloolt Estuary Restoration Project** - Appeal of the July 20, 2011 City of Marysville Administrative Shoreline Substantial Development Permit approval to allow the following: prepare staging areas; excavate connection to Allen & Jones Creek(s); creation of internal berms for protection from wave energy; stockpiling of material; cathodic protection of sewer trunk line; construct water quality treatment wetland; excavation of outlet channel; raise portion of city trail; private drainage system adjustments; and Phase 1 Christofferson grading project.

**Applicant:** The Tulalip Tribes of WA  
Kurt Nelson  
7515 Totem Beach Road  
Tulalip, WA 98271

**Location:** North of Ebey Slough, south and west of Sunnyside Blvd, east of 47<sup>th</sup> Ave NE

Hearing Examiner McConnell explained that this was the continuation of the Public Hearing on Case No. PA10013. On August 11 he heard the Conditional Shoreline Substantial Development Permit portion of the hearing. Tonight he will hear the Appeal portion. When the hearing is complete he will prepare one report that addresses both the Conditional Shoreline Substantial Development Permit and the Appeal portions of the case. Since the last hearing he has received additional exhibits numbered 131 through 144. Also, tonight he received an additional memo

from John and Jane Mack dated September 8, 2011 entitled *Request to Respond to Testimony*. Hearing Examiner McConnell reviewed the process from this point forward. Tonight's hearing is for the purpose of looking at grounds based on MMC 22G.010.530 - *Appeal of Administrative Interpretations and Approval*. This gives the grounds for appeal and gives him guidance to follow to determine:

- If the Community Development Director exceeded her jurisdiction in making this determination,
- If she failed to follow the applicable decision in reaching her decision,
- If she committed an error of law or misinterpreted the applicable city regulation, ordinance or other state law or regulation,
- If the director's findings, conclusions or conditions are not supported by the recorded, or
- If newly discovered evidence alleged to be material to the director's decision prior to the determination.

John Mack 15316 77th Ave NE Arlington WA 98223, expressed concern about not having time to respond to the Tribes' response. He requested more time to be able to prepare an adequate response. Hearing Examiner McConnell stated that he would need to consult with the Applicant about Mr. Mack's request for a Continuance.

Kurt Nelson, representative for the Tribes, stated that they have already addressed the issues Mr. Mack has raised. They have not given any new information and neither has Mr. Mack. He feels there has been sufficient time. Hearing Examiner McConnell concurred that there was no new information in the responses.

Mr. Mack stated that he has not been privy to the prior information that they were referring to. Planning Manager Dungan stated that Mr. Mack had been on the mailing list and also that the file is public record. Mr. Mack stated that he just recently became aware of his right for review of public documents. Hearing Examiner McConnell reiterated that that none of this is new information. Mr. Mack requested that the Hearing Examiner read his letter that he had submitted before making a decision.

The Hearing Examiner recessed the meeting at 7:10 p.m. to read Mr. Mack's letter. The meeting reconvened at 7:11 p.m. Mr. McConnell reported that the issues Mr. Mack raised in the letter were variations and themes of issues he had raised already. Hearing Examiner McConnell commented on the fact that he did not have authority on federal, state or tribal matters. Mr. Mack stated that he has been confused about who does have jurisdiction. Hearing Examiner McConnell stated that he can only focus on what the City's rules are. He stated that that he rejected the request for a continuance and commented on the lack of specific facts in the original appeal.

**Staff Presentation:**

Planning Manager Dungan reviewed the Project Description, Staff Response to Appellant's Contentions, and Staff Recommendation as contained in the *Staff Recommendation* dated August 31, 2011. Staff is recommending that the Hearing Examiner uphold the *July 20, 2011 Administrative Shoreline Substantial Development Permit Approval*.

Mr. Mack asked about the dyke easement. Planning Manager replied that the Tribes are required to either acquire the property or obtain flood easements over the property prior to inundation. This is already on of the City's required conditions. Hearing Examiner stated that all the conditions must be met before the project begins. Planning Manager Dungan stated that there was a condition in the Conditional Shoreline Permit that addressed property ownership or acquiring flood easements prior to construction. She added that the Tribes are allowed to construct on areas where they have other easements or property under their ownership.

**Public comment:**

John Mach, 15316 77<sup>th</sup> Avenue NE, Arlington, WA 98223, stated that he has provided a written response requesting more time since he has only had two days to prepare a response to the request he received from the Tribes.

**Applicant:**

Kurt Nelson, Environmental Division Manager, Tulalip Tribes Natural and Cultural Resources Dept., 6406 Marine Drive, Tulalip, WA, concurred with the evaluation that the City provided in regards to the Appeal. He added that the Tulalip Tribes Shoreline Substantial Development Permit that was appealed allows for ten actions to take place on the site. None of these actions on the permit will create the problems that John Mack has suggested in the Appeal that will occur. They are not breaching the dyke or flooding the property. This project has been in planning and design since 2004. They have performed wetland assessments, cultural resource assessment, vegetative assessments, geotechnical assessments, a groundwater assessment, and modeled hydrodynamics one-dimensionally and three-dimensionally to help them determine how the area would respond to the tidal influences and to help them design the project elements to protect City of Marysville residents and infrastructure. The project designs have been designed by the Tribes' consultants, but have been reviewed by the Army Corps of Engineers and its independent consultants. All the assessments are in the Exhibits which are part of the record. He invited anyone to visit the Marysville mitigation site at the mouth of Allen Creek to observe what has happened at that particular location. He discussed the many public benefits to this project. He summarized that they believe they have adequately addressed the concerns expressed by Mr. Mack as they relate to the Substantial Shoreline Permit. They also believe that the project design, modeling, site investigations and extensive reviews by experts that went into design

adequately address the landowners' concerns. They requested that the Shoreline Permit be approved.

Erick Stockdale, Wetlands and Federal Permitting Unit Supervisor, Washington State Department of Ecology, 3190 160<sup>th</sup> Ave SE Bellevue, WA 98008, stated that the DOE feels that these kinds of projects are critical for the recovery of Puget Sound. This is why they have invested time, energy, and financial support for this project. He commented on the enormous amount of material in the record. Although the issues that Mr. Mack has raised don't pertain to the ten actions allowed under the administrative approval, the questions that he has asked have already been asked and answered. He stated that the biggest risk of this is the safety of the levee. The Corps of Engineers has been working with the Tribes on the design and implementation of this. They will also be involved in the actual construction of the levee. He referred to the significant benefits to the City and its citizens in terms of increased flood protection, increased property values in the area, and benefits to habitat, improved water quality, aesthetics, passive recreation and green infrastructure. Additionally, they are structuring an agreement with the City that 14 acres that the City owns will be turned into advanced mitigation area that the city will be able to use for small wetland impacts. He commented that because of the timing of the Appeal, the project has been delayed for a year and the benefits to the Sound will also be delayed for a year. He emphasized that they are more than willing to purchase the property from Mr. Mack, with or without the uplands, but they are limited by market value. Mr. Mack has rejected the establishment of the value of the property based on an appraisal. Mr. Stockdale stated that they have a legally binding easement on the property and they do not need to buy the property in order to start building.

Mr. Mack asked for the Tribes' response to wetland mitigations (Exhibit 141). This was provided to him. He discussed an apparent contradiction in the response about the site not being used for mitigation and then that it is being used for mitigation. He stated that this is one example of an issue that he needs more time to respond to.

Mr. Nelson clarified that the issue referred to by Mr. Mack was only the Tribes responding to Mr. Mack's allegations. He stated that he had clearly stated at the last hearing that some of the area would be used for mitigation. Mr. Mack argued that the comments did not accurately reflect his comments.

Chris Lundberg, 5015 60<sup>th</sup> Avenue NE, Marysville, WA, commented that there has been a lot of work done to make sure things are done right. He concurred with Mr. Mack's concerns about not having enough time. He wondered who was in charge and if there would be a hotline that homeowners can call if there is a problem. CAO Hirashima stated that people can call either the City of Marysville or the Tulalip Tribes. Mr. Lundberg expressed concern about the smell at the wetland mitigation site and the fact that once the project is done it will be too late if there is a problem.

He generally spoke in support of the project, but wanted to have protection in case something goes wrong.

Josh Meidav, Restoration Ecologist, Tulalip Tribes, 6406 Marine Drive, Tulalip, WA, raised the question of whether or not anyone would be able to separate the smell of the sewage treatment plant from the wetland mitigation site.

Mr. Mack pointed out that Ms. Hirashima had acknowledged that they are anticipating problems. He expressed concern about the encroachment on private property that this project presents in terms of smells, rodents, etc. Hearing Examiner McConnell replied that with any project there will be issues and this is no different. If something happens, the City will try to address it. Mr. Mack requested a cement wall all the way down to hardpan to prevent any saltwater infiltration of his property. He asked the Tribes if this had been considered. Mr. Mack stated that they are only 35% completed with the design and that it had not. Mr. Mack asked if this is generally something that is done.

Steve Winter, ESA Consultants, 509 Shilshole Ave NW, Seattle, WA, stated that they have definitely looked at saltwater intrusion. They will be reintroducing tidal water to the site and the tidal water will be engaging the face of the levee on a daily basis. He reiterated that their levee design is only 35% completed. Certain elements have not been nailed down yet such as what needs to go into the levee.

Mr. Mach asked if there is a possibility of saltwater infiltration. Mr. Winter commented that they will be looking at the way the water moves and the impact of that movement. Based on their initial work, they are looking at a lot more fresh water coming from precipitation on the outboard side of the levee than they would be looking at infiltration of saltwater. The northern area of the site on the outboard side of the levee will be part of a new drainage system that will be developed over there to drain south past the industrial area into the stormwater detention facility that is also being designed right now. Mr. Mach expressed concern that he would receive saltwater infiltration on his property as well as elevated groundwater levels. He asked if they would consider this a trespass on his property. Mr. Winter disagreed that there would be elevated groundwater levels on his property. He reiterated that this is one of the key design parameters that they will be looking at. Mr. Mach argued that it was *possible* and that it would create a trespass on his personal property.

Mr. Lundberg asked if this project would exacerbate property that already has a problem draining. Mr. Winter explained that it depends on the area under discussion. They have looked closely at drainage especially in the southeastern side. Areas that already have drainage issues will not be any better, but they are working to make sure that it is not any worse. They have looked at all the drainage systems there and are designing retrofits onto those to make sure the outlets will still function under tidal and flood conditions.

Erick Stockdale stated that he worked with the developer for what used to be the Portenga farm who sold them an easement for the 12.7-foot elevation. Tidal waters will not come anywhere near the property boundaries in that area as a result of the foresight that the developer had.

Josh Meiday clarified that the Tribes' interpretation of the mitigation issue was correct. He referred to the last sentence of Mr. Mach's letter of August 4, which implies that Mr. Mach does not believe is currently part of the project. This explains the Tribes' understanding and the subsequent response regarding the mitigation.

Mr. Mach disagreed with this interpretation. He argued that there is a possibility that this project would result in a trespass on his property. He again requested a Continuance for 30 days to allow him time to form an adequate response.

Hearing Examiner McConnell reiterated his denial of the request for a Continuance and stated while he fully understood the concerns raised by Mr. Mack, he did not think that 30-days would make a difference in this situation.

Planning Manager Dungan commented that in this instance any appeal to the Hearing Examiner Decisions would be appealed to the Shoreline Hearing Board and then to the Superior Court.

**ADJOURNMENT:**

Hearing Examiner McConnell closed the hearing at 8:29 p.m. and stated he would have a determination out very shortly.

---

Laurie Hugdahl, Recording Secretary



COMMUNITY DEVELOPMENT  
80 Columbia Avenue ♦ Marysville, WA 98270  
(360) 363-8100 ♦ (360) 651-5099 FAX

CITY OF MARYSVILLE  
PLANNING DIVISION  
STAFF REPORT & DECISION

File No: PA 10013  
Reference Tax Account No.: Multiple  
Date of Report: August 2, 2011  
Nature of Request: Approval of a Conditional Shoreline Substantial Development Permit to allow the construction of a 4,000 LF levee; excavate and remove 1,800 LF of existing dike; create 1.1 acre fill pad (phase 2 and 3 of Christofferson grading project); and fill farm ditches  
Applicant(s): Tulalip Tribes of Washington  
Kurt Nelson  
7515 Totem Beach Road  
Tulalip, WA 98271  
Location: North of Ebey Slough, south and west of Sunnyside Blvd, east of the WWTP  
Current Zoning: Open Space  
Comprehensive Plan Land Use Designation: Open Space  
Shoreline Management Master Program Designation: Urban Conservancy/High Intensity  
DECISION: APPROVE with conditions

**EXHIBIT**

124

## I. EVALUATION

### A. Project Description

The project goal is to restore tidal processes to 341.5 acres on a 360 acre site. This will be accomplished by breaching the existing dike at Ebey slough to reestablish tidal inundation and reconnect the site to Ebey Slough. The project is being constructed in phases. Earlier site preparation activities which were approved and/or constructed in previous phases include excavation of drainage channels; stockpiling activities; raising a portion of existing trail; Phase 1 Christofferson grading; cathodic protection of portions of sewer lines within the project boundary; and construction of a water quality treatment wetland to treat existing stormwater from Brashler Industrial Park. The current request is to receive a Conditional Shoreline Substantial Development Permit to allow the final phase of construction for the restoration project as follows:

- 1) Construct 4,000 lineal feet of new levee along the western perimeter of the site to protect adjacent properties, which includes the filling of approximately 16.5 acres of degraded palustrine emergent wetlands;
- 2) Excavate and remove 1,800 lineal feet of dike at Ebey Slough (breach area would be approximately 200 feet long and 21 feet deep);
- 3) Create a 1.1 acre fill pad (Phase 2 and 3 of Christofferson grading project) adjacent to Allen Creek; and
- 4) Fill farm ditches to eliminate the artificial linear drainage system.

According to the SEPA checklist, approximately 98,000 cubic yards of cut and 139,000 cubic yards of fill would be required to construct the project.

### B. Site Description

The property is undeveloped agricultural land which has remained fallow for a number of years and has reverted back to a Category III, freshwater wetland. The topography is predominately flat and is surrounded by levees and short steep slopes. According to the *Soil Survey of Snohomish County*, soils are predominately classified as Puget silty clay loam, with some inclusions of Snohomish silt loam and Mukilteo muck. All three soil types are considered hydric. These soil types are characterized by low permeability with a high available water capacity, and are primarily found in depressional areas on floodplains. The eastern edge of the site has several distinct soil types including Mukilteo muck and Snohomish, Pastik, and Tokul silt loam.

### C. Project History

Since the Tulalip Tribes purchased the former Poortinga Farm in 1998, the City has been involved in the Qwuloolt Estuary Restoration Project. The City has participated in numerous Trustee/Partner meetings over the years in which multiple dike breach and trail options were evaluated and discussed. In 2006, an Alternatives Assessment was prepared which evaluated 4 dike breach and public access scenarios; an Open House was held in April of 2006 to take public comment on the proposed alternatives. Since 2006, project partners worked to refine the

preferred alternative to enhance ecological and biological objectives and reduce the overall impacts and costs. Public discussions have been held with both the City's Planning Commission and City Council regarding the proposed alternatives and trail alignment.

Since 2007, the City has approved three (3) shoreline substantial development permits to allow phased construction of various site preparation activities including the construction of historic stream channels in lower Allen and Jones Creeks; filling of existing agricultural ditches; stockpiling activities; raising a portion of existing trail; Phase 1 Christofferson grading; cathodic protection of portions of sewer lines within the project boundary; and construction of a water quality treatment wetland to treat existing stormwater from Brashler Industrial Park. In 2010, the City received the application for the final phase of the project. A neighborhood meeting was held in September of 2010 at Sunnyside Elementary School; approximately 75 neighbors attended the meeting. Issues raised at the meeting included concerns with odor, flooding, salt water intrusion, and increased rodent populations.

#### **D. Consistency with Shoreline Master Program:**

The subject property is located within the 100-year FEMA designated floodplain and the majority of the site (east of Allen Creek) is located in the FEMA designated floodway. The applicable shoreline designation for the majority of the property is Urban Conservancy, with a small portion within the High Intensity designation along 47<sup>th</sup> Ave NE.

The goals of this restoration effort are to restore more natural drainage features to the site in preparation for tidal inundation. The project is the Final Phase of the QWULOOLT Estuarine Restoration Plan which is identified as the number 1 priority in Chapter 9 of the SMP Restoration Plan.

**Shoreline:** Development goals and policies contained in the City of Marysville Shoreline Master Program which are directly applicable to this proposal follow (comments are *italicized*):

#### **Chapter 2, Section B (1) Shoreline Use Element**

Goal 6(e), Increase public access to publicly owned areas of the shorelines.

*Applicant's Response: The purpose of the project is the restoration of natural character and ecological functions of the shoreline and the project is a priority project of the City's Shoreline Restoration Plan. As such, the project aims to balance access with ecological objectives. The project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. The existing trail along the eastern boundary of the site would not be displaced by the project. One section of trail near the residential community on the northeast boundary of the project site would be raised as part of the project to prevent inundation. The proposed project would not include development of new public access or recreation facilities. However, the development of new public access to shorelines would not be precluded by the project. A perimeter trail could provide access to Ebey Slough on the east and west side of the restoration area. The perimeter trail could be approximately 2.9 miles in length. Viewpoints could be constructed at both of the access points. It would not be possible to*

*provide trail access along Ebey Slough, but opportunities for linking perimeter trails to the proposed Ebey Waterfront Trail and Downtown Trail would be preserved.*

***Staff Response:*** *The City is not requiring the applicant to construct the proposed trail, however prior to the levee breach, construction/access/maintenance easements will need to be granted to the City over the newly constructed levee and adjacent to Sunnyside Blvd on TP# 30053400102100. An additional trail easement also needs to be obtained to connect the southern end of the Harborview Village Trail to the planned park located on TP#(s)29050300108500 & 290503108400. The easements will need to be recorded with the Snohomish County Auditor's Office prior to dike breach.*

## **Chapter 2, Section B (2) Economic Development**

Goal 4. Develop as an economic asset, the recreation industry along shorelines in a manner that will enhance the public enjoyment of, and public access to shorelines. Encourage improvements of boat launches, marina facilities, and public access trails when coupled with environmental protection and/or restoration.

***Applicant's Response:*** *While future recreational development (e.g.; development of new public access) would not be precluded by the project, economic development is not a goal of the project. The project is identified as a priority project in the City's Shoreline Ecological Restoration Plan because it will provide the City with the most ecological benefit.*

***Staff Response:*** *See staff response above to Chapter 2, Section B(1) Shoreline Use Element.*

## **Chapter 2, Section B(4) Conservation Element**

The Conservation Element of the Marysville Shoreline Management Program includes several goals that specifically support the Qwuloolt Estuary Restoration Project, including:

Goal 1. As a long term goal, seek no further degradations of environmental functions and where appropriate, the restoration of Ebey Slough and associated wetlands to perform their natural ecological functions within the Snohomish River Estuary.

***Applicant's Response:*** *The Qwuloolt Estuary Restoration Project would restore tidal functions and tidal wetlands to the project area. Breaching the existing levees and restoring daily tidal flows to the project area would allow it to perform its natural ecological functions within the Snohomish Estuary. The channels of Jones and Allen Creeks would be restored to more natural conditions, which will improve fish passage and access to freshwater habitats. The Qwuloolt Estuary Restoration Project would expand the City's existing estuary restoration project on the southeast side of the Qwuloolt property.*

Goal 3. Reclaim and restore areas that are biologically and aesthetically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline. Consider the restoration of

the Qwuloolt site and add trails with interpretive displays describing the natural ecology and restoration process.

***Applicant's Response:*** *The project will restore the biological functions of the former estuary area and Jones and Allen Creeks. The project area will be restored to a tidal estuary which will be more compatible aesthetically with the Snohomish River Estuary. Invasive vegetation on the site will be eliminated by the brackish flows and the Tulalip Tribe will remove invasive species and plant native species around the perimeter of the site and on the installed berms. This project is the restoration project for the Qwuloolt site proposed in the SMP. The proposed project does not include trails, but is designed to allow the construction of trails around the perimeter of the site in the future. Interpretive displays could be installed along those trails in the future.*

***Staff Response:*** *The applicant will be required to provide trail easements so as not to preclude development the planned Ebey Waterfront Trail along the restoration project.*

Goal 6. Pursue a comprehensive program of ecological enhancements as identified in the Shoreline Ecological Restoration Plan attached to the SMP.

***Applicant's Response:*** *The project is identified as a priority restoration project in the City's Shoreline Ecological Restoration Plan. The project is identified as a priority project because it will provide the City with the most ecological benefit. The City has been a participating agency in the development of the Qwuloolt Estuary Restoration Project.*

## **Chapter 2, Section B(5) Public Access Element**

Goal 1. Provide, protect, and enhance a public access system that is both physical and visual, utilizing both private and public lands, which increases the amount and diversity of public access to the State's shorelines consistent with the natural shoreline character, private rights, and public safety.

***Applicant's Response:*** *The Qwuloolt site is the largest open space within the City of Marysville and it is currently used for passive recreation, including a trail along the eastern boundary of the site. The Qwuloolt Estuary Restoration Project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. One section of the existing trail along the eastern boundary of the site would be raised as part of the project to prevent inundation.*

***Staff Response:*** *The granting of trail easements to the City that will allow future development of public trails along the restoration project will increase the amount and diversity of public access to the State's shorelines.*

Goal 2. Construct a continuous public path along the Ebey Slough shoreline while providing protection of ecological functions.

***Applicant's Response:*** *A perimeter trail could provide access to Ebey Slough on the east and west side of the restoration area. The perimeter trail could be approximately 2.9*

miles in length. Opportunities for linking the perimeter trails to the proposed Ebey Waterfront Trail and Downtown Trail would be preserved.

**Staff's Response:** *The trail easements need to be granted to ensure the opportunity to link the Ebey Waterfront Trail and Downtown trail.*

Goal 3. Integrate public access to shorelines as a part of the City public trail system consistent with the adopted GMA Plan.

**Applicant's Response:** *See response to Goals 1 and 2 above.*

**Staff's Response:** *Development of the Ebey Waterfront trail and Downtown trail are identified in the 2005 Comprehensive Plan, Shoreline Master Plan and Park and Recreation Plan.*

Goal 4. Develop a comprehensive public access system that incorporates public access into the new shoreline development and unifies individual public access elements.

**Applicant's Response:** *See response to Goals 1 and 2 above.*

**Staff's Response:** *See response to Goal 1, 2, and 3 above.*

### **Chapter 3, Section (B)(3)(c) Urban Conservancy Environment Management Policies**

- During development and redevelopment, all reasonable efforts should be taken to restore ecological functions. Where feasible, restoration and public access should be required of all non-water dependent development on previously developed shorelines.
- Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the urban conservancy designation to ensure that new development does not further degrade the shoreline and is consistent with an overall goal to improve ecological functions and habitat for priority species.
- Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.
- Water oriented uses should be given priority over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.
- Derelict, unsafe and unlawful structures should be removed or brought into conformance of this SMP.

**Applicant's Response:** *The restoration project is consistent with the main purpose of the Urban Conservancy Environment, which is to protect and restore ecological functions in urban and developed settings. The project would benefit wildlife by enhancing habitat in the area, creating approximately 340 acres of intertidal habitat that would benefit fish, amphibians, reptiles, shorebirds, waterfowl, and other birds. Non-water oriented uses are not provided by this project.*

## **Chapter 4, Section (B)(5)(b) Flood Hazard Reduction and River Corridor Management**

Policy 2. In regulating development on shorelines within SMA jurisdiction, endeavor to achieve the following:

- a. Maintenance of human safety.
- b. Protection and, where appropriate, the restoration of the physical integrity of the ecological system processes, including water and sediment transport and natural channel movement.
- c. Protection of water quality and natural groundwater movement.
- d. Protection of fish, vegetation, and other life forms and their habitat vital to the aquatic food chain.
- e. Protection of existing legal uses and legal development unless the City determines there is a compelling reason to the contrary based on public concern and the provisions of the SMA.
- f. Protection of recreation resources and aesthetic values, such as point and channel bars, islands, and other shore features and scenery.

*Applicant's Response: The project would benefit wildlife and vegetation through habitat enhancement and would restore ecological systems and water quality. The project would have no impact on human safety or land use. The project would restore biologically degraded areas while preserving open space, existing public access, and recreational uses.*

*Staff Response: Several studies have been performed by the agencies and consultants to identify and analyze flood impacts and analysis. Flooding impacts are a critical issue for project review and has been identified as a key concern by neighboring residential and industrial property owners, and the City of Marysville.*

*Phillip Williams and Associates, LTD ("PWA") conducted the hydrologic assessments of the project through various design assessment memorandums. These include the following:*

- 1) *Assessment of Flood Risk, dated 12/1/08 (Exhibit 20)*
- 2) *Qwuloolt Tidal Wetland Preliminary Design, dated 12/2/08 (Exhibit 22)*
- 3) *Outboard Levee Breach and Tidal Channel Sizing dated 12/1/08 (Exhibit 23)*
- 4) *Industrial Park Stormwater Improvements (Exhibit 24)*
- 5) *Allen Creek Flood Modeling (Exhibit 25)*
- 6) *Preliminary Model Results: Restoration Impacts on Ebey Slough, dated 1/30/05 (Exhibit 26)*

*A principle design objective of the restoration project is to "not worsen existing flood risk to adjacent properties and uses". The existing levee system is estimated adequate for a 10 year water levels. The surrounding development to the restoration project has been built above the 100-year water level. The various memorandums and analysis conducted by the project consultants and agencies examine the ensuing conditions created by the restoration project and identify design recommendations to mitigate flood and erosion impacts introduced by the changed tidal environment.*

*Based on the modeling/studies provided, the proposed Qwuloolt Restoration alternative design does not appear to result in significant adverse impacts to the surrounding area or result in significant alterations to existing condition velocities and channel scour. The analysis concludes that additional mitigation for these areas does not appear necessary, however monitoring of the site and Ebey Slough are proposed as part of the restoration project.*

Policy 3. Undertake flood hazard planning, where practical, in a coordinated manner among affected property owners and public agencies and consider entire drainage systems or sizable stretches of rivers, lakes, or marine shorelines. This planning should consider the off-site erosion and accretion or flood damage that might occur as a result of stabilization or protection of structures or activities. Flood hazard management planning should fully employ nonstructural approaches to minimize flood hazard to the extent possible.

*Applicant's Response: The project lies within the 100-year floodplain but would maintain the same level of flood protection as currently exists. Modeling has shown that the project would not increase flood levels or flood risk upstream of the 3<sup>rd</sup> Street Crossing, and 4,000 feet of new levee will be constructed to protect adjacent properties. The installed levee and surrounding slope protection would extend to or above the existing level of protection. In a memorandum submitted to the City, the Corps of Engineers has shown that the setback levee will result in a minimal (0.1 foot) rise in the base flood elevation. However, it appears that the increase is attributable to model assumptions (e.g., the existing model does not include the City's wastewater treatment plant levees), rather than the volume of floodplain fill proposed for the project. The project would not cause long-term increases in erosion. A temporary erosion control plan would be prepared to manage any impacts during construction using best management practices.*

Policy 4. Give preference to and use nonstructural solutions over structural flood control devices wherever feasible, including prohibiting or limiting development in historically flood-prone areas, regulating structural design and limiting increases in peak storm water runoff from new upland development, public education, and land acquisition for additional flood storage. Structural solutions to reduce shoreline hazard should be allowed only after it is demonstrated that nonstructural solutions would not be able to reduce the hazard.

*Applicant's Response: The project is not a flood control measure and would not increase development in flood-prone areas or increase peak flows. The project would provide the same level of flood protection to adjacent properties as existing conditions. The project includes a water quality retrofit for impacted stormwater drains on the east side of the property.*

Policy 5. In designing publicly financed or subsidized works, give consideration to providing public pedestrian access to the shoreline for low-impact outdoor recreation.

*Applicant's Response: The project would maintain existing levels of pedestrian access to the shoreline. The project would include raising a segment of existing public trail on*

*the site to prevent inundation. The project would allow for additional pedestrian access to be developed in the future.*

***Staff Response:*** *In order to ensure the development of future additional pedestrian access, the applicant will be required to grant trail construction/access/maintenance easements to the City prior to levee breach.*

Policy 6. Encourage the removal or breaching of dikes to provide greater wetland area for flood water storage and habitat; provided, such an action does not increase the risk of flood damage to the existing human development.

***Applicant's Response:*** *The project includes lowering and breaching the existing dike at Ebey Slough. This action would establish tidal inundation and reconnect the site to the Slough, increasing the area for water storage and habitat. Approximately 1,800 linear feet of dike would be excavated and removed. The project would maintain the same level of flood protection for adjacent properties as the existing levees.*

***Staff Response:*** *The US Department of the Army, Seattle District, Corps of Engineers performed a zero-rise analysis for the proposed setback levee along Ebey Slough. The zero-rise analysis was completed on 3/29/11 The analysis identified a .1 ft rise in the unencroached flood level within the restoration site and potential .2 ft rise at points south of the site.*

*The City of Marysville met with staff from FEMA, US Army Corps of Engineers, Tulalip Tribes and Department of Ecology to discuss the results. FEMA has issued a policy on fish enhancement structures within the floodway. In the meeting FEMA staff described the policy as it relates to restoration projects, such as the Qwuloolt Restoration. The policy identifies that rather than "no-rise", the community official should certify that the project was designed to keep the rise within the floodplain as close to zero as practically possible and that no structures are impacted by the rise. DOE staff also contacted Snohomish County staff to share this data and they did not indicate concern.*

#### **Chapter 4, Section (B)(7) Public Access**

Policy 1. Public access should be considered in the review of all private and public developments (including land division) with the exception of the following:

- a. One- and two-family dwelling units; or
- b. Where deemed inappropriate due to health, safety and environmental concerns.

Public access should be required when land is divided into more than four residential lots.

***Applicant's Response:*** *While the project is a restoration project, not a traditional 'development' project as this policy more closely addresses, the project would not displace existing public access on or adjacent to the site. Access to sections of the trail along the eastern boundary of the site would be temporarily prevented during construction, but would be reestablished when construction is complete. The intertidal*

*area would not be accessible by foot during high tide and access would be limited during low tide because of mudflats.*

Policy 2. Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water or the rights of navigation.

*Applicant's Response: The project will not interfere with the public's rights of navigation. Currently the only boating in the area occurs on Ebey Slough and that use will not be affected by the project. Restoration of the site will allow more people to observe the natural tidal functions of the Snohomish River Estuary. Access to the intertidal area would be limited during low and high tides as described above under Policy 1 due to the restored intertidal functions on the site.*

Policy 3. Public access should be provided as close as possible to the water's edge without causing significant ecological impacts and should be designed in accordance with the 'Americans with Disabilities Act'.

*Applicant's Response: The focus of the project is on ecological restoration and does not include public additional access. However, the existing public access along the east side of the property would be maintained and the project does not preclude additional public access in the future.*

Policy 4. Opportunities for public access should be identified on publicly owned shorelines. Public access afforded by shoreline street ends, public utilities and rights-of-way should be preserved, maintained and enhanced.

*Applicant's Response: The project preserves existing public access to the property and does not preclude the development of additional access in the future. In general, an increase in recreational use of the site could result from more frequent or longer visits by local residents, bird watchers and recreational kayakers as a result of the restoration actions.*

Policy 5. Public access should be designed to provide for public safety and comfort and to minimize potential impacts to private property and individual privacy. There should be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.

*Applicant's Response: Since no new public access is being provided, this policy is not applicable to the project.*

Policy 6: Public views from the shoreline upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of existing native vegetation that partially impairs views.

*Applicant's Response: No existing views would be obstructed by the project and existing public viewpoints will be preserved. The project does not preclude the addition of viewpoints in the future.*

*Views on the site will change with the reintroduction of daily tidal influence and the area transitions from freshwater emergent vegetation to an emergent march with a scrub-shrub component over time. Much of the site will become mudflat within a year after the levee is breached. It will likely take several years for estuarine and scrub-shrub plant communities to colonize and establish the area.*

Policy 7: Public access and interpretive displays should be provided as part of publicly funded restoration projects where significant ecological impacts can be avoided.

*Applicant's Response: The proposed project does not include trails, but is designed to allow the construction of trails around the perimeter of the site in the future. Interpretive displays could be installed along those trails in the future.*

Policy 8: The Ebey Waterfront Trail and, where applicable, the City's Parks and Recreation Plan should be implemented to provide a continuous waterfront multi-purpose trail from the City's Waterfront Parks to the east and north to connect to the Sunnyside Drive Public Access Point and to proposed regional trails.

*Applicant's Response: The project does not include providing a trail, but it does not preclude development of perimeter trails that would connect to other trails.*

Policy 9: N/A

Policy 10: The acquisition of suitable upland shoreline properties to provide access to publicly owned shorelands should be encouraged.

*Applicant's Response: The Trustees purchased the Poortinga property where the restoration project is located. The Trustees have cooperated with the City of Marysville and other partners to acquire surrounding lowland and upland properties. The upland properties will provide flood protection to adjacent City and private property and the properties can be used by the City in the future to provide access to the shoreline around the Qwuloolt Estuary Restoration Project.*

Regulation 1. Except as provided in regulations 2 and 3, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present:

- a. Where development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
- b. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
- c. Where a use which is not a priority shoreline use under the Shoreline Management Act locates on a shoreline of the stat, the use or development shall provide public access to mitigate this impact.

- d. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
- e. Where the development is proposed by a public entity or on public lands.
- f. Where called for under the City's public access plan, including the Ebey Waterfront Trail.
- g. Where the rights of navigation are impacted, the proposed development will include mitigation for that impact.
- h. As part of development for non-water dependent uses (including water-enjoyment and water-related uses) and subdivisions of land into more than four parcels.

The shoreline permit file shall describe the impact, the required public access conditions, and how the conditions address the impact. Mitigation for public access shall be in accordance with the definition of mitigation and mitigation sequence in Section 4.B.4.

***Applicant's Response:** The project is a priority project in the City's Shoreline Restoration Plan. As such, the project aims to balance access with ecological objectives. The project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. The project will not interfere with an existing public access way.*

Regulation 2. An applicant need not provide public access where the City determines that one or more of the following conditions apply:

- a. The adopted City's public access planning indicates that public access is not required;
- b. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
- c. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
- d. The cost of providing the access as determined by the City, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
- e. Significant ecological impacts will result from the public access which cannot be mitigated; or
- f. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

***Applicant's Response:** Restoration of tidal processes at the site complicates the ability to provide public access to the water's edge and is not proposed as part of this project. Providing access facilities in the future is not precluded by this project.*

***Staff Response:** The above listed conditions do not apply. The applicant will be required to provide trail easements to allow the City to construct and operate the planned trail system along the restoration project.*

Regulation 3. In order to meet any of the following conditions “a” through “f” above, the applicant must first demonstrate and the City determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:

- a. Regulating access by such means as maintaining a gate and/or limiting hours of use;
- b. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
- c. Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.

*Applicant’s Response: This regulation is not applicable to the project.*

Regulation 4. Public access provided by the shoreline street ends, public utilities and right-of-way shall not be diminished.

*Applicant’s Response: The project will not displace or diminish public access provided by any street ends, public utilities, and rights-of-way.*

Regulation 5. Public access sites shall be connected directly to the nearest public street or public right-of-way and shall include provisions for physically impaired persons, where feasible.

*Applicant’s Response: The project will maintain the existing connection between the trail on the east side of the property and the public streets.*

*Staff Response: Planned trail segments connect to public right-of-way and will be ADA accessible where feasible.*

Regulation 6. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.

*Applicant’s Response: Access to all sections of the trail along the eastern boundary of the site would be completely restored following construction.*

*Staff Response: The City is not requiring the applicant to construct the planned trail segments, however, construction/access/maintenance easements need to be granted to the City prior to completion of the restoration project to not prevent/delay trail construction by the City.*

Regulation 7. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the County Auditor’s Office shall occur at the time of permit approval (RCW 57.17.110).

*Applicant’s Response: This regulation is not applicable to the project.*

*Staff Response: Required trail easements will be required to be recorded with the Snohomish County Auditor’s Office prior to levee removal.*

Regulation 8. Minimum width of public access easements shall be 20 feet, unless the City determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

*Applicant's Response: This regulation is not applicable to the project.*

*Staff Response: Easement widths will be a minimum of 20 feet in width unless otherwise determined by the City.*

Regulation 9. The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. In accordance with regulation 3-a, signs may control or restrict public access as a condition of approval.

*Applicant's Response: This regulation is not applicable to the project.*

Regulation 10. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.

*Applicant's Response: The project will not diminish the usefulness or value of the existing public access.*

***Staff Response:*** *The Ebey Waterfront Trail is identified as a segment of the planned regional trail in the City's Shoreline Master Plan, Comprehensive Plan, Downtown Master Plan, and Parks Plan. The original trail design identified a portion of the regional trail being constructed along the existing Ebey Slough Dike, which would connect the Downtown Waterfront trail segment easterly to the Sunnyside Area. Over a period of several years the City participated with the Tulalip Tribes and project Trustees to reach a preferred dike breach alternative that would allow both the City's planned trail system and the restoration project to move forward. As a result of the dike breach design that was chosen, the City will construct a portion of the trail on two segments of existing city-owned dike located east and west of the proposed breach. The newly constructed dike is proposed to tie into the existing City dike in the southwest corner of the project site thereby connecting approximately 4,000 lineal feet of new public trail with waterfront (restoration site) frontage. The increase in public trail access will help mitigate for the loss of the direct east/west Ebey waterfront connection that occurred as a result of the breach size/location. Through conversations with both the Tulalip Tribes and Trustees, the City will be responsible for the construction and maintenance of the trail system constructed on the new levee, however, the Tulalip Tribe will be required to provide construction, maintenance, and public access easements on the new levee to allow trail construction/operation.*

*Additionally, in accordance with the Ebey Waterfront Trail plan and Shoreline Master Plan, a construction/maintenance/public access/recreation easement will need to be granted to the City for the future trail segment which connects the northern end of the Harborview Village trail to Sunnyside Boulevard. The easement would need to be granted over TP# 30053400102100 adjacent to Sunnyside Boulevard. Again the City*

*will be responsible for trail construction and maintenance of the trail segment. An additional trail easement also needs to be obtained to connect the southern end of the Harborview Village Trail to the planned park located on TP#(s)29050300108500 & 290503108400.*

*All required easements shall be recorded with the Snohomish County Auditor prior to levee removal.*

#### **Chapter 4, Section (B)(8) State-Wide Significance Regulations**

Policy 1. Recognize and protect the state-wide interest over local interest.

- a. Solicit comments and opinions from groups and individuals representing state-wide interest by circulating the master program, and any amendments there of affecting shorelines of state-wide significance, to state agencies, adjacent jurisdictions, citizen's advisory committees and local officials and state-wide interest groups.
- b. Recognize and take into account state agencies policies, programs and recommendations in developing and administering use regulations and in approving shoreline permits.
- c. Solicit comments, opinions and advice from individuals with expertise in ecology and other scientific fields pertinent to shoreline management.

*Applicant's Response: Recognizing that Ebey Slough is a shoreline of state-wide significance and is of value to the entire state, the overall intent of the project includes restoration of ecosystem function, structure, and dynamic processes for the long-term ecological benefits, including for the benefit of future generations.*

*Natural Resources Trustees assigned to the Tulalip Landfill site (Tulalip Tribes of Washington; the U.S. Department of the Interior – U.S. Fish and Wildlife Service; the U.S. Department of Commerce – National Oceanic and Atmospheric Administration (NOAA); and the State of Washington – Department of Ecology, selected restoration of the Quwloolt Estuary as the preferred strategy for restoration of trust resources because it provides a combination of actions to maximize the opportunity for restoration and will result in an increase in the greatest diversity of estuarine habitats. The Trustees have conducted extensive studies of the hydrologic and biologic characteristics of the project site and used these studies, and applicable regional studies to guide the design of the project. See the SEPA checklist for a listing of studies and evaluations.*

*The Trustees in coordination with the City of Marysville have conducted workshops and public meetings to solicit public input on the restoration project.*

Policy 2: Preserve the natural character of the shoreline.

- a. Designate and administer shoreline environments and use regulations and restore the ecology and environment of the shoreline as a result of man-made intrusions on shorelines.

- b. Upgrade and redevelop those areas where intensive development already exists in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low-intensity use or underdeveloped areas.
- c. Protect and restore existing diversity of vegetation and habitat values, wetlands and riparian corridors associated with shoreline areas.
- d. Protect and restore habitats for State-listed ‘priority species.’

***Applicant’s Response:** The purpose of the project is to restore the natural resources of the Qwuloolt Estuary to historic conditions. These resources were lost when the estuary was diked and cut off from the natural influences of the Snohomish River and tides. The Qwuloolt Restoration Project will restore the historic and natural influences of the river and tides and restore a function wetland complex connected to the broader Snohomish estuary system consistent with the stated policy. The project will provide improved fish passage for listed fish species – Puget Sound Evolutionarily Significant Unite (ESU) Chinook salmon, Coastal-Puget Sound Distinct Population Segment (DPS) bull trout, and Puget Sound DPS steelhead.*

Policy 3. Result in long-term over short-term benefit.

- a. Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
- b. In general, preserve resources and values of shorelines of state-wide significance for future generations and restrict or prohibit developments that would irretrievably damage shoreline resources.

***Applicant’s Response:** By its nature, the project will provide long-term ecological benefits consistent with the stated policy.*

Policy 4: Protect the resources and ecology of the shoreline.

- a. All shoreline development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
- b. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or general enhancement of shoreline areas.

***Applicant’s Response:** The project site has been evaluated and planned for ecological restoration over the past ten years. The site was historically estuary wetland, converted to farmland in the early 1900’s. Over the last 15 years the land has not been farmed and has lain fallow. Overall the project will restore natural functions to the site and will benefit wildlife resources. Improvements to the Jones and Allen Creek channels will improve fish passage for listed Chinook salmon, bull trout, and steelhead. Species present at the site would experience temporary disruptions during construction, but most animals are anticipated to return to the area following construction. See the SEPA checklist for additional information.*

*Aesthetically, the site will appear different after the reintroduction of daily tidal influence. The current freshwater emergent vegetation will become either mudflat or estuarine emergent marsh directly after the breach is completed, but is expected to evolve into an emergent marsh with a scrub-shrub component over time. Much of the site will become mudflat within a year after the levee is breached. It will likely take several years for estuarine and scrub-shrub plant communities to colonize and establish the area.*

Policy 5: Increase public access to publicly owned areas of the shoreline.

- a. Give priority to developing paths and trails to shoreline areas, linear access along the shorelines and to developed upland parking.
- b. Locate development landward of the ordinary high water mark so that access is enhanced.
- c. Prevent development that would impede navigation on waters of the state.

*Applicant's Response: See response to policies under Chapter 4, Section (B)(7) Public Access, above.*

*Staff Response: By granting trail easements to the City to allow their development and operation, the applicant will have met the State's policy under the SMA of giving priority to development paths and trails to shoreline areas.*

Policy 6: Increase recreational opportunities for the public on the shoreline.

- a. Plan for and encourage development of facilities for recreational use of the shoreline.
- b. Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for non-motorized access to the shoreline.

*Applicant's Response. Though the project would not include development of new recreation facilities, existing recreational uses would be preserved. The project would not preclude the development of new trails providing public access to the shorelines. An increase in recreational use of the site could result from the project.*

*Staff's Response: See Staff Response to Chapter 4, Section (B)(7) Public Access.*

#### **Chapter 5, Section 7(b) - Policies:**

Policy 2: All shoreline restoration and/or enhancement projects should protect the integrity of adjacent natural resources including aquatic habitats and water quality.

*Applicant's Response: The channels of Jones and Allen Creek are being restored to more natural configurations, thereby improving fish passage. The high berms internal to the property and perimeter of the site (between 9 and 13 feet NAVD 88) will be planted with native vegetation and invasive species will be controlled in these areas.*

Policy 3: Where possible, shoreline restoration and/or enhancement should use maintenance-free or low-maintenance designs.

***Applicant's Response:*** *The Qwuloolt Estuary Restoration Project has been designed to be maintenance-free or low-maintenance. Once the levees are breached, natural processes will be allowed to restore tidal functions to the area and no active maintenance is planned for the tidal area. Vegetation will be allowed to establish naturally in the new tidal area. The high berms internal to the property and the perimeter of the site (between elevations 9 and 13 feet NAVD 88) will be planted with native vegetation and invasive species will be controlled in those areas. The Tulalip Tribe will develop a monitoring and maintenance plan for those revegetated areas.*

Policy 4: The City will pursue the recommendations in the shoreline restoration plan prepared as part of this SMP update. The City will give priority to projects consistent with this plan.

***Applicant's Response:*** *The Qwuloolt Estuary Restoration Project is specifically identified as a priority project in the shoreline restoration plan.*

Regulation 1. Shoreline enhancement may be permitted if the project proponent demonstrates that no significant change to sediment transport or river current will result which will adversely affect ecological processes, properties, or habitat.

***Applicant's Response:*** *The proposed project will result in changes to total flow on the site and within Ebey Slough. These changes will restore the historical condition that occurred prior to installation of the artificial levees along Ebey Slough. Changes in tidal flow and associated sediment transport are anticipated to have a beneficial effect on a suite of ecological functions as the site rebuilds a marsh plain and provides tidal channels that provide a variety of water depths over a tide cycle. The project will restore the ecological processes, properties and aquatic habitat of the area. This is further documented in the attached SEPA checklist.*

Regulation 2. Shoreline restoration and/or enhancement projects shall use 'best available science' and best management practices.

***Applicant's Response.*** *The Qwuloolt Estuary Restoration Project has been designed using both best available science and best management practices. The Trustees and the project consultants have conducted extensive studies of the hydrologic and biologic characteristics of the project site and used these studies, and applicable regional studies to guide the design of the project.*

Regulation 3. Shoreline restoration and/or enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.

***Applicant's Response:*** *The proposed project will not interfere with normal public use of navigable waters. Currently the only boating in the area occurs on Ebey Slough and that use will not be affected by the project. Restoration of the site will allow more people to observe the natural tidal functions of the Snohomish Estuary.*

Regulation 4. Shoreline restoration and ecological enhancement projects may be permitted in all shoreline environments provided:

- a. The project's purpose is the restoration of natural character and ecological functions of the shoreline, and
- b. It is consistent with the implementation of a comprehensive restoration plan approved by the City, or the City finds that the project provides an ecological benefit and is consistent with the master program.

***Applicant's Response:** The purpose of the project is the restoration of natural character and ecological functions of the shoreline and the project is a priority project in the City's Shoreline Restoration Plan.*

#### **E. Conditional Use Criteria**

Pursuant to Chapter 5.B.4 of the *Shoreline Master Plan*, a conditional use permit is required for the construction of the proposed levee and placement of fill within the FEMA designated floodway and 100-year floodplain. The following conditional use permit criteria are set forth in the *Shoreline Master Plan*:

1. The proposed use will be consistent with the policies of the SMA and the policies of the master program.

***Applicant's Response:** The levee and associated fill is needed to protect adjacent properties and is an essential part of the project's feasibility. Information on how the project is consistent with the goals and policies of the SMP as described above relate to the project in its entirety (restoration elements and levee construction) as restoration cannot occur without protecting adjacent properties. While levee construction would result in wetland impacts on a portion of the site, restoration would improve ecological conditions on the site and cause a net gain in wetland functions and values. Therefore, the project is considered self-mitigating.*

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

***Applicant's Response:** The new setback levee will not include public access, but it will be designed so as to not preclude the development of public access in the future. The setback levee will not interfere with any existing public use of the shoreline.*

***Staff Response:** The granting of trail construction/access/maintenance easements to allow the construction of the planned trail will after trail development allow public use/enjoyment of the newly restored shoreline.*

3. The proposed use of this site and design of the project will be compatible with other permitted uses in the area.

***Applicant's Response:** The levee and associated fill will be consistent with adjacent land using and zoning. The site is currently zoned Open Space and would remain open space. The open space use is compatible with the adjacent industrial park and residential areas around the perimeter of the property. No existing views would be obstructed by the levee; however, the overall site will appear different after the reintroduction of daily tidal influence.*

*The levee will be located, designed, constructed, and maintained so its resultant effect on hydraulic shoreline processes will not cause damage to other permitted uses in the area, and so that the physical integrity of adjacent upland areas is maintained. Native vegetation will be planted along the perimeter of the levee to enhance ecological functions.*

4. The proposed use will cause no unreasonable adverse effects to the shoreline environment designation in which it is located.

***Applicant's Response:** Dikes and levees are a conditional use in the Urban Conservancy designation and allowed if the project is for environmental restoration and the City determines that there will be an increase in desired ecological functions. The proposed setback levee is part of an ecological restoration project and the levee is intended to protect adjacent property from the daily tidal inundation. The overall project will increase the estuarine ecological functions of the project area.*

## **F. Critical Areas**

The entire restoration site has been classified by NOAA as a Category 3, freshwater, depressional wetland. The site also contains fish and wildlife habitat, geologic hazards, and frequently flooded areas. Both Jones and Allen Creeks are classified as Type F streams under Marysville Municipal Code (MMC) because they are used by salmonids. According to the Washington State Department of Natural Resources, the site has moderate to high susceptibility to liquefaction, which classifies the site as a geologic hazard areas according to MMC. The entire project is located in the 100-year floodplain and the majority of the site is located within the FEMA designated floodway for Ebey Slough.

The project is a restoration project which will improve wetland and fish and wildlife habitat conditions. The project is considered self-mitigating and permanent adverse impacts will not result from the activities outlined in this Phase. No mitigation for impacts to wetlands/streams is required as a result of this project.

The US Department of the Army, Seattle District, Corps of Engineers performed a zero-rise analysis for the proposed setback levee along Ebey Slough. The zero-rise analysis was completed on 3/29/11. The analysis identified a .1 ft rise in the unencroached flood level within the restoration site and potential .2 ft rise at points south of the site.

The City of Marysville met with staff from FEMA, US Army Corps of Engineers, Tulalip Tribes and Department of Ecology to discuss the results. FEMA has issued a policy on fish enhancement structures within the floodway. In the meeting FEMA staff described the policy as it relates to restoration projects, such as the Qwuloolt Restoration. The policy identifies that rather than "no-rise", the community official should certify that the project was designed to keep the rise within the floodplain as close to zero as practically possible and that no structures are impacted by the rise. DOE staff also contacted Snohomish County staff to share this data and they did not indicate concern.

## **G. Conformance with SEPA**

After evaluation of the applicant's environmental checklist submitted with the application, a Mitigated Determination of Non-Significance (MDNS) was issued on June 29, 2011, there were no appeals. The threshold determination is adopted by reference into this report.

## H. CONCLUSIONS

1. The proposal as conditioned is consistent with the City of Marysville Shoreline Management Master Program goals/policies/regulations.
2. A Mitigated Determination of Non-Significance was issued on June 29, 2011, there were no appeals.
3. The applicant is still in the process of obtaining construction/flood easements over certain properties within the project boundaries. Flooding will not be allowed to commence on those properties (including City-owned lands) until the properties are secured and/or proper easements have been obtained.
4. In 2006 the City was contacted by Foley Cleveland regarding a BLA that was recorded after the sale of 29050300200100 to the Tulalip Tribes. The then owners Peter Poortinga and Marty Loberg sold the property to the Tribes with the understanding that the existing property line had been revised to exclude the existing house through the BLA process. Mr. Foley indicated that they believed that the BLA was recorded after the sale of the property and therefore the BLA was invalid. The city concurred with that conclusion. As the existing home has been sold to a private individual there appears to be an issue with title.
5. This proposal as conditioned is consistent with the City's Critical Areas Ordinance.
6. This proposal as conditioned is consistent with the City's Floodplain Ordinance.

## III. STAFF RECOMMENDATION

Based upon the above stated findings and conclusions, the Community Development Department recommends approval of the Shoreline Substantial Development Permit subject to the following conditions:

1. Prior to levee removal, the applicant must either secure ownership of all parcels within the project work area and/or obtain flood easements over the affected properties. If flood easements cannot be obtained, those properties must be removed from the project and adequate measures must be taken to prevent flooding of said properties. A *Memorandum of Agreement* between the City of Marysville and the Tulalip Tribes is required prior to flooding of city-owned lands. Also, the title issue related to BLA 98-004 recorded under AF# 9808035010 must be resolved prior to any activity occurring on parcel 29050300200100.
2. Prior to levee removal, the applicant shall grant recreational/trail easements over the following areas:
  - a. The newly constructed levee along the west project boundary;
  - b. Adjacent to Sunnyside Blvd on TP# 30053400102100 to connect the existing northern end of the Harborview Village trail to Sunnyside Blvd; and

- c. Connection of southern end of Ebey Waterfront Trail to the planned City park located on TP#(s) 29050300108500 & 290503108400 – provided the NRCS easement can be amended to allow trail construction.

The easements shall be recorded with the Snohomish County Auditor's Office prior to levee removal.

3. The Restoration project will be required to incorporate all measures, including alternative design levee breach, as recommended in the modeling efforts by Batelle and PWA referenced in the issued technical memorandum, or as updated during final engineering design. These measures include, but are not limited to: (MDNS #1)
  - a. Brashler Industrial Park drainage improvements including construction of a stormwater detention facility as described in the 12/02/08 PWA preliminary design analyses;
  - b. Construction of levees to protect existing industrial and residential properties as described in the 12/02/08 PWA memo as the 'West Levee';
  - c. Internal berms that shall be designed as wave breaks and designed to help promote channel stability;
  - d. Removal and replacement of storm drain level spreaders that are below the +12' NAVD contour;
  - e. Raising the existing trail (Harborview system) where the trail is below 12'
4. The applicant will provide annual monitoring reports to the City of Marysville for a 5-year monitoring period and then a final monitoring report at 10 years, evaluating the following improvements: (MDNS #2)
  - a. West Levee and related industrial park drainage facilities;
  - b. Water control structure evaluation for industrial park and monitoring reports for groundwater levels behind the levee system;
  - c. Monitoring of south side of wastewater treatment plant (WWTP) levee to evaluate post-project conditions resulting from restoration project.
5. The applicant will implement measures to repair any degradation or failure of project improvements identified in the monitoring reports listed in condition 2 above. (MDNS #3)
6. The applicant shall submit a pre- and post- construction road evaluation report, as approved by the City Engineer, and repair any post-construction related road damage caused by heavy truck traffic generated as a result of project construction. (MDNS #4)
7. Prior to commencement of construction activities related to the Christofferson grading project, the applicant shall submit a traffic control plan to the City Traffic Engineer for review and approval. The plan shall include the following elements: 1) The haul vehicle should be limited to vehicles not larger/longer than 10 wheel, 10-12 yard dump trucks; and 2) the access on to and off of 61<sup>st</sup> St (Sunnyside Blvd) be controlled by two way flagging control capable of safely holding approaching traffic during the access maneuvers. (MDNS #5)

8. The applicant shall mow the existing vegetation within the inundation area, or apply other vegetation management strategies to reduce the amount of organic matter immediately prior to dike breaching. (MDNS #6)
9. Post dike construction, the applicant shall be required to monitor and evaluate salt water intrusion onto adjacent properties and as necessary, initiate appropriate mitigation measures to address the situation. (MDNS #7)
10. The applicant will repair or armor the WWTP levee if any damages result from channel velocities or scour, as documented in the monitoring report for condition 2c above. The applicant will also be required to repair or armor the southern, city-owned levee if any damages result as a result of channel velocities or scour. Maintenance vehicle access shall be maintained to the south levy post dike breach. (MDNS #8)

Prepared by: CDJ

Reviewed by: gh

**CITY OF MARYSVILLE**  
**Marysville, Washington**  
**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY OF MARYVILLE AFFIRMING THE RECOMMENDATION OF THE HEARING EXAMINER AND GRANTING A CONDITIONAL SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT FOR QWULOOLT ESTUARY RESTORATION PROJECT TO ALLOW THE CONSTRUCTION OF A 4,000 LF LEVEE; EXCAVATION AND REMOVAL OF 1,800 LF OF EXISTING DIKE; CREATION OF 1.1 ACRE FILL PAD (PHASE 2 & 3 OF CHRISTOFFERSON GRADING PROJECT); AND FILLING OF AGRICULTURAL DITCHES AS PART OF A PROCESS TO RESTORE TIDAL PROCESSES TO APPROXIMATELY 341.5 ACRES OF FALLOW FARMLAND**

WHEREAS, The Tulalip Tribes of Washington own or have flood/construction easements over certain real property generally located north of Ebey Slough, south and west of Sunnyside Blvd, and east of 47<sup>th</sup> Ave NE, in the City of Marysville; and

WHEREAS, The Tulalip Tribes of Washington applied to the City of Marysville for a Conditional Shoreline Substantial Development Permit to construct a 4,000 LF levee; excavate and remove 1,800 LF of existing dike; complete phases 2 and 3 of the Christofferson fill pad; and fill remaining agricultural ditches in order to restore tidal processes to approximately 341.5 acres of fallow agricultural land; and

WHEREAS, a SEPA Threshold Determination of Non-Significance was issued by the City of Marysville on June 29, 2011; and

WHEREAS, the City Hearing Examiner held an open public record public hearing on August 11, 2011 and continued said hearing until September 8, 2011 and adopted Findings of Fact, Conclusions and a Recommendation to approve the conditional Shoreline Substantial Development Permit subject to ten (10) conditions; and

WHEREAS, the City Council held a public meeting on said Conditional Shoreline Substantial Development Permit on October 10, 2011 and following a review of the record before the Hearing Examiner concurred with the Findings of Fact, Conclusions and Recommendation of the Hearing Examiner; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MARYSVILLE, WASHINGTON AS FOLLOWS:

1. The Findings of Fact, Conclusions and Recommendation of the Hearing Examiner with respect to the above-referenced Conditional Shoreline Substantial Development Permit under File No. PA 10013 is hereby adopted and incorporated herein by this reference and attached hereto as Exhibit A.
2. The Conditional Shoreline Substantial Development Permit under File No. PA 10013 is hereby approved in accordance with said Findings of Fact, Conclusions and Recommendation and subject to the approval of the Washington State Department of Ecology in accordance with state law.

3. The Conditional Shoreline Substantial Development Permit for the above described property shall be perpetually conditioned upon strict compliance with each of the conditions set forth in the Recommendation of the Hearing Examiner in Exhibit A.
4. Violation of any of the conditions of said decision may result in revocation of the conditional Shoreline Substantial Development Permit or enforcement action being brought by the City.
5. This Decision shall be final and conclusive with the right of appeal by any aggrieved party to the Shorelines Hearings Board pursuant to RCW 90.58.140 and other applicable provisions of state law.
6. The Director of Community Development is directed to file this Resolution and Decision with the Department of Ecology.

PASSED by the City Council and APPROVED by the Mayor this \_\_\_\_\_ day of October 2011.

CITY OF MARYSVILLE

By: \_\_\_\_\_  
JON NEHRING, MAYOR

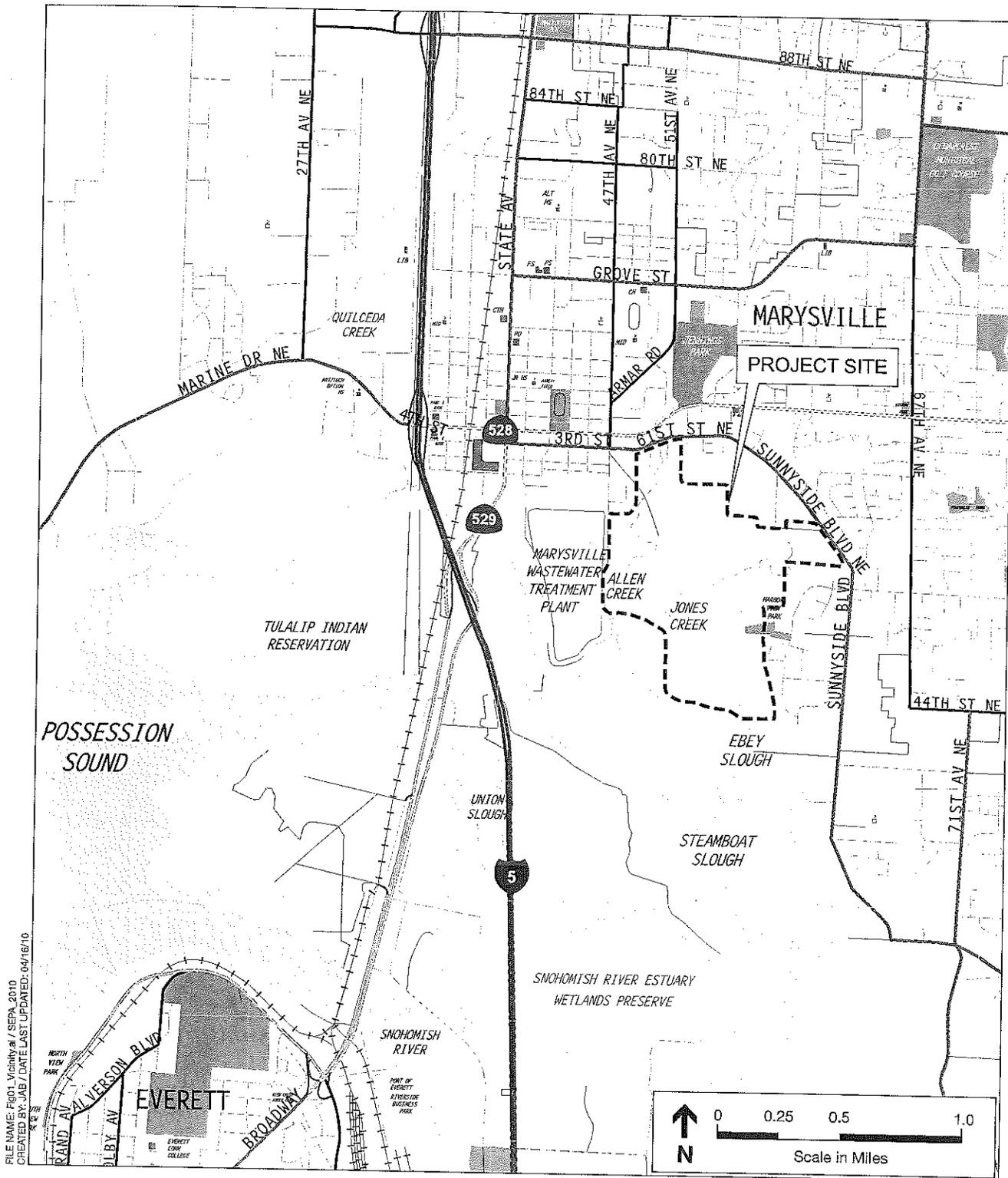
Attest:

By: \_\_\_\_\_  
CITY CLERK

Approved as to form:

By: \_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY





SOURCE: Rand McNally & Company, 2006.

Tulalip Estuary Restoration Project . 205143

**Figure 1**  
Vicinity Map  
QWULOOLT ESTUARY RESTORATION PROJECT  
MARYSVILLE, WASHINGTON

Received  
CIV 02 2010  
City of Marysville  
Community Development

EXHIBIT

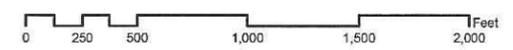


# Qwuloot Estuary Restoration

## Project Final Phase

September 2011

- - - Proposed trail
- Existing trail
- New levee
- Existing levee
- New stream realignment
- 13' LIDAR floodplain contour
- Parks and open space
- Marysville city limits



THE CITY OF MARYSVILLE DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS OF THIS DATA FOR ANY PARTICULAR PURPOSE, EITHER EXPRESSED OR IMPLIED. NO REPRESENTATION OR WARRANTY IS MADE CONCERNING THE ACCURACY, CURRENCY, COMPLETENESS OR QUALITY OF DATA DEPICTED. ANY USER OF THIS DATA ASSUMES ALL RESPONSIBILITY FOR USE THEREOF, AND FURTHER AGREES TO HOLD THE CITY OF MARYSVILLE HARMLESS FROM AND AGAINST ANY DAMAGE, LOSS, OR LIABILITY ARISING FROM ANY USE OF THIS DATA.

...GISV\ArcMap\projects\Community\_Development\qwuloot\project\_final\_phase.mxd

